

**SUPPLEMENTAL RESPONSE TO PUBLIC COMMENTS ON THE 2002
PROPOSED PLANNING RULE**

Table of Contents

- **Introduction**
- **General Issues**
- **Comments Related to Specific Rule Sections**

Section 219.1 - Purpose and applicability

Section 219.2 - Levels of planning and planning authority

Section 219.3 - Nature of land management planning

Section 219.4 - National Environmental Policy Act compliance

Section 219.5 - Environmental management systems

Section 219.6 - Evaluations and monitoring

Section 219.7 - Developing, amending, or revising a plan

Section 219.8 - Application of a new plan, plan amendment, or plan revision

Section 219.9 - Public participation, collaboration, and notification

Section 219.10 - Sustainability

Section 219.11 – Role of science in planning

Section 219.12 - Suitable uses and provisions required by NFMA

Section 219.13 - Objections to plans, plan amendments, or plan revisions

Section 219.14 - Effective dates and transition

Section 219.15 - Severability

Section 219.16 - Definitions

- **Introduction**

The Forest Service received approximately 7,000 original letters and 195,000 total comments from a wide variety of respondents on the 2002 proposed planning rule. Each comment received consideration in the development of the final rule. The final rule contains a summary of substantive comments and responses to those comments. This report contains responses to other public comments not contained in the final rule and is part of this rule making administrative record. A complete package includes the Department response to comments in the final rule plus this supplemental report. Just as the final rule includes comments made on the 2002 proposed rule section-by-section, and describes changes made between the 2002 proposed rule and the final rule in response to those comments, this report describes other comments and Department responses.

- **General Issues**

The Department received many comments not specifically tied to a particular section of the 2002 proposed rule. The following is a summary of those comments and the Department's response.

Comment: General opinion. Some respondents supported the 2002 proposed rule for a variety of reasons. These reasons included the hope that less cumbersome planning regulations would allow for more action on the ground, such as for fuels reduction projects. Some thought the 2002 proposed rule would result in a reduction in litigation. Some felt the 2002 proposed rule maintained a balance between conservation and management activities on a forest. Some cited insect infestations that needed treatment as a reason for support of the multiple-use concepts in the 2002 proposed rule. Some commented that the 2002 proposed rule should reduce gridlock of implementing on-the-

ground management, while others thought the rule would promote economic recovery and increase public participation in the planning process.

Other respondents stated they did not support the 2002 proposed rule. Some respondents wanted the 2000 rule to be implemented, while still others wanted continued use of the 1982 rule. Some felt the 2000 rule had more public support than the 2002 proposed rule.

Response: The Department believes that the final rule provides a process that promotes good stewardship of National Forest System (NFS) lands. This rule adopts social, economic, and ecological sustainability as the goal of NFS management. In addition, the Responsible Official must establish an environmental management system (EMS) for each unit of the National Forest System. The EMS must conform to the consensus standard developed by the International Organization for Standardization and adopted by the American National Standards Institute (ANSI) as “ISO 14001: Environmental Management Systems – Specification With Guidance For Use” (ISO 14001). Through the requirement for including an EMS conforming to ISO 14001 in the land management framework, the Department is committing to that international consensus standard for continual improvement in meeting this goal. Plans will take their proper place as strategic documents. The Plan Document or Set of Documents will be kept current with the latest information and used to inform later project or activity decisions. The Department is using a complementary approach in adopting both coarse filter and fine filter strategies for biodiversity. Public collaboration and involvement will be continual throughout planning, projects, and activities that carry out the plan, and in

monitoring. Through this rule and an EMS, performance, accountability, and transparency of NFS management will be greatly enhanced.

Comment: Simplify the rule. Several respondents commented that the 2002 proposed rule was too complex and would hinder public and agency personnel understanding.

Response: The Department agrees that some portions of the 2002 proposed rule were too complex. The final rule has been simplified and reorganized. Specific changes are covered in the section-by-section discussion of the rule later in this report.

Comment: Universal procedures. One group felt there should be standard operating procedures for all NFS lands and felt this would eliminate excessive re-analysis and debate. However, this group still wanted to accommodate local planning for the unique situation of each locale.

