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36 CFR Part 219

National Forest System Land Management Planning; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AC70

National Forest System Land Management Planning

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rule; request for comments.

SUMMARY: The Forest Service, U.S. Department of Agriculture, is providing notice and opportunity for comment on a proposed rule for National Forest System land management planning. This rulemaking is the result of a U.S. district court order dated March 30, 2007, which enjoined the United States Department of Agriculture from implementation and utilization of the land management planning rule published in 2005 (70 FR 1023) until it complies with the court's order regarding the National Environmental Policy Act, the Endangered Species Act, and the Administrative Procedure Act (*Citizens for Better Forestry et al.* v. *USDA,* C.A. C05–1144 (N. D. Cal.)). The purpose of this proposed rule is to respond to the court's ruling about notice and comment requirements under the Administrative Procedure Act by publishing the 2005 rule as a proposed rule. The Agency plans to comply with the court's order regarding the Endangered Species Act. In addition, the Agency is preparing a draft environmental impact statement under the National Environmental Policy Act.

This proposed rule sets forth a framework for National Forest System land management planning to provide for sustainability of social, economic, and ecological systems and establishes direction for developing, amending, and revising land management plans. The proposed rule clarifies that, absent extraordinary circumstances, land management plans developed, amended, or revised under the proposed rule are strategic and are one stage in an adaptive cycle of planning for management of National Forest System lands. The intent of the proposed rule is to streamline and improve the planning process by making plans more adaptable to changes in social, economic, and environmental conditions; to strengthen the role of science in planning; to strengthen collaborative relationships with the public and other governmental entities; and to reaffirm the principle of sustainable management consistent with the Multiple-Use Sustained-Yield Act and other authorities.

DATES: Comments must be received in writing by October 22, 2007. The Agency will consider and place comments received after this date in the record only if practicable.

ADDRESSES: Send written comments concerning this proposed rule through one of the following methods: E-mail: *planningrule@fscomments.org.* Include ''planning rule'' in the subject line of the message. Fax: (916) 456–6724. Please identify your comments by including ''planning rule'' on the cover sheet or the first page. Mail: Planning Rule Comments, P.O. Box 162969, Sacramento, CA 95816–2969. Please note that the Forest Service will not be able to receive hand-delivered comments. Submit comments through the World Wide Web/Internet Web site *http://www.regulations.gov.* Please note that all comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The Agency cannot confirm receipt of comments. Individuals wishing to inspect comments should call Bob Dow at (801) 517–1022.

FOR FURTHER INFORMATION CONTACT: Regis Terney, Planning Specialist; Ecosystem Management Coordination Staff (202) 205–1552, or Ron Pugh, Planning Specialist, Ecosystem Management Coordination Staff (202) 205–0992.

SUPPLEMENTARY INFORMATION:

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1. Additional Documents Are Available

The following information is posted on the World Wide Web/Internet at *http://www.fs.fed.us/emc/nfma/2007_planning_rule.html:* (1) This proposed rule; (2) a draft environmental impact statement (EIS) analyzing the proposed rule; (3) the Civil Rights Impact Analysis for this proposed rule; (4) the cost-benefit analysis for this proposed rule; (5) the business model cost study done to estimate predicted costs to implement the 2000 planning rule, and (6) the Forest Service directives and other guidance on land management planning developed for the now enjoined 2005 planning rule. This information may also be obtained upon written request from the Director, Ecosystem Management Coordination Staff, Forest Service, USDA, Mail Stop 1104, 1400 Independence Avenue, SW., Washington, DC 20250–1104. The final environmental impact statement, when completed, will also be available on the above Web site.

2. The 2005 Planning Rule

The Department published the land management planning rule in 2005 (2005 planning rule) in the **Federal Register** on January 5, 2005 (70 FR 1023). The 2005 planning rule at 36 CFR part 219 was based on a review, conducted by Forest Service personnel at the direction of the Office of the Secretary of the United States Department of Agriculture, of an earlier planning rule promulgated in 2000 (65 FR 67514). The review affirmed the

2000 rule's underlying concepts of sustainability, monitoring, evaluation, collaboration (working with the public), and the consideration of science. However, although the 2000 rule was intended to simplify and streamline the development, amendment, and revision of land management plans (also referred to as plans), the review concluded that the 2000 rule was very costly and neither straightforward nor easy to implement. The review also found that the 2000 rule did not clarify adequately the strategic nature of land management planning.

Based on the review and over two decades of experience with plans, the Agency published the 2005 planning rule to (1) simplify and streamline the development, revision, and amendment of plans; (2) clarify that plans are strategic; and (3) ensure that direction for developing, revising, and amending plans is consistent with legal requirements and the limits of the Agency authorities and the capabilities of National Forest System lands.

On March 30, 2007, the United States District Court for the Northern District of California in *Citizens for Better Forestry et al.* v. *United States Dept. of Agriculture,* C.A. C05–1144 PJH, No. C 04–4512 PJH (N. D. Cal., March 30, 2007), enjoined the United States Department of Agriculture (USDA) from implementation and utilization of the 2005 planning rule until USDA takes certain additional steps concerning the Administrative Procedure Act (APA), the Endangered Species Act (ESA), and the National Environmental Policy Act (NEPA).

The Agency is committed to transparent rulemaking and public participation, and provided a notice and comment period for the proposed 2005 rule (December 6, 2002, 67 FR 72770). In the final 2005 rule, the Agency 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 Environmental Management System provisions require the Agency to define a structure and system of organizational activities, responsibilities, practices, and procedures for carrying out the Agency environmental policy. The Court found that the proposed rule did not provide sufficient notice to the public of these changes to the final rule such that the final rule was not the logical outgrowth of the proposed rule. Therefore, the Agency is providing notice and seeking comment on the proposed rule, which includes the changes made to the final 2005 planning rule.

Regarding NEPA, the court further found that the 2005 planning rule did not fit the Agency's categorical exclusion for Servicewide administrative procedures. That categorical exclusion, developed with public participation, is a recognized method of NEPA compliance. Under the court's order, however, further environmental analysis under NEPA is required. Accordingly, the Agency is preparing a draft EIS on the proposed rule.

Finally, the court found that the Agency was required to consult on the impact of the 2005 rule under ESA. Based upon an analysis of the 2005 rule, the Agency had concluded that adoption of the 2005 planning rule alone would have no effect on protected species or critical habitat. The court, however, found that some form of consultation with the U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration (NOAA) Fisheries is required. Accordingly, the Agency plans to comply with the court's order regarding the Endangered Species Act.

Without conceding the correctness of the court's ruling, which is being addressed through the judicial process, the Agency has decided to undertake these processes to expedite much needed plan revisions and plan amendments.

3. Overview of the 2007 Proposed Rule

Forest planning rules have a long history. The Department adopted the first planning rule September 17, 1979 (44 FR 53928). The planning rule 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). The 1982 rule, as amended, has guided the development, amendment, and revision of the land management plans that are now in place for all national forests and grasslands. In addition, the Department adopted a revised rule on November 9, 2000 (65 FR 67514). No plans have been developed, amended, or revised using the procedures of the 2000 rule. After review of the 2000 planning rule, the Agency proposed to revise the planning rule on December 6, 2002 (67 FR 72770) with a 90-day public comment period.

This proposed rule is identical, except as noted below, to the currently enjoined rule at 36 CFR part 219 published in the **Federal Register** on January 5, 2005 (70 FR 1023) as amended on March 3, 2006 (71 FR 10837). The preamble to the 2005 rule contains a detailed analysis of comments received and issues identified during the comment on the 2002 proposed rule. This proposed rule differs from the 2005 final rule, in that, the effective date and the end of the transition period date in § 219.14 are changed. This proposed rule also includes the amendment made March 3, 2006 (71 FR 10837) to change the transition provision for the Tongass National Forest plan. The Agency believes this proposed rule is based on a better understanding of land management planning resulting from the Forest Service's 25 years of experience developing, revising, and amending plans under the 1982 planning rule and 2000 rule transition provisions. After assessing the flaws and benefits of the planning rules during these 25 years, the Forest Service believes that it is time to rely on its experience, think differently about NFS planning, and change our planning procedures. This proposed rule embodies a strategic approach to planning that emphasizes the desired outcomes of land management and the sustainability of resources, rather than the output-oriented approach embodied in the 1982 rule. The Forest Service's intent with this proposed rule is to promote a more efficient way to protect the environment and to facilitate working with the public. The proposed rule establishes an adaptive management process with a priority on monitoring to allow timely changes to plans to respond to changing conditions and new information to ensure that clean air, clean water, and abundant wildlife remain available. In this way, the proposed rule better allows the Agency to carry out its mission to ''to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations'' (Forest Service Manual 1020.21). This proposed rule will enable the Forest Service to respond in a timely manner to changing conditions like hazardous fuels, new science, and many other dynamics that affect NFS management. A fundamental concept in this proposed rule is that protection and management of the NFS lands should be based on sound and current science.

This proposed rule assures the public the opportunity for an effective voice throughout the entire planning process. Finally, because this proposed rule will enable more efficient planning, the Forest Service will be able to shift its limited resources to the public's expressed priorities. These priorities include improved conservation of the

forests and grasslands and better responses to the threats the forests and grasslands face, such as critical wildfire danger and invasive species that degrade ecological systems.

To achieve these important goals, plans under this proposed rule will be more strategic and less prescriptive than those developed, amended, or revised under the 1982 planning rule. The Agency believes that strategic, adaptable plans are the most effective means of guiding NFS management in light of changing conditions, science, and technology. To this end, plans under this proposed rule typically will not approve or prohibit projects or activities except under extraordinary circumstances. Rather, as described further below, plans under this proposed rule typically will contain five components, which set forth guidance for subsequent decisions approving or prohibiting on-the-ground activities. The plan components are: Desired conditions, objectives, guidelines, suitability of areas, and special areas.

• *Major Themes and Areas of Public Comment in the Proposed Rule*

The major themes of the proposed rule discussed in this preamble reflect the public comments received on the 2005 rule (70 FR 1023). This proposed rule sets forth the process for development, amendment, and revision of plans for NFS units, including the national forests, grasslands, prairie, or other comparable administrative units in compliance with the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 1600 *et seq.*). The Forest Service has developed 125 plans and revised 53 plans since enactment of NFMA and has amended numerous plans. The Agency expects to complete more than 100 additional revisions during the next decade. Based on the decades of experience under the 1982 planning rule, transition provisions of the 2000 rule, and under the 2005 rule, the Agency has focused this proposed rule around the following major themes:

Plans Should Be Strategic

The purpose of plans should be to establish goals for forests, grasslands, and prairies and to set forth guidance to achieve those goals. Plans can meet these purposes through components that describe desired conditions, provide objectives for achieving desired conditions, and that identify guidelines, suitability of areas for various uses, and special areas. These five plan components will supply clear, concise statements of management intent for all areas of the national forests. Typically, a plan should not include decisions that approve or prohibit projects and activities and such decisions would follow subsequent proposed actions considered by the Agency.

Plans Should Be Adaptive and Based on Current Information and Science

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

Land Management Planning Should Involve the Public

Plans are prepared for public lands. The Agency firmly believes that public participation and collaboration should be welcomed and encouraged during planning. Throughout the planning process, responsible officials offer people the opportunity to work collaboratively to find solutions that balance conflicting needs and values, to evaluate management under the plans, and to consider the need to adjust plans as conditions and issues change.

