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36 CFR Part 219

National Forest System Land Management Planning; Final Rule

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 and record of decision.

SUMMARY: This final rule describes the National Forest System (NFS) land management planning framework; sets up requirements for sustainability of social, economic, and ecological systems; and gives directions for developing, amending, revising, and monitoring land management plans. It also clarifies that, absent rare circumstances, land management plans under this final rule are strategic in nature and are one stage in an adaptive cycle of planning for management of NFS lands. The intended effects of the rule are to strengthen the role of science in planning; to strengthen collaborative relationships with the public and other governmental entities; to reaffirm the principle of sustainable management consistent with the Multiple-Use Sustained-Yield Act of 1960 (MUSYA) and other authorities; and to streamline and improve the planning process by increasing adaptability to changes in social, economic, and environmental conditions. This rulemaking is the result of a United States District Court of Northern California order dated March 30, 2007, which enjoined the United States Department of Agriculture (the Department, the Agency, or the USDA) from putting into effect and using the land management planning rule published on January 5, 2005 (70 FR 1023) until it complies with the court's order regarding the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Administrative Procedure Act (APA) (*Citizens for Better Forestry* v. *USDA*, 481 F. Supp 2d 1059 (N.D. Cal. 2007)). The purpose of this final rule is to respond to the district court's ruling.

This final rule replaces the 2005 final rule (2005 rule) (70 FR 1022, Jan. 5, 2005), as amended March 3, 2006 (71 FR 10837) (which was enjoined by the district court's ruling) and the 2000 final rule (2000 rule) adopted on November 9, 2000 (65 FR 67514) as amended on September 29, 2004 (69 FR 58055).

DATES: *Effective Date:* This rule is effective April 21, 2008.

ADDRESSES: For more information, including a copy of the final environmental impact statement (EIS), refer to the World Wide Web/Internet at *http://www.fs.fed.us/emc/nfma/2008_planning_rule.html*. More information may be obtained on 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: Ecosystem Management Coordination staff's Assistant Director for Planning Ric Rine at (202) 205–1022 or Planning Specialist Regis Terney at (202) 205–1552.

SUPPLEMENTARY INFORMATION: The following outline shows the contents of the preamble, which is also the record of decision (ROD), for this regulation.

Decision

Alternative M is selected as the final rule. This decision is based upon the ''Environmental Impact Statement—National Forest System Land Management Planning,'' USDA Forest Service, 2008, and the supporting record. This decision is not subject to Forest Service appeal regulations.

Public comment on the proposed action in the draft environmental impact statement (EIS) (alternative A) supported some modifications of the proposed rule. The Department reviewed and considered these comments, in consultation with agency managers, and concluded the rule could be improved if some suggested changes were incorporated. Many suggested modifications contributed to the development of alternative M in the final EIS.

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Introduction and Background

The Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476 *et seq.*), as amended by the National Forest Management Act of 1976 (NFMA) (90 Stat. 2949 *et seq.*; 16 U.S.C. 1601–1614), requires the Secretary of Agriculture (the Secretary) to promulgate regulations under the principles of the MUSYA that set up the process for the development and revision of land management plans (16 U.S.C. 1604(g)).

The first planning rule, adopted in 1979, was substantially amended on September 30, 1982 (47 FR 43026), and was amended, in part, on June 24, 1983 (48 FR 29122) and on September 7, 1983 (48 FR 40383). It is the 1982 planning rule (1982 rule), as amended, which has guided the development, amendment, and revision of the land management plans on all national forests and grasslands.

The Forest Service has undertaken several reviews of the planning process carried out under the 1982 rule. The first review took place in 1989 when the Forest Service, with the help of the Conservation Foundation, conducted a comprehensive review of the planning process and published the results in a summary report ''Synthesis of the Critique of Land Management Planning'' (1990). The critique concluded that the Agency spent too much time on planning, spent too much money on planning, and, therefore, the Forest Service needed a more efficient planning process.

The Forest Service published an advance notice of proposed rulemaking on February 15, 1991 (56 FR 6508) for possible revisions to the 1982 rule. A proposed rule was published on April 13, 1995 (60 FR 18886), however, the Secretary chose not to continue with that proposal.

In response to comments on the 1995 proposed rule, the Secretary convened a 13-member Committee of Scientists in late 1997 to evaluate the Forest Service's planning process and recommend changes. In 1998, the Committee of Scientists held meetings across the country and invited public participation in the discussions. The Committee's findings were issued in a final report, ''Sustaining the People's Lands'' (March 1999). In response to many findings in the 1990 ''Synthesis of the Critique of

Land Management Planning'' and the 1999 Committee of Scientists report, the Forest Service tried to prepare a rule that would provide a more efficient planning process. A proposed rule was published on October 5, 1999 (64 FR 54074), and a final rule was adopted on November 9, 2000 (65 FR 67514).

After adoption of the 2000 rule, the Secretary received many comments from individuals, groups, and organizations expressing concerns about putting into effect the 2000 rule. In addition, lawsuits challenging promulgation of the rule were brought by a coalition of 12 environmental groups from 7 States and by a coalition of industry groups (*Citizens for Better Forestry* v. *USDA*, No. C–01–0728–BZ– (N.D. Cal., filed February 16, 2001)) and (*American Forest and Paper Ass'n* v. *Veneman*, No. 01–CV–00871 (TPJ) (D.D.C., filed April 23, 2001)). Because of these lawsuits and concerns raised in comments to the Secretary, the Department of Agriculture started a review of the 2000 rule focusing on implementation. ''The NFMA Planning Rule Review,'' (USDA Forest Service April 2001) concluded many concerns about carrying out the rule were serious and needed immediate attention.

Having considered the reports of the review teams, the Acting Deputy Under Secretary for Natural Resources and Environment asked the Chief of the Forest Service to develop a proposed rule to replace the 2000 rule. A new planning rule was proposed on December 6, 2002 (67 FR 72770).

In addition, interim final rules extending the transition from the 1982 rule to the 2000 rule were published May 17, 2001 (66 FR 27552) and May 20, 2002 (67 FR 35431). The second rule allowed Forest Service managers to elect to continue preparing plan amendments and revisions under the 1982 rule until a new final rule was adopted. An interim final rule was published September 10, 2003 (68 FR 53294) extending the date project decisions must conform to provisions of the 2000 rule until a new rule is promulgated. Finally, an interpretive rule was published September 29, 2004 (69 FR 58055) to clarify the intent of the transition section of the 2000 rule regarding the consideration of the best available science to inform project decisionmaking. The 2004 interpretive rule also explicitly states that the 1982 rule is not in effect. Accordingly, no 1982 regulations apply to project decisions.

The final 2005 rule was published January 5, 2005 (70 FR 1022). Shortly thereafter, Citizens for Better Forestry and others challenged it in Federal district court. In an order dated March 30, 2007, the United States District Court for Northern California enjoined the Department from putting into effect and using the 2005 rule pending additional steps to comply with the court's opinion for APA, ESA, and NEPA (*Citizens for Better Forestry* v. *USDA,* 481 F. Supp. 2d 1059 (N.D. Cal. 2007)). The court concluded,

> [T]he agency must provide notice and comment on the 2005 Rule as required by the APA since the court concludes the rule was not a 'logical outgrowth' of the 2002 proposed rule. Additionally, because the 2005 Rule may significantly affect the quality of the human environment under NEPA, and because it may affect listed species and their habitat under ESA, the agency must conduct further analysis and evaluation of the impact of the 2005 Rule in accordance with those statutes.

(*Citizens for Better Forestry* v. *USDA*, 481 F. Supp. 1059, 1100 (N.D. Cal. 2007))

Purpose and Need for the National Forest System Land Management Planning Rule

The final rule's purpose is two-fold. The primary purpose is to improve on the 2000 rule by providing a planning process that is readily understood, is within the Agency's capability to carry out, is consistent with the capabilities of NFS lands, recognizes the strategic programmatic nature of planning, and meets the intent of the NFMA, while making cost effective and efficient use of resources allocated to the Agency for land management planning. This rule is needed to address the limitations of the 2000 rule that were identified in the April 2001 ''NFMA Planning Rule Review.''

This action's second purpose is in response to the court order in *Citizens for Better Forestry* v. *USDA* that enjoined the 2005 rule. The EIS supporting this ROD documents the analysis and evaluation of the impact of the rule in accord with the NEPA.

Based on the results of the aforementioned reviews, principles, and practical considerations, there is a need for a planning rule that:

- Contains clear and readily understood requirements;
- Makes efficient use of agency staff and collaborative efforts;
- Establishes a planning process that can be conducted within agency planning budgets;
- Provides for diversity of plant and animal species, consistent with capabilities of NFS lands;
- Requires analyses that are within the Agency's capability to conduct;
- Recognizes the strategic nature of land management plans;
- Considers best available science;
- Requires public involvement in development of a monitoring strategy, taking into account key social, economic and ecological performance measures and provides the responsible official sufficient discretion to decide how much information is needed;
- Promotes the use of adaptive management;
- Involves the public;
- Guides sustainable management; and
- Complies with applicable laws, regulations, and policies.

Public Involvement on the Proposed Rule

• *How Was Public Involvement Used in the Rulemaking Process?*

A notice of intent to prepare an EIS was published in the **Federal Register** on May 11, 2007 (72 FR 26775) with a public comment period ending June 11, 2007. The notice stated the Agency was considering reinstituting planning direction like that from the 2005 rule and specifically requested public comments on the nature and scope of environmental, social, and economic issues that should be analyzed in the EIS. Because of the extensive public comment already received on the 2005 rule, the planning directives, and the Agency categorical exclusion for land management planning, no public meetings were held for the scoping.

The Agency received a little over 800 responses. Responses included advocacy for a particular planning rule, as well as suggestions for analyses to conduct, issues to consider, alternatives to the proposed action, and calls for compliance with laws and regulations.

Some responses raised specific issues with the proposed action while others raised broader points of debate with management of the national forest system (NFS). Some respondents suggested alternative processes for promulgating a planning rule or alternative purposes for the NFS. Besides considering comments received during the scoping period, the Forest Service reviewed the court's opinion on the 2005 rule in *Citizens for Better Forestry* v. *USDA* and comments previously collected during promulgation of the 2005 rule (70 FR 1022, Jan. 5, 2005), agency planning directives (72 FR 4478, Jan. 31, 2007; 71 FR 5124, Jan. 31, 2006), and the Forest Service's categorical exclusion for land management planning (71 FR 75481, Dec. 15, 2006).

• *What General Issues Were Identified Regarding the Proposed Rule and Draft Environmental Impact Statement?*

Based on comments and the aforementioned review, an interdisciplinary team identified a list of issues to address.

• Diversity of Plant and Animal Communities.
• Timber Management Requirements of 16 U.S.C. 1604(g).
• Identification of Lands Not Suited for Timber Production (16 U.S.C. 1604(k)).
• Standards and Prohibitions.
• Environmental Impact Statement.
• Best Available Science and Land Management Plans.
• Management Requirements.

These issues are described in more detail later in this ROD.

The proposed rule was published on August 23, 2007 (72 FR 48514), and the notice of availability for the supporting draft EIS was published in the **Federal Register** on August 31, 2007 (72 FR 50368). A copy of the proposed rule and the draft EIS have been available on the World Wide Web/Internet at *http://www.fs.fed.us/emc/nfma/2007_planning_rule.html* since August 16, 2007. The proposed action and preferred alternative identified in both documents was the 2005 rule, as amended. Public comments were requested on both the proposed rule and the draft EIS. The comment period for both documents ended on October 22, 2007. The notice of availability of the final EIS was published in the **Federal Register** on February 15, 2008 (73 FR 8869).

The Forest Service received 79,562 responses. Of these, about 78,500 are form letters. The remaining letters consist of original responses or form letters with added original text. Some respondents focused their remarks on provisions of the proposed rule, others concentrated on the alternatives and analyses in the draft EIS and many comments applied to both documents.

Comments received on the proposed rule and draft EIS were consistent with, and often reiterated, the comments received during scoping. These comments played a key role in the decisions made in this ROD.

Alternatives Considered

The Agency fully developed six alternatives, and considered seven alternatives that were eliminated from detailed study (40 CFR 1502.14(A)). Alternatives considered in detail are summarized below. Seven additional alternatives (F–L) were considered but eliminated from detailed study because they did not meet some aspects of the purpose and need. More discussion about the eliminated alternatives can be found in chapter 2 of the EIS.

• *What Alternatives Were Considered by the Agency?*

Alternative A (2005 rule). This alternative is the proposed action as originally published as a proposed rule on January 5, 2005, and amended on March 3, 2006, with an updated effective date and transition period date set out at section 219.14. Alternative A was the preferred alternative in the draft EIS. This alternative was slightly modified in response to public comments on the draft EIS. Details of this proposed rule are in appendix A of the EIS.

The proposed rule describes the NFS land management planning framework; sets up requirements for sustaining social, economic, and ecological systems; and gives directions for developing, amending, revising, and monitoring land management plans. It also clarifies that land management plans under the proposed rule, absent rare circumstances, are strategic, and are one stage in an adaptive management cycle of planning for management of NFS lands. The intended effects of the proposed rule are to strengthen the role of science in planning; to strengthen collaborative relationships with the public and other governmental entities; to reaffirm the principle of sustainable management consistent with the MUSYA and other authorities; to establish an environmental management system (EMS) for each NFS unit; and to streamline and improve the planning process by increasing adaptability to changes in social, economic, and environmental conditions. Under this alternative, approval of a plan, plan amendment, or plan revision would be done in accord with the Forest Service NEPA procedures. It would be possible for one unit to approve a plan, plan amendment, or plan revision with a categorical exclusion (CE), a second unit to use an environmental assessment (EA), and a third unit might use an EIS depending on the nature of the decisions made in each respective plan approval.

Alternative B (2000 rule). The 2000 rule at 36 CFR part 219 as amended is the no action alternative. Although an interim final rule allowed responsible officials to use the 1982 rule procedures for planning until a new final rule is adopted (67 FR 35434), this alternative assumes that responsible officials have been using the 2000 rule procedures.

This rule would guide development, revision, and amendment of land management plans for the NFS and to a certain extent, guide decisions for projects and activities as well. It describes the framework for NFS land and natural resource planning; reaffirms sustainability as the goal for NFS planning and management; sets up requirements for the carrying out, monitoring, evaluating, amending, and revising of land management plans. The intended effects of the rule are to strengthen and clarify the role of science in planning; to strengthen collaborative relationships with the public and other government entities, to simplify, clarify, and otherwise improve the planning process; and to reduce burdensome and costly procedural requirements. Plan revisions would require an EIS while plan amendments would follow agency NEPA procedures, which prescribe the appropriate level of NEPA documentation based on the significance of effects. The 2000 rule, as amended, is found in appendix B of the EIS.

Alternative C (1982 rule). Under this alternative, the 1982 rule at 36 CFR part 219, as it existed before promulgation of the 2000 rule, would guide development, revision, and amendment of land management plans for the NFS. This rule requires integration of planning for national forests and grasslands, including the planning for timber, range, fish, wildlife, water, wilderness, and recreation resources. It includes resource protection activities such as fire management and the use of minerals and other resources. This rule also established requirements for plan and animal diversity such as providing habitat to ensure viable populations of native and desired non-native vertebrate species and identifying and monitoring populations of management indicator species. Case law has applied the monitoring of management indicator species population trends to projects and activities. Plan revisions and significant amendments would require an EIS while non-significant plan amendments would follow agency NEPA procedures, which prescribe the appropriate level of NEPA documentation based on the significance of effects. The 1982 rule, as amended, is in appendix C of the EIS.

Alternative D. This alternative is the same as the proposed action (alternative A) but without either the environmental management system (EMS) requirements or references to EMS at section 219.5 in the proposed action. The EMS would not be part of the plan set of documents. Setting up an EMS would not be required before plan approval, and an EMS would not mark the end of the transition period.

Alternative E. Alternative E is the same as the proposed action (alternative A) but modified by (1) removing EMS requirements and all references to EMS, (2) adding standards as a plan component, (3) adding more direction for identifying lands suitable for timber production and timber harvest, and (4) adding various timber management requirements (16 U.S.C. 1604(g)) and limitations on timber removal (16 U.S.C. 1611) from the NFMA.

Alternative M. This alternative is the preferred alternative in the final EIS. Alternative M is the same as alternative E except that it requires an EMS and it places requirements for long-term sustained-yield capacity and culmination of mean annual increment in agency directives.

Alternative M directs the Chief to establish direction for EMS in the Forest Service directives. The directives will formally establish national guidance, instructions, objectives, policies, and responsibilities leading to conformance with International Organization for Standardization (ISO) and adopted by the American National Standards Institute (ANSI) as ''ISO 14001:2004(E) Environmental Management Systems—Requirements With Guidance for Use.'' The ISO 14001 is presently available for a fee from the ANSI Web site at *http://webstore.ansi.org/ansidocstore/default.asp.*

Under Alternative M, the EMS scope is changed so that the responsible official is the person authorized to identify and establish the scope and environmental aspects of the EMS, based on the national EMS and ISO 14001, with consideration of the unit's capability, needs, and suitability. The detailed procedures to establish scope and environmental aspects are being developed in a national technical guide and the Forest Service Directives System.

Alternative M allows a responsible official to conform to a multi-unit, regional, or national level EMS as an alternative to establishing an EMS for a specific unit of the NFS. The responsible official will have the responsibility to deal with local concerns in the EMS. The unit EMS will provide the opportunity either to conclude that the higher level EMS adequately considers and addresses locally identified scope and significant environmental aspects, or to address project-specific impacts associated with the significant environmental aspects. The complete details for how the Agency will do this are being developed in a national technical guide and the Forest Service Directives System. This guidance is planned for release during fiscal year 2008.

Alternative M does not require an EMS prior to approving a plan, plan revision, or plan amendment. However, it does provide that no project or activity approved under a plan developed, amended, or revised under the requirements of this subpart may be implemented until the responsible official establishes an EMS or the responsible official conforms to a multi-unit, regional, or national level EMS. Furthermore, alternative M has several additional minor changes described in the final EIS.

• *What Is the Environmentally Preferable Alternative?*

The Department has identified two environmentally preferable alternatives, alternative B and alternative M. They are identified as environmentally preferred for different reasons. It should be noted that the presence or absence of EMS in the rule wording of these two alternatives is not a factor in their identification as environmentally preferable because the Agency will establish an EMS regardless of the alternative selected. The Agency fully intends to comply with Executive Order 13423—Strengthening Federal Environmental, Energy, and Transportation Management by implementing an EMS. In alternative B, all Agency direction concerning EMS would come from Agency directives. In alternative M, Agency direction concerning EMS would come from the planning rule and from Agency directives.

Alternative B: Alternative B is one of two environmentally preferable alternatives. Although neither of the environmentally preferable alternatives has direct environmental effects, the procedural requirements of alternative B provide more surety that explicit environmental protections will be set up during land management planning. For example, alternative B requires the setting up of a national science advisory board and the possible setting up of regional advisory boards. It calls for use of broad-scale analyses to set the context for decisionmaking and specific actions for coordination and interaction with other Federal agencies, State and local governments, American Indian Tribes and Alaska Native Corporations, interested individuals and organizations. Alternative B calls for providing for species viability and requiring that the planning process includes development and analysis of information about a specified list of ecosystem and diversity components. The same factors making alternative B one of the environmentally preferable alternatives makes it unworkable. As previously described, alternative B's requirements are so prescriptive they cannot be done within agency resources. The cost and complexity of carrying out alternative B were major factors in the Department's decision to develop a new planning rule and in the decision not to select alternative B in this ROD.

Alternative M: Alternative M is the other environmentally preferable alternative. The rule contains substantive requirements for protecting important resources such as soil, water, wildlife habitat, and aesthetics. It requires NFS lands contribute to the sustainability of ecosystems within the capability of the land, and requires species-specific plan components be developed in situations where broader ecosystem diversity components might not meet the habitat needs of threatened and endangered species, species-of-concern, and species-of-interest. The Forest Service directives provide substantial additional guidance aimed at ensuring resource protection and restoration. Another reason for identifying alternative M as an environmentally preferable alternative is the streamlined planning process it engenders will allow units of the NFS to respond more quickly to new information or changed conditions. The flexibility to respond quickly might, in some situations, allow the Agency to better mitigate or avoid threats to national forest resources by allowing variances or amendments to plans to occur without the delay caused by time-consuming NEPA procedures. This flexibility contributed to the decision to select alternative M.

• *Decision and Rationale*

Decision

Alternative M is selected as the final rule. This decision is based on the Environmental Impact Statement—National Forest System Land Management Planning, USDA Forest Service, 2008, and its supporting record. This decision is not subject to Forest Service appeal regulations.

Public comment on the proposed action in the draft EIS (alternative A) supported some modifications of the proposed rule. The Department reviewed and considered these comments, in consultation with Agency managers, and concluded the rule could be improved if some suggested changes were incorporated. Many suggested modifications contributed to the development of alternative M in the final EIS.

Rationale for the Decision

The following paragraphs describe a process of elimination for selecting alternative M, by first discussing the alternative's responsiveness to the purpose and need and then each alternative's responsiveness to significant issues identified through public comments.

• Response to Purpose and Need

Alternatives A, D, and E, and M meet the purpose and need for action previously described in this document. In contrast, alternatives B and C do not meet the purpose and need for action.

Alternative B, the 2000 rule, was not selected because it does not meet the purpose and need for action. The 2001 NFMA Planning Rule Review and the subsequent 2002 business model workshop identified a number of shortcomings with the 2000 rule and these shortcomings constitute a large part of the purpose and need for action. This alternative is identified as the no action alternative in the EIS.

First, alternative B does not meet the purpose and need for a rule to have clear and readily understood requirements. This rule has both definitions and analytical requirements that are unclear and complex, and, therefore, subject to inconsistent implementation across the Agency. Second, alternative B does not meet the need for a rule that makes efficient use of agency staff and collaborative efforts. This alternative includes unnecessarily detailed procedural requirements for scientific peer reviews, broad-scale assessments, monitoring, and science advisory boards. These detailed analysis requirements would cause land management plan revisions to take an expected 6 years to complete. Although this rule requires public involvement, it would be difficult for members of the public to remain engaged in such a protracted process and even agency staff turnover would likely interrupt such a long process. With a 6-year revision process, approximately 48 plans would be in some stage of revision during a 15-year cycle. Funding this many simultaneous revisions would likely exceed the Agency's budget—failing to meet another part of the purpose and need to establish a planning process that can be conducted within agency planning budgets. The monitoring requirements in alternative B are overly prescriptive and do not provide the responsible official sufficient discretion to decide how much information is needed—contrary to the purpose and need to establish monitoring requirements that provide the responsible official sufficient discretion to decide how much information is needed.

Alternative C, the 1982 rule, was also not selected because it does not meet the purpose and need for action. It should be noted that normally an action alternative would not be studied in detail if it does not fully meet the purpose and need. However, the Agency is in litigation. The plaintiffs argue that the 1982 rule, not the 2000 rule, is in effect as a result of the court's injunction of the 2005 rule. Because the proposal is to revise an existing rule, taking no action would entail continuing under the existing rule. Whether one believes the 2000 rule or the 1982 rule is the existing rule or ''no action alternative,'' both have been considered. Furthermore, all but one of the issues concerning the proposed action is based on the public's many years of experience with the 1982 rule. Accordingly, the 1982 rule provides a useful basis for comparison of the alternatives.

Alternative C, like alternative B, does not meet the need to make efficient use of agency staff and collaborative efforts because of the detailed analysis requirements, including benchmarks that would cause land management plan revisions to take an average of 5 years to complete. Because of the this long planning period, Alternative C has the same problems with the public remaining involved, agency staff changes, and exceeding the Agency's budget as Alternative B has. Approximately 40 plans would be in some stage of revision during a 15-year cycle. Funding this many simultaneous revisions would likely exceed the Agency's budget—failing to meet another part of the purpose and need to establish a planning process that can be conducted within Agency planning budgets. Alternative C does not meet the purpose and need to provide for diversity of plant and animal species consistent with capabilities of NFS lands. The requirements in alternative C to maintain viable populations of native and desired non-native vertebrate species do not recognize the limitations of suitability and capability of the specific land area and are a technical impossibility given that the cause of the decline of some species is outside the Agency's control. Further, the requirement to monitor management indicator species (MIS) populations at the plan and project level has proved difficult.