Response: The final rule provides general guidance for management on NFS lands. The Forest Service Directive System (Forest Service directives) will include provisions in the Manual and Handbooks that provide further guidance. Plans and project design reflect the uniqueness of each area. The final rule mandates public involvement and debate and allows Responsible Officials to make decisions that are specific to a locale and that address local issues and local conditions.

Comment: Electronic mail. Many respondents expressed concerns about use of electronic mail. Several respondents believed that the 2002 proposed rule did not allow the public to comment on plans using electronic mail. On a different, but related matter, some respondents reported problems when sending in comments on the 2002 proposed rule through the Internet.

Response: The 2002 proposed rule did not restrict electronic mail, including use of duplicative material such as form letters, to provide comments on plans. However, the 2002 proposed rule did provide that duplicative material would not be accepted as objections (§219.19). Due to the concerns of respondents who disagreed with any limitations to duplicative material, the Department changed the final rule to allow duplicative material to be submitted for objections.

The problem experienced by some commenting electronically on the 2002 proposed rule was caused by a filter on a Forest Service server used to reduce undesirable email, such as advertisements coming into the Forest Service servers from an Internet service provider (ISP). The filter had an inadvertent effect, such that users sending electronic mail through that specific server had their e-mail blocked and received a reply to that effect. However, once the Forest Service realized that a filter blocked legitimate e-mail, the agency immediately removed that specific filter, and all e-mails were captured and considered for this final rule.

Comment: Funding. Some respondents requested that the agency provide adequate funding and personnel for a variety of purposes, including monitoring and inventory of recreation facilities and restoration of ecological integrity, and for personnel with expertise in the biological and social sciences to ensure science is appropriately applied to planning.

Response: The Department is concerned about funding for land management planning. The Department designed the final rule to reduce the costs of plan development, amendment, and revision to shift resources to on-the-ground management, monitoring, and evaluation for continual improvement in environmental performance.

The Department agrees that professional expertise of on-the-ground personnel is fundamental to quality management. Use of an EMS with impartial and objective audits will ensure that adequate training and accountability are provided for environmental performance with any given budget level.

Comment: Commercial activities and oversight. Some respondents asserted that the Forest Service should not allow or “subsidize” activities such as mining, timber harvest, and mineral exploration.

Response: As directed by Congress, the NFS is managed under the provisions of the NFMA, the MUSYA, and other laws. Pursuant to these laws, many commercial uses, such as timber harvest, mining, and commercial recreation activities, are recognized as appropriate uses on NFS lands.

Although the MUSYA provides for multiple uses of NFS lands, many acres of NFS lands are not suitable for every use. The final rule provides for identifying areas as generally suitable for various uses at §§ 219.7(a), and 219.12 which allow for that balance of the many potential multiple uses that are appropriate for a particular plan area while maintaining and restoring healthy, resilient ecosystems. Identification of areas as generally suitable for various uses merely indicates which uses are compatible with desired conditions and objectives for that area. Like the other components of plans developed under the final rule, suitability of an area is not a commitment or final decision approving projects and activities.

Comment: Use of “must” versus “should” language. Several respondents commented that the 2002 proposed rule appeared to weaken conservation for resources

such as wildlife by using “should” instead of “must.” Others wanted definitions for these terms.

Response: The Department has carefully reviewed “must” and “should” in the 2002 proposed rule, and has made appropriate changes in the final rule, as explained in the section-by-section portion of this report. The Department’s intent is to offer clear provisions for planning that provide the necessary balance of mandatory requirements and discretion to the Responsible Official.

Comment: Water rights. One government group commented that the planning rule should contain mandates forbidding Federal claims to State water.

Response: The planning rule properly does not provide national provisions on individual resource issues.

Comment: Information quality guidelines. One group commented that the Forest Service failed to disclose the cost analysis developed for the 2000 rule and the 2002 proposed rule and, therefore, the 2002 proposed rule did not comply with the Office of Management and Budget or USDA information data quality guidelines or both. Therefore, this group questioned associated statements in the 2002 proposed rule on expected difficulties in implementing the 2000 rule.