Plans Should Guide Sustainable Management of NFS Lands

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

Planning Must Comply With All Applicable Laws, Regulations, and Policies

Planning must comply with all applicable laws, regulations, and policies, although none of these requirements needs to be restated in plans. For example, the Clean Water Act includes requirements for nonpoint source management programs, to be administered by the States. The States or the Forest Service then develops Best Management Practices (BMPs) for use in the development of projects or activities on NFS lands. BMPs are designed to meet State water quality standards and prevent adverse environmental consequences. Specific BMPs and other legal requirements do not have to be repeated in the plan to be in effect and applicable to NFS projects and activities.

• *Plans Should Be Strategic*

Land management plans are strategic. A plan establishes a long-term management framework for NFS units. Within that framework, specific projects and activities are proposed, approved, and carried out depending on specific conditions and circumstances in the area at the time the Forest Service initiates a project. The U.S. Supreme Court described the nature of NFS plans in *Ohio Forestry Ass'n* v. *Sierra Club* (523 U.S. 726, 737 (1998)) (*Ohio Forestry*), explaining that plans are ''tools for Agency planning and management.'' The Court recognized that the provisions of such plans ''do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil or criminal liability; they create no legal rights or obligations'' (523 U.S. 733 (1998)).

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

Under the proposed rule, plans will continue to be the strategic plans recognized by the Supreme Court in *Ohio Forestry* and *SUWA.* As described below, the five components of a plan under the proposed rule do not approve or prohibit projects and activities, but rather characterize general desired conditions and guidance for achieving

and maintaining those conditions. Typically, a plan will not approve or prohibit activities.

On December 11, 1997, Secretary of Agriculture chartered the Committee of Scientists (COS) to provide scientific and technical advice on improvements that could be made in the planning process. The Forest Service examined the report by the COS, which said on page xxx of the synopsis of their COS Report: ''Collaborative planning begins by finding agreement in a common vision for the future conditions of the national forests and grasslands'' and said on page xxv of the synopsis of their COS report ''it also requires crafting strategies to achieve those conditions'' (Committee of Scientists Report, March 15, 1999, U.S. Department of Agriculture, Washington, DC 193 p.). The Forest Service also examined the strategic planning processes used by businesses and other government agencies. The Forest Service developed a three-part outline to organize plan components, and communicate their strategic nature. This outline is based on the plan components in the final 2005 planning rule and this proposed rule. The Forest Service describes the three parts, vision, strategy, and design criteria, in Foundations of Forest Planning, Volume 1—Preparing a Forest Plan. This document is available from the Technical Information for Planning Systems Web site at *http://www.fs.fed.us/TIPS.* Within this outline, the vision is expressed with descriptions of desired conditions. The strategy is crafted from three plan components: Suitability of areas, special areas, and objectives. Finally, the design criteria are developed using the guidelines plan component. The Forest Service directives for the 2005 planning rule (FSM 1921.1, FSH 1909.12, chapter 10) recommend responsible officials use this three-part outline for plans. For example, the Cimarron and Comanche National Grasslands Plan, Pre-Decisional Review Version was made available using that outline. See *http://www.fs.fed.us/r2/psicc/projects/forest_revision/gr_plan_prv.shtml.*

Planning documentation.

The proposed rule requires a *plan document or set of documents* (§ 219.7(a)(1)) to contain all information relevant to planning. A plan document or set of documents includes: (1) Evaluation reports; (2) all plan components, including applicable maps; (3) the plan approval document; (4) any relevant National Environmental Policy Act of 1969 (NEPA) documents; (5) the monitoring program for the plan area; (6) any documents relating to the public involvement process in planning; (7) any documents relating to the adaptive management process (including EMS) applicable to the plan; and (8) documentation of how science was taken into account in the planning process (§ 219.11).

Plan Components

This proposed rule uses the term ''plan components'' to describe the parts of a plan. How plans are characterized and how plan parts operate has evolved over the years. This evolution has occurred through an ongoing evaluation of the role plans play, how plans guide projects, how plans have or do not have on-the-ground impacts, how current plans enable or restrict responding to changing circumstances and science, and how more active and structured monitoring provides better information for monitoring, amending, or revising plans as needed. To a greater extent than before, plans under the proposed planning rule will be strategic and aspirational in nature, setting desired conditions, objectives, and guidance for subsequent on-the-ground projects or activities. Typically, the Forest Service can meaningfully evaluate environmental effects only when projects or activities developed to carry out desired conditions and objectives of the plan are proposed.

The Agency has concluded that plans are more effective if they include more detailed descriptions of desired conditions and general guidance instead of long lists of prohibitive standards, guidelines, or suitability determinations developed in an attempt to anticipate and address every possible future project or activity and the potential on-the-ground effects they could cause. Under this proposed rule, plans have five principal components (§ 219.7(a)(2)): Desired conditions, objectives, guidelines, suitability of areas, and special areas.

Desired Conditions

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

The increased attention to fire regimes provides an example of the role of ''desired conditions.'' The Forest Service has been challenged with unnatural fuel levels throughout NFS lands. Much of the western United States is currently in a severe drought cycle, and the reduction of fuel is necessary. To facilitate moving toward a healthier and more natural condition on the land, a plan could describe ecological conditions closer to those that would have occurred under natural fire regimes: For example, desired conditions for desired fuel loads, along with desired tree species, structure, distribution, and density.

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

Objectives

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

Guidelines

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

approving or prohibiting projects and activities. Guidelines should provide the recommended technical and scientific specifications to be used in the design of projects and activities to contribute to the achievement of desired conditions and objectives. They are the guidance that a responsible official would normally apply to a project or activity unless there is a reason to vary. The 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. If the responsible official decides a variance from the guideline is necessary, 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. However, a variance does not require an amendment to the plan.

Section 6 of the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 1600 *et seq.*) sets forth the requirements for development and maintenance of land management plans. Section 6(c) of 16 U.S.C. 1604 directs the Secretary of Agriculture to incorporate the ''standards and guidelines'' required by that section into plans as soon as practicable. Section 6(g) directs the Secretary to promulgate regulations setting out the process for development and revision of plans and specifying the guidelines prescribed by that subsection. Subsection (g) requires the regulations to include guidelines for various things, such as land suitability identifications, diversity of plant and animal communities based on the suitability and capability of the land to meet overall multiple use objectives, and permitting harvest level increases, among other things. Subsection (g) does not specify that any particular standards must be included nor the form in which the regulations must provide guidelines. In the 1982 planning rule and the original plans, the terms ''standards and guidelines'' were usually used interchangeably. Some plan revisions have called mandatory provisions ''standards'' and discretionary direction with latitude for variance as ''guidelines.'' The 2000 planning rule did not use the term ''guidelines.'' In the 2000 planning rule, a provision labeled a *standard* could be either mandatory or discretionary depending upon its wording and the scope of its requirements.

However, in line with and to emphasize the strategic nature of plans, this proposed rule proposes the term ''guidelines'' and does not include the term ''standards'' as a required plan component.

Suitability of Areas

Suitability of areas is the identification of the general suitability of an area in an NFS unit for a variety of uses. Plans may identify areas as generally suitable for uses that are compatible with desired conditions and objectives for that area. Under this proposed rule, a plan may identify all uses that are generally suitable for a particular area or may identify the major or most prominent generally suitable uses. The identification of an area as generally suitable for a use or uses is neither a commitment nor a decision approving or prohibiting activities or uses. Responsible officials authorize the actual suitability of an area for a specific use or activity through project and activity decisionmaking.

The identification of areas as generally suitable does not ''allocate'' the area but identifies that desired conditions are compatible with that use. A future proposed project for a use not identified as a generally suitable use may be approved if appropriate based on site-specific analysis and if the proposed project is consistent with other plan components. The identification of an area as generally suitable for various uses is not a final decision compelling, approving, or prohibiting projects and activities. The identification of generally suitable land areas is guidance for future project or activity decision-making. A final determination of suitability of lands for resource uses is made through project and activity decisionmaking.

Suitable use identification has evolved over time. Plans prepared under the 1982 planning rule often characterized suitable use identification 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. Early in the Agency's experience with carrying out the 1982 planning rule the Forest Service realized that suitability identifications in a plan, like environmental analysis itself, would always require site-specific reviews when projects or activities were proposed. This site-specific review would verify that the proposed project or activity is compatible with desired conditions and objectives for that area or compatible with the other suitable uses for that area.

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 based on this site-specific analysis. Thus, the Forest Service never made a final determination of suitability until the project or activity analysis and decision process was completed. This proposed rule better characterizes the nature and purpose of suitability identification.

An illustration of the effect of suitability identifications in the proposed rule may be helpful. Under this proposed rule, a plan may identify certain portions of an NFS unit as generally suitable for some uses. Example uses may include: Mechanized travel, motorized travel, non-commercial uses, non-mechanized travel, non-motorized travel, and wheeled motorized travel. Suppose for example that an area of an NFS unit is identified as generally suitable for wheeled motorized travel (or transportation development). Identification of an area in a plan as generally suitable for motorized travel does not mean that construction of any road is approved or is even inevitable. Rather, the identification merely provides guidance for where road construction may be compatible with desired conditions. The responsible official may approve proposed projects for construction of a road or roads only after appropriate project-specific National Environmental Policy Act (NEPA) analysis and public involvement.

Special Areas

Special areas are areas within the NFS designated for their unique or special characteristics. Under the proposed rule, these areas include wilderness, wild and scenic river corridors, and research natural areas. Special areas also may include smaller areas with unique botanical, geologic, or other natural feature that makes them special. Some of these areas are statutorily designated. Other areas may be designated through plan development, amendment, revision, or through a separate administrative process with appropriate NEPA analysis.

Monitoring

The monitoring program is also a central element of adaptive management in this proposed rule because monitoring is the key to discovering how to make project-specific decisions consistent with desired conditions and

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

The proposed rule allows the monitoring program to be changed with administrative corrections, instead of amendments, to more quickly reflect the best available science and account for unanticipated changes in conditions. The responsible official will notify the public of changes in monitoring programs, and the responsible official can involve the public in a variety of ways to develop program changes.

Streamlining the Planning Rule and Use of the Forest Service Directive System

This proposed rule places the procedural and technical details to carry out the NFMA in the Forest Service Directive System (Forest Service directives). Forest Service directives are the primary basis for the Forest Service's internal management of all its programs and the primary source of administrative direction to Forest Service employees. The Forest Service Manual (FSM) contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff to plan and execute programs and activities. The Forest Service Handbook (FSH) is the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities contained in the FSM. The Forest Service is required by section 14 of NFMA (16 U.S.C. 1612(a) to provide adequate notice and opportunity to comment on the formulation of standards, criteria, and guidelines applicable to Forest Service programs. Forest Service regulations at 36 CFR part 216 define standards, criteria, and guidelines as those ''written policies, instructions and orders, originated by the Forest Service and issued in the Forest Service Manual * * *.''