With alternatives B and C eliminated, the remaining four alternatives, A, D, E, and M, were compared with respect to the issues identified from public comments.

• Response to the Issue of Diversity of Plant and Animal Communities

Concerns were expressed that the proposed rule procedures for diversity weaken protection for fish and wildlife species because the rule does not include the requirement for managing habitat to maintain viable populations.

The NFMA requires the planning rule to specify guidelines that provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet multiple-use objectives and provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species (16 U.S.C. 1604(g)(3)(B)). Although providing a mandate of viability is within this authority, NFMA does not mandate viability of species. Rather, species diversity appropriate to the area covered by a plan is NFMA's goal. Further, viability would place an impractical burden on the Agency.

The view held by some, that there must be 100 percent certainty that species viability will be maintained, is a technical impossibility given that the cause of the decline of some species is outside the Agency's control. For example, viability of some species on NFS lands might 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 Agency's control (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). Moreover, the number of recognized species present on the units of the NFS is very large. It is clearly impractical to analyze all native and desirable non-native vertebrate species, and previous attempts to analyze the full suite of species by groups, surrogates, and representatives has had mixed success in practice. Furthermore, 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.

Alternatives A, D, E, and M meet the NFMA diversity requirements by establishing a goal of providing appropriate ecological conditions for plant and animal communities,

requiring a framework for sustaining these conditions in plans, and giving the responsible official discretion to decide what plan components should be included in the plan for species. Alternatives A, D, E, and M require the planning directives for sustaining ecological systems to be consistent with the concepts of ecosystem diversity and species diversity. In addition, guidance is currently included in the Forest Service Directives System for providing self-sustaining populations of species-of-concern. A self-sustaining population is one that is sufficiently abundant and has appropriate population characteristics to provide for its persistence over many generations. Species-of-concern are species for which the responsible official determines that management actions might be needed to prevent listing under the ESA. This issue did not result in the further elimination of the remaining four alternatives, A, D, E, and M.

• Response to the Issue of Requiring an Environmental Impact Statement

There is concern that by not requiring an EIS for plan development and plan revision, the proposed rule would not require consideration of a full range of planning alternatives, would reduce public involvement in land management planning, and would eliminate consideration of cumulative effects or leave such consideration to project-level analyses.

Alternatives A, D, E, and M allow an iterative approach to development of a plan, plan amendment, or plan revision. Under these alternatives, a plan is developed as various options for plan components are merged, narrowed, adjusted, added, and eliminated during successive rounds of the collaborative process. The term ''option'' is used to differentiate it from ''alternative'' as used in the NEPA process. The difference between alternatives and options is that options are developed to address specific issues or groups of issues. For example, a collaborative process to develop a proposal for a plan revision or plan amendment might identify differences of opinion concerning desired conditions for an area with respect to mechanized use. Options for mechanized use would then be developed. Where there are points of agreement on other desired conditions, there would be no need to develop options. An option could also be developed as a complete alternative to a proposal. If the responsible official determines the plan revision or amendment can be categorically excluded from documentation in an EA or EIS, no alternatives would be developed. If further NEPA analysis and documentation are required, appropriate alternatives would be developed from the options.

The difference in public participation between previous planning rules and alternatives A, D, E, and M is whether public participation occurs inside or outside the NEPA procedures. As discussed in the EIS, public involvement requirements in these alternative rules exceed those required for an EIS under NEPA. Under these alternatives, the responsible official must provide opportunities for the public, Federal, State, and local agencies, and Tribal governments to collaborate and participate openly and meaningfully in the planning process. Specifically, as part of plan development, plan amendment, and plan revision, the responsible official must involve the public in developing and updating a comprehensive evaluation report, establishing the components of a plan, and designing the monitoring program. Public notice must also be provided at initiation of plan development, revision, or amendment. Plan development, plan revision, and plan amendment are subject to a 90-day comment period and a 30-day objection period. Public notice must also be provided at the point of approval. These public involvement requirements would apply even if a land management plan decision is categorically excluded from further analysis and documentation in an EA or EIS.

In contrast, plan development and revision under the 1982 rule involving an EIS required public notice at initiation of plan development or revision, a minimum three-month public comment period for draft plans and draft EISs, public notice in a record of decision at the point of approval, and an administrative appeal process.

Experience in planning processes under the 2005 rule has shown that the collaborative process is very effective and successful in engaging the public. Alternatives A, D, E, and M all share the same requirements for public involvement as the 2005 rule.

Throughout 28 years of land management planning, the Agency has learned that tiering to the cumulative effects analysis in a plan EIS did not provide nearly as much useful information at the project or activity level as the Agency had expected. The effects analyses in plan EISs were often too general to meet analytical needs for projects and activities. Meaningful cumulative effects analyses cannot be conducted until project design and location are known or at least reasonably foreseeable. Plan-level analysis would, however, evaluate existing conditions and broad trends at the geographic scale of the planning area. The Department believes these rules provide for the development and consideration of planning alternatives with much more robust public participation than previously afforded. The Department also believes that analysis of current conditions and trends required by these rules constitutes an appropriate evaluation of broader scale settings and influences that merit recognition in the planning process. Cumulative effects analysis at the project scale will continue when designs and locations are at least reasonably foreseeable. These issues did not result in the further elimination of the remaining four alternatives, A, D, E, and M.

• Response to the Issue of Best Available Science

There was a concern the proposed rule requiring the responsible official only to take into account the best available science (sec. 219.11) weakens the consideration of science, while the 2000 rule required the responsible official to ensure the plan was consistent with the best available science. Respondents said the planning rule should ensure plans are consistent with best available science.

The Department believes it is essential that land management plans be based on current, relevant science. Public comment on the EIS clearly showed strong support for incorporating science into the planning process. The Department believes alternatives A, D, E, and M are equally responsive to the desire to increase effective use of relevant science in the planning process. These alternatives have requirements to document how science was considered and that science was appropriately interpreted and applied. Further, these alternatives allow the responsible official to use independent peer review, science advisory boards, and other review methods. Alternative M differs slightly from alternatives A, D, and E because the detailed procedural requirements to address risks and uncertainties are currently in Agency directives instead of the rule.

The words ''take into account'' were used in the proposed action (alternative A) and alternatives D, E, and M instead of the words of the 2000 rule, which used ''consistent with'' because ''take into account'' better expresses that formal science is just one source of information for the responsible official and only one aspect of decisionmaking. When making decisions, the responsible

official also considers public input, competing use demands, budget projections, and many other factors as well as science. The Department believes that this wording 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.

This issue did not result in the further elimination of the remaining four alternatives, A, D, E, and M.

• Response to the Issue of Management Requirements

There is a concern the proposed planning rule does not include minimum specific management requirements as the 1982 rule did at section 219.27, and that the lack of management requirements in the planning rule would reduce environmental protections resulting in significant environmental impacts including reduced environmental protection in project design and implementation.

The Department believes that less specific planning guidance is needed after decades of experience implementing NFMA. The proposed planning rule (alternative A) and alternatives D, E, and M provide a flexible process that can be applied to issues associated with local conditions and experience with implementing individual plans. The minimum specific management requirements in the 1982 rule are not required by NFMA—perhaps with good reason. The Department believes it is important not to include overly prescriptive requirements in a planning rule that unnecessarily limit a responsible official's discretion to develop, revise, or amend a land management plan tailored to local conditions.

There has always been a tension between providing needed detailed direction in a planning rule and discretion of the responsible official. Project and activity decisions by a responsible official are not only constrained and guided by a large body of law, regulation, and policy; they are also guided by public participation and administrative oversight. Public participation plays an important role in identifying unintended consequences of a proposed action. Additionally, administrative oversight conducted through management reviews, and the Agency's appeals and objections processes provide an additional check on a responsible official's exercise of discretion. Because every issue cannot be identified and dealt with in advance for every situation, the Department must rely on the judgment of the responsible official to make decisions based on laws, regulation, policy, sound science, public participation, and oversight.

This issue did not result in the further elimination of the remaining four alternatives, A, D, E, and M.

• Response to the Issue of Timber Management Requirements of 16 U.S.C. 1604(g)

Concerns were expressed that the proposed rule guidance for timber resource management (sec. 219.12(b)(2)) was inadequate because it did not include the specificity of the 1982 rule. Further, some respondents believe the timber management requirements from NFMA are legally required to be in the regulations.

The Department believes alternatives A, D, E, and M all meet the requirements of NFMA at section 1604(g). The difference among alternatives with respect to this issue is whether the requirements will be in the rule or in the Forest Service directives. The Department believes timber management using good land stewardship practices will occur regardless of which approach is taken. Moreover, the Department believes the wording in the proposed rule (alternative A) meets the NFMA requirement in 16 U.S.C. 1604(g) by directing the Chief of the Forest Service to include the timber management requirements of section 1604(g) in the Forest Service Directives System. However, the Department also understands and respects the view that if the requirements are in the rule, they are afforded greater visibility. Accordingly, to eliminate this potential controversy, alternatives E and M were selected over alternatives A and D, because they include the NFMA timber management requirements (16 U.S.C. 1604(g)) where alternatives A and D do not.

• Response to the Issue of Identification of Lands Not Suited for Timber Production (16 U.S.C. 1604(k))

Concerns were expressed that the proposed rule guidance for identifying lands not suited for timber production (sec. 219.12(a)(2)) was insufficient because it did not include the detail that was in earlier rules and that not including this detail represented an elimination of resource protection standards.

The Department believes alternatives A, D, E, and M all meet the requirements of NFMA at section 1604(k). The difference among alternatives with respect to this issue is whether the requirements would be in the rule or in the Forest Service directives. The Department believes the identification of lands not suited for timber production will properly occur pursuant to section 1604(k) regardless of which approach is taken. Both the proposed rule (alternative A) and alternative D provide a framework for consideration of lands not suited for timber production, but rely on the Forest Service directives as a means to provide further detail to accomplish this requirement. Alternatives E and M include additional procedural requirements to identify land as not suitable for timber production where technology is not available for conducting timber harvest without causing irreversible damage to soil, slope, or other watershed conditions or substantial and permanent impairment of the productivity of the land, and where there is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest. As in the discussion of timber management requirements, the Department understands and respects the view that if detailed guidance for identifying lands not suited for timber production is in the rule, it is afforded greater visibility. Accordingly, to eliminate this potential controversy, alternatives E and M were selected over alternatives A and D, because they include such detailed guidance in the rule.

• Response to the Issue of Standards and Prohibitions

Concerns were expressed that the proposed rule limited land management plans to strategic plan components and did not specifically allow more conventional components, such as standards, that could regulate or limit uses and activities.

The Department believes plans are more effective if they include more detailed descriptions of desired conditions, rather than long lists of prohibitive standards or guidelines developed in an attempt to anticipate and address every possible future project or activity and the potential effects such projects could cause. For example, standards could have been included that precluded 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.

In reviewing public comments, the Department concluded that the argument for excluding standards from a planning rule so as not to limit a responsible official's discretion cuts both ways. Just as standards and prohibitions in a planning rule limit a responsible official's discretion, not allowing them also limits a responsible official's discretion in developing, revising, and amending a land management plan. Recognizing the ecological, economic, and social diversity across the NFS, there might be circumstances where certain standards or prohibitions would be appropriately included in a land management plan. Accordingly, the Department believes it is important to explicitly allow a responsible official the flexibility to include standards and prohibitions in a land management plan.

Alternatives E and M were selected over alternatives, A and D, because alternatives E and M explicitly allow standards and prohibitions to be included in land management plans.

• Consideration of Environmental Management System (EMS)

After considering the preceding issues, alternatives E and M remained for selection. EMS was included in the proposed action because the Department is committed to complying with Executive Order 13423, requiring the head of each Federal agency to put into effect an EMS as the primary management approach for addressing environmental aspects of internal agency operations and activities, and because the Department believes it will enhance adaptive planning and should be part of the land management framework. The Department is committed to conform to ISO 14001. The Department is required by E.O. 13423 and instructions for implementing the E.O. to implement an EMS by December 2008.

The Forest Service has a long history of adaptive management and the concepts associated with EMSs. The ''Plan-Do-Check-Act'' cycle of an EMS can be found in plan implementation strategies designed for forest plans developed under the 1982 rule. The concept of adaptive management has been a component of Forest Service planning rules dating back to 1995 where it was identified as a cornerstone of ecosystem management. Although systems were developed to provide an adaptive approach to management, in the press of business the ''Check—Act'' portions of the system were only sporadically accomplished. The Department considered relying solely on Agency directives to implement the Executive order for land management planning—as reflected in alternatives B, C, D, and E, but believes incorporating EMS in the planning rule better integrates adaptive management and EMS in Forest Service culture and land management planning practices.

The proposed rule (alternative A) requires the responsible official to establish an EMS for each unit of the NFS, the scope of which was to include at least the land management planning process. Each unit revising a plan using the proposed rule procedures would be required to have an EMS in place before approval of the revised plan. Plan amendments could not be made after the end of the 3-year transition period if an EMS was not in place. These requirements generated management concerns during initial efforts to create unit EMSs because: (1) EMS was perceived to be redundant to existing management systems; (2) wording about the scope of the EMS covering the land management planning process was too broad, resulting in inconsistent application; (3) requiring an EMS prior to approving a revision was perceived as an obstacle to completing the planning process, that is, it is more logical to revise plans first, then use an EMS to manage environmental aspects under the new plan rather than to prepare an EMS before or concurrent with planning; (4) the proposed rule requirement at section 219.5 to create an EMS on every administrative unit of the NFS did not permit the Agency to realize efficiencies by establishing a multi-unit, regional, or national level EMS; and (5) independently developing of the ISO 14001 protocol from the start for every administrative unit proved to be too costly and unwieldy.

Although the Agency recognizes concerns about potential redundancy in management systems due to EMS requirements, the Agency is committed to integrating EMS with existing management systems or modifying existing systems to be consistent with EMS. Alternative M was crafted to address these remaining management concerns. First, regarding redundancy with existing agency processes, this alternative would allow the Chief of the Forest Service to establish detailed procedures in the directives to create an EMS that reduces or eliminates redundancy. Second, the wording stating that the scope of an EMS will include the entire planning process described in the rule is removed in alternative M and replaced with wording to the effect that the scope will include environmental aspects as determined by the responsible official in a unit EMS or established in a multi-unit, regional, or national level EMS. The EMS scope is changed so that the responsible official is the person authorized to identify and establish the scope and environmental aspects of the EMS, based on the national EMS and ISO 14001, with consideration of the unit's capability, needs, and suitability. The detailed procedures to establish scope and environmental aspects are being developed in a national technical guide and the Forest Service directives. Third, alternative M does not require an EMS to be in place before developing or revising a plan. It does, however, state that no project or activity approved under a plan developed, amended, or revised under the rule may be implemented until the responsible official either establishes a unit EMS or conforms to a multi-unit, regional, or national level EMS. The Department believes this change from the proposed rule will improve integration of EMS into the plan development and revision process by allowing plan components to inform the identification of environmental aspects in an EMS. Fourth, alternative M allows a responsible official to conform to a multi-unit, regional, or national level EMS as an alternative to establishing an EMS for a specific unit of the NFS. The responsible official will have the responsibility to deal with local concerns in the EMS. The unit EMS will provide the opportunity either to conclude that the higher level EMS adequately considers and addresses locally identified scope and significant environmental aspects, or to address project-specific impacts associated with the significant environmental aspects. Administrative units that do not have an EMS will satisfy the requirement in section 219.5 after they develop an EMS that conforms with the national EMS and either adds environmental aspects and components under the local focus area or determines that the national EMS focus areas sufficiently identify and deal with the local unit's environmental aspects and components. The Department believes this modification will provide the Forest Service flexibility to determine the appropriate scope of an EMS. Finally, alternative M directs the Chief to establish direction for EMS in the Forest Service directives. The directives will formally establish national guidance, instructions, objectives, policies, and responsibilities leading to conformance with ISO 14001. By letter of direction from the Chief and through its directives, the Forest Service will implement a national EMS applicable to

all administrative units of the Forest Service.

Implementation of the EMS will be governed by the Forest Service directives. A technical guide is being prepared for use by EMS managers and an EMS handbook is being developed for use in the field. The scope of the EMS will address the goals of EO 13423, nationally identified land management environment aspects, and as appropriate, local significant environmental aspects.

The EMS will be designed to conform to the ISO 14001 standard, as required by section 219.5(c). Audit procedures will be established in the technical guide or directives. Conformance will be determined by the procedures detailed in the directives for the EMS. A ''non-conformity'' identified by a management review or audit under these EMS procedures is not a failure to conform to the ISO 14001 standard, per section 219.5(c), but part of the Plan-Do-Check-Act (P–D–C–A) cycle of continuous improvement that makes up the ISO conformant EMS. A non-conformity would be followed up with preventive or corrective action which leads to continuous improvement in environmental performance. Such a ''non-conformity'' is a normal part of the EMS P–D–C–A process and does not constitute a failure to conform to the ISO 14001 standard as required by section 219.5(c).

Alternative M resulted as the final land management planning rule not only through a reasoned choice among the alternatives, but also through an iterative approach to alternative development by which the Agency modified the proposed action and alternatives and developed an additional alternative in response to public comments. Details concerning each change between the proposed rule (alternative A) and the final rule (alternative M) are discussed in the section-by-section portion of this preamble.

• *What Specific Comments Were Raised on the Proposed Rule and What Changes Were Made in Response to Those Comments?*

Each comment received consideration in the development of the final rule. A response to comments on the draft EIS and the proposed rule may be found in the response to comments appendix of the EIS located on the World Wide Web/Internet (see **ADDRESSES**).

General Comments

The Department received the following comments not specifically tied to a particular section of the 2007 proposed rule.

Comment: Guidance for management of individual resources and uses. Some respondents commented on a variety of issues such as access, air, conversion of hardwood stands to pine monoculture, soil and water, carbon storage, climate change, developed recreation, dispersed recreation, eco-tourism, ecosystem services, grazing, habitat for threatened and endangered species, habitat for fish and wildlife, heritage resources, historic range of variability, hunting, late successional reserves, mining, non-Federal lands, off-road vehicle use, oil and gas development, old growth forest conservation, parks and preserves, preservation, recreation, resilience to disturbance, restoration, rural communities, soil conservation, timber harvest, water quality, watersheds, weed-free ecosystems, wilderness, and wildlife. The respondents wanted issues about the management of these resources discussed in the final rule or for the rule to require management toward a particular emphasis, such as protection or conservation of biodiversity, ecosystem integrity, ecosystem sustainability, grizzly bears, heritage resources, national forests, old growth, opportunities for education and scientific research, primitive recreational opportunities, roadless area protection, roadless characteristics, scenery, soils, undisturbed forests, viable populations of wildlife, watershed protection, wilderness, wildlife, or the production of timber, minerals, oil and gas, or other commodities. One respondent suggested the final rule should incorporate specific, enforceable timetables for the processing of right-of-way applications for wireless communications infrastructure and encourage the infrastructure on NFS lands. The Virginia Department of Environmental Quality supplied suggestions to protect water quality and other resources for national forests in the State of Virginia.

Response: The Agency agrees the issues raised are important. However, the final rule is intended to provide overall direction for how plans are developed, revised, and amended. The final rule does not provide direction for the management of any specific resource. This type of guidance 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. Those communities, groups, or persons interested in these important 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 of proposed projects and activities under the plan. The Agency is committed to reducing threats to the Nation's forests and grasslands, as discussed in the USDA Forest Service Strategic Plan: FY 2007–2012. These threats include: (1) The risk of loss from catastrophic wildland fire caused by hazardous fuel buildup; (2) the introduction and spread of invasive species; (3) the loss of open space and resulting fragmentation of forests and grasslands that impair ecosystem function; and (4) unmanaged recreation, particularly the unmanaged use of off-highway vehicles. The Agency forwarded comments from the State of Virginia to the staff of the George Washington and Jefferson National Forests.

Comment: Climate change. Some respondents felt it was imperative the rule contain specific direction to address the problem of global warming and climate change. They suggested the rule should set forth a strategy and require plans that anticipate and provide for the likely effects of climate change and result in NFS lands being managed to reduce global warming. Some believe that the proposed rule would lead to an increase in livestock grazing, oil and gas development, and timber harvest, and that these increases would add to problems of global warming.

Response: The Agency agrees the problem of climate change is important. The land management planning process is informed by both a comprehensive evaluation and the best available science to evaluate the situation of the individual forest unit with respect to climate change. The final rule is intended to guide how plans are developed, revised, and amended. It does not provide direction that is more appropriately addressed in the plans themselves, or in the subsequent decisions about projects and activities on a particular national forest, grassland, prairie, or other comparable administrative unit. These activities would be guided by land management plans and subsequent and separate decisions made at the project level with appropriate NEPA documents. Because it is not possible to estimate these subsequent and separate decisions, there is no basis to conclude that the rule will lead to increases or decreases in grazing, oil and gas, timber harvest, or global warming.

Comment: Timeline for developing the rule. Several respondents said the Agency rushed the rulemaking and EIS

process. Others requested a rule be developed for the benefit of all citizens and not be unduly influenced by politics and special interests. Other respondents expressed support for the proposed rule and urged the Forest Service to finalize the rule as soon as possible so ongoing plan revisions can be completed.

Response: The process of developing a new planning rule has been ongoing since recommendations for more effective planning were documented in the 1989 ''Synthesis of the Critique of Land Management Planning.'' The final rule was developed considering recommendations of the 1999 Committee of Scientists and public and internal input on the 2000 and the 2005 rules. Although every effort has been made to promptly complete rulemaking tasks, the Agency believes there has been ample time for public comment, agency analysis of alternatives, and ultimately the selection of this final rule. The final rule was developed to ensure efficient and effective land use planning procedures and was not unduly influenced by political considerations.

Comment: Consultation with a committee of scientists. Several respondents were concerned there was no consultation with a committee of scientists in developing the proposed rule. Some said the 1999 Committee of Scientists should be reconvened, others said previous recommendations of the past Committee should be reviewed.

Response: The National Forest Management Act (NFMA) does not require a committee of scientists for revision of the planning rule. Nonetheless, the Department based the final 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 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.

Comment: Compliance with the court decision enjoining the 2005 rule. Some respondents commented that because the proposed rule is identical to the enjoined 2005 rule, it does not comply with the Administrative Procedure Act (APA), National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and other environmental laws. Some respondents disagreed with the reasoning of the district court in *Citizens for Better Forestry* v. *USDA* and were concerned that preparation of an EIS to adopt a planning rule may set precedent that in addition to the environmental analysis underlying the development of a categorical exclusion, a redundant EIS must be prepared to determine the effects of using the categorical exclusion.

Response: On March 30, 2007, the United States District Court for the Northern District of California in *Citizens for Better Forestry* v. *USDA,* 481 F. Supp 2d 1059 (N.D. Cal. 2007) enjoined the Agency from carrying out and using the 2005 rule until the Agency took certain additional steps concerning the APA, NEPA, and ESA. The Forest Service decided to undertake these processes to expedite much needed plan revisions and plan amendments.

The Department is committed to transparent rulemaking and public participation under the APA. In the final 2005 rule, the Department changed the provisions for timber management requirements, changed the provisions for making changes to the monitoring program, and added provisions for environmental management system (EMS). The court found that the Forest Service did not provide sufficient notice to the public of these changes to the 2005 rule such that the 2005 rule was not the logical outgrowth of the 2002 proposed rule. Therefore, the Agency provided notice and comment of the 2007 proposed rule (72 FR 48514, August 23, 2007) which included the final 2005 rule's provisions for timber management, monitoring, and EMS.

Regarding NEPA, the court found the 2005 rule did not fit the Agency's categorical exclusion for servicewide administrative procedures. The categorical exclusion for administrative procedures was developed with public participation and the use of categorical exclusions is a recognized method for NEPA compliance. Under the court's order, further environmental analysis under NEPA was required. Accordingly, the Agency prepared a draft EIS on the proposed rule and a final EIS.