Response: The cost study, “A Business Evaluation of the 2000 and Proposed NFMA Planning Rules,” was available on the Forest Service World Wide Web/Internet site when the proposed planning rule was published in the **Federal Register**, and is still available at <http://www.fs.fed.us/emc/nfma/index.htm>. The Forest Service informed the group of the availability of this study and received no further inquiries associated with the planning rule about data quality.

Comment: Forest Service leadership and management. Several respondents suggested the Forest Service focus on developing leaders. The respondents believe that key management and line positions need to be filled by people with leadership skills who can effectively work with the public, resolve conflict, and motivate employees. One respondent thought that management of the NFS should be left to professional foresters. Another felt that because planning took so much time the Forest Service had become ineffective in its management responsibilities.

Response: The Department agrees that leadership is critical in management of the NFS and is continually working to develop those skills in current and future agency leaders. In addition, the Forest Service is developing training for agency employees for plan development under this rule and intends to emphasize adaptive management and EMS skills in that training. With respect to agency effectiveness and management of NFS land and resources, the Department believes that providing a structure through adaptive management and EMS to link on-the-ground management and planning through a cycle of continual improvement will enable both people and activities to be more effective.

Comment: Takings. Several respondents commented that an analysis of potential “takings” of private property should accompany the planning rule to consider property interests.

Response: The Department finds that there are no “takings” implications by the final rule. The rule establishes a planning process that applies only to NFS lands, not to private property.

Comment: Delay the rule. One person commented that the planning rule should not be implemented until various other processes are completed, such as surveys on lands damaged by wildfire.

Response: The final rule provides a stronger monitoring and evaluation process that allows Responsible Officials to adjust plans more easily for an unplanned event, such as a wildfire. While the Department appreciates the importance of the surveys mentioned, the Department will not delay the final rule while these surveys and other important activities occur on NFS lands.

Comment: Increase logging for wildlife. One person commented that logging needs to be increased because the current low level is detrimental to certain bird species

Response: Because a planning rule provides how to develop plans throughout the entire NFS, a planning rule should not require that harvest levels be either increased or decreased. Such decisions are appropriate after consideration of on-the-ground resource conditions.

Comment: Rulemaking should go slowly. Several respondents commented that plans take a long time to develop and questioned what they perceived as a rush to develop a new rule. Others requested a rule be developed that will stand the test of time and not be unduly influenced by politics.

Response: The Department has been aware of planning problems and has been trying to revise the planning rule since 1989 when the “Synthesis of the Critique of Land Management Planning” was developed. The Department feels there has been ample time to develop this planning rule, especially considering that the Forest Service has had over 25 years of experience with planning under NFMA. The rule was developed by

Washington Office and field-level Forest Service personnel, all with decades of field-level planning and resource management experience, with consideration of previous efforts such as the recommendations of the 1999 Committee of Scientists report and the 2000 rule. The Department also desires a rule that will stand the test of time and believes that this final rule contains the proper balance of direction and flexibility needed to allow the Responsible Official to respond not just to today's issues but also to the issues of tomorrow. The rule was developed to ensure efficient and effective land use planning procedures and was not unduly influenced by political considerations.

Comment: Extension of comment period. Several respondents requested an extension of the public comment period. One reason given was the need to review the proceedings from the Diversity Workshop before submitting comments.

Response: The Department extended the comment period from March 6, 2003, to April 7, 2003.

Comment: Balanced rule. One person's comments expressed support for an Environmental Impact Statement (EIS) for planning, meaningful public involvement, and differentiation in the rule between "micro- and macro-level planning streamlining." This person wanted a rule that is balanced.

Response: The Department discusses issues about use of an EIS and public involvement in the preamble to the final rule. The Department believes the final rule does provide a desirable balance. Indeed, there is substantial discussion in the preamble about the differences between decisions at the strategic level (plans) and at the project and activity level, for which the Forest Service can meaningfully evaluate the

environmental effects. A comprehensive look at a plan approval, project and activity decisions, and ongoing analysis will be included in the Forest Service directives.