The Forest Service developed directives for the enjoined 2005 rule that set forth the legal authorities, objectives, policy, responsibilities, direction, and overall guidance that Forest Service line officers, Agency employees, and others would need to use that rule. Directives in Forest Service Manuals (FSMs) 1900 and 1920 and Forest Service Handbook (FSH) 1909.12, chapters zero code, 10, 20, 30, 40, 50, 60 and 80 were issued on January 31, 2006 (71 FR 5124). A directive to FSM 1330 was issued on March 3, 2006 (71 FR 10956). A directive to FSH 1909.12, chapter 70 was issued on January 31, 2007 (72 FR 4478). If the United States Department of Agriculture (Department) promulgates the proposed rule as final, the Agency would carry out this rule using the current directives, modified as necessary to account for changes because of this rulemaking. Directives are available at *http://www.fs.fed.us/emc/nfma/index5.html.*

• *Plans Should Be Adaptive and Based on Current Information and Science*

This proposed rule requires that the responsible official take into account the best available science (§ 219.11) and specifies the process for taking science into account. Under this proposed rule, science, while only one aspect of decisionmaking, is a significant source of information for the responsible official. When making decisions, the responsible official also considers public input, competing use demands, budget projections, and many other factors.

Under the 1982 planning rule, planning teams were required to ''integrate knowledge of the physical, biological, economic and social sciences, and the environmental design arts in the planning process'' (§ 219.5(a) of 1982 planning rule). Therefore, the Agency has been under an obligation to take the best available science into account for decades. The addition of § 219.11 specifies provisions to make plain what has been part of good practice.

The proposed rule states that the responsible official may use independent peer reviews, science advisory boards, or other appropriate review methods to evaluate the application of science used in the planning process. Forest Service directives (FSH 1909.12, chapter 40) set forth specific procedures for conducting science reviews.

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

• *Land Management Planning Should Involve the Public*

The proposed rule clearly expresses the Agency's emphasis on public involvement and collaboration. The proposed rule clarifies requirements about public involvement by consolidating provisions on consultation with interested individuals and organizations, State and local governments, Federal agencies, and federally recognized Indian Tribes.

The Agency expects that, compared with the 1982 planning rule, this proposed rule will allow more members of the public to be more effectively engaged because development of a plan, plan amendment, or plan revision will be simpler, more transparent, and faster. The public will have the opportunity to engage collaboratively in the development, amendment, or revision of a plan and in the development of the monitoring program. In addition, the public will have an opportunity to comment on a plan, plan amendment, or plan revision, and to object prior to approval if concerns remain.

The proposed rule requires opportunities for public involvement in the unit's land management planning process (§ 219.9) and in monitoring (§ 219.6(b)(3)). One of the more important changes in public involvement is how the Forest Service will work with the public to collaboratively develop, amend, or revise a plan.

The Agency has lots of experience with the type of collaboration envisioned under the proposed rule. Collaboration will vary by administrative unit by necessity to deal with local, regional, and national needs, interests, and values. In addition, the process must take into account the capability for collaboration of these stakeholders and Forest Service personnel. There are many ways to design a collaborative process including open public meetings, landscape-based, issue-based, technical reviews, issue presentations, joint fact finding, web-based interactions, and various other types of communication.

For instance, from the Forest Service perspective, the collaboration effort on

the White Mountain National Forest, located in New Hampshire and Maine, was successful. The collaboration effort began in 1997 and their planning effort was guided by the 1982 planning regulations in effect at that time. The national forest used a wide variety of public involvement, collaboration, and communication methods during the eight years they worked on revising their plan, including outreach meetings; numerous public planning meetings; monthly meetings of geographically based local planning groups; and meetings and conversations with tribal officials, local governments, and private individuals and organizations. Through these meetings, members of the public were given many opportunities to interact with the Agency's planning team and provide input on future management of the national forest. Collaboration occurred throughout the development of the revised plan and environmental impact statement, and was in addition to public comment periods required by the 1982 planning rule. These efforts culminated with the approval of a revised forest plan in September 2005. The administrative appeal period closed 90 days later without a single appeal being filed, surely an indicator of successful collaboration.

Before the injunction against the 2005 planning rule, the Agency had some opportunities to use the public participation provisions of that rule. A survey of several of the Forest Service units that have conducted collaboration activities under the 2005 planning rule indicates potential for successful collaboration under the proposed rule. For instance, the Cimarron and Comanche National Grasslands (Grasslands) applied collaborative processes in four local communities. Invited researchers and professors at regional universities participated in two scientific reviews of the plan and related assessments and monitoring questions. The Grasslands reached out to and shared information with many local stakeholders including grazing associations, environmental groups, federal, state, and local government agencies, and others. Some of the media included postcards, newsletters, and posters, newspapers, and local radio stations. They collaborated diligently with outside groups on the Plan's monitoring questions and performance measures. To share the latest information about the plan revision, processes used during plan development, and the associated documents supporting the plan, the Grasslands planning team also kept the plan revision Web site current.

The Grasslands' first round of public meetings used the collaborative tools of structured group exercises, questionnaires, open houses, individual questions-and-answers, and group discussions. From this the planning team learned what interested parties believed were the main topics to deal with and what they would like the Grasslands to look like in the future.

The Grasslands' second round of public meetings centered on the proposed plan, which was released in December 2005. In this second round, each of several small groups focused on a designated section of the proposed plan and engaged in discussion with Forest Service and third party facilitators to develop and suggest changes they would like to make to the proposed plan. This round focused on whether the proposed plan's components embodied the public's expressed desires. This round also engaged the public in evaluating the proposed plans' monitoring questions and performance measures, which had been developed in cooperation with The Nature Conservancy. Two main views were represented in the public meetings and comments. Some respondents felt their traditional lifestyle was threatened by economic conditions, drought, government interference, and the growing population of Colorado's Front Range. Other people advocated quiet-use recreation and habitat and wildlife protection. From the Forest Service perspective, collaboration provided a safe environment where these diverse groups could express differing opinions, share ideas, and begin building relationships. One result was improved relations, understanding, communication, and a confidence about working together. Based on Forest Service interpretation of feedback forms, participants were pleased with the approach used and with the mixed working group exercises. Another important benefit for Agency employees was the opportunity to improve their own collaboration skills.

The Forest Service has found that the traditional way of developing plan alternatives under the 1982 planning rule has often had an adverse effect on the planning process. The traditional approach of developing and choosing among discrete alternatives that are carried throughout the entire planning process often proves divisive, because it often maintains adversarial positions, rather than helping people seek common ground. To overcome this tendency, the proposed rule features an iterative approach to planning. The Agency recognizes that people have many different ideas about how NFS lands should be managed. Furthermore, a plan could potentially include a variety of different desired conditions, objectives, suitable uses, guidelines, and special area designations. The Agency also recognizes that the public should be involved in determining what plan components should be. Therefore, the proposed rule emphasizes participation and collaboration with the public at all stages of plan development, plan amendment, or plan revision.

The responsible official and the public will review the various options to change the plan, and together they will successively narrow potential plan component options until a proposed plan is developed. However, the proposed rule also recognizes that it is not always possible or desirable to present only one proposed plan for public comment and, therefore, the responsible official can develop options to the proposed plan for public comment when appropriate.

The Forest Service will ensure the process for plan development will be transparent to the public. Key steps in development of the proposed plan will be documented in the plan document or set of documents, which will be available to the public. While the proposed rule requires the responsible official to collaborate with the public and that a record of that collaboration be kept, it does not require in-depth social, economic, or ecological analysis of every potential option for a plan. In-depth analysis, documented in an evaluation report, is required only for the proposed plan and the options that remain after public collaboration.

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

• *Plans Should Guide Sustainable Management of NFS Lands*

As did the 2000 planning rule, this proposed rule makes sustainability the overall goal for NFS planning. Managing NFS lands for sustainability of their renewable resources meets the Multiple Use and Sustained Yield Act of 1960 (MUSYA) mandate that the Secretary develop and administer the renewable surface resources of the national forests for multiple use and sustained yield (16 U.S.C. 529). Managing for sustainability will provide for management of the various renewable resources without impairment of the productivity of the land, as required by the MUSYA. Sustaining the productivity of the land and its renewable resources means meeting present needs without compromising the ability of those lands and resources to meet the needs of future generations. The proposed rule is identical to the 2005 planning rule for social, economic, and ecological sustainability requirements.

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

The 2002 proposed rule asked for comments on an ecosystem approach (67 FR 72770, December 6, 2002). The Agency also hosted a workshop to arrange an opportunity for public discussion of the ecosystem approach and for identification of other ideas on how best to meet the statutory diversity requirement. Both in public comments and during the workshop, people expressed an extremely wide range of opinions. The Agency found these comments useful in developing a scientifically credible and realistic approach for this proposed rule and in the development of Forest Service directives that meet legal requirements and the Agency's stewardship responsibilities.

In common with 2002 proposed rule and the 2000 planning rule, the proposed rule approaches diversity at two levels of ecological organization: The ecosystem level and the species level. This concept has considerable support among scientists, has already been tested by a number of NFS administrative units developing or revising plans under the 1982 planning rule, and the now enjoined 2005 planning rule.

The Agency developed the proposed rule based on the following concepts related to diversity:

First, maintenance of the diversity of plant and animal communities starts with an ecosystem approach. In an ecosystem approach, the plan will provide a framework for maintaining and restoring ecosystem conditions necessary to conserve most species.

Second, where the responsible official determines that the ecosystem approach alone does not provide an adequate framework for maintaining and restoring conditions to support specific federally listed threatened or endangered species, species-of-concern, and species-of-interest, the plan must include additional provisions for these species. This proposed rule defines species-of-concern as those species for which the responsible official determines that continued existence is a concern and listing under the Endangered Species Act (ESA) may become necessary. This proposed rule defines species-of-interest as those species for which the responsible official determines that management actions may be necessary or desirable to achieve ecological or other multiple-use objectives. The Forest Service directive (FSH 1909.12, section 43.22) identifies lists of species developed by objective and scientifically credible third parties, including the U.S. Fish and Wildlife Service and NatureServe (*http://www.natureserve.org/*).

Third, Agency managers should concentrate their efforts on contributing to sustaining species where Forest Service has the authority and capability to carry out management activities that may affect species rather than where the cause of species decline is outside the limits of Agency authority or the capability of the plan area.

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

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

The proposed rule is less detailed than 2002 proposed rule or the 2000 planning rule with respect to specific ecosystem analysis requirements. After reviewing public comments, and after consideration of the Forest Service's experience with planning over the past 25 years, the Agency concluded that such detail about analysis is more properly included in the Forest Service directives. These directives can be more extensive and can be more easily updated as the Agency learns how to improve its analytic processes and as new scientific concepts and new technological capabilities become available.

The Forest Service developed directives for the enjoined 2005 rule that set forth the overall guidance that Forest Service employees would need to use that rule. The Forest Service directives (FSM 1921.7, FSH 1909.12, chapter 40) include appropriate analysis processes. The Agency 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 easily if new and better techniques emerge.

The proposed rule focuses on ecosystem diversity as the primary means of providing for the diversity of plant and animal communities. The proposed rule does not explicitly require analysis of ecosystem characteristics, natural variation under historic disturbance regimes, or spatial scales. However, guidance on appropriate analysis is included in the Forest Service directives (FSM 1921.7, FSH 1909.12, chapter 40).