Finally, the court found the Agency was required to prepare a biological assessment or to consult on the impact of the 2005 rule under ESA. Based upon an analysis for the 2005 rule, the Agency had concluded that adoption of the 2005 rule alone would have no effect on listed species or critical habitat. The court, however, found that conclusion unlawful absent some type of consultation with the United States Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) Fisheries or a biological assessment. Accordingly, the Agency has prepared a biological assessment, which concludes that the final rule, in itself, will have no effect on threatened, endangered, or proposed species or to designated or proposed critical habitat. Since initiating the development of the current proposed planning rule, the Forest Service has consulted with NOAA Fisheries and USFWS to discuss the programmatic nature of the planning rule, to explain the Forest Service's tiered decisionmaking framework (regulation, land management plan, and project) and to consider the potential of the 2008 planning rule to affect threatened, endangered and proposed species, and designated and proposed critical habitat. We concluded this consultation by reaching a ''no effect'' determination. The Forest Service was aware that USFWS and NOAA Fisheries had agreed with the Forest Service's similar ''no effect'' determination for the 2000 planning rule. However, the Forest Service ultimately concluded that, because our ''no effect'' determination fulfilled the consultation requirement, it was not necessary to submit this biological assessment to the NOAA Fisheries or USFWS seeking agreement with our finding.

The APA notice and comment opportunity, the EIS, and the preparation of the biological assessment fully address the procedural defects identified by the district court. The court did not require any substantive changes in the 2005 rule.

Comment: Compliance with the Multiple-Use, Sustained-Yield Act, and other laws governing the Forest Service. Some respondents commented on whether the proposed rule complies with laws affecting the Agency, including the MUSYA, NFMA, NEPA, Federal Land Policy and Management Act (FLPMA), Forest and Rangeland Renewable Resource Planning Act (RPA), ESA, Telecommunication Act of 1996, and applicable State laws, including best management practices, providing environmental safeguards and public involvement.

Response: All alternatives are faithful to compliance with all laws governing the Forest Service, including applicable State laws. NFMA requires the use of the MUSYA to provide the substantive basis for forest planning. As used in the rule, sustainability embodies these congressional mandates, including the requirements of FLPMA, RPA, and other laws. The interrelated and interdependent elements of sustainability are social, economic, and ecological as described in section 219.10. The final rule sets the stage for

a planning process that can be responsive to the desires and needs of present and future generations of 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. The plans developed provide guidance for future projects and activities.

Moreover, an EIS has been prepared for the rule under the requirements of NEPA, and the Forest Service has reached a ''no effect'' determination under the ESA after preparing a biological assessment. Since initiating the development of the current proposed planning rule, the Forest Service has consulted with NOAA Fisheries and USFWS to discuss the programmatic nature of the planning rule, to explain the Forest Service's tiered decisionmaking framework (regulation, land management plan, and project) and to consider the potential of the 2008 planning rule to affect threatened, endangered and proposed species, and designated and proposed critical habitat. We concluded this consultation by reaching a ''no effect'' determination. The Forest Service was aware that USFWS and NOAA Fisheries had agreed with the Forest Service's similar ''no effect'' determination for the 2000 planning rule. However, the Forest Service ultimately concluded that, because our ''no effect'' determination fulfilled the consultation requirement, it was not necessary to submit this biological assessment to NOAA Fisheries or USFWS seeking agreement with our finding.

Comment: Placing procedures in directives rather than the rule. Some respondents commented the proposed rule does not meet all requirements of NFMA, such as provisions for determining timber harvest levels, identification of lands not suitable for timber production, use of the clearcutting harvest system, and providing for a diversity of plant and animal communities based on the suitability and capability of the land. They also expressed concerns that carrying out these requirements through the Agency's Directives System, rather than the plan rule itself, would not meet NFMA's mandatory and enforceable requirements, because the requirements would no longer have the force and effect of law. Other respondents said NFMA requirements have the force and effect of law, and if the Agency does not have mandatory requirements in regulations, a responsible official could end up violating NFMA and a lawsuit could shut down the national forest and perhaps the entire NFS. Respondents noted that directives do not require a mandatory public comment and agency response as is required through the regulatory process provided in the APA (5 U.S.C. 551); therefore, changes could be made to the directives without public input.

Response: The Agency is committed to meeting all the requirements of NFMA for all projects. Individual projects must meet NFMA's requirements for soil and water protection, restocking, restrictions on the use of clearcutting, esthetic quality, and so forth, regardless of whether those requirements are set out in regulation or agency directives.

The Agency believes the NFMA requirement that the planning regulation ''shall include, but not be limited to * * * specifying guidelines for land management plans developed to achieve the goals of the Program which'' [provide for diversity, ensure timber harvest will only occur if certain conditions are met, etc.] affords the Agency discretion to provide policy guidance either through regulations or directives (16 U.S.C. 1604(g)). Directives are available at *http://www.fs.fed.us/im/directives*.

In keeping with the strategic and adaptive nature of planning, the Agency is striving to make rulemaking more strategic and adaptive. Therefore, many procedural and technical details have been 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 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 FSH is the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities in the FSM.

Furthermore, the Agency requires that Federal, State, and local governments and the public have adequate notice and opportunity to comment on the formulation of standards, criteria, and guidelines applicable to land management planning when substantial public interest or controversy concerning a directive can be expected. For example, in the March 23, 2005, **Federal Register** (70 FR 14637), the Agency gave notice and requested public comment concerning issuance of interim directives related to carrying out the 2005 rule. The issuance of the final directives and response to comments received was published on January 31, 2006 (71 FR 5124).

A similar process will be done for directives carrying out the final planning rule. The directives for land management planning are composed of two manual chapters and nine handbook chapters. Manual chapters FSM 1900—Planning—Chapter Zero Code, and FSM Chapter 1920—Land Management Planning. FSM 1900 will need to be amended to update a few definitions. FSM 1920 will need updating to reflect the final rule for timber management requirements. FSH 1909.12 is composed of ten chapters as follows: Chapter—Zero Code, Chapter 10—Land Management Plan, Chapter 20—The Adaptive Planning Process, Chapter 30—Public Participation and Collaboration, Chapter 40—Science and Sustainability, Chapter 50—Objection Process, Chapter 60—Forest Vegetation Resource Planning, Chapter 70—Wilderness Evaluation, Chapter 80—Wild and Scenic River Evaluation, and Chapter 90—References. Chapters 10, 20, 60, and 90 will need updating to reflect the final rule. The changes to the final rule do not directly affect chapters Zero Code, 30, 40, 50, 70, and 80 of the handbook. However, the Agency has received comments on the existing directives and will take a comprehensive look at these directives to see if improvements can be made.

Although directives have been held not subject to judicial enforcement, (*Western Radio Services Co., inc.* v. *Espy,* 79 F 3d 896 (9th Cir. 1996)), they are enforced in the Forest Service. The Agency has a variety of methods for determining whether policy is being put into practice. First, the public involvement process allows for direct input into the planning process and management decisions on-the-ground. This local collaboration serves as an important check on agency practices. Second, the Agency has administrative appeals and objections processes through which the public can raise concerns about projects and land management plans. Third, the Forest Service conducts regular management reviews designed to assess to what degree the Agency is complying with rules and policies.

The Department also understands and respects the view expressed in a number of public comments that if certain requirements are in the rule, they are afforded greater visibility. In response to these comments, the Department has included the NFMA timber management requirements (16 U.S.C. 1604(g)) and detailed requirements for identifying

lands not suited for timber production (16 U.S.C. 1604(k)) in the final rule.

Comment: Compliance with the ESA. Some respondents raised concerns the proposed rule, without a strong viability or ecological sustainability requirement, does not ensure protection of federally-listed threatened or endangered species (such as the Canada lynx), will not help with their recovery, and will not forestall the listing of other species. Some stated that if the needs of these species are not met through a meaningful NFMA process, they will have to be met through an ESA process, thereby requiring greater application of the ESA to future project operations.

Response: The final rule is intended to provide a framework to contribute to sustaining native ecological systems by providing appropriate ecological conditions to support diversity of native plant and animal species in the plan area. Plan components establish a framework to provide the characteristics of ecosystem diversity in the plan area. Plans are to include provisions in plan components that the responsible official determines are needed to provide appropriate ecological conditions or protective measures for specified threatened and endangered species, consistent with limits of agency authorities, the capability of the plan area, and multiple-use objectives (219.10(b)(2)).

Under the ESA, the Agency has responsibilities to insure its actions do not jeopardize the continued existence of threatened and endangered species, or destroy or adversely modify habitat designated as critical habitat for such species. This is done where applicable when the Forest Service is proposing to take a particular action, through the use of ESA section 7(a)(2) consultation with the USFWS and NOAA Fisheries on potential effects of agency proposals to such species and to designated critical habitat. The Agency also coordinates with the USFWS and NOAA Fisheries under ESA section 7(a)(1) to carry out programs and activities for the conservation of endangered and threatened species and the ecosystems on which they depend.

Comment: Consistency with the intent of Congress as expressed in the Appeals Reform Act (ARA). One respondent asserted that the use of a predecisional objection process for plans rather than a post-decisional appeal process runs counter to the intent of Congress when they passed the Appeals Reform Act (ARA). This respondent believes that, although the ARA addresses only project-level appeals, Congress intended to leave unaffected the forest plan appeal process that was then in place.

Response: There is nothing in the Appeals Reform Act or its legislative history that would indicate Congress had any intent of addressing appeals processes other than those for ''proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans.'' On the other hand, NFMA only requires ''public participation in the development, review, and revision of land management plans'' without specifying any post-decision review (16 U.S.C. 1604(d)). The Department believes the proposed predecisional objection process provides an opportunity for public concerns to be reviewed at a higher administrative level using a process that is more collaborative and less confrontational. The predecisional objection process provides an opportunity to make needed or appropriate adjustments to a plan before it is approved. The Agency's experience with post-plan decision appeals is that it is difficult to make needed changes. Often a separate amendment process must be carried out to respond to an appeal.

Comment: Integration of Minerals Management. Some respondents raised concerns the proposed rule does not ensure integration of mineral and energy resource development with the management of renewable resources. They believe without specific procedures for integration, the Agency will not meet its obligations under the Mining and Minerals Policy Act, Forest Service Minerals Program Policy, and the Forest Service Energy Implementation Plan.

Response: Increased production and transmission of energy and mineral resources in a safe and environmentally sound way is essential to the well-being of the American people. Like other agencies, the Forest Service is charged to take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy and mineral resources. In most instances, the Agency meets this responsibility by assuring that mineral activities on NFS lands are conducted in a way that minimizes environmental impacts on the renewable surface resources as directed by the MUSYA, NFMA, and various other statutes. Management responsibility for non-renewable, subsurface mineral resources primarily rests with the Secretary of the Interior. Where applicable, plan components will be developed considering the various conditions and uses of each individual unit, including the mineral and energy resource and opportunities for development of that resource. Forest planning is one, but certainly not the only, means to integrate the exploration and development of mineral and energy resources with the use and protection of the various goods and services provided from the NFS.

Comment: Legal requirements. Several respondents commented that various laws have made changes to some legal requirements, which must be addressed in the rule. For example, the Alaska Native Interest Lands Conservation Act requirement under section 1326(b) that ''no further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, or for related or similar purposes shall be conducted unless authorized by this Act or by further Act of Congress.''

Response: Wording at section 219.7(a)(6)(ii) in the final rule accounts for such situations by stating that wilderness recommendations must be considered ''unless otherwise prohibited by law.'' Although this provision of the final rule discusses only wilderness recommendations, no planning actions will be taken if in conflict with Federal law.

Comment: Court oversight. Some respondents commented the proposed rule makes it more difficult to challenge agency decisions in court.

Response: 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 providing discretion for 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 Agency believes the final rule is fully compatible with the nature of forest planning as described by the U.S. Supreme Court in *Ohio Forestry* v. *Sierra Club 523 U.S. 726 (1998)* (Ohio Forestry). The Agency 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 accord with Ohio Forestry. As a general matter, and consistent with the Ohio Forestry decision, a plan by itself is not expected to be reviewable by

the courts at the time the plan is developed, revised, or amended. The Department does not believe this rule makes judicial review any harder to obtain than was the case in Ohio Forestry. 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 relevant to that action.

Comments in Response to Specific Sections

The following is a section-by-section discussion of comments received on specific sections of the proposed rule, the Agency's response, and a discussion on the differences between the 2007 proposed rule and the final rule and why the Department made the changes. The Agency ordered the rule sections from general to specific. The first section introduces the reader to what is covered in the final rule and acknowledges the Forest Service's multiple-use and sustained-yield mandate (remainder of sec. 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 (sec. 219.3 and 219.4), a discussion of environmental management systems (sec. 219.5), followed by the specific plan requirements (sec. 219.6–219.16). Throughout the final rule minor edits have been made for clarity.

Section 219.1—Purpose and Applicability

This section introduces the reader to what is covered in the final rule, acknowledges the Forest Service's multiple-use and sustained-yield mandate, and directs the Chief of the Forest Service to establish planning procedures in the Forest Service directives. The Department retains the 2007 proposed rule wording in the final rule, with the minor change of replacing ''required components'' with ''plan components'' to be consistent with section 219.7.

Comment: Meaningful, definitive plans. Several respondents urged that regulations provide for meaningful plans that give the American people a good idea of how lands will be managed. These respondents stated plans should not be vague, but rather be a contract with the public about how lands and resources will be managed. To be definitive in this regard, the plans must have standards that require or prohibit certain activities, standards and guidelines for management areas, other items required by NFMA, and supported by an EIS. One respondent commended the intent of defining measurable objectives toward desired conditions along with a structure for monitoring and evaluation.

Response: The Department believes plans are more effective if they include more detailed descriptions of desired conditions, rather than long lists of prohibitive standards or guidelines developed in an attempt to anticipate and address every possible future project or activity and the potential effects such projects could cause. For example, standards could have been included that precluded 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.

In reviewing public comments, the Department concluded that the argument for excluding standards from a planning rule so as not to limit a responsible official's discretion cuts both ways. Just as standards and prohibitions in a planning rule limit a responsible official's discretion, not allowing them also limits a responsible official's discretion in developing, revising, and amending a land management plan. Recognizing the ecological, economic, and social diversity across the NFS, there might be circumstances where certain standards or prohibitions would be appropriately included in a land management plan. Accordingly, the final rule explicitly allows a responsible official the flexibility to include standards and prohibitions in a land management plan.

Comment: Desired conditions, modeling parameters, information gaps. Some respondents asked that the final rule identify parameters that would guide the development of vegetation simulation models; clarify how desired conditions guide a project level EIS or EA, and how information gaps would be rectified when existing science is lacking.

Response: As with many other procedures, those that would guide the development of vegetation simulation models are properly discussed in technical guides rather than the planning rule. This allows selected models to change as technology evolves. The final rule defines a consistent approach to analysis and evaluation at broad scales and the local level. The final rule at section 219.6(a) would require the responsible official to keep the plan set of documents up to date with evaluation reports to show changing conditions, science, and other relevant information.

Desired conditions under the final rule are the social, economic, and ecological attributes toward which land management under the plan will aspire. A plan's desired conditions will contribute to the purpose and need for action articulated in a project EA or EIS. Responsible officials propose to carry out various projects and activities designed to meet a particular purpose and need for action, which should move toward or maintain desired conditions and achieve objectives described in the plan. The comprehensive evaluation report under the final rule may describe the risks and uncertainties associated with carrying out management consistent with the plan. At the project stage, where gaps in information are apparent, the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the NEPA at 40 CFR 1502.22 (incomplete or unavailable information) would be followed, and the Agency would acknowledge when information is lacking or either obtain it or

> the agency shall include within the environmental impact statement: (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, ''reasonably foreseeable'' includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason (40 CFR 1502.22).

Managers prioritize risks and develop strategies to control them. These strategies may include specific monitoring and evaluation to gather additional information.

Section 219.2—Levels of Planning and Planning Authority

This section describes planning in general, how planning occurs at many organizational levels and geographic areas in the Agency, and provides the basic authorities and direction for developing, amending, or revising a plan. The Department retains the 2007 proposed rule wording in the final rule.

Comment: Addressing statewide issues. One respondent discussed past difficulty resolving statewide issues under the 2005 rule, and expressed concern the proposed rule will have the same problems. Another respondent commented that some planning issues are best answered at the regional level.

Response: The final rule has provisions for plan development and or revision to occur at a multiple forest level (sec. 219.2(b)(2)). Under the 1982 rule, responsible officials have routinely coordinated planning across unit and regional boundaries and will continue to do so as plans are developed under the final rule. 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 needed.

Comment: Levels of authority. Some respondents were concerned the further up the authority ladder a decision is made, the further it is removed from the local level, and there is excessive discretion and lack of accountability in the rule, including unrestricted license to amend plans through project decision-making in violation of the NFMA.

Response: In compliance with NFMA, the final rule establishes a planning rule as a broad framework where issues specific to a plan area can be identified and resolved in an efficient and reasonable way, where responsible officials and the public can be informed by the latest data and scientific assessments, and where the public participates collaboratively. Like the 2000 rule, the responsible official will typically be the forest supervisor under the final rule; not the regional forester as under the 1982 rule.

Regardless of the administrative level, the responsible official must develop, amend, or revise plans within the framework set out by the planning rule and is accountable for compliance with the planning rule and the multitude of relevant laws and policies. About project decisionmaking, the NFMA allows plans to ''be amended in any manner whatsoever after final adoption after public notice'' (16 U.S.C. 1604(f)(4)). Furthermore, the Agency has been doing project amendments under the 1982 rule since the 1980s.

Comment: Inconsistency between responsible officials. Several respondents said the proposed rule would guarantee inconsistent application across the Agency because it leaves virtually all definitional and methodological decisions to the responsible official. Moreover, several respondents said that the Agency needs to put an end to inconsistency that occurs between responsible officials.

Response: Responsible officials currently coordinate across unit boundaries and would continue to do so because the areas of analysis for evaluations described in sections 219.6, 219.7, and 219.10 would often extend beyond the unit's boundaries to adjacent or nearby 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. The Forest Service already has directives which ensure consistency as needed for Tribal or public consultation or for social, economic, or ecological resource related issues. The final rule supplies discretion for the responsible official because the Agency believes that the responsible official is the person most familiar with the resources and the people on the unit and is usually the most appropriate person to make decisions affecting those lands.

Section 219.3—Nature of Planning and Land Management Plans

This section describes the nature of planning, and the force and effect of plans. The Department retains the 2007 proposed rule wording in the final rule.

Comment: Strategic nature of planning. Many respondents were concerned about the strategic nature of plans. Some respondents were concerned that if strategic plans do not create legal rights, then there is no need for projects to be consistent with the plan; a circumstance that would violate NFMA. Other respondents said that if plans do not control on-the-ground activities and are only ''aspirational,'' the plans become meaningless paper exercises. On the other hand, some respondents were concerned that plans were too restrictive because forest staff would refuse to consider activities not consistent with management zones designated in the plan. Some respondents disagreed that plans do not usually include final decisions approving projects. They cited decisions made in the recently issued plan revisions in the Forest Service's Southern region. Other respondents agree plans are strategic and are not actions that significantly impact the human environment and, therefore, that the preparation of an EIS is not required. Others stated that plans should focus on goals rather that specific prescriptions or prohibitions.

Response: The 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. The final rule's approach to the project consistency requirement is consistent with the Supreme Court's observation of the characterization of plans in *Norton* v. *Southern Utah Wilderness Alliance,* 124 S. Ct. 2373 (2004), 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.' ''

An ''aspirational'' plan establishes a long-term management framework for NFS units. A framework is not a meaningless paper exercise. Within the framework, specific projects and activities are proposed, approved, and carried out depending on specific conditions and circumstances at the time of accomplishment. The final rule is consistent with the Supreme Court's description of plan decisions and the nature of plans in *Ohio Forestry* v. *Sierra Club* (523 U.S. 726, 737 (1998)). This ruling explains 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.''

The use of a framework for identifying suitable uses has evolved. Determining suitable uses was often characterized in plans prepared under the 1982 rule as permanent restrictions on uses or permanent determinations as to which uses would be suitable in particular areas of the unit over the life of the plan. However, even under the 1982 rule, Forest Service staff realized these identifications were never permanent, unless they were a statutory designation by Congress. Section 219.8 of the final rule lists actions that must be taken if an existing or proposed project or activity is found to be inconsistent with the applicable plan.

Recent plan revisions for NFS's Southern region did include project and activity decisions, but those revisions were done under the 1982 rule. Project and activity decisions can be in a plan but would likely be rare exceptions under the strategic approach used for the final rule.

Section 219.4—National Environmental Policy Act Compliance

This section of the final rule describes how planning will comply with NEPA.

The Department retains the 2007 proposed rule wording in the final rule except for a change to paragraph (b). Within paragraph (b), the Department removed the wording about categorical exclusion so that it now says approval of a plan, plan amendment, or plan revision, under the authority of this subpart, will be done in accord with the Forest Service NEPA procedures. As categorical exclusions are part of those procedures, this is not a substantive change.

Comment: Plans as major Federal actions. Although some respondents supported categorically excluding land management plans from documentation in an EIS or EA, other respondents believed land management plans significantly affect the environment and are therefore, major Federal actions triggering the NEPA requirements for an EIS (40 CFR 1508.18). Some stated NEPA requirements for an EIS are triggered because land management plans are in the category of Federal actions that are described as ''formal plans'' in the Council on Environmental Quality (CEQ) regulations at 40 CFR 1508.18 (b)(2). Some respondents expressed the view that by determining the types of land uses that will occur in areas of a national forest, the Forest Service makes decisions in its land management plans that ultimately can result in significant effects even though the plans themselves may not approve specific projects or activities. Other respondents believed extraordinary circumstances in the plan area would always preclude the use of a categorical exclusion.

Response: CEQ regulations define ''major Federal action'' as including ''actions with effects that may be major'' and state, ''major reinforces but does not have a meaning independent of significantly'' (40 CFR 1508.18). The CEQ regulations state that Federal actions fall within several categories, one of which is the ''[a]doption of formal plans, such as official documents prepared or approved by Federal agencies which guide or prescribe alternative uses of Federal resources'' (40 CFR 1508.18). However, not all Federal actions are major Federal actions significantly affecting the quality of the human environment. Plans developed under the final rule would typically not approve projects and activities, or command anyone to refrain from undertaking projects and activities, or grant, withhold, or modify contracts, permits, or other formal legal instruments. Such plans have no independent environmental effects. Plan components would guide the design of projects and activities in the plan area. The environmental effects of proposed projects and activities will be analyzed under NEPA once they are proposed. Furthermore, the final rule does not preclude preparation of an EA or EIS for a land management plan where appropriate to the decisions being made in a plan approval.

The Forest Service conducted an analysis for categorically excluding land management plan decisions and published a proposed category for public comment in 2005 (70 FR 1062). The Agency's final category was published in the **Federal Register** on December 15, 2006 (71 FR 75481). The land management planning categorical exclusion states that a decision approving projects and activities, or that would command anyone to refrain from undertaking projects and activities, or that would grant, withhold, or modify contracts, permits, or other formal legal instruments are outside the scope of this category. Proposals outside the scope of the categorical exclusion must be documented in an EA or EIS. Accordingly, land management plans, depending on their content, can be subject to various levels of NEPA documentation.

The Department acknowledges that extraordinary circumstances can preclude the use of a categorical exclusion, but believes that, absent plan decisions with on-the-ground effects, extraordinary circumstances are not likely.

Forest Service NEPA procedures provide that a responsible official, when considering whether to rely upon a categorical exclusion must determine whether there are extraordinary circumstances, which would preclude the use of a categorical exclusion. The procedures describe resource conditions to be considered when determining whether there are extraordinary circumstances. The procedures make clear that ''The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is (1) the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions and (2) if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.'' Although the responsible official must consider whether there are extraordinary circumstances precluding use of a categorical exclusion for a plan, the Department expects that typically the nature of the plan will be such that its potential effects on the resource conditions will not involve extraordinary circumstances.