- **Comments Related to Specific Rule Sections**

Following are responses to public comments received on specific proposed sections in 36 CFR part 219 during the Department’s comment period on the 2002 proposed rule, including discussion of the differences between the 2002 proposed rule and the final rule and why these changes were made. The final rule has been reorganized. As a result, some sections have new titles and/or new designations as shown in Table 1 in Part 4 of the preamble of the final rule. In this Supplemental Report, sections with substantial reorganization have detailed discussion on the structure of that section. In particular, the specific planning process requirements of the 2002 proposed rule have been consolidated into §§219.6 and 219.7 of the final rule.

In addition, the heading for subpart A in the 2002 proposed rule, “National Forest System Planning for Land and Resource Management Plans,” has been shortened and simplified in the final rule to “National Forest System Land Management Planning,” which is a term also used in NFMA. This discussion of each section follows the numbering and titles adopted in the final rule, with references to where the text was located in the 2002 proposed rule.

Section 219.1 – Purpose and applicability

This section is coded the same in the final rule as it was in the 2002 proposed rule. This section describes the purpose of the rule and its applicability. This section describes the overall goal of sustainability and the relationship of sustainability to NFMA and MUSYA. The Department kept the 2002 proposed rule language, with some clarification

about the overall goal to sustain the multiple uses of its renewable resources in perpetuity while maintaining the long-term productivity of the land. The phrase “planning occurs over multiple time frames and geographic areas” has been moved to §219.2 in the final rule and changed to “Planning occurs at multiple organizational levels and geographic areas.”

In addition, in paragraph (a), instead of describing plan elements as “decisions,” the final rule describes the elements of a plan as “components,” because the only “decision” is the plan approval. Therefore, the final rule language reflects this change. In addition, in paragraph (b), the final rule clarifies that maintaining or restoring the health of the land enables the NFS to provide a sustainable flow of uses and so forth.

Finally, the final rule adds provisions in paragraph (c) for the Chief of the Forest Service to establish planning procedures in the Forest Service directives. This paragraph was added because in some sections of the final rule procedures are removed with the understanding that they will be added to the Forest Service directives. The addition in paragraph (c) ensures that Forest Service develops directives for the whole rule, and thus, avoids repetition in individual sections of the rule. However, specific requirements to include provisions in the Forest Service directives are also stated elsewhere in the final rule when topics are new, such as EMS, or where, based on public comment, the Department believes movement to the Forest Service directives was of particular interest to the public, such as sustainability and provisions required by NFMA.

Comment: Role of politics in planning. Some respondents commented that the planning process goes smoothly when Forest Supervisors and District Rangers are allowed to go through the planning process without political interference. These

respondents requested that the Forest Service ensure that the planning process be free of political interference.

Response: Planning is a public process and is open to everyone who is interested in management of the NFS lands. Elected officials, as well as groups, tribes, and others can participate in planning.

Comment: Planning in eastern forests. Some respondents commented that eastern forests are different than the vast tracts found in the west; therefore, they should be managed differently.

Response: The final rule provides a flexible planning framework to address the specific needs of each NFS unit.

Section 219.2 – Levels of planning and planning authority

This section was located in the 2002 proposed rule at §219.3, but has been re-designated at §219.2 as part of the overall reorganization of the final rule. This section of the rule describes that planning occurs at multiple organizational levels and geographic areas. This section sets out the provisions for the positions authorized to serve as the Responsible Official for planning occurring at the national level; the national forest, grassland, prairie, or other comparable administrative unit level; and the project or activity level.

The Department changed text in this section at paragraph (b) to include the concept that land management plans provide broad guidance and information for project and activity decisionmaking in a national forest, grassland, prairie, or other comparable administrative unit. In addition, the paragraphs (b), (c), and (d) of the 2002 proposed rule have been moved to paragraph (b) of the final rule but reworded for clarity. Paragraph

(c) has been added to provide requirements for authorities for projects and activity decisions. To set the stage for subsequent rule sections, paragraph (d) has been added to the final rule to provide a general description of the provisions for developing, amending, or revising a plan. Other text in this section has been retained, except for minor changes to improve readability and eliminate redundancies.

Comment: Station Director concurrence. One respondent said that the concurrence of the appropriate Station Director for decisions involving experimental forests should also be extended to decisions involving Research Natural Areas (RNAs).