Another point in common between this proposed rule and 2002 proposed rule is the concept that the more effective the ecosystem management guidance is in sustaining species habitat, the less need there is for analysis and planning at the species level of ecological organization. This proposed rule recognizes that some additional analysis and additional plan provisions may be needed for some species. It is the Agency's expectation that in developing the plan components, especially the desired conditions, that

plans will supply sufficient detail for characteristics of both ecosystem diversity and species diversity to provide the ecological conditions necessary to conserve and recover species and prevent the listing of at-risk species. We will collaborate with the ESA regulatory agencies in the development of these plan components for listed species. However, the proposed rule does not include a requirement to provide for viable populations of plant and animal species. Such a requirement had previously been included in both the 1982 planning rule and the 2000 planning rule.

The species viability requirement was not proposed for several reasons:

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

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

Third, focus on the viability requirement has often diverted attention and resources away from an ecosystem approach to land management that, in the Agency'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.

The ecosystem approach is consistent with the statute. NFMA requires the Agency 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.

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

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

• *Environmental Management Systems and Adaptive Management*

Adaptive Management and Land Management Planning

Plans must adapt to ever-changing conditions. Agency policy may change, new laws may be enacted, or court decisions can change interpretation of existing laws. Fires, invasive species, or outbreaks of insects or disease can substantially change environmental conditions. Changes in market conditions or public values may shift the demand for specific goods and services. Changes in future climate elements such as absolute or relative humidity, clouds and sky conditions, precipitation, snow depth, snowfall, soil temperature and moisture, solar radiation, temperature, wind speed and direction may influence the structure, function, and productivity of forest and related ecosystems. Scientific findings can change our understanding of the environment and of the effects of specific management activities. Better monitoring techniques or ways to achieve objectives may be found. Plans must reflect the fact that ecological conditions are dynamic and that change and uncertainty are inevitable. Consequently, plans must allow for quick response to these ever-changing conditions.

The National Association of University Forest Resources Programs and others commented on the 2002 proposed rule about the importance, from the scientific perspective, of using adaptive management when dealing with complex ecosystems. In 1999, the Committee of Scientists (COS) developed recommendations that strongly encouraged the use of adaptive management. The COS recommended placing a high priority on developing ongoing analyses that are based on monitoring to continually adjust or change land management planning decisions. In response to these comments and recommendations to place a greater emphasis on and commit to adaptive management, the Agency has chosen to rely on environmental management systems (EMS) to support the land management framework.

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

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

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

Research is an important part of adaptive management. Through experimentation and long-term ecological studies, researchers investigate cause and effect relationships of management practices on the environment. Experiments test hypotheses and researchers develop reliable knowledge about effects of management practices. The new

information may be used to amend plans, amend directives, or change project level work.

Land Management Plans, Adaptive Management, and EMS

This proposed rule requires the responsible official to establish an EMS based on the international consensus standard published by the International Organization for Standardization as ''ISO 14001: Environmental Management Systems—Specification With Guidance For Use'' (ISO 14001:2004). The Agency is developing a national EMS framework that will include aspects and components for sustainable consumption and land management that will be included in each unit EMS. Each unit will also be required to identify any additional local aspects and components that will be added to the local unit EMS. The Forest Service would design and implement the national framework elements and the local unit EMS to enable the Forest Service to meet its legal obligations more efficiently by providing a nationally consistent approach to adaptive management.

The Agency's approach to EMS under the proposed rule incorporates lessons learned from the fiscal year (FY) 2006 EMS pilot efforts. These pilot efforts involved all Forest Service regions and 18 national forests and grasslands. The pilot efforts revealed that a forest-by-forest approach to EMS: (1) Creates many redundancies, (2) burdens field units with unnecessary 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 framework that will serve as the basis for environmental improvement on each unit of the National Forest System (NFS) and as the basis for the EMS to be established on each unit.

The national EMS framework includes three focus areas: *Sustainable consumption, land management,* and *local.* 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 applies to items such as increasing energy efficiency, reducing the use of petroleum in fleets, and improving waste prevention and recycling programs. The activities covered under this focus area include aspects and components that will be addressed in each local unit EMS.

The land management focus area applies to three 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 uniform approach to sustainable consumption and land management aspects and components in each local unit 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 unit EMS to include aspects and components specific to an individual unit's environmental conditions and programs. Each Forest Service unit's EMS will likely differ with respect to the local focus area as opposed to the nationally standardized sustainable consumption and land management focus areas.

Each administrative unit will implement their own EMS, which includes the aspects and components developed under the sustainable consumption and land management focus areas of the national EMS framework. Additionally, each unit will either include additional local aspects and components to the unit EMS or determine that the national aspects and components are sufficient to meet local needs. Each unit will monitor and collect data for all components of its EMS. Data collected and reviewed at the unit level for the sustainable consumption and land management focus areas will be to a national standard, providing the ability to aggregate this information at the regional and national levels. The local data, as well as information developed under the national framework, will inform future decisions in the adaptive EMS cycle on the local unit.

The national EMS framework will use a systematic approach to identify and manage environmental conditions and obligations to achieve improved performance and environmental protection. The national EMS framework will facilitate the identification of and help prioritize environmental conditions; set objectives in light of Congressional, Agency, and public goals; document procedures and practices to achieve those objectives; and monitor and measure environmental conditions to track performance and verify that objectives are being met. Agency management personnel will regularly review performance, and information about environmental conditions will be regularly updated to improve environmental performance continually.

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

Under the proposed rule and to conform to the ISO standard, the implementation of ISO 14001 in NFS administrative units will have to reflect the legal and other obligations of the Agency, as well as the environmental conditions and issues relevant to land management, such as sustainability and long-term issues, including cumulative effects.

The Agency's use of EMS will more efficiently meet legal obligations, will increase the transparency of Agency operations, and will enhance the Agency's ability to identify and respond to public input. Creating a transparent and consistent framework that describes how natural resources on administrative units are managed will improve the public's ability to participate more effectively in land management. The units' EMS will not replace any legal obligations that the Agency has under NFMA, MUSYA, NEPA, or any other statute, nor will the EMS diminish the public's ability to participate in the land management process or its rights under any law. To the contrary, use of EMS will significantly improve the public's ability to participate effectively in land management planning by providing a record of the Agency's efforts to continuously improve its environmental performance.

The Agency chose ISO 14001 as the EMS model for several reasons. First, it is the most commonly used EMS model in the United States and around the world. This will make it easier to implement and understand (internally and externally) because there is a significant knowledge and experience

base regarding ISO 14001. Second, the National Technology and Advancement Act of 1995 (NTAA) (Pub. L. 104–113) requires that Federal agencies use or adopt applicable national or international consensus standards wherever possible, in lieu of creating proprietary or unique standards. The NTAA's policy of encouraging Federal agencies to adopt tested and well-accepted standards, rather than reinventing-the-wheel, clearly applies to this situation where there is a ready-made international and national EMS consensus standard (through the American National Standards Institute) that has already been successfully implemented for almost a decade. Third, it has been a long-standing policy that Federal agencies establish and implement EMSs to improve environmental performance. For example, Executive Order 13148 issued April 21, 2000 (E.O. 13148), titled *Greening the Government Through Leadership in Environmental Management;* April 1, 2002, Memorandum from the Chair of the Council on Environmental Quality and the Director of the Office of Management and Budget to the heads of all Federal agencies; Executive Order 13423 issued January 24, 2007 (E.O. 13423) titled *Strengthening Federal Environmental, Energy and Transportation Management.* Federal agencies that have implemented EMS in response to the E.O. 13148 and the E.O. 13423 have typically used ISO 14001 as their model.

Several administrative units established their EMS as a part of the pilot effort before adoption of a consistent national approach. Those administrative units' EMS's include locally unique significant aspects and components as well as the aspects and components they have in common with other units. Those aspects and components they have in common with other units are similar to the aspects and components being developed under the sustainable consumption and land management focus areas of the national EMS framework. Because an EMS must include procedures to upload new requirements, these administrative units have procedures to transition to the requirements developed under the national EMS sustainable consumption and land management focus areas and they will subsequently conform to the national framework. Therefore, there would not be a transition period under § 219.14(b) for the administrative units that have completed EMS's under § 219.5.

Administrative units that do not have an EMS will satisfy the requirement in § 219.5 after they develop an EMS that implements the national framework and either adds significant aspects and components under the local focus area or determine that the national framework focus areas sufficiently address the local unit's significant aspects and components.

• *National Environmental Policy Act and National Forest Management Act Planning*

The application of NEPA to the planning process as identified in this proposed rule is the next iterative step in an evolution that began with the promulgation of the 1979 planning rule, revised in 1982. In developing the NEPA provisions of this proposed rule, the Agency took into account: (1) The nature of the five plan components under this proposed rule; (2) the experience the Agency has gained over the past 25 years from developing, amending, and revising plans; (3) the requirements of NEPA and NFMA; (4) the Council on Environmental Quality (CEQ) regulations; and (5) the comments by the Supreme Court in *Ohio Forestry Ass'n* v. *Sierra Club and Norton* v. *Southern Utah Wilderness Alliance* about the nature of plans themselves.

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

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

In the course of completing NEPA analysis on the first generation of NFMA plans, the Forest Service also became more aware of the difficulties of scale created by the size of the national forests and grasslands. The National Forest System includes 193 million acres, and individual planning units, such as the Tongass National Forest, may be as large as 17 million acres. These vast landscapes contain an enormous variety of different ecosystems, which will respond differently to the same management practices. As the Committee of Scientists (COS) said on page 26 of the Committee of Scientists Report:

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

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

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

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

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

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

In addition to concern about timely and accurate disclosure of environmental effects, the Agency's experience with planning has demonstrated the need to clarify what plans do. Neither the 1982 nor the 2000 planning rule clearly described or contrasted the differences between the effects of plans and the effects of projects and activities. This has been confusing to the public and Agency employees. As discussed previously in the guidelines and the suitability discussions, plan components have not been applied or interpreted consistently throughout the Agency and often have been characterized as the functional equivalent of final project-level decisions or actions, rather than guidance for projects and activities over time.

This proposed rule clarifies that plan components will be strategic rather than prescriptive, absent extraordinary circumstances. Plans will describe the desired social, economic, and ecological conditions for a national forest, grassland, prairie, or other comparable administrative unit. Plan objectives, guidelines, suitable uses, and special area identifications will be designed to help achieve the desired conditions. While plans will identify the general suitability of lands for various uses, they typically will not approve projects or activities with accompanying environmental effects. Decisions approving projects or activities that have environmental effects that can be meaningfully evaluated will typically be made subsequent to the plan. Plans under the proposed rule will describe desired conditions and objectives for the plan area, and provide guidance for future decisionmaking. Consistent with the nature of plans recognized by the Supreme Court in *Ohio Forestry Ass'n* v. *Sierra Club,* (523 U.S. 726, 737 (1998)) (*Ohio Forestry*), plan components under this proposed rule typically will not include proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments. Typically, plan components under this proposed rule will not be linked in a cause-effect relationship over time and within a geographic area to effects on the human environment.