Comment: Desired conditions as a final agency decision. Some respondents believe that the establishment in plans of desired conditions and general suitability determinations (sec. 219.7(a)(2)(iv)) for management areas are final agency actions that will preclude certain uses from occurring. They also note the preamble for the 2005 rule (70 FR 1031) admits the approval of a forest plan is a final agency decision.

Response: The Department agrees that the approval of a plan, plan amendment, or plan revision is a final agency action under CEQ regulations, and that such actions may have environmental effects in some extraordinary circumstances, such as when a plan amendment or revision includes final decision approving projects or activities.

As discussed at section 219.12 of the final rule, NFS lands are generally suitable for a variety of multiple uses, such as outdoor recreation, range, timber, watershed, and wildlife and fish purposes, and a plan could designate the same area as suitable for multiple uses which when any one is authorized, precludes other uses. 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. Specific uses of specific areas are approved through project and activity decisionmaking. At the time of plan approval, the Forest Service does not typically have detailed information about what projects and activities will be proposed and approved over the life of the a plan, where they will be located, or how they will be designed. Under the final rule, plans will be strategic rather than prescriptive in nature, absent rare circumstances. Plans would 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 would be designed to help achieve the desired conditions. None of the plan components are intended to directly dictate an on-the-ground decision that has impacts on the environment. Rather, they state guidance and goals to be considered in project and activity decisions.

Comment: Desired condition and suitability determinations as irretrievable and irreversible decisions: A respondent commented that plans make irretrievable and irreversible decisions because desired future

conditions require certain management and identifying a timber base assures that certain actions will occur and impacts will result. Another respondent commented that the zoning of certain forest lands in the plan has a direct impact on how national forests will be managed and what impacts will be acceptable.

Response: The identification of desired conditions in a plan will not require any activities to actually occur or describe the precise activities to be undertaken to bring a forest or grassland to those conditions. Although a statement of desired conditions will typically influence the choice and design of future proposed projects and activities in the plan area it does not by itself have any effects on the environment. Likewise identifying a particular area as suitable for timber production does not require or approve any projects or activities, command anyone to refrain from undertaking projects and activities, or grant, withhold, or modify contracts, permits, or other formal legal instruments. Nor does it mean that a particular set of management prescriptions will be the only set considered when future projects are proposed in that area.

Comment: Standards and guidelines as final agency decisions: A respondent stated that standards and guidelines ensure that protective or impacting activities will occur.

Response: Standards and guidelines provide constraints, information, and guidance that will be applied to future proposed projects or activities to contribute to achieving or maintaining desired conditions. Standards and guidelines may even determine whether a potential project is feasible. Furthermore, standards and guidelines will typically influence the design of proposals for future projects and activities in the plan area. The influence standards and guidelines have on the direct, indirect, and cumulative effects of future projects or activities are not known and cannot be meaningfully analyzed until such projects or activities are proposed by the Agency. If a plan standard or guideline were to approve projects and activities, or command anyone to refrain from undertaking projects and activities, or grant, withhold, or modify contracts, permits, or other formal legal instruments, such a plan component would be subject to appropriate NEPA analysis and documentation.

Comment: Roadless inventory, wilderness or wild and scenic rivers recommendations, and oil and gas leasing as final agency decisions. Some respondents did not agree that plans do not typically make final decisions subject to NEPA, citing the determination of roadless areas, recommendations for wilderness or wild and scenic rivers, and the decisions to open areas to oil and gas leasing. Other respondents agree with the Forest Service that plans do not approve or execute any particular action; that management is more dynamic when it is closest to the ground.

Response: The planning process includes inventories and analysis that provide information but this information is not a decision. Inventories identifying areas meeting certain criteria for potential wilderness areas are an example. Only the Congress can make the decision to designate wilderness or wild and scenic rivers. Unless otherwise provided by law, based on inventories and analysis, the responsible official will consider all NFS lands possessing wilderness characteristics for recommendation as potential wilderness areas during plan development or revision. Congress may consider recommendations in the plan, but has no obligation to designate wilderness consistent with the plan's recommendations. The final rule ensures that NEPA analysis would coincide with those stages in agency planning and decisionmaking likely to have a measurable effect on the human environment. If the Chief decides to forward preliminary recommendations of the forest supervisor to the Secretary, an applicable NEPA document shall accompany these recommendations.

If the responsible official proposes to determine what oil and gas lands are administratively available for oil and gas under 36 CFR 228.102(d), this would be a separate decision, which the plan may cross-reference. However, this is an activity decision under 36 CFR 228.102(d), this is not a plan decision or plan component.

Comment: Disclosure of the environmental effects of a plan. Many respondents were concerned that using a categorical exclusion instead of an EIS for land management planning eliminates disclosure of environmental effects of a land management plan. Some were concerned that without disclosure of environmental effects, scientists and the public would not have a basis for providing meaningful comments. Some respondents believed the proposed categorical exclusion would eliminate cumulative effects analysis of management activities across the NFS in violation of NEPA.

Response: A categorical exclusion is one method of complying with NEPA. A categorical exclusion represents a Forest Service determination that the actions encompassed by the category ''do not individually or cumulatively have a significant effect on the human environment'' (40 CFR 1508.4). Plans developed under the final rule would typically not include a decision approving projects and activities, nor that command anyone to refrain from undertaking projects and activities, nor that grant, withhold or modify contracts, permits, or other formal legal instruments. Plan components would provide guidance and a strategic framework-they would not compel changes to the existing environment. Achieving desired conditions depends on future management decisions. Thus, without a decision approving projects and activities, or that commands anyone to refrain from undertaking projects and activities, or that grants, withholds or modifies contracts, permits, or other formal legal instruments, the plan components would not be linked in a cause-effect relationship over time and within the geographic area to any resource. Therefore, such a plan would not have a significant effect on the quality of the human environment.

The final rule would provide for extensive analysis, as set out in section 219.6 and section 219.7. A comprehensive evaluation of current conditions and trends would be done for plan development and revision and updated at least every 5 years (sec. 219.6(a)(1)). This evaluation, along with information from annual evaluations and other sources, would be part of the continually updated plan documents or set of documents that would be considered in project analysis. These up-to-date plan documents or set of documents would provide a better context for project cumulative effects disclosures than previously provided by programmatic plan EISs under the 1982 rule; therefore, the Forest Service would make better informed management decisions at the time it decides to propose projects under the plan. However, the comprehensive evaluation report will not have a cumulative effects disclosure like the EISs under the 1982 rule had.

The Forest Service is required to address the cumulative effects of projects and activities. Those cumulative effects will be analyzed and disclosed at the time the projects and activities are proposed, which is the time when the Forest Service has a goal, is actively preparing to make a decision about one or more alternatives to achieve that goal, and the effects can be meaningfully evaluated (40 CFR 1508.23).

Comment: Plan alternatives. Several respondents commented that by not

using an EIS for land management planning, no alternatives will be considered other than the one proposed by the Forest Service. They were concerned this would preclude the consideration of alternatives proposed by the public. Some suggested that alternatives play an important role in educating the public about the possible outcomes for national forests and grasslands. Others believed evaluating alternatives allows Forest Service managers to make decisions that are more informed.

Response: With the 1982 rule, the Forest Service believed the most efficient planning approach was to integrate the rule's regulatory requirement to formulate alternatives to maximize net public benefit with the NEPA alternative requirement (i.e., 40 CFR 1502.14). However, the final rule would not require alternatives because it envisions an iterative approach to plan development, in a way that plan options are developed and narrowed successively (sec. 219.7(a)(7)). The Department recognizes that people have many different ideas about how NFS lands should be managed and agrees 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. Under the final rule, the responsible official and the public may iteratively develop and review various options for plan components, including options offered by the public. Responsible officials and the public would work collaboratively to narrow the options for a proposed plan instead of focusing on distinct alternatives that would be carried through the entire process. The Forest Service developed this iterative option approach under the final rule to encourage people to work together, to understand each other's values and interests, and to find common solutions to the important and critical planning issues.

Comment: Efficiency of future project and activity decisionmaking. Some respondents believed categorically excluding land management plans will increase the analysis needed for project or activity decisions and therefore, reduce efficiency gained during the planning process. Some stated that without a plan EIS, cumulative effects and impacts to forest-wide resources would now have to be evaluated in each project decision.

Response: Inherent in these comments is the assumption that programmatic land management plan EISs consistently provided useful and up-to-date information for project or activity analysis including sufficient cumulative effects analysis for reasonably foreseeable projects and activities. After 28 years of NFMA planning experience, the Forest Service has determined that plan EIS cumulative and landscape-level effects analyses are mostly speculative and quickly out of date. Landscape conditions, social values, and budgets change between when a plan's effects analysis occurs and when most project and activity decisions are made. Large-scale disturbances, such as drought, insects and disease, fires, and hurricanes can dramatically and unexpectedly change conditions on hundreds to thousands of acres. Use of a plan area can change dramatically in a relatively short time, as has occurred with the increased numbers of off-highway vehicles in some areas or the listing of a species under the ESA. Hence, the Forest Service has found that a plan EIS typically does not provide useful, current information about potential direct, indirect, and cumulative impacts of project or activity proposals. Such effects will be better analyzed and disclosed when the Forest Service knows the proposal's design and the environmental conditions of the specific location.

Section 219.5—Environmental Management Systems

This section of the final rule describes environmental management systems (EMS) provisions. The EMS provisions will enhance the Agency's ability to monitor and adaptively respond to changes in the environmental aspects in its land management activities. The Department modified the wording of the proposed rule to (1) permit the Agency to establish a multi-unit, regional, or national level EMS; (2) clarify that the scope of an EMS will include land management environmental aspects as determined by the responsible official; and (3) add a requirement that no project or activity approved under a plan developed, amended, or revised may be implemented until the responsible official has established an EMS.

The Department decided to allow the responsible official to conform to a multi-unit, regional, or national level EMS because this modification will provide the Forest Service flexibility to determine the appropriate scope of an EMS and allow the Agency to set EMS procedures at the appropriate organizational level to improve environmental efficiency and effectiveness. The responsible official will have the responsibility to deal with local concerns in the EMS. The unit EMS will provide the opportunity either to conclude that the higher level EMS adequately considers and addresses locally identified scope and significant environmental aspects, or to address project-specific impacts associated with the significant environmental aspects. The complete details for how the Agency will do this are being developed in a national technical guide and the Forest Service directives.

The Department changed the scope of an EMS so that the responsible official is the person authorized to identify and establish the scope and environmental aspects of the EMS, based on the national EMS and ISO 14001, with consideration of the unit's capability, needs, and suitability. The detailed procedures to establish scope and environmental aspects are being developed in a national technical guide and the Forest Service Directives System which are planned for release in fiscal year 2008. The Department made this change because the wording about scope in the proposed rule was too broad to be effectively implemented.

The Department is requiring the Chief to establish direction for EMS in the Forest Service directives. The directives will formally establish national guidance, instructions, objectives, policies, and responsibilities leading to conformance with International Organization for Standardization (ISO) and adopted by the American National Standards Institute (ANSI) as ''ISO 14001:2004(E) Environmental Management Systems—Requirements with Guidance for Use.''

The Department decided to remove the requirement that an EMS be in place prior to developing or revising a plan. However, the Department added the requirement that no project or activity approved under a plan developed, amended, or revised under the rule may be implemented until the responsible official either establishes an EMS or conforms to a multi-unit, regional, or national level EMS. The Department believes this change from the proposed rule will improve integration of EMS into the plan development and revision process by allowing plan components to inform the identification of environmental aspects in an EMS.

Comment: Contribution of EMS to the planning process. Several respondents questioned the value of including EMS in the proposed rule. A respondent expressed the belief that EMS is voluntary for industry and not enforceable; however, incorporating it in the planning rule would give it the force of law against the Agency. One respondent noted that although the

effectiveness of monitoring should be tightly integrated into each forest plan, it can be done without a burdensome and impractical EMS. Other respondents said that the existing planning process has adequate requirements for adaptive management, and the requirement to develop an EMS is redundant. Another respondent found requiring EMS to be inconsistent with the proposed rule's intent to be strategic rather than prescriptive. Another respondent suggested the requirement for EMS be moved to the directives and expanded to provide guidance on its scope and use. Conversely, some respondents expressed support for including an EMS in the rule. Several respondents expressed the opinion that a strategic forest plan accompanied by an EMS was preferable to a prescriptive forest plan.

Response: EMS is based on a national standard and the procedures for enforcing it will be established in the technical guide and directives. The standard lays out management system elements. EMS can be applied to any organization that wants to use it, not just industry. The final rule requires the responsible official to establish an EMS or conform to multi-unit, regional, or national level EMS with a land management emphasis. By letter of direction from the Chief and through its directives, the Forest Service will implement a national EMS applicable to all administrative units of the Forest Service.

Implementation of the EMS will be governed by the Forest Service directives. A technical guide is being prepared for use by EMS managers and an EMS handbook is being developed for use in the field. The scope of the EMS will address the goals of EO 13423, nationally identified land management environment aspects, and as appropriate, local significant environmental aspects.

The EMS will be designed to conform to the ISO 14001 standard, as required by section 219.5(c). Audit procedures will be established in the technical guide or directives. Conformance will be determined by adherence to the procedures detailed in the directives for the EMS. A ''non-conformity'' identified by a management review or audit under these EMS procedures is not a failure to conform to the ISO 14001 standard, per section 219.5(c), but part of the ''Plan-Do-Check-Act'' (P–D–C–A) cycle of continuous improvement that makes up the ISO conformant EMS. A non-conformity would be followed up with preventive or corrective action which leads to continuous improvement in environmental performance. Such a ''non-conformity'' is a normal part of the EMS P–D–C–A process and does not constitute a failure to conform to the ISO 14001 standard as required by section 219.5(c).

Administrative units that do not have an EMS will satisfy the requirement in section 219.5 when they implement the national EMS and either add significant environmental aspects and components under the local focus area or determine that the national EMS significant environmental aspects sufficiently identify and deal with the local unit's concerns. The detailed procedures and requirements for a Forest Service EMS under section 219.5 are being developed in a national technical guide and the Forest Service directives.

Although the Department recognizes concerns about potential redundancy in management systems due to EMS requirements, the Department is committed to integrating EMS with existing management systems or modifying existing systems to be consistent with EMS. The Department believes incorporating EMS in the planning rule better integrates adaptive management and EMSs in Forest Service culture and land management planning practices. This will help the Agency apply the principles of adaptive management to Agency operations.

Comment: EMS design and purpose. Several respondents felt that the Agency needs to clarify the purpose and contents of its EMS. One respondent specifically asked for clarification on the sustainable consumption component of the national EMS framework and how the public can be involved in the development of a unit's EMS.

Response: The Forest Service is committed to use EMS as a national framework for adaptive management. Details on the requirements of EMS, including procedures for public involvement, will be placed in the Forest Service directives. The sustainable consumption focus area of the national EMS discusses the goals outlined in Executive Order 13423 ''Strengthening Federal Environmental, Energy and Transportation Management.''

Comment: Applicability of International Organization of Standardization (ISO) 14001. Some respondents expressed the view that the ISO 14001 was designed for businesses, corporations, and facilities that cause pollution and that it would be an awkward fit to natural resource management agencies.

Response: The ISO standard simply lays out management system elements. EMS can be applied to any organization that wants to use it, not just industry. The Forest Service will use the ISO 14001 elements as the framework for EMS development for two reasons. It is the most commonly used EMS model in the United States and around the world. This will make it easier to carry out 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 carried out in the field.

The Agency's approach to EMS under the final rule incorporates lessons learned from the fiscal year (FY) 2006 EMS pilots. These pilots involved all Forest Service regions and 18 national forests and grasslands. The pilots revealed that a forest-by-forest approach to EMS: (1) Creates many redundancies, (2) burdens field units with unnecessarily duplicative work, (3) introduces inconsistencies, and (4) makes it difficult to assess regional and national trends emerging from EMS efforts because there is no standardization between units. Because of these problems, the Forest Service now proposes to develop a single, national EMS that will serve as the basis for environmental improvement on each unit of the NFS and as the basis for the EMS to be implemented on each unit. The national EMS will include three focus areas: *Sustainable consumption, land management,* and *local concerns.* The sustainable consumption focus area concentrates on the consumption of resources and related environmental impacts associated with the internal operations of the Forest Service. This focus area is the Agency's way to achieve the goals of Executive Order 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management.'' The sustainable consumption focus area will apply to items such as increasing energy efficiency, reducing the use of petroleum in fleets, and improving waste prevention and recycling programs. The land management focus area of the national EMS will include land management activities applicable

to all national forests and grasslands. A review of the 2006 EMS pilot program and review of the Agency's Strategic Plan found each local unit EMS will at a minimum include: (1) Vegetation management, (2) wildland fire management, and (3) transportation system management as significant aspects. The activities covered under the sustainable consumption and the land management focus areas include aspects and components that will be discussed in a national level EMS. Therefore the change in the final rule at section 219.5 that allows the responsible official to conform to multi-unit, regional, or national level EMS will allow the responsible official to cover the sustainable consumption and land management focus areas. The uniform approach to sustainable consumption and land management aspects and components in the national EMS will enable the Forest Service to track progress in achieving the objectives of the Forest Service Strategic Plan and unit land management plans and supply a feedback loop that will help improve the Agency's response when goals and objectives are not being met. The local focus area allows local units to include aspects and components specific to an individual unit's environmental conditions and programs. Each Forest Service unit's implementation of the national EMS could differ with respect to the locally identified significant environmental aspects.

Several administrative units established EMSs as a part of the pilot effort before the Forest Service adopted a consistent national approach. Those administrative units' EMSs include locally unique environmental aspects and components as well as the environmental aspects and components they have in common with other units. Those common environmental aspects and components are similar to the environmental aspects and components that will be developed under the sustainable consumption and land management focus areas of the national EMS. Because an EMS includes procedures to add new requirements, these administrative units have procedures to transition to the requirements developed under the national EMS and they will subsequently conform to the national EMS. Therefore, the EMS requirement under section 219.5(d) is met for those units. Administrative units that do not have an EMS will satisfy the requirement in section 219.5 after they implement the national EMS and either add significant environmental aspects and components under the local focus area or determine that the national EMS significant environmental aspects sufficiently identify and deal with the local unit's concerns.

Comment: EMS as substitute for NEPA or NFMA requirements. Some respondents expressed the opinion that EMS appears to be an entirely inappropriate substitute for NEPA to advance the public's interest in protecting the environmental integrity of the national forests. Another respondent expressed the opinion that EMS should not be a replacement for the standards and limits required by NFMA.

Response: The final rule requires all forest plans to be consistent with NFMA requirements, and an EMS will not be a replacement for these requirements. The final rule also requires the responsible official to select the appropriate level of NEPA analysis. The Forest Service will apply EMS as a tool for monitoring and effective adaptive management. EMS is not an environmental ''analysis'' system and is not a substitute for appropriate NEPA analysis.

Section 219.6—Evaluations and Monitoring

This section specifies requirements for plan evaluation and plan monitoring. The Department retains the 2007 proposed rule wording in the final rule except for minor changes. In paragraph (a)(1), the Department added that a comprehensive evaluation report may be combined with other documents, including NEPA documents. This change to the provision about comprehensive evaluation was done to eliminate a perception among Forest Service managers that two documents may be required if an EA or an EIS were prepared. In paragraph (b)(2), the Department removed the provision requiring the monitoring program to provide for monitoring of multiple-use objectives because paragraph (b)(2) also requires the monitoring program provide for monitoring of ''the degree to * * * making progress toward * * * objectives for the plan,'' which includes multiple-use objectives. Because multiple-use objectives will still be monitored, this is not a substantive change.

In paragraph (b)(2), the Department changed the provision requiring the monitoring program to determine the effects of the various resource management activities within the plan area 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. The Department changed the provision to require the monitoring program to provide for monitoring to assist in evaluating the effects of each management system to the end that it will not produce substantial and permanent impairment of the productivity of the land. The Department made this change in wording based on comments from Forest Service managers that the proposed rule wording was confusing. Therefore, the Department used the same words as NFMA at 16 U.S.C. 1604(g)(3)(C). The term ''management system'' in this provision means vegetation management system, such as, even-aged system, two-aged system, or uneven-aged system. Because the revised wording still carries out the intent of the NFMA, this is not a substantive change.

Because of a request by Alaska Native Corporations, the Department added the name Alaska Native Corporation to the list of possible partners for joint monitoring.

The final rule allows the monitoring program to be changed with administrative corrections and public notification, instead of amendments, to enable the Forest Service to implement improved techniques and eliminate those proven not to be effective, 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 changes to the program.

Comment: Guidance or requirements for monitoring. A respondent commented that the proposed rule failed to provide any guidance on what or how to monitor and evaluate. The respondent said that adaptive management requires compatible or standardized information to allow managers to learn from current management and make appropriate modifications, but that the proposed rule does not require such a system or provide guidance in how to set up a successful monitoring system. The rule does not require monitoring of any specific resources or actions such as monitoring wildlife or fuels reduction projects. With no system in place, a forest manager could selectively monitor some resources and activities and ignore others.

Response: The Department agrees standardized information collection through monitoring is an important part of adaptive management. The final rule includes a core set of requirements for establishing a monitoring system. These

include that monitoring must provide for determining whether management systems are producing substantial and permanent impairment of the productivity of the land and the extent to which on-the-ground management is maintaining or making progress toward the desired conditions and objectives of the plan (sec. 219.6(b)(2)). There is further guidance that monitoring must be prepared with public participation and take into account key social, economic, and ecological performance measures, and best available science (sec. 219.6(b)(1)). The Forest Service Directives System and other technical guidance provide information on how to design and conduct a monitoring program.

Rather than impose through this planning rule a standardized list of resources or activities for monitoring, the Agency believes that monitoring needs are best determined for each individual unit. Requiring standard information to be collected on fuels may be a critical element to fire-prone forests, but it is not to wet forests where fire is a less important ecological process. The reality of limited financial and technical capabilities makes it particularly important that forest managers be allowed to develop a monitoring program appropriate for the information needs of each forest without the additional burden of providing standardized information of limited utility to some forests.

Comment: Need for wildlife monitoring. Several respondents stated wildlife monitoring must be done to ascertain the effects of projects on wildlife.

Response: The final rule establishes a process for developing, amending, and revising land management plans for the NFS (sec. 219.1(a)). If the responsible official determines that provisions in plan components, in addition to those required for ecosystem diversity 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. The rule also requires plans to include monitoring of the degree to which on-the-ground management is maintaining or making progress toward the desired conditions and objectives for the plan. Accordingly, a forest plan's monitoring program would include monitoring of effects on wildlife where appropriate.

Comment: Monitoring detail in the rule. Some respondents were concerned that the proposed rule did not include requirements for detailed monitoring of objectives and standards.

Response: The rule requires a plan's monitoring program to take into account financial and technical capabilities, key social, economic, and ecological performance measures relevant to the plan area, and best available science in monitoring the degree to which on-the-ground management is maintaining or making progress toward the desired conditions and objectives for the plan. Because plan components such as desired conditions, objectives, and standards (if a plan includes them) will reflect management specific to a particular unit of the NFS, the plan's monitoring program will need to be tailored to that unit as well. By requiring a plan's monitoring program to focus on the achievement of desired conditions and objectives, the rule strikes a balance between providing needed detailed direction and discretion of the responsible official.

Comment: Collecting relevant and necessary information. Some respondents noted there is no process for assuring the Agency will collect relevant and necessary information. Permitting merely the use of available information (especially if no information is available) gives the Agency an excuse for not collecting the right monitoring information. One respondent said the proposed rule abdicates the Forest Service's responsibility to monitor species and perform population assessments, shifting that burden to the public, which will have little or no record of data from the Agency on which to rely.

Response: As described in section 219.6(b)(1) in the final rule, the monitoring program will be developed with public participation and will take into account the best available science. Section 219.6(a)(3) of the final rule requires an annual evaluation of monitoring information. These steps would help assure that the monitoring program gets the right information.

Comment: Need for evaluation of current conditions. Respondents stated it is imperative the Forest Service evaluate current conditions that resulted from past management decisions before making changes in management direction.