Response: Experimental forests contain active, often long-term experiments conducted by the Research branch of the Forest Service or others that must have coordination with other uses. The number of experiments in RNAs is less frequent. The process to establish RNAs has many steps, and coordination between research and NFS managers usually occurs at many points in the process. The Forest Service Research branch would be involved in the RNA establishment decision subsequent to the recommendation established in the plan approval.

Section 219.3 – Nature of land management planning

The provisions found in §219.2 of the 2002 proposed rule has been redesignated at §219.3 as part of the reorganization of the final rule. The provisions found in §219.3 of the 2002 proposed rule has been moved to §219.2 of the final rule, and changes discussed above. Section 219.3 paragraph (a) of the final rule modifies §219.2 paragraph (a) of the 2002 proposed rule by eliminating the wording about desired conditions and discussing adaptive management. The focus on desired conditions is not appropriate because all plan components are important in light of the overall goal of managing the

NFS lands as described in §219.1. In addition, §219.3 paragraph (a) describes the overall aim of planning, which is to produce responsible land management based on current and useful information. The requirements of §219.2 paragraph (b) of the 2002 proposed rule, including public participation, taking into account the best available science, analysis proportional to the decisions, interdisciplinary approach, and monitoring were removed from this section because the concepts are discussed elsewhere in the final rule. For example, the final rule moved information on public participation to §219.9 and moved discussion of diversity of plant and animal communities to §219.10.

Section 219.2 paragraph (d) of the 2002 proposed rule (force and effect of plans) has been revised for clarity and has been moved to §219.3(b) of the final rule.

Comment: Other laws. Several respondents noted a variety of laws that should be included in the list of laws related to planning.

Response: The Department agrees that there are many laws that are related to planning; however, §219.2(c) of the 2002 proposed rule (integration of authorities) has been removed because the section is not needed. Section 219.5 of the final rule requires that The Responsible Official must establish an environmental management system (EMS) for each unit of the National Forest System, and that the Forest Service develop the EMS using ISO 14001, which requires establishment of procedures to identify and provide access to current legal requirements and to identify and maintain operating controls for them.

Comment: Discretion of the Forest Service to interpret statutes. Some respondents said that the 2002 proposed rule allows too much interpretation of existing law, Executive orders, and regulations.

Response: Plans integrate the requirements of statutes, regulations, and agency policy. The final rule does not provide integration and interpretation of all of these statutes, regulations, and agency policy.

Section 219.4 – National Environmental Policy Act Compliance

Compliance with the National Environmental Policy Act (NEPA) was addressed in §219.6 in the 2002 proposed rule. This section has been redesignated at §219.4 as part of the overall reorganization of the final rule. This section of the final rule clarifies how planning will comply with NEPA. The Overview of the Final Rule in the preamble to the rule describes this section in detail.

Section 219.5 – Environmental Management Systems

The provisions in this section have been added to the final rule to address public comments about how planning relates to adaptive management. Adaptive management was addressed in §219.11 (Monitoring and evaluation) in the 2002 proposed rule. Both the 2002 proposed rule and the final rule defines adaptive management as an approach to natural resource management where actions are designed and executed and effects are monitored for the purpose of learning and adjusting future management actions, which improves the efficiency and responsiveness of management.

This section requires that the Responsible Official must establish an environmental management system (EMS) for each unit of the National Forest System. . . Further discussion on this section can be found in the preamble of the final rule under “Environmental management systems and adaptive management.”

Section 219.6 – Evaluations and monitoring

The Department organized this section to specify requirements for plan evaluation and plan monitoring. Monitoring and evaluation requirements were found in §§219.4(a)(6) and 219.11 of the 2002 proposed rule. Further discussion on this section can be found in the preamble of the final rule under “The strategic and adaptive nature of land management plans.” Plan components do not include monitoring and evaluation, because even though they are integral to planning, monitoring and evaluation are planning processes more than plan components. The final rule allows the monitoring program to be changed with administrative corrections with public notification, instead of amendments, to reflect more quickly the best available science and account for unanticipated changes in conditions. The Responsible Official annually reports changes in a monitoring program. The Responsible Official has flexibility to involve the public in a variety of ways in developing any changes to the requirements.