Notwithstanding a plan's strategic nature, Agency approval of a plan, plan amendment, or plan revision is a Federal action under the CEQ regulations. Under NEPA and the CEQ regulations, an EIS is required for every report or recommendation on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment (16 U.S.C. 4321 *et seq.*, 40 CFR 1502.3). CEQ regulations explain that ''Federal actions'' generally tend to fall within several categories. Although these categories include adoption of formal Agency plans within the definition of ''federal action,'' not all federal actions are major federal actions significantly affecting the quality of the human environment. Plans under this proposed rule, as evidenced by their five components, are strategic and aspirational in nature. As previously explained, plans under this proposed rule normally will not include decisions with on-the-ground effects that can be meaningfully evaluated.

However, approval of parts of such actions may have environmental effects in some extraordinary circumstances. For example, plans developed under the 1982 planning rule sometimes included specific final decisions (such as oil and gas leasing under 36 CFR 228.102(d)) or decisions establishing specific prohibitions (such as decisions prohibiting motorized vehicles in certain areas). In some extraordinary circumstances, an amendment or revision might include a decision approving a project to thin certain trees to reduce fire hazards, which might have environmental effects that could be significant. In such cases, the Agency would consider these separately under Forest Service NEPA procedures, and further analysis and documentation in an EA or EIS may be appropriate.

Plan components provide a strategic framework and guidance—they typically will not authorize or compel changes to the existing environment. Achieving desired conditions depends on future management decisions that will help effect a change toward or maintain these desired conditions over time. Thus, without a proposal for action that approves 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 cannot be linked in a cause-effect relationship over time and within the geographic area to effects on air quality; threatened and endangered species; significant scientific, cultural, and historic resources; water quality; nor other resources. Therefore, the plan components typically will not have a significant effect on the quality of the human environment.

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

During plan development, amendment, or revision, the Agency generally is not at the stage in national forest planning of proposing actions to accomplish the goals in plans. CEQ regulations define ''proposals'' that can trigger the requirement for an EIS as ''that stage in development of an action when an Agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated'' (40 CFR 1508.23). The statements of desired conditions (goals) and objectives in a plan typically influence the choice and design of future proposed projects and activities in the plan area. However, the influence that desired conditions have on the direct, indirect, and cumulative effects of future projects or activities is not known and cannot be meaningfully analyzed until such projects and activities are proposed by the Agency.

Meaningful analysis of the effects of a plan is not possible because plan components typically cannot be linked in a cause-effect relationship over time and within a geographic area to effects on the human environment. This cause-effect relationship is lacking when plans do not include proposals for actions that approve projects and activities; that command anyone to refrain from undertaking projects and activities; or that grant, withhold, or modify

contracts, permits, or other formal legal instruments.

The Agency views a final decision on a proposed action as having effects on the air quality; threatened and endangered species; significant scientific, cultural, and historic resources; water quality; or other resources when such effects may occur without additional action from the Agency other than routine administrative actions to carry out the decision. There normally is a *cause-effect relationship* between the project or activity and the environmental impacts. For example, there would normally be a *cause-effect relationship* between the decision to approve a timber sale and the direct, indirect, and cumulative effects on the environment of the timber sale project.

No such cause-effect relationship exists when the Agency merely designates an area as suitable for timber harvest because a timber sale may never be proposed for the area. Even though the area is designated as suitable for timber harvest, the area may never be used for timber harvest. For land management plans developed under the proposed planning rule, a cause-effect relationship typically does not exist. To establish a cause-effect relationship for a land management plan, plan revision, or plan amendment, it is not sufficient to find that one or more plan components increase or decrease the likelihood of effects from future actions on one of the unit's resources. A plan component may indeed be a preliminary step for a later decision, which has environmental effects. Unless and until that later decision is made and carried out, no effects occur. Thus, the act of planning done, while preliminary to the decision, itself causes no effects. It is only when a plan component by itself, without further analysis and decisionmaking by the Agency, will either allow actions or prohibit actions by the Agency or other parties that effects on natural resources may be caused by the plan component.

While a plan includes desired conditions (goals) and objectives, the Forest Service does not make a decision on an action aimed at achieving desired conditions or objectives until the Agency proposes projects and activities under the plan. Thus, the decision to adopt, amend, or revise a plan is typically not the point in the decisionmaking process at which the Agency is proposing an action likely to have a significant effect on the human environment.

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

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

The Supreme Court also described plans as merely strategic and without any immediate on-the-ground impact in the *SUWA* decision discussed above in the preamble section titled ''*The Strategic nature of land management plans.*'' In both cases, the Supreme Court recognized the strategic nature of plans. The Supreme Court's analysis is consistent with and reinforces the Forest Service's approach to this issue, which is based on 25 years of completing EISs for plans. The Supreme Court's analysis also supports the approach to planning and NEPA compliance that we are taking in the proposed rule.

In accordance with NFMA, NEPA, and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provision of NEPA, this proposed rule will ensure that Forest Service NEPA analysis will be appropriately timed to coincide with those stages in Agency planning and decisionmaking likely to have a significant effect on the human environment. The proposed rule emphasizes the clear distinction between the adoption, revision, or amendment of a plan, versus projects and activities having on-the-ground environmental effects. In this proposed rule, the Agency clarifies that plans are strategic. Because plans are strategic, this proposed rule specifies that plans, plan amendments, and plan revisions may be categorically excluded from NEPA documentation as specified in Agency NEPA procedures.

The CEQ regulations (40 CFR parts 1500–1508) require that each Agency establish specific criteria for and identification of three types of actions: (1) Those that normally require preparation of an environmental impact statement (EIS); (2) those that normally require the preparation of an environmental assessment (EA); and (3) those that normally do not require either an EA or EIS. Actions in this third type are defined as categorical exclusions because they do not individually or cumulatively have a significant impact on the human environment; therefore, neither an environmental assessment nor an environmental impact statement is required (40 CFR 1508.4).

A categorical exclusion is not an exemption from the requirements of NEPA. Categorical exclusions are an essential part of NEPA implementation. Categorical exclusions provide a categorical determination that certain actions do not result in significant impacts, eliminating the need for individual analyses and lengthier documentation for those actions. Before the Forest Service approves a categorical exclusion, the Agency extensively analyses any effects from the type of action under consideration. If the Agency determines that potential effects of the action are non-significant and if CEQ finds that the Agency's determination conforms with NEPA and the CEQ regulations, only then can the Agency approve a categorical exclusion.

To reduce excessive paperwork, CEQ regulations at 40 CFR 1500.4(p), 1507.3, and 1508.4 direct agencies to use categorical exclusions to define categories of actions, which do not individually or cumulatively have a significant effect on the human environment and do not require the preparation of an environmental assessment or an environmental impact statement. Current Forest Service procedures for complying with and implementing NEPA are set out in Forest Service Handbook (FSH) 1909.15.

The Forest Service approved a categorical exclusion for the development, amendment, and revision of plans on December 15, 2006 (71 FR 75481). The categorical exclusion is set out in FSH 1909.15, chapter 30, which is available electronically at *http://www.fs.fed.us/im/directives.* The Agency proposed the categorical exclusion on January 5, 2005 (70 FR 1062). The Forest Service provided a 60-day comment period on the proposed land management planning categorical exclusion (Planning CE) (70 FR 1062;

January 5, 2005). The Forest Service received 55,000 comments in 3,334 responses (letters, form letters, and petitions). In addition, the Forest Service presented and sought public comment on this approach to NEPA and NFMA planning in the 2002 proposed rule. The categorical exclusion clarifies that, absent extraordinary circumstances, plan development, plan amendment, or plan revisions do not significantly affect the environment, and thus are categorically excluded from further NEPA analysis. The Forest Service will comply with all applicable NEPA requirements, including preparation of an EA or an EIS where appropriate, for example, when considering specific projects or making other project-specific decisions that may affect the human environment.

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

Public Participation

This proposed rule includes extensive opportunity for public participation that goes beyond the requirements for public participation under the NEPA EIS process and improves the clarity of the process for public notification (§ 219.9). For example, the proposed rule requires the Forest Service to involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program.

Evaluations and Documentation

This proposed rule requires three types of evaluation reports: Comprehensive evaluations, evaluations for plan amendments, and annual evaluations of monitoring information (§ 219.6). Evaluation reports: (1) Document existing social, economic, and ecological conditions and trends; (2) will be available to the public and included in the plan document or set of documents; (3) are prepared for plan development, plan amendment, and plan revision; (4) use a systematic and interdisciplinary approach (§ 219.7(a)); and (5) consider environmental amenities and values along with economic and technical considerations (§ 219.10).

The responsible official will supplement the plan document or set of documents with annual evaluation reports and with other information as appropriate to form a continually refreshed and current analytical base of information. Because of this more current information base, evaluations will supply a much stronger and more robust source of information to rely on for project and activity environmental analysis than a plan level EIS prepared as required under the 1982 planning rule.

Cumulative Effects

Predictive EIS environmental analysis under the 1982 planning rule grew increasingly stale over time when the information and analyses were not updated. In contrast, the proposed rule will support more timely and informed consideration of cumulative effects. To account for cumulative effects of management and natural events, this proposed rule requires (§ 219.6(a)): (1) A comprehensive evaluation of current conditions and trends for the development of a new plan or plan revision; (2) annual plan monitoring and evaluation; and (3) update of the comprehensive evaluation of current conditions and trends at least every 5 years. The plan document or set of documents also supports a robust information base for the consideration of cumulative effects of Agency proposals in NEPA documents prepared for projects or activities.

The Relationship Between EMS and NEPA

For some elements of the adaptive management process, EMS will generate information that may be useful in Agency NEPA analysis of projects and activities. However, the greatest improvement in Agency operations will be associated with completing the adaptive management cycle described in the proposed rule. This will lead to an improvement in plan components under which responsible officials will conduct project and activity NEPA analysis.

Under the 1982 planning process, the Agency collects information about environmental conditions to prepare detailed NEPA analysis and document plan development, plan amendment, or plan revision. There is no effective system for keeping this information current, because the collection and analysis of information often stops when the NEPA analysis and documentation is finished. Therefore, the information collected for the environmental documents for 125 NFS units can grow stale as environmental, social, and economic conditions change. Further, the focus of the information collection and analysis process is on NEPA analysis and documentation, rather than for use in the ongoing adaptive management process of the administrative unit. Therefore, the large volume of information and analysis that is created over a long period is often used as a snapshot for making a single decision (plan, plan amendment, or plan revision), instead of being integrated into a dynamic, ongoing adaptive management system to effectively manage units.

This rule will improve this situation by requiring each forest, grassland, prairie, or other comparable administrative unit to carry out an EMS that includes defined procedures for identifying environmental aspects, keeps that information current, and includes monitoring and measurement procedures for continually evaluating conditions in the unit. The EMS requirement is separate from any obligations to develop EISs, EAs, or CEs. Therefore, the obligation to keep this information current and available to the public for review is separate from the obligation to create a NEPA document. The Agency will use this EMS information to formulate the plans that are the subject of this rule, to manage administrative units on an ongoing basis, and to develop and to analyze specific project and activity proposals that trigger the need for EISs, EAs, or CEs. By carrying out EMS, administrative units will collect and evaluate the data on an ongoing basis to improve on a timely basis the plan components and create documents needed for NEPA. This will enable the Agency to efficiently create accurate and relevant NEPA documents. This proposed rule will ensure that managers of the administrative unit and the public have access to a ''library'' of current information, analyses, and research that, through EMS, will be used by managers of the administrative unit to adapt management practices to avoid unwanted environmental effects.