Response: Under the final rule baseline information would be collected as needed to establish trends for social, economic, and ecological sustainability. Section 219.6(a) of the final rule requires three types of evaluations. These include comprehensive evaluations for plan revisions that must be updated every 5 years (sec. 219.6(a)(1)), evaluation for a plan amendment (sec. 219.6(a)(2)), and annual evaluations of the monitoring information (sec. 219.6(a)(3)).

Comment: Monitoring of goals and objectives. Some respondents stated the lack of any requirements in the planning rule for meeting forest plan goals and objectives assures that any monitoring plan will be meaningless.

Response: The final rule provides for monitoring the degree to which management is making progress toward the desired conditions and objectives for the plan (sec. 219.6(b)). Section 219.6(a)(3) of the final rule calls for an annual evaluation to be made of this monitoring information. Under the final rule, if plan objectives are not realized due to budget constraints, changed conditions, or other reasons, the desired conditions may not be realized. If monitoring and evaluation indicates that certain objectives and/or desired conditions are not achievable, the responsible official would consider the need for a plan amendment or revision or may consider stepping up on-the-ground management to actually improve progress toward desired conditions and objectives.

Comment: Substantial changes in evaluation reports. A respondent was concerned that the term 'substantial changes in conditions and trends' as described in section 219.6(a)(1) was not defined and thus did not allow the public to review and understand what is expected in the updated comprehensive evaluation.

Response: Section 219.9(a) of the final rule requires public involvement in the updating of the comprehensive evaluation report. It is expected that the update of the comprehensive evaluation will involve a general review of relevant conditions and trends with emphasis on those whose changes that are considered substantial. Accordingly, the public will have an opportunity to tell the responsible official what they believe are substantial changes in conditions and trends.

Comment: Analysis for a project or activity should not be sufficient for a plan amendment. A respondent disagreed with the proposed rule at section 219.6(b)(2) that states that the analysis prepared for a project or activity satisfied requirements for an evaluation for an amendment. The concern is there would be no analysis to evaluate how an exception made for the project or activity will affect the plan.

Response: The project or activity analysis that satisfies the requirements for an evaluation report for a plan amendment that only applies to the project or activity decision must also meet the requirements in section 219.6(a) and section 219.6(a)(2). These

include an evaluation commensurate to the levels of risk or benefit associated with the nature and level of expected management in the plan area and an analysis of the issues relevant to the purposes of the amendment.

Section 219.7—Developing, Amending, or Revising a Plan

This section discusses plan components; planning authorities; planning process, including the process for review of areas with potential for wilderness recommendation; administrative corrections; plan document or set of documents; and the plan approval document. The Department retains the 2007 proposed rule wording in the final rule except for minor changes: In paragraph 219.7(a)(1), the Department changed the wording about EMS documents from ''documents relating to the EMS established for the unit'' to ''applicable EMS documents, if any.'' This change to the description of documents was made because the Forest Service will maintain separate records for EMS. Separate records are necessary because the responsible official may conform to multi-unit, regional, or national level EMS. In paragraph 219.7(a)(2)(iv), the Department added wording to acknowledge that the responsible official may identify an area as generally unsuitable for various uses. The Department added these words to avoid confusion. Some public comments indicated that identification of an area as generally not suitable for uses would be perceived as a final decision. Therefore the Department clarified its intent. The Department views this as an outgrowth of the proposed rule's suitability provisions and not a substantive change. In paragraph 219.7(a)(3) the Department added a paragraph to explicitly list standards as a possible plan component. As discussed in the decision and rationale section of this preamble, the Department added that standards may be included in a plan in response to public comments and the Agency's desire to include standards as a plan component when appropriate. This clarifies the Department's intent that standards are an option for the responsible official as described in the preamble to the proposed rule (72 FR 48528). This is not a substantive change because this option was available under the proposed rule and because this was considered in the range of alternatives in the EIS.

In paragraph 219.7(b)(4), the Department added wording to allow administrative corrections for projections of uses or activities in addition to timber management projections. This change was made at the request of Forest Service managers to allow planners to update projections of other uses besides timber to be updated. If the Forest Service is allowed to update timber projections, then updates should similarly be allowed for other resources. Because projections of use are not decisions, this is not a substantive change. In paragraph 219.7(c)(6), the Department added wording that if a plan approval document is the result of an EA or EIS process, the plan approval document would be done in accord with Forest Service NEPA procedures. This wording was added to ensure that a plan approval document in these circumstances would meet both the requirements of the final rule and agency NEPA procedures. This is not a substantive change as the addition ensures the planning rule is consistent with existing Forest Service NEPA procedures.

Section 219.7(b) provides for administrative corrections to include changes in the plan document or set of documents, except for substantive changes in the plan components. This is done to allow for continual inclusion of new science and other information into the plan document or set of documents. 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.

Comment: Triggering an amendment or revision. Some respondents stated concerns about how the proposed rule describes the way plan revisions will be triggered. One concern is the perception that the responsible official will have unfettered discretion to amend or revise the plan without any guidance as to what types of events would be rational for changing the plan. These respondents urge that the rule include a representative list of the general types of events that might trigger a plan amendment or revision. Some respondents urge that an EIS and public involvement be required when forest plans are changed.

Response: The final rule provides the responsible official discretion about whether to initiate a plan amendment or plan revision, subject to the NFMA requirement that the plan be revised at least every 15 years. The periodic evaluations required by the final rule would document current conditions and trends for social, economic, and ecological systems in the area of analysis (sec. 219.6(a)) and aid the responsible official in determining if a plan amendment or plan revision is needed and what issues need to be considered. The responsible official will be able to amend or revise the plan based on information obtained by monitoring and evaluation, as well as other factors. The Department believes that the efficiencies of the final rule would be reduced if the planning rule attempted to identify every specific event that must occur before a plan revision or plan amendment can be initiated.

Plan amendments prepared under the procedures described in the final rule will have a 90-day comment period and will have a 30-day objection opportunity. If a NEPA document is part of a plan development, plan amendment, or plan revision the NEPA document will be prepared in accord with Forest Service NEPA procedures.

Section 219.7(a)(2)(i)—Plan Components—Desired Conditions

Comment: Addressing elements of sustainability in desired conditions. Some respondents urged that the components of sustainability (social, economic, ecological) be given equal footing in the descriptions of desired conditions. They stated that very specific detailed descriptions are needed in order to establish meaningful objectives and without detailed desired condition descriptions, objectives will not be met.

Response: Under the final rule, desired conditions will be the social, economic, and ecological attributes toward which management of the land and resources of the plan area are to be directed. The Agency agrees that well defined desired condition descriptions are useful, because they provide a clear basis for project or activity design and are needed to effectively establish objectives.

Section 219.7(a)(2)(ii)—Plan Components—Objectives

Comment: Nature of objectives. One respondent expressed concern that objectives are described as aspirational rather than being defined as concrete, measurable, and time specific as in previous rules.

Response: Under the final rule, the objectives are measurable projections of time specific intended outcomes and are a means for measuring progress toward reaching desired conditions (sec. 219.7(a)(2)(ii)). These objectives can be thought of as a prospectus of anticipated outcomes, based on past performance and estimates of future trends. These objectives must be measurable, so progress toward attainment of desired conditions can be determined. Variation in accomplishing objectives would be expected due to changes in

environmental conditions, available budgets, and other factors.

Comment: Timber production objectives. Some respondents are concerned that if the timber sale program quantity (TSPQ) and the acres and volumes of projected management practices are objectives and the basis for achieving the desired conditions, then if the Agency does not meet these objectives the desired condition will never be achieved.

Response: We agree. Under the final rule, if plan objectives are not realized due to budget constraints, changed conditions, or other reasons, the desired conditions may not be realized. If monitoring and evaluation indicates that certain objectives and/or desired conditions are not achievable, the responsible official would consider the need for a plan amendment or revision or may consider stepping up on-the-ground management to actually improve progress toward desired conditions and objectives.

Section 219.7(a)(2)(iii)—Plan Components—Guidelines

Comment: Mandatory protections. Several respondents raised concerns because they felt the proposed rule removes mandatory protections for resources such as water and wildlife and removes the restraints on clearcutting that have been in place for over 25 years. Most of these respondents requested the final planning rule provide at least the minimum protections from the 1982 rule and these protections and those required by the NFMA not be weakened. Other respondents said the flexibility incorporated in the 2007 proposed rule better allows the Agency to carry out its mission and adapt to changing conditions. Other respondents are pleased the proposed rule featured the use of guidelines as opposed to standards.

Response: The final rule provides for inclusion of standards as a plan component (sec. 219.7(a)(3)). Standards are constraints on project and activity decisionmaking and may be established to help achieve the desired conditions and objectives of a plan and to comply with applicable laws, regulations, Executive orders, and agency decisions. When a plan contains standards, a project or activity must be designed in accord with the applicable standard(s) in order to be consistent with the plan. If a proposed project would be inconsistent with the plan, the responsible official must modify the proposal, reject the proposal, or amend the plan.

NFMA requirements for timber harvest are in the final rule text (sec. 219.12(b)) including provisions for protection of soil, watershed, and other resources during timber harvest. The final rule depends on the Forest Service Directive System to further specify how to meet the NFMA requirements. Existing directives are available at *http://www.fs.fed.us/im/directives*. These directives will be revised to be consistent with the final rule.

Current guidance for timber harvest is provided in the 1920 section of the FSM and in FSH 1909.12, chapter 60 for even-aged harvest, reforestation, and stocking requirements, suitability determinations, calculation of long-term sustained yield, and calculation of timber sale program quantities. Detailed direction on watershed protection and management may be found in FSM 2520.

About the comments on guidelines removing the protections from the 1982 rule for wildlife, the final rule and directives are explicitly designed to work together and provide for ecological sustainability through the combination of ecosystem diversity and species diversity approaches. Under the existing directives adopted to carry out the 2005 planning rule, species-of-concern would be identified based on NatureServe rankings (FSH 1909.12 section 43.22b). Under the existing directives species-of-interest would be identified considering many sources including those listed by states as threatened or endangered and those identified in state comprehensive plans as species of conservation concern (FSH 1909.12 section 43.22c). Under the final rule, the primary purpose for identifying species-of-concern is to put in place provisions that will contribute to keeping those species from being listed as threatened or endangered. The combined criteria for species-of-concern and species-of-interest currently in the Forest Service directives would lead to identification of all species for which there are conservation concerns. Particularly, criterion five for species-of-interest (FSH 1909.12, sec. 43.22(c)), which directs identifying ''additional species that valid, existing information indicates are of regional or local conservation concern due to factors that may include significant threats to populations or habitat, declining trends in populations or habitat, rarity, or restricted ranges.'' Species for which there are no conservation concerns would be adequately conserved through the ecosystem diversity approach.

Section 219.7(a)(2)(iv)—Plan Components—Suitability of Areas

Comment: Applicability of suitability and other plan components in restricting or prohibiting projects or activities. Some respondents recommended the description of objectives, guidelines, suitability of areas, and special areas be clarified so decisions on these components do not constitute a final commitment restricting or prohibiting projects or activities. Other respondents said the plan must make a clear decision on priority land use if the plan is to be of use in guiding management. Still others agreed general suitability determinations are appropriate for a strategic forest plan.

Response: Under the final rule section 219.7(a)(2), plan objectives, guidelines, suitability of uses, and special areas designations are not commitments or final decisions approving projects and activities. Plan components provide guidance for future project and activity decisionmaking. The responsible official will identify suitable uses that best fit the local situation. 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.

The response to comment section on 219.8 has more discussion about how projects and activities must be consistent with the plan.

Section 219.7(a)(2)(v)—Plan Components—Special Areas

Comment: Nature of special designations. A respondent commented that the proposed rule allow the plans to designate or remove designation from certain types of special areas. In the past, this type of action would require environmental review under NEPA, but under the proposed plan, these changes could be made without environmental review. Some respondents stated special designations and final decisions should not be made without some kind of analysis to support that designation. Others suggested that the Appalachian National Scenic Trail, as well as other congressionally designated national scenic and historic trails, be in the list of special designations and that management direction for special areas be in forest plans.

Response: Under the final rule, the level of NEPA analysis needed to support designations would be consistent with agency NEPA procedures. The responsible official may designate special areas for unique or special characteristics during plan development, plan amendment, or plan revision. These areas include national scenic and historic trails, wilderness, wild and scenic river corridors, and research natural areas. National scenic and historic trails, wilderness, and wild and scenic river corridors are statutorily designated. Other areas (such as national scenic and historic trails) may be designated through plan development, amendment, revision, or through a separate administrative process with an appropriate level of NEPA analysis. The types of special areas that the responsible official may designate or remove depend on the designation authority in Forest Service directives, regulation, or statute (FSH 1909.12 section 11.15). The intent of the new rule is not to expand the use of special areas into totally new categories, but rather to assure that plans recognize the categories established by Congress, the Department, or the Agency. For example, the forest supervisor may recommend research natural areas (RNAs) but regional foresters may designate RNAs. The forest supervisor may recommend national scenic and historic trails, wilderness, and wild and scenic river corridors but only the Congress may designate. Under this final rule the Department envisions forest supervisors designating areas with the following characteristics: scenic, geological, botanical, zoological, paleontological, historical, and recreational as discussed in FSM Chapter 2372. Designating a special area that simply identifies one or more of these characteristics, and also includes plan components developed for that particular area, may occur without further NEPA analysis and documentation. The responsible official with designation authority may propose a prohibition on projects or activities in specific special areas. Furthermore if the prohibition commands anyone to refrain from undertaking projects and activities in the areas, or that grants withholds or modifies contracts, permits, or other formal legal instruments, that proposed designation would be done in accord with the Forest Service NEPA procedures.

Section 219.7(a)(6)(ii)—Plan Process—Consideration and Recommendation for Wilderness

Comment: Roadless inventory procedures and wilderness recommendations. Some respondents stated the wilderness review required by the rule should require that the roadless areas inventory include those areas that do not have maintained roads and that may have been missed in past reviews.

Some respondents are concerned that section 219.7(a)(5)(ii) of the proposed rule required a vast expansion of areas to be considered for wilderness because the language is overly broad and does not specify what constitutes wilderness characteristics or to what degree such characteristics must be present to merit evaluation. These respondents were concerned this language will lead to expansion of wilderness without considering other multiple uses. Other respondents believed this section of the rule is in conflict with the nature of plans as strategic and not a final agency decision and recommend the removal of section 219.7 from the final rule. Some respondents suggested this section of the rule exclude national forests in Alaska from further wilderness review and recommendation.

Response: Identification of potential wilderness areas and wilderness recommendations has always been an integral part of the NFS planning process. The process for wilderness evaluation has not changed from the requirements in the 1982 rule. Under the final rule section 219.7(a)(6)(ii), the responsible official will 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. Identification of potential wilderness areas and wilderness recommendations has always been an integral part of the NFS planning process. The final rule 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. The Forest Service directives (FSH 1909.12, chapter 70) provide the detailed criteria for the identification of potential wilderness areas and the wilderness evaluation process to follow in carrying out the requirements of the rule. The inventory criteria for potential wilderness areas are not part of the final rule. About roads, the inventory criteria from FSH 1909.12 section 71.1 states that such areas do not contain forest roads (36 CFR 212.1) or other permanently authorized roads, except as permitted in areas east of the 100th meridian. Forest roads have a wide range of maintenance levels and may be closed and not maintained for passenger vehicles. The final rule does not predetermine the plan decision a responsible official may make concerning the future management of areas meeting potential wilderness criteria. A variety of options may be considered. Final decisions on designation of wilderness are made only by Congress, and those designations may or may not follow agency recommendations.

Section 219.7(a)—Developing Options

Comment: Developing a forest plan requires the consideration of alternatives. A respondent commented that one of the most valuable elements of the existing planning process is the consideration of alternatives. This has yielded new ways of reconciling issues, often through ideas and alternatives submitted by scientists and other reviewers. Not having alternatives to consider puts the Forest Service in the unenviable position of making decisions without having alternatives and their effects at its disposal.

Response: Under the final rule, alternatives and their effects under NEPA are not needed for responsible officials to approve a plan. Section 219.7(a) of the final rule implements a collaborative and participatory process for land management planning. Under the final rule, the responsible official and the public may iteratively develop and review various options for plan components, including options offered by the public. Responsible officials and the public would work collaboratively together to narrow the options for a proposed plan based on analysis of the options instead of focusing on distinct alternatives carried through the entire process. The Forest Service developed this iterative option approach under the

final rule to encourage people to work together, to understand each other's values and interests, and to find common solutions to the important and critical planning issues. Alternatives under NEPA may also be developed if agency NEPA procedures require the preparation of an EIS or EA for a specific plan development, plan amendment, or plan revision.

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

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 Department retains the 2007 proposed rule wording in the final rule, with a minor change. Although the 2007 proposed rule required project or activity consistency with the applicable plan, the final rule requires consistency with the applicable plan components. This change was made to avoid confusion. The Department wants to make clear that future projects do not have to be consistent with other information written in plans. Today and in the future, land management plans have other information in the plan besides plan components. For example, other information may include items such as collaboration strategies, program emphasis, management approaches, priorities, and resource strategies. These items may convey a sense of priority and focus among objectives so that the public will know where the responsible official expects to place the greatest importance. However, these are often quite speculative projections based on past trends of budget and program accomplishments. This other information is not the plan.

Comment: Site specific applicability of the plan. A respondent commented that the proposed rule removed any applicability of the plan to site specific projects and violated NFMA by allowing project-specific amendments rather than requiring that all projects be consistent with plan direction.

Response: To respond effectively to new information or changed circumstances it is essential for the rule to include provisions for amending the plan when it is needed. The final rule requires that decisions approving projects and activities be consistent with the plan. Site-specific plan amendments are a valid method of achieving final rule plan consistency. Provisions at section 219.8(e)(3) are consistent with the NFMA provisions for plan amendments found at 16 U.S.C. 1604(f)(4), NEPA regulatory requirements relevant to new information and changed circumstances at 40 CFR 1502.22, and Forest Service practice to allow project-specific amendments since the 1982 rule.

Comment: Consistency of projects and activities with the plan. Several respondents said the proposed rule at section 219.8 is not consistent with the rule preamble in describing consistency of projects and activities with plan guidelines. The preamble indicates that ''a project or activity design may vary from the guideline only if the design is an effective means of meeting the purpose of the guideline, to maintain or contribute to the attainment of relevant desired conditions and objectives.'' The preamble allows variation from plan guidelines without a plan amendment, but that option is not reflected in the proposed rule at section 219.8(e). These respondents were concerned that retaining this text from the proposed rule would override the statements in the preamble about plan flexibility and the nonbinding nature. Another respondent stated that the proposed rule and preamble do not explain or define what it means to be ''consistent'' with the plan.

Response: To carry out the NFMA plan consistency mandate in an effective way, the Agency will amend the normal wording about plan consistency in the FSH 1909.12, section 11.4. This template wording should be used in revised plans. By amending the existing procedures in the Forest Service Directive System, the Agency will clarify how projects or activities must be consistent with applicable plan components. The public will have the opportunity to comment on this amendment to directives about consistency between projects and plans.

Tentative wording for the proposed amendment may be as follows:

(a) A project or activity is consistent with the desired condition component of the plan if it does not foreclose the opportunity for maintenance or attainment of the applicable desired conditions over the long term based on the relevant spatial scales described in the plan.

(b) A project or activity is consistent with the objectives component of the plan if it contributes to or does not prevent the attainment of one or more applicable objectives.

(c) A project or activity may be consistent with a guideline in one of two ways.

(1) The project or activity is designed in accord with the guideline, or

(2) A project or activity design varies from a guideline if the design is an effective means of meeting the purpose of the guideline to maintain or contribute to the attainment of relevant desired conditions and objectives. If the responsible official decides such a variance from a guideline is appropriate, the responsible official must document how the variance is an effective means of maintaining or contributing to the attainment of relevant desired conditions and objectives. A variance from a guideline does not require an amendment to the plan.

(d) A project with the primary purpose of timber production may only occur in an area identified as suitable for that use (16 U.S.C. 1604(k)).

(e) For suitability of areas except for timber production, consistency of a project or activity should be evaluated in one of two ways.

(1) The project or activity is a use identified in the plan as generally suitable for the location where the project or activity is to occur, or

(2) The project or activity is not a use identified in the plan as generally suitable for the location, but the responsible official documents the use to be appropriate for that location.

(f) Where a plan provides plan components specific to a special area, a project, or activity must be consistent with those area-specific components.

(g) A project or activity is consistent with a standard if the project or activity is designed in accord with the standard.

Comment: Protecting valid existing rights. Several respondents expressed the view that all existing uses authorized by the Forest Service include valid existing rights and should be allowed to continue for the term of existing authorizations. Others indicated existing authorizations should only be modified if they conflict with applicable laws.

Response: NFMA at 16 U.S.C. 1604(i) states, ''When land management plans are revised, resource plans and permits, contracts and other instruments, when necessary, shall be revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made pursuant to this section shall be subject to valid existing rights.'' The final rule section 219.8(a) is consistent with this requirement.

Section 219.9—Public Participation, Collaboration, and Notification

This section of the final rule describes collaboration; comment periods; content of public notices, engaging interested individuals, organizations, and governments; and public notifications. The Department retains the 2007 proposed rule wording in the final rule, with minor changes.

Because of a request by Alaska Native Corporations, the Department added the

name Alaska Native Corporation to the list of persons the responsible official must provide opportunities for collaboration (sec. 219.9(a)(3)). As the responsible official must provide opportunities for many people to collaborate, this is not a substantive change.

At paragraph (a)(3) of this section, the Department added a sentence saying that the responsible official should seek assistance, where appropriate, from federally recognized Indian Tribes and Alaska Native Corporations to help address management issues or opportunities. This change was made to make the requirements for engaging Tribal governments and Alaska Native Corporations similar to paragraph (a)(2) for engaging State and local governments and Federal agencies.

At paragraph (b)(3)(v) of this section, the Department modified the wording to provide required content for a public notice in cases where an ongoing planning process under the 2005 rule was halted because of the district court's order in *Citizens for Better Forestry* v. *USDA*. The responsible official's public notice must state whether a planning process initiated before the final rule was promulgated will be adjusted to the final rule requirements. The Department modified the proposed rule wording because of public comment. Some respondents were unclear as to how the products created during land management planning under the 2005 rule, such as those generated with a interest group, would be used in the final plans. This notice now provides a vehicle for the public to learn if previously created products will be used. As the proposed rule, described in the content of the public notice for an adjustment to an ongoing planning process, this change in the requirements of the notice is not a substantive change.

Comment: Public participation in the planning process. Several respondents commented that the proposed rule unfairly limits public participation in the planning process.

Response: The final rule establishes public involvement procedures and requirements for formal public comment opportunities that go well beyond the requirements of NEPA. Specifically, the final rule requires the responsible official to involve the public in developing and updating a comprehensive evaluation report; in establishing the components of the plan, including the desired condition of the lands involved; and in designing the monitoring program to be carried out during the life of the plan. The requirements for public participation and collaboration for land management planning in the final rule create a high standard for agency performance. Considering all the opportunities to participate under the final rule, people would not only continue to have access to the land management planning process, they would have the opportunity to participate more meaningfully in bringing each plan to life. With the efficiencies under the final rule, plan revisions would be expected to take 2 to 3 years to complete as opposed to a 5 to 7 year period that was typical in the past under the 1982 rule. The Agency believes this shorter timeframe would make it possible for more people to stay involved throughout the planning process.

Comment: Public involvement if an EIS is not prepared. Many were concerned that without an EIS (as required under the 1982 rule), opportunities for public involvement and oversight in the land management planning process will be reduced or eliminated. They were concerned because specific public involvement requirements in the CEQ regulations that apply to EISs do not apply to categorical exclusions.

Response: Categorical exclusions do not require the same system of public involvement as EISs. However, if a categorical exclusion is used, the rule's extensive requirements for public participation and collaboration apply nonetheless. The final rule provides greater opportunities for public notification and comment during the land management planning process than is required for an EIS. In addition, under the final rule, the responsible official is specifically required to involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program.

Comment: Access to information if an EIS is not prepared. Some respondents were concerned that people will have less access to timely information about environmental impacts and the comparative advantages of various alternatives if an EIS is not prepared for plans. Some were concerned that there will not be legal recourse for submitting citizen alternatives. Some were concerned that the rule eliminates a ''scoping'' phase, such as the 30-day period at the beginning of a NEPA process, and that the rule's 90-day comment period for proposed plans will be too late to have changes made.

Response: The final rule section 219.9(a) requires public involvement at early stages of the planning process when the comprehensive evaluation report would be developed and updated. The comprehensive evaluations would provide information about the effectiveness of current forest management in achieving desired conditions. This can provide useful information to managers and the public for collaboratively developing a plan or identifying needed changes to discuss during plan revision. Formal public notification of the initiation of development of a plan is similar in timing to scoping under NEPA. Opportunity for public involvement is also required in the developing the components of the plan and designing the monitoring program. A 90-day comment period on a proposed plan is an NFMA requirement. Under the 1982 rule, it was done at the proposed plan/draft EIS review stage. However, public involvement in the planning process is not intended to be limited to discrete 30-day or 90-day periods, but may occur throughout the process. Options may be considered as an iterative approach to developing plan components in collaboration with the public. Additional guidance and procedures for collaboration are supplied through agency directives located in FSM 1921.6 and FSH 1909.12, chapter 30.

Comment: Importance of government relationships. Some respondents reiterated the importance of collaborative relationships with other government entities that manage surrounding lands. Some respondents wanted the rule to provide an equivalent to the cooperating agency provision of NEPA.

Response: Under the final rule, the responsible official must coordinate planning efforts with those of other resource management agencies. The responsible official will provide opportunities for other government agencies to be involved, collaborate, and participate in planning for NFS lands.

Comment: Public notices via e-mail. Some respondents were concerned that few citizens review legal notices in newspapers or the **Federal Register**, and notices should be e-mailed to interested publics.

Response: Under the final rule, a variety of public notification techniques may be used, including mail and e-mail. Public notification will be essential in meeting the public participation requirements of the rule.

Comment: Public involvement in plan evaluation and monitoring. Some respondents commented that an opportunity for public involvement should be provided to change the monitoring program. One respondent suggested that some changes could have environmental effects and that these should only be done through a plan

amendment rather than simply required notification of change.

Response: Under the final rule, the responsible official would notify the public of changes in the monitoring program and can involve the public in a variety of ways when considering changes in the program. Section 219.9(a) requires the responsible official to involve the public in developing and updating the comprehensive evaluation, establishing the components of the plan, and designing the monitoring program.

Comment: Public involvement for administrative corrections. One respondent said administrative corrections might be significant, and should require public notice before they are made. The respondent believes that changes such as to logging projections and monitoring procedures constitute significant changes with environmental effects.

Response: Administrative corrections are intended for non-substantive changes to plan components and for changes in explanatory material. Long-term sustained-yield capacity (LTSYC) is a statutory limit on timber sale amount. The timber sale program quantity is an objective. Administrative corrections would not be appropriate for LTSYC or for the TSPQ. Administrative correction may be appropriate, however, for timber harvest projections which are for information purposes only, and are not binding. Timber harvest projections are not LTSYC or TSPQ, but, for example, may be estimates of the amount of harvest by cutting method, management emphasis, or product type. The directive system will require administrative corrections to be made available to the public through the unit's Web site or by other means.

Comment: Extending Tribal consultation to Alaska Native Corporations. Several Alaska Native Corporations requested inclusion of language at section 219.9(a)(3) that would ensure consultation with Alaska Native Corporations as required by the 2004 and 2005 Consolidated Appropriations Acts.

Response: Alaska Native Corporations has been added to the engaging Tribal governments provision at section 219.9(a)(3) as well as to section 219.6(b)(3) on collaborative monitoring. The definition of ''Alaska Native Corporations'' provided is in section 219.16.

Comment: Consultation requirements when identifying species-of-interest. Some respondents recommended the final rule specifically require consultation with the USFWS, state heritage, or natural resource agencies in the identification of species-of-interest.

Response: The final rule at sections 219.9(a)(2 and 3) requires the responsible official to coordinate and engage with Federal agencies, local governments, and States during the planning process. The responsible official would provide opportunities for the coordination of Forest Service planning efforts with those of other resource management agencies and to seek assistance, where appropriate, from other State and local governments, Federal agencies, local Tribal governments, and scientific institutions to help address management issues or opportunities. Consultation with the USFWS (and NOAA Fisheries) is a process defined and required by the Endangered Species Act and which typically includes a requirement to identify listed species that may be affected.

Section 219.10—Sustainability

This section of the final rule provides provisions for social, economic, and ecological sustainability. The Department retains the 2007 proposed rule wording in the final rule.

Comment: Elements of sustainability. Some respondents commended the Agency for continuing to define sustainability in terms of social, economic, and ecological elements; none of which trumps the others. It was felt this more accurately reflects the tenets of ecosystem management with its explicit recognition of the human dimension of natural systems and national forest management, and that the three types of sustainability are tightly linked. Moreover, respondents commented that although ecological sustainability is unarguably important, it needs to be balanced with the Agency's charge to ''provide a continuous flow of goods and services to the nation in perpetuity'' as well as other obligations, such as with the Mining and Minerals Policy Act.

Others believe that ecological sustainability should be the primary goal because ecological sustainability provides the needed assurance that social and economic benefits can be produced at sustainable levels. There was also the comment that the highest priority for forest management must be the maintenance of as complete a component of its species and natural processes as possible.

Another respondent commented that sustaining social and economic systems may conflict with sustaining ecological systems, and asked what will be done to ensure that these goals do not conflict. Lastly, a respondent noted that the ''overview'' to the proposed rule states that plans ''should'' guide sustainable management, which implies that sustainable management is optional.

Response: NFMA requires the use of the MUSYA to provide the substantive basis for forest planning and the development of one integrated plan for the unit. Under the final rule, the Agency would treat economic and social elements as interrelated and interdependent with ecological elements of sustainability, rather than as secondary considerations. Sustainability is viewed as a single objective with interdependent social, economic, and ecological components. This does not downplay the importance of ecological sustainability, as the MUSYA provides for multiple-use and sustained use in perpetuity without impairment to the productivity of the land. The final rule recognizes the interconnection between the ecological, social, and economic components of sustainability and requires consideration of each in the planning process. It establishes a planning process that can be responsive to the desires and needs of present and future generations of Americans for the multiple uses of NFS lands. The rule does not make choices among the multiple uses; it provides for a process by which those choices will be made during the development of a plan for each NFS unit.

Comment: Time frames for sustainability. Some respondents stated that ecological sustainability is measured in decades and centuries while economic sustainability is usually measured in a five-year time frame. They recommended that sustainability be measured only by ecological sustainability time frames.

Response: The Agency recognizes that time frames for ecological sustainability and economic sustainability will rarely match. The final rule allows for NFMA's requirement to consider both the economic and environmental aspects of various systems of renewable resource management during development of a plan.

Comment: Approach to maintaining diversity. Some respondents believe that the proposed rule's reference to an ''overall goal'' of providing a framework and narrowing the focus to endangered and threatened species, species-of-concern and species-of-interest is not sufficient. Other respondents commented that following the coarse filter/fine filter approach is a major improvement, because scarce resources can be focused on communities rather than trying to devote the same attention to a myriad of species that are not in danger of ESA listing. Other respondents said that the proposed rule does little to specify how the

''framework'' will be crafted, how it will ''contribute to'' sustaining native ecological systems, or how plans will ''provide for'' threatened and endangered species, species-of-concern or species-of-interest.

Response: The final rule sets forth the 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 appropriate 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 hierarchical and iterative approach to sustaining ecological systems: Ecosystem diversity and species diversity. The intent of this hierarchical approach is to contribute to ecological conditions appropriate for biological communities and species by developing effective plan components (desired conditions, objectives) for ecosystem diversity and supplementing it with species-specific plan components as needed, thus improving planning efficiency. The final rule leaves the specific procedures on how the framework will be crafted for 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 discussed in agency directives, the responsible official will develop plan components for ecosystem diversity establish desired conditions, objectives, and other plan components, where feasible, for biological communities, associated physical features, and natural disturbance processes that are the desired components of native ecosystems. The directives specify how to deal with local conditions. Ecosystem characteristics include the structure, composition, and processes of the biological and physical resources in the plan area. The primary approach the Agency envisions for evaluation of characteristics of ecosystem diversity is estimating the range of variation that existed under historic disturbance regimes and comparing that range to current and projected future conditions. For specific detail procedures see FSM 1920 and FSH 1909.12, chapter 40.

As part of the hierarchical and iterative approach, the plan area would be assessed for species diversity needs after plan components are developed for ecosystem diversity. The responsible official would evaluate whether the framework established by the plan components meets the needs of 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 appropriate ecological conditions in the plan area that contribute to the conservation of these species.

Under the final rule, the Agency 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.

Additional guidance is provided in Forest Service Directive System. For example, at FSM 1971.76c, plan components for federally-listed species must comply with the requirements and procedures of the ESA and should, as appropriate, carry out approved recovery plans or deal with threats identified in listing decisions. Plan components for species-of-concern should provide the appropriate desired ecological conditions and objectives to help avoid the need to list the species under the ESA. Appropriate desired ecological conditions may include habitats of appropriate quality, distribution, and abundance to allow self-sustaining populations of the species to be well distributed and interactive, within the bounds of the life history, distribution, and natural fluctuations of the species within the capability of the landscape and consistent with multiple-use objectives. (A self-sustaining population is one that is sufficiently abundant and has appropriate population characteristics to provide for its persistence over many generations.) For species-of-interest, if a plan component will not contribute appropriate ecological conditions to maintain a desired or desirable species-of-interest, the responsible official must document the reasons and multiple-use tradeoffs for this decision.

Comment: Meeting the NFMA diversity requirements. Some respondents stated that the proposed rule's sustainability provisions contain no clear mandates, no concrete obligations, and are unenforceable; so they do not meet the NFMA's diversity requirement. Others noted the proposed rule at section 219.10 only mentions the diversity of native plant and animal communities, but this section does not require plans to provide for that diversity or ensure that there will be a diversity of plant and animal communities, as required by NFMA. Another respondent challenged the wording at section 219.10(b) of the proposed rule that appears to make providing ecosystem and species diversity subservient to meeting multiple-use objectives, although the NFMA states that providing for diversity is a necessary component of meeting multiple-use objectives.

Response: The NFMA requires guidelines for land management plans that ''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)). The NFMA does not mandate a specific degree of diversity nor does it mandate viability. The NFMA affords the Agency discretion to provide policy guidance to provide for diversity. The final rule wording at section 219.10(b) is consistent with NFMA. As discussed the preamble to the 2005 planning rule (70 FR 1023, 1028, (January 5, 2005)) the Agency developed five concepts to design the planning rule provisions for plant and animal diversity: (1) Managing ecosystems; (2) providing for a diversity of species; (3) concentrating management efforts where the Agency has authority and capability; (4) determining with flexibility the degree of conservation needed for species not in danger of being listed; and (5) tracking progress of ecosystem and species diversity using a planning framework.

Comment: Approach to providing ecosystem sustainability. Some respondents do not believe that the emphasis on ecosystem diversity will protect rare and declining species. They expressed concern that there are no clear mandates, concrete obligations, measurable objectives, or mandatory requirements to provide for diversity and that simply having a ''framework'' will not provide adequate protection to the species. The question was raised as to why plans would only ''contribute to'' sustaining ecological systems and said the rule should require plans to ''sustain ecological systems.'' Some observed that under the proposed rule at section 219.10(b)(2), forest plans will no longer have to specifically address

wildlife needs unless the Forest Service determines that the ''ecosystem diversity'' provisions of the plan need to be supplemented for a particular species. They also noted that FSH 1909.12, section 43.21, states that a species approach is not required. Some respondents were concerned that a responsible official could decide that the very coarse filter of ecosystem diversity is sufficient for protecting all resident fish, wildlife, and plants, and some respondents said that no program of protecting species can be complete without a requirement for ensuring individual species' viability. A respondent noted that the definition of self-sustaining populations in the FSM is not clear, because the terms ''sufficiently abundant,'' ''appropriate population characteristics,'' and ''persistence over many generations'' are not defined.

Response: Under the final rule and Agency directives, the responsible official would identify federally-listed threatened and endangered species, species-of-concern, and species-of-interest whose ranges include the plan area. The federally-listed threatened and endangered species are those species that are listed as threatened or endangered by the Department of the Interior, USFWS or the Department of Commerce, NOAA Fisheries. Under the Agency directives, species-of-concern are those identified as proposed and candidate species pursuant to the ESA or those species ranked by NatureServe as needing action to prevent listing under ESA. Under the Agency directives, species-of-interest are identified by working cooperatively with State fish and wildlife agencies, the USFWS, NatureServe, and other collaborators.

The responsible official would then determine if the ecological conditions to support threatened and endangered species, species-of-concern, and species-of-interest would be provided by the plan components for ecosystem diversity. If not, then additional species-specific plan components would be included. Under the Agency directives, as part of an iterative process of developing plan components for ecosystem diversity and species diversity, several examinations, or analysis steps may be carried out. An initial analysis based on the current plan and species status may set the stage for the development of plan components for the revised plan. Such an evaluation helps identify the key risk factors that should be dealt with in plan components. Additionally, the evaluation would help determine what combinations of plan component will best contribute to sustaining species diversity. This additional evaluation would focus on the (1) Amount, quality, and distribution of habitat; (2) The dynamics of habitat over time; (3) Species distribution; (4) Known species locations; (5) Information on species population trends and dynamics if available; (6) Key biological interactions; (7) Other threats and limiting factors, such as wildland fire and other natural disturbances, roads, trails, off-road use, hunting, poaching, and other human disturbances. FSM 1920 and FSH 1909.12, chapter 40 contain further guidance on how to provide for ecological and species diversity and how to evaluate whether ecological conditions will provide for ''self-sustaining populations'' of species-of-concern. Standards to maintain or improve ecological conditions, and to maintain or improve ecological conditions for specific species may be included in a land management plan.

Comment: Species-of-Concern and Species-of-Interest. Some respondents commented that previous Forest Service planning rules had extended protection to species proposed for listing under the ESA, ''candidate species'' under the ESA, State-listed species, and Forest Service ''sensitive species.'' Other respondents made the comment they found the species-of-concern and species-of-interest system to be confusing and that the criteria for inclusion did not address species needs adequately. Concerns were expressed about the time needed for State fish and wildlife agencies to interact with responsible officials to ensure that all wildlife management concerns and issues are adequately addressed. It was recommended a return to a modified management indicator species (MIS) system. Others commented that the Agency needs to clarify how it will determine the accuracy of species-of-concern and species-of-interest, use scientifically credible third parties in these determinations, and address how species-specific provisions for those species that do not meet the species-of-concern and species-of-interest criteria will be provided. They stated that the species-of-concern criteria need to be reconsidered to be more pro-active in managing wildlife populations to prevent ESA listing.

Response: The concept of MIS was not included in the final rule 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 Agency defined species-of-concern and species-of-interest clearly. As identified in the Agency directives species-of-concern are those identified as proposed and candidate species under the ESA or those species ranked by NatureServe as needing action to prevent listing under the ESA. Under the final rule, the Forest Service directives identify the criteria for determining the species-of-concern and species-of-interest lists. The criteria include working with lists of species developed by objective and scientifically credible third parties, such as the USFWS, the National Marine Fisheries Service, and NatureServe. These lists of species are also to be determined by working collaboratively with the State fish and wildlife agencies and using some of their sources of information such as their State Wildlife Conservation Strategies (see FSH 1909.12, chapter 40). The primary purpose for identifying species-of-concern is to put in place provisions that will contribute to keeping those species from being listed as threatened or endangered. The combined criteria for species-of-concern and species-of-interest should lead to identification of all species for which there are legitimate conservation concerns (FSH 1909.12, section 43.22). Species for which there are no conservation concerns should be adequately conserved through the ecosystem diversity approach.

Comment: Retain the 2000 rule provisions for species viability. Some respondents preferred the explicit, mandatory provisions for species viability in the 2000 rule at section 219.20, because they believed it would help the Forest Service keep the wildlife that now exists, while the proposed language would lead to the disappearance of more species from the national forests.

Response: The 2000 rule established a ''high likelihood of viability'' criterion. Although the 2000 rule provisions at section 219.20 provided for considerations based on the suitability and capability of the specific land area, the provisions would also have established the most intensive analysis requirements over either the 1982 rule or the proposed 2007 rule. The 2000 rule analysis requirements for ecosystem diversity and species diversity were estimated to be very costly and neither straightforward nor easy to carry out.

Comment: Retain the 1982 rule provisions for species viability. Some respondents commented that given the high level of importance of national forest lands for wildlife, planning regulations should ensure that plans focus on maintaining the viability of

native fish, wildlife, and plants; and that the section 219.19 provisions from the 1982 planning regulations should be retained. Conversely, other respondents agreed with the move away from the viability language in the 1982 rule stating that it was never realistic to provide for viability for all species on all lands given the many factors that influence viability, and that the focus should be on managing habitat as defined by desired conditions rather than on counting populations of each species. Some respondents commented that the viability requirement is a pillar of wildlife conservation in the United States. They provided many examples of the importance of wildlife habitat and the many local and international threats to wildlife.

Some respondents noted that one of the reasons stated by the Forest Service for not including the species viability requirement in the proposed rule is that it is not always possible to maintain viability due to factors outside the Agency's control. However, some have responded that the Agency should still do everything it can to maintain viability for species on NFS lands. It was suggested that although the Forest Service should give a considerable amount of attention to those species that spend most of their time on NFS lands; perhaps the Agency could give those species relatively little attention to those species that spend a small amount of time on NFS lands.

Response: As noted earlier, the NFMA requires guidelines that provide for diversity. It does not mandate viability. The Agency has learned that the requirement to maintain viable native fish and wildlife species populations without recognizing the capability of the land is not practicable due to influences on many populations that are beyond agency control. The Forest Service is dedicated to the principle that biological diversity is an essential and critical facet of our multiple use land management mandate. Therefore, the final rule requires a framework using the concepts of ecosystem diversity and species diversity. The issue of self-sustaining populations is dealt with in the current Forest Service Directive System (FSM 1921.76(c)). The directives are not as prescriptive as the viability requirement under the 1982 planning rule; however, the enhancement of conditions for fish and wildlife populations is the expected outcome of carrying out management consistent with plans developed under the final rule. The suggestion to give a considerable attention to those species that spend most of their time on NFS lands and to give less attention to those species that spend most of their time elsewhere is similar to the direction in the Forest Service directives developed to carry out the 2005 planning rule. About self-sustaining populations FSM 1921.76c says that:

> Plan components for species-of-concern should provide appropriate ecological conditions to help avoid the need to list the species under the Endangered Species Act. Appropriate ecological conditions may include habitats that are an appropriate quality, distribution, and abundance to allow self-sustaining populations of the species to be well distributed and interactive, within the bounds of the life history, distribution, and natural population fluctuations of the species within the capability of the landscape and consistent with multiple-use objectives. A self-sustaining population is one that is sufficiently abundant and has appropriate population characteristics to provide for its persistence over many generations. The following points describe appropriate considerations for plan components based on the portion of the range of a species-of-concern that overlaps a plan area. When a plan area encompasses:
>
> 1. The entire range of a species, the plan components should contribute appropriate ecological conditions for the species throughout that range.
> 2. One or more naturally disjunct populations of a species, the plan should contribute appropriate ecological conditions that contribute to supporting each population over time.
> 3. Only a part of a population, the plan should contribute appropriate ecological conditions to support that population.
>
> Where environmental conditions needed to support a species-of-concern have been significantly altered on NFS lands so that it is technically infeasible to provide appropriate ecological conditions that would contribute to supporting self-sustaining populations, the plan should contribute to the ecological conditions needed for self-sustaining populations to the degree practicable.

In addition, the 1982 planning rule at section 219.19 says:

> Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.

Furthermore, the 1982 planning rule at section 219.19 contains the words ''shall be managed to maintain'' and the stringent ''ensure.'' These words have been interpreted by some people to be a 100 percent certainty that all species must remain viable at all times. The 100 percent certainty interpretation is a technical impossibility given that the cause of some species decline is beyond the Forest Service's authority. For example, viability of some species on NFS lands might not be achievable because of species-specific distribution patterns (such as a species on the extreme and fluctuating edge of its natural range), because 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 migrant birds), or because the land lacks the capacity to support species (such as drought affecting fish habitat).

The Agency developed these directives to carry out the 2005 rule. The final rule provisions for ecosystem diversity and species diversity are identical to the 2005 rule. Therefore, there is not an urgent obligation to update the directives for ecosystem diversity and species diversity; however, because of public comment the Agency will take a comprehensive look a these directives and may update them to be more effective and efficient.

Comment: Reasons for not retaining a viability requirement. Several respondents disagreed with the reasons for not establishing a viability requirement cited in the preamble for the proposed rule. While they recognized that the number of species having habitat or potential habitat is very large, they disagreed with this being justification to not include a viability requirement. It was suggested that the Agency could focus on species whose overall viability might be questionable and refine the list of species to those whose populations and habitat are most affected by changes occurring on NFS lands. Another respondent stated that as a minimum, the viable populations of proposed, endangered, threatened, and sensitive species (PETS) and management indicator species (MIS) should be managed for viability. Still another respondent suggested that instead of abandoning the viability requirement because it does not make sense to apply it to small national forests such as the Finger Lakes National Forest, those national forests should just be exempt from the requirement. Respondents also disagreed with the statement in the preamble to the proposed rule that focusing on viability would divert attention from an ecosystem approach. They responded that an understanding of both ecosystems and species is needed to understand the functioning of ecosystems. A focus on viability could

help maintain the existence of certain species that, if under an ecosystem approach, could be missed and might disappear from the area or not receive the attention needed to arrest population decline in that area. Further, some contended that providing for species viability maintains ecosystems by maintaining its parts.

Response: The Agency is committed to the hierarchical and iterative approach to sustaining ecosystem diversity and species diversity. To do that, the Agency developed directives that focuses on those species where changes in plan components may be necessary to prevent listing under ESA and refines the list of species to focus on the species whose populations are most affected by changes in habitat on NFS lands. This focus is essentially in the criteria for selecting the federally listed threatened and endangered species, the species-of-concern, and the species-of-interest supplied by the existing Forest Service Directive System (FSM 1921.7 and FSH 1909.12, chapter 40). Similarly, the Agency directives deal with the concern expressed that some species ''might disappear from the area or not receive the attention needed to arrest population decline in that area.'' The term ''self-sustaining populations'' is used instead of the term viability in the current Forest Service Directive System (FSM 1921.76(c)). The Agency directive deals with the suggestion to just ''exempt'' certain national forests from a viability requirement by including direction in Agency directives to take into account capability of NFS lands (FSM 1921.76c). Lastly, the Department believes that providing appropriate ecological conditions for specific threatened and endangered species, species-of-concern, and species-of-interest is superior to managing for PETS and MIS. Under the final rule, threatened and endangered species, species-of-concern, and species-of-interest replace PETS and MIS. MIS concept from the 1982 rule has not been useful to the Agency as a framework for understanding the relationship of changes in wildlife habitat and population trends, because of the lack of ability to predict future trends. Once a plan has been revised under the final rule, sensitive species are no longer needed because species-of-concern and species-of-interest replace them.

Comment: Committee of Scientists recommendations. The comment was made that the proposed rule's sustainability provision represents a departure from the 1999 Committee of Scientists (COS) recommendations on how to implement the NFMA's diversity mandate. The COS recommended a three-tier approach, with the first prong involving an assessment of the composition, structure, and processes of the ecosystems; the second prong involving focusing on the viability of native species through the use of ''focal species,'' and the third prong involving species-level monitoring.