• *Summary*

This proposed rule emphasizes the strategic nature of NFMA land management plans and permits more flexibility in carrying out projects in response to ongoing developments in scientific understanding and changing on-the-ground conditions, such as unforeseen natural disasters. It requires that responsible officials take into account the best available scientific information. It requires public involvement and collaboration

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

4. Section-by-Section Explanation of the Proposed Rule

In this proposed rule, the Agency listed the proposed sections in order of those that are more general first, followed by those that are more specific. The first section introduces the reader to what is covered in this proposed rule and acknowledges the multiple-use and sustained yield productivity mandate of the Forest Service (§ 219.1). Section 219.2 describes planning in general and the levels of planning in the Agency. Then, this proposed rule contains a general description of plans (§ 219.3); NEPA compliance (§ 219.4); EMS (§ 219.5); the specific plan requirements (§§ 219.6–219.12); followed by objections to plans, plan amendments, or plan revision (§ 219.13); effective dates and transition (§ 219.14); severability (§ 219.15); and definitions (§ 219.16).

Section 219.1—Purpose and Applicability

This section introduces the reader to what is covered in this proposed rule, acknowledges the multiple-use and sustained-yield productivity mandate of the Forest Service, and directs the Chief of the Forest Service to establish planning procedures in the Forest Service directives. The Agency clarifies the goal to sustain the multiple uses of its renewable resources in perpetuity while maintaining the long-term productivity of the land.

Section 219.2—Levels of planning and Planning Authority

This section describes planning, the levels of Agency planning, and the basic authorities and directions for developing, amending, or revising a plan.

Section 219.3—Nature of Land Management Planning

This section describes the nature of planning, and the force and effect of plans.

Section 219.4—National Environmental Policy Act Compliance

This section describes how planning will comply with NEPA.

Section 219.5—Environmental Management Systems

This section describes the requirements for EMS and responds to public comments about how planning relates to adaptive management. This proposed rule defines adaptive management as a natural resource management approach in which actions are designed and executed, and effects are monitored to improve the efficiency and responsiveness of future management actions. The ''Overview of the 2007 Proposed Rule'' section of the preamble describes in detail the provisions of this section for EMS.

Section 219.6—Evaluations and Monitoring

This section specifies requirements for plan evaluation and plan monitoring. This proposed rule allows the responsible official to change the monitoring program by making an administrative correction and notifying the public, rather than requiring plan amendments. This administrative correction will enable the plan to more quickly reflect the best available science and account for unanticipated changes in conditions. The responsible official will notify the public of changes in a monitoring program, and the responsible official can involve the public in a variety of ways in developing changes to the program. Discussions of both evaluation and monitoring are found in the ''Overview of the 2007 Proposed Rule'' section of the preamble. The Agency is proposing a requirement for comprehensive evaluation of the area of analysis (§ 219.6(a)(1)) at no longer than 5-year intervals and conducting an evaluation when amending a plan (§ 219.6(a)(2)). The Agency has also proposed a provision that the monitoring program take into account the best available science to improve the evaluation process.

One clarification about the requirement at § 219.6(b)(2)(ii) may help understanding. This paragraph requires that the responsible official design the monitoring program to determine the effects of management on the productivity of the land. The term ''productivity'' refers to all of the multiple uses, such as outdoor recreation, range, timber, watershed, and wildlife and fish. Use of this term is broader than just commercial uses.

Section 219.7—Developing, Amending, or Revising a Plan

This section includes requirements for plan components; planning authorities; plan processes, including considering lands for recommendation as potential wilderness areas; developing plan options; administrative corrections; plan document or set of documents; and the plan approval document.

As explained in the ''Overview of the 2007 Proposed Rule'' section of the preamble, plans previously contained standards. Plans under the proposed rule will contain guidelines (§ 219.7(a)(iii)) due to the strategic nature of plans. The Agency believes mandatory standards are too restrictive to be effective for project design because of variable site conditions. The Forest Service directives provide additional direction for writing plan guidelines, many of which will be measurable. To make project consistency with guidelines easy for decisionmakers and the public to check, Forest Service directives provide criteria for guidelines and require guidelines be written clearly (FSH 1909.12, chapter 10). This proposed rule also allows forest-wide and area-specific guidelines. As discussed earlier in the preamble in the ''Overview of the 2007 Proposed Rule,'' if the responsible official decides a variance from the guideline is necessary, 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.

Although the proposed rule does not specifically identify standards as a plan component, the proposed rule also does not preclude their inclusion in plans; responsible officials may include standards in plans under extraordinary circumstances. Standards may include specific decisions (prohibiting motorized cross-country travel or prohibiting boat use on a specific river segment). If a responsible official proposes this kind of standard in a plan, the standard must be considered in an appropriate NEPA analysis.

Plans may reference other sources of information besides the five plan components of desired conditions, objectives, guidelines, suitability of areas, and special areas. Other sources of information may include previous plan decisions that remain in place and become part of the new plan, or other

sources of direction and guidance. There is a wide variety of other sources of information for project and activity decisionmaking. This information can be laws, regulations, policy (FSM and FSH), memoranda of understanding, conservation strategies, programmatic agreements, species accounts, scientific literature, and other sources. The responsible official may cross-reference other sources of information in the plan. Plans should not repeat existing direction found in laws, regulations, and Forest Service directives.

Note that at the project or activity level, the responsible official can bring the other sources of information to bear in response to the specific conditions found in the project area. The responsible official adopts project specific guidelines and other sources of information for individual projects or activities through the project or activity decision. The specific items adopted become binding commitments for the life of that project or activity.

When responsible officials revise plans, some of the plan provisions and their NEPA analysis may be still relevant and current. If so, the responsible official may propose to retain the previous provisions in the revised plan. For example, guidelines for Grizzly Bear Habitat Conservation for the Greater Yellowstone Area National Forests adopted in the April 18, 2006, Record of Decision amending the Greater Yellowstone National Forest plans would likely remain relevant and current for subsequent project and activity decisions on those forests even after those plans are revised in future years. The responsible official may carry over provisions into the revised plan. Responsible officials would identify the specific provisions that they propose to retain in the plan revision. Like other provisions in plans, subsequent projects and activities must be consistent with such provisions.

Special area identification (§ 219.7(a)(v)) is an integral part of the planning process. This proposed rule provides for the identification of special areas in the plan. After reviewing comments, and consideration of the Forest Service's experience with planning over the past 25 years, the Agency concluded that guidance about special area concerns, such as potential wilderness evaluations or social and economic values, are more properly included in the Forest Service directives. Provisions in directives can be more extensive and easier to revise as the Agency learns how to improve its processes and as new scientific concepts become available.

The intent is to allow plans to recognize categories of special areas established by Congress, the Department, or the Agency. FSM 2370 and FSH 1909.12, chapter 10 display categories of special areas meeting these criteria. To ensure a consistent approach, plans should limit special areas to those listed in these directives. If a land area does not qualify as a special area, but needs specific guidance, planners may specify that through other plan components.

If the responsible official needs to propose actions or prohibitions to reach the desired conditions for a special area, that proposal must be covered by separate appropriate National Environmental Policy Act (NEPA) analysis for an individual area or a group of areas. For example, appropriate site-specific NEPA analysis and decisionmaking would be required to support the establishment of a research natural area or a closure order that prohibits or restricts public access in a special area.

Section 219.7(b) provides for administrative corrections to plans. This proposed rule, at § 219.7(b)(5), proposes a category for administrative corrections to include non-substantive changes in the plan document or set of documents. Administrative corrections may not be used to make substantive changes in the plan components. The Agency made this proposal to supply a specific way to allow for timely updates of new science and other sources of information into the plan document or set of documents. Changes to the plan document or set of documents may also occur when the responsible official removes outdated documents, for example, when a new inventory replaces an older one.

Administrative corrections may not be used to change long-term sustained-yield capacity (LTSYC) or the timber sale program quantity (TSPQ). The LTSYC is the amount of timber that can be removed annually in perpetuity on a sustained-yield basis from lands generally suitable for timber harvest (FSM 1921.12, FSH 1909.12, chapter 60). Responsible officials base these estimates on the amount of timber that could be removed assuming the desired vegetation conditions for the area have been fully achieved. This is an NFMA requirement (16 U.S.C. 1611). This is a substantive limit and the proposed rule would not allow a responsible official to change LTSYC by an administrative correction.

The TSPQ is the average projected output of wood fiber for the plan area. The projected outputs reflect past and projected budget levels and organizational capability to accomplish timber harvest activities. Calculations of the TSPQ include all planned outputs of wood fiber sold from NFS lands. This includes all sawlogs, veneer bolts, and other material such as pulpwood and firewood. The TSPQ should be identified in the ''objectives'' plan component. This is a substantive plan component and the responsible official may not change TSPQ by an administrative correction.

FSH 1909.12, section 65 requires documentation of the projected vegetation management practices by acres and volume in the first decade of the plan. Projected vegetation management practices are not commitments to action and do not have on-the-ground effects. Vegetation management practices may include regeneration cutting, uneven-aged management, intermediate harvesting, reforestation, and timber stand improvement. These projections of acres and volume are mere estimates of what the Agency might do in carrying out projects and activities under the plan. These projections are not aspirations or outcomes but the estimates of potential timber harvest methods within the plan unit based on past performance. However, past performance is no indication of future performance because circumstances beyond the Agency's control may affect performance. Therefore, these projected vegetation management practices are not substantive and the responsible official may change them by administrative corrections.

The responsible official must involve the public in designing the monitoring program (§ 219.9(a)). The responsible official must notify the public of changes in the monitoring program (§ 219.9(b)(2)(iii)). The proposed rule allows the plan's monitoring program to be changed with administrative corrections, rather than plan amendments, to more quickly reflect the best available science and account for unanticipated changes in conditions. The responsible official can involve the public in a variety of ways to develop program changes.

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

This section describes how the responsible official applies new plans, plan amendments, or plan revisions to new or ongoing projects or activities. This proposed rule requires project or activity consistency with the applicable plan. In addition, paragraph b of this section describes how projects or activities developed after approval of

the plan must be consistent with applicable plan components. The wording of this section conforms to 16 U.S.C. 1604(i). The Agency has placed more guidance on plan consistency in FSH 1909.12 section 11.4.

Section 219.9—Public Participation, Collaboration, and Notification

The ''Overview of the 2007 Proposed Rule'' section of the preamble contains a discussion of public involvement. The Agency has placed more guidance on public participation in FSM 1921.6 and FSH 1909.12, chapter 30.

Section 219.10—Sustainability

This proposed rule proposes sustainability as the goal for NFS planning and proposes the concept of the interrelated and interdependent social, economic, and ecological elements of sustainability.

This proposed rule at § 219.10(b)(1) requires plan components to provide a framework to sustain the characteristics of ecosystem diversity in the plan area. The Agency defines the term *characteristics of ecosystem diversity* at FSM 1905. These characteristics are parameters that describe an ecosystem composition (such as major vegetation types, rare communities, aquatic systems, and riparian systems); structure (such as successional stages, water quality, wetlands, and floodplains); principal ecological processes (such as stream flows and historical and current disturbance regimes); and soil, water, and air resources. Providing the characteristics of ecosystem diversity is the primary way a plan will contribute to sustaining native ecological systems. Thus, plans provide for sustaining systems, the systems provide for diversity, and Forest Service meets NFMA requirements.