Response: The report and recommendations from the 1999 Committee of Scientists were considered in the development of the proposed and final rule. The basic concepts developed by the COS on ecological sustainability have been carried forward. The procedures in the final rule and Forest Service directives still include looking at the composition, structure, and processes of the ecosystems; considering and evaluating the composition, structure, processes needed by a subset of the plant and animal kingdom (threatened and endangered species, species-of-concern, and species-of-interest), and the development of a monitoring program.

Comment: Proposed rule ignores scientific data concerning sustainability. One respondent stated the proposed rule ignores scientific data concerning what uses are sustainable, thereby setting the stage for long-term destabilization of ecosystems.

Response: The final rule at section 219.7(a)(2)(iv) does not determine what uses are suitable for any specific area of land. The responsible official will identify in the plan areas of land as generally suitable for a variety of uses. Moreover, the final decisions on actual uses of specific areas would not be made until project and activity decisions (sec. 219.7(a)(2)(iv). The responsible official will take into account the best available science and document that science was appropriately interpreted and applied in making plan decisions (sec. 219.11). Various means such as independent peer review, science advisory boards, or other review methods may be used to evaluate the consideration of science under any alternative. The Department believes that these requirements of the final rule, along with the collaborative process, would assure that scientific knowledge is appropriately considered throughout the planning process.

Section 219.11—Role of Science in Planning

This section of the final rule requires the responsible official to take into account the best available science. The words ''take into account'' express that formal science is just one source of information for the responsible official and only one aspect of decisionmaking. The Department retains the 2007 proposed rule wording in the final rule, except the Department removed two requirements from the final rule. The Department removed the requirements that the responsible official must (1) evaluate and disclose substantial uncertainties in that science; and (2) evaluate and disclose substantial risks associated with plan components based on that science. The Department removed these two requirements from the rule because detailed instructions for dealing with uncertainties associated with science information and risks in plan components are currently in the Forest Service directives (FSM 1921.8, FSH 1909.12, chapter 40).

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 provide specific procedures for conducting science reviews (FSH 1909.12, chapter 40).

Comment: Consistency with best available science. Some respondents wanted the rule to retain 2000 rule language requiring responsible officials to make decisions that are consistent with the best available science. They felt that the proposed rule would allow scientific knowledge or recommendations to be overridden. Other respondents agreed with language requiring that the responsible official take into account the best available science, as science itself is constantly changing and subject to controversy. They stated that a requirement for consistency would be unwieldy, ambiguous, and lead to increased litigation.

Several respondents were concerned about a reduced emphasis on science, citing the absence of a requirement to use peer reviewed science or science advisory boards.

Response: The Department is not reducing the emphasis on science. 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. However, the Department removed these two requirements from the rule because detailed instructions for dealing with uncertainties associated with science information and risks in plan components are currently in the Forest Service directives (FSM 1921.8, FSH 1909.12, chapter 40).

Although a significant source of information for the responsible official, science would be only one aspect of decisionmaking. When making decisions, the responsible official must

also consider public input, competing use demands, budget projections and many other factors. Under the final rule, 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 specify specific procedures for conducting science reviews at FSM 1921.8 and FSH 1909.12, chapter 40. The Agency believes these requirements of the rule, along with the collaborative process, will assure that the best available scientific knowledge is appropriately considered throughout the planning process.

Comment: Consideration of traditional knowledge. One respondent was concerned about the strong focus on science. While acknowledging that science is essential for Forest Service planning, traditional ecological knowledge also has much to offer and is not included in the rule.

Response: Although a significant source of information for the responsible official, science is only one aspect of decisionmaking. Other factors including traditional ecological knowledge need to be considered in the comprehensive evaluations and the formulation of plan components.

Comment: Term ''best available science.'' A respondent was concerned about the term ''best available science'' and urged adoption of another term or defining this term in the definitions section of the rule.

Response: Under the final planning rule there is no firm, established definition on what is best available science. The current Forest Service directives at FSM 1921.8 and FSH 1909.12 chapter 40 use this term. It is also important to realize there can be more than one source for science or more than one interpretation of the science. What constitutes the best available science might vary over time and across scientific disciplines. The best available science is a suite of information and the suite of information does not dictate that something can only be done one way. Furthermore, under the final rule the responsible official must take this suite of information into account in a way that appropriately interprets and applies the information applicable to the specific situation. A four step process is described in the existing directives FSM 1921.81. This process includes gathering quality science information, assessing the information for pertinence, synthesizing the information for application to planning, and applying the synthesis in developing the plan components. When the four step process is followed and an appropriate review is conducted, the best available science should be taken into account and properly influence the plan components.

Comment: Public input into the use of scientific information. One respondent was concerned that scientists consider input from the public and the Agency provides scientific information to the public so that all the facts and information are available during decisionmaking. Another respondent was concerned the rule needed to provide mechanisms for the consideration and incorporation of sound science at all levels and stages of the planning process. Another stated the rule leaves out the voice of scientists in making plan decisions.

Response: Under the final rule, the Department expects the responsible official to share scientific information with the public throughout the process. Under section 219.9(a), the responsible official would involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program. Any interested scientists can be involved at any phase of public involvement. It is also expected that responsible officials would seek out quality science information applicable to the issues being analyzed. Under section 219.11, the responsible official would document how best available science was taken into account and that science was appropriately interpreted and applied. This could be done with the use of independent peer review, a science advisory board, or other methods.

Section 219.12—Suitable Uses and Provisions Required by NFMA

This section of the final rule includes provisions for identifying suitable land uses, lands not suitable for timber production, lands suited for timber production, plan provisions for resource management, and requirements for the Forest Service Directive System to include more NFMA requirements. The Department modified the 2007 proposed rule wording in the final rule.

In paragraph (a)(1) of this section, in the discussion of identifying suitable uses, the Department added wording to acknowledge that the responsible official may identify an area as generally unsuitable for various uses. The Department added these words to avoid confusion. Some public comments indicated that identification of an area as generally not suitable for uses would be perceived as a final decision. Therefore, the Department clarified its intent. The Department views this as outgrowth of the proposed rule's suitability provisions and not a substantive change.

Furthermore, in paragraph (a)(1) of this section the Department modified wording about project and decisionmaking to say that the plan approval document may include project and activity decisions when the analysis and plan approval documents are prepared in accord with Forest Service NEPA procedures. The Department made this change because some Agency managers were confused by the previous wording that if authorization of a specific use is needed, responsible officials may approve a specific use through project and activity decisionmaking. As this change clarifies the Department's intent, this is not a substantive change.

In paragraph (a)(2) of this section, in the discussion of identifying lands not suitable for timber production, the Department added wording to explicitly require the responsible official to identify lands as not suitable for timber production if (1) the technology is not available for conducting timber harvest without causing irreversible damage to soil, slope, or watershed conditions or substantial and permanent impairment of the productivity of the land; (2) there is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest. The Department added these requirements to the final rule to be responsive to public concerns expressed on this issue. This is not a substantive change because the proposed rule relied on the Forest Service Directive System as a means to accomplish this requirement and because this was considered in the range of alternatives in the EIS.

In response to public comment, the Department added new paragraphs at (a)(3), (a)(4), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) of this section to further discuss lands suitable for timber production, other lands where trees may be harvested, and plan provisions for resource management. The Department received several comments arguing that this content is required by NFMA to be in the text of the planning rule. Although the Department does not agree with this legal interpretation of NFMA, the Department has elected to move content into the rule from the Forest Service Directives System and alternative E of the EIS to eliminate this potential controversy. Furthermore, these added paragraphs are not a substantive change because the proposed rule relied on the Forest Service Directive System as a means to accomplish these NFMA requirements

and because this was considered in the range of alternatives in the EIS.

In response to public comment, the Department added a new paragraph (a)(3) in this section to direct the responsible official to consider physical, ecological, social, economic, and other factors when identifying lands suitable for timber production. In addition, the Department added wording to discuss the requirement of NFMA to review lands not suited for timber production every 10 years (16 U.S.C. 1604(k)).

In response to public comment, the Department added a new paragraph (a)(4) in this section to clarify and provide more direction about salvage sales or other harvest needed for multiple-use objectives other than timber production that may take place on areas that are not suitable for timber production as previously discussed at paragraph (a)(2)(ii) of this section.

In response to public comment, the Department added a new paragraph (b) in this section that says the plan should include provisions for resource management. The verb should is used to recognize that extenuating circumstances are likely to occur at times for these provisions, for example, national forests or grasslands without timber programs would not need to deal with the timber management provisions. In paragraph (b) of this section, the Department added wording to deal with the four conditions related to timber harvest at 16 U.S.C. 1604(g)(3)(E) and the five conditions related to even-aged harvest at 16 U.S.C. 1604(g)(3)(F) in response to comments. The wording requires that these plan provisions deal with protection of bodies of water, esthetics, fish, recreation, soil, watershed, wildlife, interdisciplinary review, size limits for cutting of areas in one harvest operation, and the regeneration of the timber resource. Furthermore, paragraph (b)(5) in this section requires that the harvesting system used is not selected primarily because it will give the greatest dollar return or the greatest unit output of timber.

The provision requiring Forest Service directives deal with additional NFMA requirements of the 2007 proposed rule has been redesignated at paragraph (c) of this section. This section requires the directives discuss limitations on timber removal (16 U.S.C. 1611) and culmination of mean annual increment (CMAI) of growth. The Department added the provisions about culmination of mean annual increment of growth to respond to public comment. Based on the use of sound silvicultural practices, the Department specifies in the final rule that this requirement applies to regeneration harvest of even-aged stands on lands identified as suitable for timber production and where timber production is a management purpose for the harvest. The Department added this sentence about CMAI to clarify that based on the use of sound silvicultural practices, MAI and CMAI are not applicable to intermediate harvests (such as thinning or stand improvement measures) and uneven-aged management. In addition, they are not applicable to salvage or sanitation harvesting of timber stands that are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack. Further discussion of CMAI is supplied in the Forest Service directives because NFMA does not require this guidance to be in the rule itself.

Comment: General suitability of NFS land for multiple uses. A respondent noted the proposed rule at section 219.12(a)(1) that national forests are generally suitable for a variety of multiple uses appeared to represent a substantial change in forest policy that would open all lands to all uses unless a forest manager specifically limits uses in certain areas. The respondent was concerned that this policy would jeopardize existing closures where certain uses are prohibited unless designated open.

Response: The final rule allows a responsible official to identify lands that are generally suitable for various uses and lands that are generally unsuited for various uses. National Forest System lands are generally open to uses if consistent with the land management plan, subject to consideration under appropriate NEPA procedures and other applicable laws, regulations, and policies. This approach is not a change in agency policy and would not affect existing closures that prohibit a use for specific areas.

Comment: Protection of soil and water resources during timber harvest should be addressed. A number of respondents suggested that more guidance limiting harvest activities should be in the rule, specifically that lands should be identified as unsuited for timber harvest where soil and watershed conditions would be irreversibly damaged. It was also suggested that specific soil and water protection requirements from the 1982 rule or the 2000 rule should be in the 2007 rule.

Response: The final rule and supporting directives meet the requirements of NFMA timber management requirements of 16 U.S.C. 1604(g) including provisions for protection of soil, watershed, and other resources during timber harvest (sec. 219.12(b)). NFMA requirements concerning guidelines for timber harvest are in section 219.12(b), including provisions for protection of soil, watershed, and other resources during timber harvest. The responsible official is required to identify as not suitable for timber production lands where the technology is not available for conducting timber harvest without causing irreversible damage to soil, slope, or watershed conditions or substantial and permanent impairment of the productivity of the land. It also requires that lands be identified as not suitable for timber production if there is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest.

Comment: Limitation on timber harvest. Several respondents suggested that the rule include limitations on timber harvest like those prior rules. One suggestion was to limit harvest to the estimated amount of timber that can be sold annually in perpetuity on a sustained-yield basis, with exceptions for situations where areas have been substantially affected by fire, wind, or other events or there is imminent threat from insect or disease. Additional suggestions were made that this section should reflect harvest limitations based on ecological, social, and economic sustainability requirements from the 2000 rule. It was also suggested that the timber resource land suitability requirements include the considerations from section 219.14 of the 1982 rule. These would address such things as economic costs and benefits and other multiple-use objectives.

Response: Under the final rule, responsible officials must limit the sale of timber from each national forest to a quantity equal to or less than a quantity that can be removed for such forest annually in perpetuity on a sustained-yield basis (16 U.S.C. 1611). The rule relies on the Forest Service Directive System for provisions on this issue. The responsible official would take into account all elements of sustainability (social, economic, and ecological) and involve the public in analysis regarding timber suitability and timber harvest limitations during the planning process. The responsible official would evaluate relevant economic and social conditions and trends as appropriate during the planning process. More detail for social and economic analysis is provided in Forest Service Directives System.

Comment: Force and effect of determinations that lands are unsuitable for uses. A determination of lands unsuitable for logging or other

development should have the force of a standard, not a guideline.

Response: Under the final rule, a project with the primary purpose of timber production may only occur in an area identified as suitable for that use (16 U.S.C. 1604(k)). However, timber harvest may be used on such lands as a tool to achieve other multiple-use purposes. Examples of the reasons may include, but are not limited to (1) maintaining or recruiting mature forest characteristics in areas where final regeneration of a stand is not planned, (2) experimental forests, (3) restoring meadow or rangeland ecosystems being replaced by forest succession, (4) cutting trees to promote the safety of forest users, and (5) removal of understory trees to reduce hazardous ladder fuels in frequent fire return interval forests. For suitability of areas except for timber production, consistency of a project or activity should be evaluated in one of two ways: (1) The project or activity is a use identified in the plan as suitable for the location where the project or activity is to occur. (2) The project or activity is not a use identified in the plan as suitable for the location, but the responsible official documents the reasons the use is appropriate for that location.

Comment: Provisions for timber harvest on land classified as unsuitable for timber production. Some respondents stated that salvage sales or other harvest needed for multiple-use objectives other than timber production should not be allowed on lands unsuitable for timber production, because no sideboards have been set in regulation that constrain how this would be done or what trade-offs would or would not be acceptable.

Response: Timber harvest for salvage sales or sales necessitated to protect other multiple-uses is authorized by the NFMA at 16 U.S.C. 1604(k). The NFMA sets forth sideboards that apply to timber harvest whatever its purpose (16 U.S.C. 1604(g)(3)). Under the final rule, the responsible official may only authorize timber harvest to achieve other multiple-use purposes if such a project is consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources.

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

This section establishes the objection process by which the public can challenge plans, plan revisions, or plan amendments. The Department retains the 2007 proposed rule wording in the final rule.

The Committee of Scientists, in its 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 (sec. 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 Federal agencies have other avenues for working together to resolve concerns, under the final rule Federal entities are not able to file objections. This exclusion of Federal agencies is a long-standing procedure of Forest Service administrative appeal provisions at 36 CFR parts 215, 217, and 251, subpart C. The Forest Service is required to involve other Federal agencies, at section 219.9(a)(2) of the final rule. The objection process is intended primarily for state and local governments, tribes, and members of the public. The objection process is not suitable to resolve concerns between sister agencies in the executive branch. The Forest Service anticipates that other agencies will be able to resolve most planning concerns informally. Where it is anticipated that there may be concerns that are not easily resolved by planners and other agency personnel, various techniques such as establishments of memorandums of understanding or local working agreements may be used. Some agencies also have regulatory authority; for example, EPA has review authority pursuant to section 309 of the Clean Air Act. These techniques and authorities are successfully being used now and will continue to be used in the future.

Comment: Inherent benefits of a post-decisional appeal process. A respondent said the Forest Service failed to consider the inherent value of a post decisional appeal process. One value is that it addresses a need for citizens to air legitimate objections to final decisions in forest plans so that litigation remains a last option. The respondent cited studies of the Agency's appeal process for projects that concluded ''most appeals appear to be justified,'' and that the program has been ''an internal mechanism for clarifying the legal requirements and for testing the soundness of decisions and the appropriateness of current policies and procedures.'' Another respondent noted that only a post-decisional appeal process provides the public a way of objecting based on a review of the actual decision that has been made. A respondent said the current appeals process has a proven track record of resolving conflicts, encouraging collaboration, and preventing unnecessary litigation. One respondent noted there is nothing that prevents a deciding officer from seeking objections before issuing a decision, then also receiving post-decisional appeals. The appeal and objection processes are compatible, and it is essential and efficient to keep the appeal process, because the review of contentious decisions by higher level officials before contention leads to litigation.

Response: The Agency believes a predecisional objections process in the final rule will be a natural continuation of the collaborative planning process in a way that participants have opportunities to discuss the proposed decision, consider options, and air concerns and opinions throughout the process. The Agency believes objections are a more effective mechanism for testing soundness of decisions. Consistency with law and policy can still be tested, contentious issues discussed, and litigation avoided. The Agency believes that having both a predecisional objection process and a post decisional appeals process would be redundant. 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 because 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. With a predecisional objection process, 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. This approach fits well with a collaborative approach to planning.

In its 1999 report, the COS identified potential problems associated with the post-decisional appeals process. These problems included isolating agency decisionmakers from one another just at the time when internal discussion about the upcoming plan decision might be useful, inhibiting multi-agency collaboration, and giving mixed and inconsistent incentives for involvement of interest groups. The COS recommended that in line with a collaborative planning process, the Agency should consider an approach that minimizes incentives to appeal plan decisions. The committee recommended that if the appeals process proves problematic, influencing parties to disregard their agreements or to leave the table before agreements are reached, and then the Agency might consider shifting to a predecisional process similar to that used by the U.S. Department of the Interior, Bureau of Land Management (BLM). Having considered these recommendations, and the experience of the Agency with the post decisional appeals process, the Agency believes the objection process will provide a more consistent process among agencies and further a collaborative approach to planning.

Comment: Time allowed for filing objections and responding to objections. Several respondents commented that the 30-day period for filing objections is not adequate to review the plan and supporting documentation and prepare an objection. Some respondents recommended that the rule allow at least 60 days for filing objections. Some also recommended that the rule include a specific time frame for making decisions on objections. One respondent noted that it is a double standard for having a time limit for filing objections, but none for responding to them. Another respondent had the impression that the 30-day objection period replaced the 3-month public review and comment period required by the NFMA.

Response: Under the final rule, the Agency would use the objection process to resolve many potential conflicts by encouraging resolution before a plan, plan amendment, or plan revision is approved. The 30-day objection period specified in these alternatives is the same amount of time provided in the BLM protest process. The Agency does not specify a time limit for agency responses. It is in the interest of all parties for the reviewing officer to promptly render a decision on the objection, but a specific time limit could potentially shortcut joint discussions among the parties aimed at resolving issues raised in the objections. The Agency believes that 30 days is adequate for developing and filing an objection, considering that objections would follow a collaborative public participation process including a 90-day comment period on the proposed plan, plan amendment, or plan revision found at section 219.9(b)(1)(ii).

Comment: Designating a lead objector and content of objections. A respondent said the objection process is too burdensome, because it requires someone be designated the lead objector, who is the only person the Forest Service will contact or talk with. The process limits opportunities for resolution because it does not require a notice of all objections received and limits who can request meetings. The process places too stringent requirements on the content of objections, mere disagreement with the decisions should be adequate basis for an objection.

Response: Section 219.13(b)(1) of the final rule calls for a designated lead objector when an objection is filed by more than one person. Under the final rule, a person may object if they believe a policy has been violated, but a person is free to object simply because they disagree with the decision. The requirements of section 219.13(b) allow the reviewing officer to know why an objector objects as well as what the objector recommends for change. About the lead objector, the final rule says ''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.'' The procedures for communication through the designated lead objector are a reasonable accommodation to effectively work with a multi-party objection and quickly resolve issues. However, the reviewing officer may meet with all objectors if the reviewing officer desires. The reviewing officer has the discretion to manage the process.

Comment: Participation in objections by interested parties. Some respondents recommended that the rule include provisions for participation in the objections process by parties who did not file an objection, but who participated in the planning process and may be affected by the response to objections filed by others.

Response: Under the final rule, the reviewing officer is not precluded from involving parties in addition to the objector(s) when making a response to the objection. Interested individuals and organizations could also object to plans, plan amendments, or plan revisions.

Comment: Decisions by responsible officials at a higher level than the Chief. Per section 219.13(a)(2) of the proposed rule, there is no opportunity for administrative review (objections) if the plan decision is made by a Department official at a level higher than the Chief of the Forest Service. One respondent recommended that officials higher than the Chief should not be allowed to make plan decisions, because the objection process should be available to allow for resolution of disagreements at the local level rather than through the courts.

Response: The final rule retains this exception at section 219.13(a)(2) to opportunities for objecting to a plan. There is no higher level to object to when the decision is made at a level higher than the Forest Service Chief. It is anticipated that plan decisions will rarely be made at a level above the regional forester.

Section 219.14—Effective Dates and Transition

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. For clarity, the Department modified this section from the transition wording in the 2007 proposed rule. The final rule sets up the time requirement for EMS establishment in section 219.5; therefore, the discussion of EMS establishment has been removed from this section.

In paragraph (a) of this section, the Department retains wording about effective dates from the 2007 proposed rule. In paragraph (b) of this section, the Department retains the definition of initiation from the 2007 proposed rule. In paragraph (b)(1) of this section, the Department retains the requirement of the proposed rule that plan development and plan revisions initiated after the effective date of the final rule must conform to the requirements of this subpart.

In paragraph (b)(2) of this section, the Department discusses the requirements of plan amendments during transition under the final rule. This section combined discussions from the proposed rule in paragraph (d)(2), paragraph (d)(3), and (e)(2) of this section in the proposed rule. As in the proposed rule, for 3 years the responsible official may amend plans

under the 1982 rule procedures or under the final rule procedures. As in the proposed rule, all plan amendments initiated after 3 years must conform to the final rule. Plan amendments initiated prior to that 3 year deadline may use the 1982 procedures.

The Department added a new provision in paragraph (b)(2) in this section that allows responsible officials to use the objections process of the final rule or the appeal procedures if they amend under the 1982 procedures. In the proposed rule, plan amendments previously initiated were permitted to use either administrative review process. This addition permits plan amendments using the 1982 rule procedures a choice. Furthermore, this is not a substantive change.

In paragraph (b)(3) of this section, the Department discusses plan development, plan amendments, or plan revisions initiated before this rule. This is a modification of paragraph (e) of this section in the proposed rule. To deal with plan revisions efforts that relied on the 2005 rule, the Department added a provision at paragraph (b)(3)(ii) in this section that the responsible official is not required to start over on a finding that process conforms to the final rule.

The Department removed paragraph (f) from this section about management indicator species (MIS) from the final rule, because the revised paragraph (b)(4) of this section eliminates the need to discuss MIS as a separate topic. In paragraph (b)(4) of this section, the Department discusses plans developed, amended, or revised using the 1982 rule. For those national forests and grasslands, the 1982 rule is without effect. Therefore, no obligations remain from the 1982 rule including MIS, except those that are specifically in the plan. There has been uncertainty about the application of provisions of the 1982 rule, particularly with respect to obligations about MIS (69 FR 58055, Sept. 29, 2004). For such plans, species obligations may be met by considering data and analysis relating to habitat unless the plan specifically requires population monitoring or population surveys. The appropriate scale for species monitoring is the plan area, however, plan provisions define species obligations. There has been some confusion about the intent of paragraph (f) in this section of the proposed rule. The Department believes this change in wording at revised paragraph (b)(4) is not a substantive change but clarifies the Department's intent.

Comment: Management indicator species (MIS) population monitoring. Some respondents expressed concern that monitoring of habitat conditions may not reflect population trends in a timely enough manner and stated that baseline data is needed if sampling programs are to be used for trend analysis. Other respondents stated that provisions of the proposed rule allowing monitoring of habitat rather than populations, using a range of methods, and specifying that MIS monitoring is not required for individual projects conflicts with the MIS case law developed under the 1982 rule and may not survive legal challenge. Other respondents urged that wildlife monitoring requirements not be optional (as was proposed in sec. 219.14(f)), otherwise the forest managers and public would have no way of knowing whether wildlife goals have been met.

Response: Management indicator species monitoring is not discussed in the final rule. The 1982 rule is not in effect (sec. 219.14(b)(4)). No obligations remain from that regulation (including MIS), except those that are specifically in a plan. Considerable uncertainty has arisen in the past, specifically due to conflicting court decisions related to MIS monitoring. The responsible official may use information on habitat unless the plan specifically requires population monitoring or population surveys in meeting any species monitoring obligations of the plan. Site-specific monitoring or surveying of a proposed project or activity area is not required, unless required by the plan. Any monitoring would likely be carried out at the scale most appropriate to the species within the national forest, grassland, prairie, or other administratively comparable unit. The Agency does not dictate a specific required approach to species monitoring under plans. Rather, the responsible official is allowed flexibility to carry out monitoring approaches that may include either habitat or population monitoring and a variety of sampling programs to estimate or approximate population trends for species. The need for timely feedback on trends and the existence of baseline data may be a consideration as the responsible official adopts a specific monitoring protocol.

Comment: Transition—when existing plans come under the new rule. A respondent did not support allowing forests to come under the new rule as soon as they established an EMS. This respondent said that a plan should conform to the rule it was developed under until a new plan had been prepared and approved.

Response: The final rule provides a process for developing, revising, or amending plans only. Except as specifically provided, none of the requirements of this final rule, apply to projects or activities. Since all current plans were developed under the 1982 rule, the respondent is actually recommending that the 1982 rule remain in effect until a plan is revised under the final rule. However, there is nothing to ''conform to'' unless one of these planning actions is initiated, and the Department sees no advantage to delaying use of the new rule. The 1982 rule is not in effect. It is the Agency position that requirements for project and activity planning should be set in the Agency directives, not in a rule. The requirement for establishing an EMS as a precondition to approving plan development, plan amendments, or plan revisions has been removed from the final rule.

Comment: Continuing plan revisions initiated under the 2005 rule. One respondent urged that the rule include a specific provision allowing units that had begun revision under the 2005 rule to use the work and material prepared to date, because forcing these units to start the process over again would be a significant waste of agency resources and would frustrate the local community because their past efforts would be ignored.

Response: The final rule requires the responsible official to make a finding that the plan, plan amendment, or plan revision process conforms to the requirements of the planning rule (sec. 219.14(b)(3)). The final rule discusses the transition for plan development, amendments, or revisions previously initiated, and allows for these planning processes to build on the work done to date rather than requiring that the responsible official to start over. The Agency believes that, although some adjustments may be needed, the public involvement, analysis, and documentation developed thus far through planning efforts conducted under the 2005 rule can and should be used as these plans are completed under the final rule.

Section 219.15—Severability

This section explains that it is the Department's intent that the individual provisions of this rule be severable from each other. The Department retains the 2007 proposed rule wording in the final rule.

Section 219.16—Definitions

This section sets out and defines the special terms used in the final rule. Additional discussion in response to comments about definitions is found in Appendix G of the EIS. The Department added two terms to the definitions section of the final rule. These additional terms are ''Alaska Native

Corporations,'' and ''timber harvest.'' The Alaska Native Corporation addition is based on public comment from those entities pointing out that the proposed rule did not include them. The addition of the timber harvest definition is needed to deal with the additional timber provisions added at section 219.12 in response to comments on that section. Based on public comment, the definition of the term ''adaptive management'' has been modified to agree with the definition used in the ongoing NEPA rule-making. The Department changed the definition of environmental management systems (EMS) to let EMS be multi-unit, regional, or national in scope.

The Department removed the definition of species from section 219.16 for two reasons: (1) During review of the proposed rule other agencies pointed out that there may be confusion between statutes and our proposed definition for species; (2) the definition of species-of-concern in the final rule demonstrates the Department's intent to deal with the species for which management actions may be necessary to prevent listing under the Endangered Species Act.

Compliance With the Endangered Species Act of 1973, as Amended

As part of the environmental analysis, a biological assessment was prepared for threatened, endangered, and proposed species and designated and proposed critical habitat for the 2008 final land management planning rule. The assessment concluded that the planning rule will have no effect to these species as it establishes the procedures for land management planning and does not authorize, fund, permit, or carry out any habitat or resource disturbing activities. The rule does not affect, modify, mitigate, or reduce the requirement for the Forest Service to conference or consult on projects or activities that it funds, permits, or carries out that may affect threatened, endangered, or proposed species or their designated or proposed critical habitat. Section seven consultation will be conducted for actions authorized, funded, or carried out by the Forest Service as required by regulation or policy (50 CFR 402.01, FSM 2671.45). Based on this assessment it was determined that the final rule, in itself, will have no effect on threatened, endangered, or proposed species or to designated or proposed critical habitat. Since initiating the development of the current proposed planning rule, the Forest Service has consulted with NOAA Fisheries and USFWS to discuss the programmatic nature of the planning rule, to explain the Forest Service's tiered decision making framework (regulation, land management plan, and project) and to consider the potential of the 2008 planning rule to affect threatened, endangered and proposed species, and designated and proposed critical habitat. We concluded this consultation by reaching a ''no effect'' determination. The Forest Service was aware that USFWS and NOAA Fisheries had agreed with the Forest Service's similar ''no effect'' determination for the 2000 planning rule. However, the Forest Service ultimately concluded that, because our ''no effect'' determination fulfilled the consultation requirement, it was not necessary to submit this biological assessment to the NOAA Fisheries or USFWS seeking agreement with our finding. Copies of the biological assessment and appendices are in the analysis record for this rule and are available on request.

Regulatory Certifications

Regulatory Impact

The Agency reviewed this rule under U.S. Department of Agriculture (Department) procedures and Executive Order 12866 issued September 30, 1993, as amended by Executive Order 13422 on regulatory planning and review and the major rule provisions of the Small Business Regulatory Enforcement and Fairness Act (5 U.S.C. 800). The Agency has determined this rule is not an economically significant rule. This 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 rule will neither interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this 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 NFS planning and decisionmaking, this rule has been designated as significant and, therefore, is subject to Office of Management and Budget review under Executive Order 13422.

An analysis was conducted to compare the costs and benefits of carrying out the rule to the baseline—the 2000 rule. This analysis is posted on the World Wide Web/Internet at *http://www.fs.fed.us/emc/nfma/2008_planning_rule.html*, along with other documents associated with this rule. The 2000 rule was used as the baseline because it is the no action alternative (alternative B).

Quantitative differences between this rule, and the other alternatives were also estimated. Alternatives included alternative A (the 2005 rule), alternative C (the 1982 rule), alternative D (2005 rule modified to not include the EMS requirement), alternative E (2005 rule modified to not include EMS and explicitly to include timber requirements in the rule and standards as plan components). Primary sources of data used to estimate the costs and benefits of the 2000 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 Institute 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 the 2000 rule. The main source of data used to approximate costs under the 1982 rule is from a 2002 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 rule, the 2000 rule, the rule selected in this ROD, and the other alternative rules. The key activities for which costs were analyzed include regional guides, collaboration, consideration of science, evaluation of the sustainability of decisions, and diversity requirements under the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), monitoring, evaluation, and the resolution of disputes about the proposed plan decisions through the administrative processes of appeals and objections. The rule would reduce the cost of producing a plan or revision by shortening the length of the planning process and by providing the responsible official with more flexibility to decide the scope and scale of the planning process.

The rule would require a comprehensive evaluation during plan development and plan revision that would be updated at least every 5 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 existing conditions and trends of past management activities and natural events when preparing a comprehensive evaluation of the plan under the rule.

Based on costs that can be quantified, carrying out this final rule is expected to have an estimated annual average cost savings of $25.6 million when

compared to the 2000 rule, and an estimated annual average savings of $0.2 million when compared to estimates of the 1982 rule. From this cost-benefit analysis, the estimated costs for carrying out the rule are expected to be lower than the 2000 rule.

Agency costs for carrying out the rule, the 2000 rule, 1982 rule, and other alternative rules were discounted at 3 percent and 7 percent discount rates for the 15-year period from 2008 to 2022; then annualized costs were calculated for these alternatives. By using 3 percent discount rate, the annualized cost for the rule was estimated at $104.6 million, while the annualized cost for the 2000 rule was $129 million and for the 1982 rule was $104 million. The Agency expects the rule to have an annualized cost savings of about $24.6 million when compared with the 2000 rule, and an estimated annualized cost of $0.3 million when compared with estimates of the 1982 rule.

When using a 7 percent discount rate for the same timeframe, the results show the annualized cost estimate for the rule is $104.5 million and the estimated annualized cost for the 2000 rule and the 1982 rule are $127.2 million and $103.2 million respectively. Based on these annualized cost estimates at 7 percent discount rate, use of this rule is expected to have an annualized cost savings of $22.7 million when compared with the 2000 rule, and an estimated annualized cost of $1.3 million when compared with estimates of the 1982 rule. This quantitative assessment indicates a cost savings for the Agency using the rule.

Although the annual average costs of the rule and the 1982 rule are relatively similar, there are substantive and significant differences in how planning dollars are invested annually. Under the 1982 rule, 68 percent of all estimated annual planning expenditures are committed to plan revision processes, rather than monitoring and evaluation. An estimated 75 percent of annual planning expenditures would fund plan revisions under the 2000 rule. Under this rule, an estimated 51 percent of annual planning dollars would be expended for plan revisions, leaving nearly half of annual expenses for monitoring and evaluation that would keep plans more current and adaptive to new information and changing conditions.

One of the criticisms of planning under the 1982 rule is that these plans were very unresponsive to new information and changing conditions. Once a revised plan is approved, the useful life of a plan EIS is very short when compared to the 15-year useful life of the revised plan. Spending a significant higher amount of available planning dollars on monitoring and evaluation over the life of the plan, instead of a large up front cost on plan revision and an EIS, will create more dynamic and adaptive plans. This will fulfill the purpose and need much more than the 1982 or 2000 rule.

This 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 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 rule. The rule imposes no requirements on either small or large entities. Rather, the rule sets out the process the Forest Service will follow in land management planning for the NFS. The 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 rule should benefit small businesses through more timely decisions that affect outputs of products and services.

Environmental Impacts

This rule sets up the administrative procedures to guide development, amendment, and revision of NFS land management plans. This rule, like earlier planning rules, does not dictate how administrative units of the NFS are to be managed. The Agency does not expect this 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 Servicewide administrative procedures, program processes, or instruction.'' The Agency believes this rule falls squarely within this category of actions and that no extraordinary circumstances exist that would require preparation of an EA or an EIS. However, because of the district court's March 30, 2007 decision in *Citizens for Better Forestry* v. *USDA* and the Agency's desire to reform the planning process, the Agency has prepared an EIS considering several alternatives to the rule and potential environmental impacts of those alternatives. The EIS is available on the Internet at *http://www.fs.fed.us/emc/nfma/2008_planning_rule.html*. The EIS explains there are no environmental impacts resulting from promulgating this rule.

Energy Effects

This rule has been reviewed under Executive Order 13211, issued May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' It has been determined this rule does not constitute a significant energy action as defined in Executive Order 13211. This 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 might identify major rights-of-way corridors for utility transmission lines, pipelines, and water canals. Although these plans might consider the need for such facilities, they do not authorize constructing them; therefore, the rule and the plans developed under it do not have energy effects within the meaning of Executive Order 13211. The effects of constructing such lines, pipelines, and canals are, of requirement, considered on a case-by-case basis as specific construction proposals. Consistent with Executive Order 13211, direction to incorporate consideration of energy supply, distribution, and use in the planning process will be in the Agency's administrative directives for carrying out the rule.

Controlling Paperwork Burdens on the Public

In accord 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 December 31, 2006, for the 2005 rule. The OMB has extended this approval, effective January 31, 2007, 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 (71 FR 40687, July 18, 2006). The Forest Service received one comment about the extension. The information required by section 219.13 is needed for an objector to explain the objection being made to a proposed land management plan, plan amendment, or plan revision. This rule retains but simplifies the objection process set up

in the 2000 rule. The rule removes the requirements previously provided in the 2000 rule for interested parties, publication of objections, and formal requests for meetings (36 CFR 219.32 of 2000 rule). These changes have resulted in a small reduction in burden hours approved by OMB for the 2000 rule.

Federalism

The Agency has considered this rule under the requirements of Executive Order 13132 issued August 4, 1999, ''Federalism.'' The Agency has made an assessment the rule conforms to 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 relation between the national government and the states, nor on distributing power and responsibilities among the various levels of government. Therefore, the Agency concludes this rule does not have Federalism implications. Moreover, section 219.9 of this 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 Executive Order 13132, the Agency consulted with State and local officials, including their national representatives, early in the process of developing the regulation. The Agency has consulted with the Western Governors' Association and the National Association of Counties to get 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 puts into effect 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 before its publication. Based on comments received on the 2002 proposed rule, the Agency has determined more consultation was not needed with State and local governments for promulgating the 2005 rule, and thus this rule. State and local governments were encouraged to comment on the proposed rule during this rulemaking process.

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 rule on Indian Tribal governments and has determined the rule does not significantly or uniquely affect communities of Indian Tribal governments. The 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 about the occupancy and use of NFS land. At section 219.9(a)(3), the rule requires consultation with federally recognized Tribes when conducting land management planning. The Agency has also determined this rule does not impose substantial direct compliance costs on Indian Tribal governments. This rule does not mandate Tribal participation in NFS planning. Rather, the 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 rule has been analyzed in accord with the principles and criteria in Executive Order 12630 issued March 15, 1988, and it has been determined the rule does not pose the risk of a taking of private property.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule (1) preempts all State and local laws and regulations that conflict with this rule or would impede the carrying out of this rule; (2) does not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of NFS lands; and (3) does not require administrative proceedings before parties could 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 rule on State, local, and Tribal governments and the private sector. This rule does not compel the spending 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, National forests, Reporting and recordkeeping requirements, Science and technology.

■ Therefore, for the reasons set forth in the preamble, part 219 of title 36 of the Code of Federal Regulations is revised 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.

Subpart A—National Forest System Land Management Planning

§ 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 (NFS), 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 plan components. This subpart is applicable to all units of the NFS 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) (MUSYA), the overall goal of managing the NFS 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 NFS 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 National Forest Management Act (NFMA). The Strategic Plan establishes goals, objectives, performance measures, and strategies for management of the NFS, 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 apply 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 NFS 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 aim of planning is to produce responsible land management for the NFS based on useful and current information and guidance. Land management planning guides the Forest Service in fulfilling its responsibilities for stewardship of the NFS to best meet the needs of the American people.

(b) *Force and effect of plans*. Plans developed in accord 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 accord 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 NFS land management planning.

(b) Approval of a plan, plan amendment, or plan revision, under the authority of this subpart, will be done in accord with the Forest Service NEPA 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 will establish an environmental management system (EMS) or conform to a multi-unit, regional, or national level EMS. The scope of an EMS will include, at the minimum, land management environmental aspects as determined by the responsible official or established in a multi-unit, regional, or national level EMS. An EMS may also include environmental aspects unrelated to land management if deemed appropriate.

(a) An EMS may be established independently of the planning process.

(b) The Chief of the Forest Service shall establish procedures in the Forest Service Directive System to ensure that an appropriate EMS(s) is in place. The responsible official may determine whether and how to change and improve an EMS, consistent with those procedures.

(c) 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.

(d) No project or activity approved under a plan developed, amended, or revised under the requirements of this subpart may be implemented until the responsible official establishes an EMS or the responsible official conforms to a multi-unit, regional, or national level EMS as required by this section.

§ 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 5 years to reflect any substantial changes in conditions and trends since the last comprehensive evaluation. A comprehensive evaluation report may be combined with other documents, including NEPA documents. 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 may be used to satisfy the requirements for an evaluation for an amendment.

(3) *Annual evaluation of the monitoring information*. Monitoring results must be evaluated annually and in accord 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 assist in evaluating the effects of each management system to the end that it will not produce substantial and permanent impairment of the productivity of the land;

(ii) 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

(iii) 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, Alaska Native Corporations, 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; applicable EMS documents, if any; and the monitoring program for the plan area.

(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 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 NFS 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. An area may be identified as generally not suitable for uses that are not compatible with desired conditions and objectives for that area. Identification of an area as generally suitable or not suitable for a use is guidance for project and activity decisionmaking and not a commitment nor 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 in the NFS 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 accord with NEPA requirements (§ 219.4) and other applicable laws.

(3) *Standards*. A plan may include standards as a plan component. Standards are constraints upon project and activity decisionmaking and are explicitly identified in a plan as ''standards.'' Standards are established to help achieve the desired conditions and objectives of a plan and to comply with applicable laws, regulations, Executive orders, and agency directives.

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

(5) *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).

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

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

(7) *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 a way that 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 or other projections of uses or activities; and

(5) Other changes in the plan document or set of documents that are not 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 reasons 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 in the plan area, in accord with § 219.2(b)(3);

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

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

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

If a plan approval document is, in whole or part, the culmination of an EA or EIS process, the plan approval document or pertinent part thereof, must be prepared in accord with Forest Service NEPA procedures.

§ 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 carrying out 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 needed 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 accord 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 components. 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 components, 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 accord 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, Alaska Native Corporations, 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 in, adjacent to, or otherwise affected by future management actions in 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 accord 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, to

collaborate, and to participate in planning for NFS 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 and Alaska Native Corporations.* 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 any federally recognized Indian Tribes and Alaska Native Corporations that may be affected by the planning process to collaborate and participate. In working with federally recognized Indian Tribes, the responsible official must honor the government-to-government relationship between Tribes and the Federal Government. The responsible official should seek assistance, where appropriate, from federally recognized Indian Tribes and Alaska Native Corporations to help address management issues or opportunities.

(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 a way that 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

(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 ways:

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

(ii) Required notifications that are associated with a plan amendment or any ongoing plan amendment as provided in § 219.14(b) and that apply to one plan must be published in the newspaper(s) of record. Required notifications that are associated with plan amendments and any ongoing plan amendments (as provided at § 219.14(b)) 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 way 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; identify any other need for change in a plan that they feel should be addressed during the planning process; 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 before 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 ongoing planning process.* The notice must state whether or not a planning process initiated before April 21, 2008 (§ 219.14(b)) will be adjusted to conform to this subpart.

§ 219.10 Sustainability.

Sustainability, for any unit of the NFS, 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 appropriate 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) 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. The responsible official may identify lands within the plan area as generally not suitable for uses that are not compatible with desired conditions and objectives for that area. Identification of an area as generally suitable or not suitable for a use is guidance for project and activity decisionmaking and not a permanent land designation, and is subject to change through plan amendment or plan revision.

A plan approval document may include project and activity decisions including prohibitions of a specific use (or uses) under 36 CFR part 261 or authorization of a specific use (or uses) when the supporting analysis and plan approval document for the prohibition or use is in accordance with the Forest Service NEPA procedures.

(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; or

(E) The technology is not available for conducting timber harvest without causing irreversible damage to soil, slope, or other watershed conditions or substantial and permanent impairment of the productivity of the land; or

(F) There is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest.

(ii) This identification in a plan 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.

(3) *Lands suitable for timber production.* After considering physical, ecological, social, economic, and other pertinent factors to the extent feasible, a Responsible Official may establish timber production as an objective in a plan for any lands not identified in paragraph (a)(2)(i) of this section. The responsible official must review lands not suited for timber production at least once every 10 years, or as otherwise prescribed by law, to determine their suitability for timber production. As a result of this 10-year review, timber production may be established as a plan objective for any lands found to be suitable for such purpose through amendment or revision of the plan.

(4) *Other lands where trees may be harvested for multiple use values other than timber production.* Designation of lands as not suitable for timber production does not preclude the harvest of trees on those lands for salvage, sanitation, or other multiple use purposes. Except for lands described at paragraph (a)(2)(i)(E) of this section, timber harvest may be used as a tool to assist in achieving or maintaining applicable desired conditions or objectives.

(b) *Plan provisions for resource management.* A plan should include provisions for the following:

(1) Limitations on even-aged timber harvest methods, including provisions to require harvest in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources and the regeneration of the timber resource, including requirements that even-aged harvest may occur only upon a finding that it is appropriate and that clearcutting may occur only upon a finding that it is the optimum method to meet the objectives and requirements of the plan;

(2) Maximum size openings created by timber harvest according to geographic areas, forest types, or other suitable classifications for areas to be cut in one regeneration harvest operation. This limit may be less than, but will not exceed, 60 acres for the Douglas-fir forest type of California, Oregon, and Washington; 80 acres for the southern yellow pine types of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Oklahoma, and Texas; 100 acres for the hemlock-Sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types. The plan must allow for exceeding its limitations on maximum size openings after appropriate public notice and review by the supervisor of the responsible official who normally would approve the harvest proposal. The plan maximum size openings must not apply to the size of areas harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm;

(3) Provisions that cut blocks, patches, or strips that are shaped and blended to the extent practicable with the natural terrain;

(4) Provisions for maintaining or restoring soil and water resources, including protection for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment, when management activities are likely to seriously and adversely affect water conditions or fish habitat;

(5) Provisions that timber harvest projects be considered through interdisciplinary review, assessing the potential environmental, biological, aesthetic, engineering, and economic impacts on the sale area, as well as the consistency of the sale with the multiple use of the general area, and that the harvesting system used is not selected primarily because it will give the greatest dollar return or the greatest unit output of timber;

(6) Provisions that there is reasonable assurance that lands can be adequately restocked within 5 years after final regeneration harvest; and

(7) Provisions that soil, slope, or other watershed conditions will not be irreversibly damaged by timber harvest.

(c) *Forest Service Directive System procedures.* (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 requirements assuring that even-aged stands of trees scheduled for harvest during the planning period have generally reached culmination of mean annual increment of growth. This

requirement applies only to regeneration harvest of even-aged stands on lands identified as suitable for timber production and where timber production is a management purpose for the harvest.

(3) Forest Service Directive System procedures to fulfill the requirements of this paragraph shall be adopted following 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 a way that 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 a way that 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 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 a way that 36 CFR part 215 or part 218, subpart A, apply.

(b) *Transition.* 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.

(1) *Plan development and plan revisions.* Plan development and plan revisions initiated after April 21, 2008 must conform to the requirements of this subpart, except that the plan for the Tongass National Forest may be revised once under this subpart or the planning regulations in effect before November 9, 2000.

(2) *Plan Amendments.* With respect to plans approved or revised pursuant to the planning regulation in effect before November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000), a 3-year transition period for plan amendments begins on April 21, 2008. During the transition period, plan amendments may continue using the provisions of the planning regulation in effect before November 9, 2000, or may conform to the requirements of this subpart. If the responsible official uses the provisions of the prior planning regulations, 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. Plan amendments initiated after the transition period must conform to the requirements of this subpart.

(3) *Plan development, plan amendments, or plan revisions underway before this rule.* (i) For plan development, plan amendments, or plan revisions that had been underway before April 21, 2008, 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) the responsible official is not required to halt the process and start over but may complete those processes in conformance of the provisions of those regulations or in conformance to the requirements of this subpart.

(ii) For plan development plan amendment, or plan revisions that had been underway before April 21, 2008 using the provisions of the planning regulations in effect January 5, 2005 (See 36 CFR parts 200 to 299, Revised as of July 1, 2005) the responsible official is not required to start over under this subpart upon a finding that the plan, plan amendment, or plan revision process undertaken before April 21, 2008 conforms to the requirements of this subpart.

(iii) 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 a way that 36 CFR part 215 or part 218, subpart A, apply.

(4) *Plans developed, amended, or revised using the provisions of the planning rule in effect prior to November 9, 2000.* For units with plans developed, amended, or revised using the provisions of the planning rule in effect prior to November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2000), that rule is without effect. No obligations remain from that regulation, except those that are those specifically in the plan.

§ 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: A system of management practices based on clearly identified outcomes and monitoring to determine if management actions are meeting desired outcomes, and if not, to facilitate management changes that will best ensure that outcomes are met or re-evaluated. Adaptive management stems from the recognition that knowledge about natural resource systems is sometimes uncertain.

Alaska Native Corporations: The regional, urban, and village native corporations formed under the Alaska Native Claims Settlement Act of 1971.

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 environmental policy.

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 non-forest 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-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 harvest: The removal of trees for wood fiber use and other multiple-use purposes.

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).

Subpart B—[Reserved]

Dated: April 9, 2008.

Mark Rey,

Under Secretary, NRE.

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