To carry out this goal, this proposed rule proposes a two-level approach to sustaining ecological systems: Ecosystem diversity and species diversity. The Agency defines the specific procedures for the two-level approach in FSM 1921.7 and FSH 1909.12, chapter 40. For example, FSM 1921.76c specifies how to sustain species diversity. FSM 1921.76c says 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 ''Overview of the 2007 Proposed Rule'' section of the preamble contains a further discussion of sustainability.

Section 219.11—Role of Science in Planning

This proposed rule requires the responsible official to take into account the best available science. The Agency proposes the words ''take into account'' because this term better expresses that formal science is just one source of information for the responsible official and only one aspect of decisionmaking.

This proposed rule states that the responsible official may use independent peer reviews, science advisory boards, or other review methods to evaluate science used in the planning process. Forest Service directives specify specific procedures for conducting science reviews at FSM 1921.8 and FSH 1909.12, chapter 40. The ''Overview of the 2007 Proposed Rule'' section of the preamble discusses the role of science in planning.

The Agency 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. Under this proposed rule, the responsible official must: (1) Document how the best available science was considered in the planning process within the context of the issues being considered; (2) evaluate and disclose any substantial uncertainties in that science; (3) evaluate and disclose substantial risks associated with plan components based on that science; and (4) document that the science was appropriately interpreted and applied. Any interested scientists can be involved at any of the public involvement stages.

Section 219.12—Suitable Uses and Provisions Required by NFMA

This section discusses identification of suitable land uses, identification of lands not suitable for timber production, and NFMA requirements for timber. This proposed rule requires the Chief of the Forest Service to develop directives to discuss the timber provisions for NFMA. The Forest Service developed directives under the enjoined 2005 rule that applied to timber. FSM 1921.12 and FSH 1909.12, chapter 60 specifies guidance for timber provisions of NFMA.

Guidance for suitable uses, under paragraph (a) of this section, describes the identification of suitable land uses. NFS lands are generally suitable for a variety of multiple uses, including timber harvest and timber production, unless administratively withdrawn or prohibited by statute, Executive order, or regulation. On lands generally suitable for timber, the Forest Service may harvest timber for a variety of purposes, such as creating openings for wildlife or for fuels reduction and restoration. If timber production is not an objective for lands generally suitable for timber, the responsible official must identify these lands as not suitable for timber production (§ 219.12(a)(2)). More guidance for identification of lands not suitable for timber harvest and guidance for timber harvest is placed in the Forest Service directives at FSM 1921.12 and FSH 1909.12, chapter 60.

In addition, Forest Service directives discuss other NFMA requirements for timber. These requirements include limitations on timber harvest and provisions for plans to determine forest management systems, restocking requirements, harvesting levels in light of the multiple uses, and the potential suitability of lands for resource management, as well as projections of proposed and possible actions, including the planned timber sale program. The Agency placed detailed NFMA requirements in the directives (FSM 1921.12, FSH 1909.12, chapter 60) to balance the specific procedures for timber and the provisions for other sections of this proposed rule.

In addition, the Agency supplies detailed guidance for determining the culmination of mean annual increment (CMAI) in the Forest Service directives. NFMA requires establishment of guidance so that stands of timber, not individual trees, generally have reached CMAI. The Forest Service directives clarify the technical limits of the CMAI concept at FSM 1921.12 and FSH 1909.12, chapter 60.

Forest Service directives stipulate guidance for restocking requirements at FSH 1921.12 and FSH 1909.12, chapter 60. Forest Service directives meet the requirement of NFMA to ensure that timber will be harvested from NFS lands only where there is assurance that such lands can be adequately restocked within five years after harvest. Adequate restocking may vary depending on the purpose of a harvest and the objectives and desired conditions for the area. Restocking is not required for lands harvested to create openings for fuel breaks and vistas, to prevent

encroaching conifers, and other similar purposes. This will apply to all timber harvest, including final regeneration harvest. Therefore, responsible officials will include guidance in plans for adequate restocking depending on the purpose of a harvest, the desired conditions, and objectives for the area.

This proposed rule uses the expression ''generally suitable'' because identification of suitability is guidance and responsible officials must approve suitability for specific activities through project and activity decisionmaking. In response to public comment and to clarify the criteria for identifying suitability, this proposed rule has listed the resources as outdoor recreation, range, timber, watershed, and wildlife and fish purposes so that the resources listed are consistent with the Multiple-Use Sustained-Yield Act (MUSYA) of 1960 (16 U.S.C. 528–531). Energy resource development and mining activities are not included in § 219.12(a)(1) because, even though allowable uses on many NFS lands, they are not renewable surface resources listed in MUSYA.

Forest Service directives discuss the upper limit of timber and use long-term sustained-yield capacity as the upper limit of timber that the Forest Service may harvest during the planning period (FSM 1921.12, FSH 1909.12, chapter 60).

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

This section sets up the objection process as a way the public can challenge plans, plan revisions, or plan amendments before the responsible official approves them. The Agency expects the objection process to resolve many potential conflicts by encouraging resolution before the responsible official approves a plan, plan amendment, or plan revision.

The Committee of Scientists (COS), in their 1999 report, recommended that the Forest Service seek to harmonize its administrative appeal process with those of other Federal agencies. The COS 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 Agency is proposing the pre-decisional objection process (§ 219.13) to replace the appeals process under the 1982 rule. The objection process complements the public participation process because 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 proposed rule is the same as the BLM protest process. This proposed rule does not specify a time limit for Agency responses. This proposed rule has adopted the BLM requirement that the reviewing officer promptly render a decision on the objection. To move forward it is in the interest of the Agency to render a decision promptly. This proposed rule does not include details about responding to objections because this information is more appropriately placed in the Forest Service directives (FSH 1909.12, chapter 50).

Section 219.13(a)(1) discusses appeals of plan amendments in site-specific decisions. The Agency specifies specific requirements for administrative review of plan amendments approved contemporaneously with a project or activity decision in 36 CFR 215 and 218, subpart A.

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.

This section defines, for pending or future plan documents, the applicable rules during the transition period. During the transition period, pending or proposed projects remain subject to the applicable forest plan.

This section allows amendment of land management plans that have not yet implemented an EMS 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), if the responsible official provides public notice during the transition period which may be up to three years. Plan revisions or development of new plans initiated before the effective date of this rule may continue under the provisions of the planning regulations in effect before November 9, 2000 or conform to this rule once the unit has established an EMS. Except for the Tongass National Forest, plan revisions or development of new plans initiated after the effective date of this rule must conform to this rule, which requires the unit to have established an EMS.

Paragraph (d)(1) of this section includes transition wording to allow the Tongass National Forest to revise its plan either under the proposed rule or the planning regulations in effect before November 9, 2000 (1982 planning rule). The Agency previously published this wording on March 3, 2006 in the **Federal Register** (71 FR 10837). This was in response to the August 5, 2005, Ninth Circuit Court of Appeals decision in *Natural Resources Defense Council* v. *U.S. Forest Service,* 421 F.3d 797, that found defects in the 1997 Final EIS and Record of Decision for the Tongass Land Management Plan. The court's analysis of the 1997 forest plan was made in the context of the 1982 planning rule. For this unique situation, this proposed rule at 36 CFR 219.14(d)(1) allows the Tongass National Forest land management plan to be revised using either the 1982 planning rule or the 2005 planning rule. The Tongass National Forest mailed out a Draft Environmental Impact Statement for the Tongass Land and Resource Management Plan Amendment on January 4, 2007. The Forest Supervisor is currently reviewing the comments and will eventually finish the plan amendment process. Because the amendment is still in process and the Agency must change the Tongass Land Management Plan in response to the court decision, we are proposing the exception to remain as a contingency.

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

Providing explicitly for MIS monitoring flexibility will allow

monitoring of habitat conditions as a surrogate for population trend data. It is appropriate for a range of methods to be available to estimate, or approximate, population trends for MIS. The responsible official will determine which monitoring method or combination of monitoring methods to use for a given MIS.

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

The sampling area should relate to the geographic range occupied by the population, and will usually far exceed the area of one project. Because of using sampling procedures in the geographic area used by a population, individual project areas might or might not be part of a sampling program designed to estimate the population. Based on the foregoing, for most species it would be technically and practically inappropriate to conduct population trend sampling at the scale of individual project areas. Consequently, where responsible officials conduct population monitoring for MIS, that monitoring should be carried out at the scale most appropriate to the species within the overall national forest, grassland, prairie, or other administrative comparable unit. Monitoring populations at the sites of individual projects is not part of this requirement. Therefore, the transition wording at § 219.14 clarifies that MIS monitoring is appropriate at the times and places appropriate to the specific species, and is not required in individual project or activity areas.

Section 219.15—Severability

The Agency has proposed a section to discuss the issue of severability, so that, if parts of this proposed rule are separately challenged in litigation, individual provisions of this rule can be severed from other parts of the rule.

Section 219.16—Definitions

This section sets out and defines the special terms used in this proposed rule.

5. Regulatory Certifications

Regulatory Impact

The Agency reviewed this proposed rule under U.S. Department of Agriculture (Department) procedures and Executive Order 12866 issued September 30, 1993 (E.O. 12866), as amended by E.O. 13422 on Regulatory Planning and Review. On all substantial matters, this proposed rule is identical to the rule on land management planning published as a final rule in the **Federal Register** at 70 FR 1034 (January 5, 2005) (also referred to as the 2005 planning rule). Therefore, the Agency has determined that documents, studies, and other analyses reporting regulatory, economic, civil rights, energy, and other potential impacts of the 2005 planning rule are also applicable to this proposed rule.

It has been determined that this proposed rule is not an economically significant rule. This proposed 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 proposed rule will neither interfere with an action taken or planned by another Agency nor raise new legal or policy issues. Finally, this proposed rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in National Forest System (NFS) planning and decisionmaking, this proposed rule has been designated as significant and, therefore, is subject to Office of Management and Budget review under E.O. 13422.

An analysis was conducted to compare the costs and benefits of implementing the proposed rule to the baseline, the 2000 planning rule. This analysis is posted on the World Wide Web/Internet at *http://www.fs.fed.us/emc/nfma/2007_planning_rule.html*, along with other documents associated with this proposed rule. The 2000 planning rule was used as the baseline because it is the no action alternative (Alternative B). Quantitative differences between this proposed rule, and the other alternatives were also estimated. Alternatives included Alternative C (the 1982 planning rule), Alternative D (2005 planning rule modified to not include the EMS requirement), Alternative E (2005 planning rule modified to not include EMS and explicitly 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 planning 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 planning rule. The main source of data used to approximate costs under the 1982 planning 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 planning rule, the 2000 planning rule, the proposed rule 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 (NFMA) 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 proposed rule would reduce the cost of producing a plan or revision by shortening the length of the planning process and providing the responsible official with more flexibility to decide the scope and scale of the planning process. The proposed 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 cumulative effects of management activities and natural events when preparing a comprehensive evaluation of the plan under the proposed rule.

Based on costs that can be quantified, carrying out this proposed rule is expected to have an estimated annual average cost savings of $30.8 million when compared to the 2000 planning rule, and an estimated annual average savings of $5.4 million when compared to estimates of the 1982 planning rule. From this cost-benefit analysis, the estimated total costs for carrying out the proposed rule are expected to be lower than the 2000 planning rule.

Total Agency costs for carrying out the proposed 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 proposed rule was estimated at $99 million, while the annualized costs for the 2000 rule was $129 million and for the 1982 rule was $104 million. The Agency expects the proposed rule to have an annualized cost savings of about $30 million when compared to the 2000 planning rule, and an estimated annualized savings of $5 million when compared to estimates of the 1982 planning rule.

While using a 7 percent discount rate for the same timeframe, the results show that the annualized cost estimate for the proposed rule is $99.2 million and the estimated annualized cost for the 2000 rule and the 1982 planning rule are $127.2 million and $103.2 million respectively. Based on these annualized cost estimates at 7 percent discount rate, use of this proposed rule is expected to have an annualized cost savings of $28 million when compared to the 2000 planning rule, and an estimated annualized savings of $4 million when compared to estimates of the 1982 planning rule. This quantitative assessment indicates a cost savings for the Agency using the proposed rule.

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

Environmental Impacts

This proposed rule establishes the administrative procedures to guide development, amendment, and revision of NFS land management plans. This proposed rule, like earlier planning rules, does not dictate how administrative units of the NFS are to be managed. The Agency does not expect that this proposed 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 that this proposed 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, due to the court's decision in *Citizens for Better Forestry et al.* v. *U.S. Department of Agriculture,* No. C 05–1144 PJH from the U.S. District Court in the Northern District of California, (March 30, 2007) and the Agency's desire to reform the planning process, the Agency has determined to prepare an environmental impact statement to analyze possible environmental effects of the proposed rule and present several alternatives to the proposed rule and potential environmental impacts of those alternatives. An environmental impact statement (EIS) is being developed concurrently with this rulemaking. The Draft EIS is available on the Internet at *http://www.fs.fed.us/emc/nfma/2007_planning_rule.html*. The draft EIS explains that there are no environmental impacts resulting from the promulgation of this proposed rule.

Energy Effects

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

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or reporting requirements for the objection process were previously approved by the Office of Management and Budget (OMB) and assigned control number 0596–0158, expiring on December 31, 2006, for the 2005 planning 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 extension.

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

Federalism

The Agency has considered this proposed rule under the requirements of Executive Order 13132 issued August 4, 1999 (E.O. 13132), ''Federalism.'' The Agency has made an assessment that the proposed rule conforms with the Federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of

power and responsibilities among the various levels of government. Therefore, the Agency concludes that this proposed rule does not have Federalism implications. Moreover, § 219.9 of this proposed rule shows sensitivity to Federalism concerns by requiring the responsible official to meet with and provide opportunities for involvement of State and local governments in the planning process.

In the spirit of E.O. 13132, the Agency consulted with State and local officials, including their national representatives, early in the process of developing the proposed regulation. The Agency has consulted with the Western Governors' Association and the National Association of Counties to obtain their views on a preliminary draft of the 2002 proposed rule. The Western Governors' Association supported the general intent to create a regulation that works, and placed importance on the quality of collaboration to be provided when the Agency implements the regulation. Agency representatives also contacted the International City and County Managers Association, National Conference of State Legislators, The Council of State Governments, Natural Resources Committee of the National Governors Association, U.S. Conference of Mayors, and the National League of Cities to share information about the 2002 proposed rule prior to its publication. Based on comments received on the 2002 proposed rule, the Agency has determined that additional consultation was not needed with State and local governments for the promulgation of the 2005 planning rule, and thus this proposed rule. State and local governments are encouraged to comment on this proposed rule, in the course of 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 proposed rule on Indian Tribal governments and has determined that the proposed rule does not significantly or uniquely affect communities of Indian tribal governments. The proposed 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 § 219.9(a)(3), the proposed rule requires consultation with federally recognized tribes when conducting land management planning.

The Agency has also determined that this proposed rule does not impose substantial direct compliance costs on Indian Tribal governments. This proposed rule does not mandate Tribal participation in NFS planning. Rather, the proposed 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 proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 issued March 15, 1988, and it has been determined that the proposed rule does not pose the risk of a taking of private property.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this proposed rule, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) this proposed rule would not require the use of 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 proposed rule on State, local, and Tribal governments and the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, National forests, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, it is proposed to revise part 219 of title 36 of the Code of Federal Regulations to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Land Management Planning

Sec.

Subpart B—[Reserved]

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

§ 219.1 Purpose and applicability.

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

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

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

§ 219.2 Levels of planning and planning authority.

Planning occurs at multiple organizational levels and geographic areas.

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

(b) *Forest, grassland, prairie, or other comparable administrative unit.*

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

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

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

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

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

(2) *Plan amendment.* The responsible official may amend a plan at any time.

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

§ 219.3 Nature of land management planning.

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

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

§ 219.4 National Environmental Policy Act compliance.

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

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

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

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

§ 219.5 Environmental management systems.

The responsible official must establish an environmental management system (EMS) for each unit of the National Forest System. The scope of an EMS will include, at the minimum, the land management planning process defined by this subpart. An EMS for any unit may include environmental aspects unrelated to the land management planning process under this subpart.

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

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

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

§ 219.6 Evaluations and monitoring.

(a) *Evaluations.* The responsible official shall keep the plan set of documents up to date with evaluation reports, which will reflect changing conditions, science, and other relevant information. The following three types of evaluations are required for land management planning: Comprehensive evaluations for plan development and revision, evaluations for plan amendment, and annual evaluations of monitoring information. The responsible official shall document evaluations in evaluation reports, make these reports available to the public as required in § 219.9, and include these

reports in the plan set of documents (§ 219.7(a)(1)). Evaluations under this section should be commensurate to the level of risk or benefit associated with the nature and level of expected management activities in the plan area.

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

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

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

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

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

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

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

(i) Financial and technical capabilities;

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

(iii) The best available science.

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

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

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

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

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

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

§ 219.7 Developing, amending, or revising a plan.

(a) *General planning requirements*—(1) *Plan documents or set of documents.* The responsible official must maintain a *plan document or set of documents* for the plan. A plan document or set of documents includes, but is not limited to, evaluation reports; documentation of public involvement; the plan, including applicable maps; applicable plan approval documents; applicable NEPA documents, if any; the monitoring program for the plan area; and documents relating to the EMS established for the unit.

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

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

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

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

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

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

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

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

(5) *Plan process.*

(i) Required evaluation reports, plan, plan amendments, and plan revisions must be prepared by an interdisciplinary team; and

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

(6) *Developing plan options.* In the collaborative and participatory process of land management planning, the responsible official may use an iterative approach in development of a plan, plan amendment, and plan revision in which plan options are developed and narrowed successively. The key steps in

this process shall be documented in the plan set of documents.

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

(1) Corrections and updates of data and maps;

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

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

(4) Changes in timber management projections; and

(5) Other changes in the plan document or set of documents, except for substantive changes in the plan components.

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

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

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

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

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

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

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

(a) *Application of a new plan, plan amendment, or plan revision to existing authorizations and approved projects or activities.*

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

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

(b) *Application of a new plan, plan amendment, or plan revision to authorizations and projects or activities subsequent to plan approval.* Decisions approving projects and activities subsequent to approval of a plan, plan amendment, or plan revision must be consistent with the plan as provided in paragraph (e) of this section.

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

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

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

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

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

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

§ 219.9 Public participation, collaboration, and notification.

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

(a) *Providing opportunities for participation.* The responsible official must provide opportunities for the public to collaborate and participate openly and meaningfully in the planning process, taking into account the discrete and diverse roles, jurisdictions, and responsibilities of interested and affected parties. Specifically, as part of plan development, plan amendment, and plan revision, the responsible official shall involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program. The responsible official has the discretion to determine the methods and timing of public involvement opportunities.

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

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

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

(b) *Public notification.* The following public notification requirements apply to plan development, amendment, or revision, except when a plan amendment is approved contemporaneously with approval of a project or activity and the amendment

applies only to the project or activity, in which case 36 CFR part 215 or part 218, subpart A, applies:

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

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

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

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

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

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

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

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

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

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

(3) *Content of the public notice.* Public notices must contain the following information:

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

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

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

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

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

§ 219.10 Sustainability.

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

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

(b) *Sustaining ecological systems.* The overall goal of the ecological element of sustainability is to provide a framework to contribute to sustaining native ecological systems by providing ecological conditions to support diversity of native plant and animal species in the plan area. This will satisfy the statutory requirement to provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives (16 U.S.C. 1604(g)(3)(B)). Procedures developed pursuant to § 219.1(c) for sustaining ecological systems must be consistent with the following:

(1) *Ecosystem diversity.* Ecosystem diversity is the primary means by which a plan contributes to sustaining ecological systems. Plan components must establish a framework to provide the characteristics of ecosystem diversity in the plan area.

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

§ 219.11 Role of science in planning.

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

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

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

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

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

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

§ 219.12 Suitable uses and provisions required by NFMA.

(a) *Suitable uses.*

(1) *Identification of suitable land uses.* National Forest System lands are generally suitable for a variety of multiple uses, such as outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The responsible official, as appropriate, shall identify areas within a National Forest System unit as generally suitable for uses that are compatible with desired

conditions and objectives for that area. Such identification is guidance for project and activity decisionmaking, is not a permanent land designation, and is subject to change through plan amendment or plan revision. Uses of specific areas are approved through project and activity decisionmaking.

(2) *Identification of lands not suitable for timber production.*

(i) The responsible official must identify lands within the plan area as not suitable for timber production (§ 219.16) if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Use of other administrative review processes.* Where the Forest Service is a participant in a multi-Federal agency effort that would otherwise be subject to objection under this subpart, the reviewing officer may waive the objection procedures of this subpart and instead adopt the administrative review procedure of another participating Federal agency. As a condition of such a waiver, the responsible official for the Forest Service must have agreement with the responsible official of the other agency or agencies that a joint agency response will be provided to those who file for administrative review of the multi-agency effort.

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

§ 219.14 Effective dates and transition.

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

(b) *Transition period.* For each unit of the National Forest System, the transition period begins on the effective date of this subpart and ends on the unit's establishment of an EMS in accordance with § 219.5 or three years after the effective date of this subpart, whichever comes first.

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

(d) *Plan development, plan amendments, or plan revisions initiated during the transition period.*

(1) Plan development and plan revisions initiated after the effective date of this subpart 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 initiated during the transition period may continue using the provisions of the planning regulations in effect before November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2000) or may conform to the requirements of this subpart if the responsible official establishes an EMS in accordance with § 219.5.

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

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

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

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

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

§ 219.15 Severability.

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

§ 219.16 Definitions.

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

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

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

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

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

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

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

Federally recognized Indian Tribe: An Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

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

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

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

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

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

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

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

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

Reviewing Officer: The supervisor of the responsible official. The reviewing officer responds to objections made to a plan, plan amendment, or plan revision prior to approval.

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

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

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

Timber production: The purposeful growing, tending, harvesting, and

regeneration of regulated crops of trees to be cut into logs, bolts, or other round sections for industrial or consumer use.

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

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

Dated: August 13, 2007.

Sally Collins,

Associate Chief.

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