Evaluation replaces the Analysis of the Management Situation documentation requirements in the 1982 rule (§219.12(e)) and the revision initiation documentation requirements in the 2000 rule (§219.9). The final rule requires evaluation of current social, economic, and ecological conditions and trends that contribute to sustainability, as described in §219.10 of the final rule. In addition, the final rule requires the Responsible Official to consider for recommendation as potential wilderness areas all NFS lands possessing wilderness characteristics during plan development or plan revision (§219.7(a)(5)). This consideration would be documented in the comprehensive evaluation report.

Paragraph (a) provides provisions for including evaluations in the Plan Documents or Set of Documents. Maintaining the Plan Documents or Set of Documents

is a key part of evaluations and monitoring. The last sentence of paragraph (a) that “analysis should be commensurate to the level of risk” is a modification of the wording of §219.2(b)(1) of the 2002 proposed rule that “analysis shall be proportional to the decisions to be made.”

Paragraph (a)(1) provides requirements for comprehensive evaluations. This paragraph has been expanded beyond what was included in the 2002 proposed rule at §219.11(b) in response to public comments questioning: (1) how plan analysis would be documented and disclosed and (2) how cumulative effects of on-the-ground management and natural events would be determined. The Department believes the best way to consider cumulative effects and to embrace adaptive management is to make monitoring and evaluation a cornerstone of the final planning rule. This paragraph clarifies the purpose and content of an evaluation. A key principle from §219.6(a) is that the evaluations should be commensurate to the level of risk or benefit associated with the nature and level of expected management activities in the plan area.

Paragraph (b) provides provisions for monitoring. This paragraph has been adapted from §219.11(a) in the 2002 proposed rule. In addition, the final rule added provisions based on §219.5 of the 2002 proposed rule on financial/technical capabilities and the best available science.

Comment: Public participation. One respondent felt that the final rule should include provisions that ensure public participation during monitoring and evaluation, consideration of issues, and plan amendment or plan revision. Another respondent suggests that the public and agencies should consult at all adaptive management iterations.

Response: The Department agrees that the public should be involved throughout the planning process. Section 219.9 emphasizes public participation throughout the planning process. The information developed and continually updated through monitoring and evaluation will be available to the public in the Plan Documents or Set of Documents. Responsible Officials should notify the public of the availability of annual evaluation reports (§§219.6(a)(3) and 219.9(b)(2)(iii)). Section 219.9 consolidates the public participation provisions, including the public notice and comment requirements for the planning process. Section 219.9 paragraph (a) adds that the Responsible Official shall involve the public in developing and updating the comprehensive evaluation, establishing the components of the plan, and designing the monitoring program.

Comment: Funding. Several respondents were concerned about the funding level for monitoring and evaluation. Some wanted retention of the 2000 regulations that required the decisionmaker to ensure that monies are available for monitoring and evaluation before projects and activities are implemented.

Response: The Department emphasizes monitoring and evaluation in the final rule because they are such an integral piece of the planning process. Congress allocates funding, but the final rule as written at §219.6(b) makes monitoring and evaluation a top priority for planning. In addition, §219.6(b)(1) requires the plan monitoring program to take into account financial and technical capabilities. Section 219.9(a) requires the Responsible Office to involve the public in designing the monitoring program. Again, the final rule and use of the EMS will enable monitoring on the most important environmental concerns.

Comment: Project or activity monitoring. Some respondents wanted the rule to require that plan monitoring occur before each project or activity can be approved. Others wanted to make sure that project-specific monitoring would be part of plan monitoring.

Response: The final rule emphasizes monitoring and evaluation. However, monitoring required by the plan may or may not relate directly to a specific project. For example, if monitoring one year is concentrated on water quality, the results may not relate to a proposed recreation project. However, project monitoring and implementation are often a part of the overall plan monitoring program. Likewise, project-specific monitoring required by a project decision may or may not produce data that are useful for the overall plan monitoring program. Therefore, the final rule has not been changed from the 2002 proposed rule and does not require that either monitoring required by the plan be accomplished before a project or activity is approved or that project or activity monitoring always be part of the plan monitoring program. The final rule (§219.6(b)) requires monitoring of the degree to which management maintains or makes progress toward meeting desired conditions and objectives for the plan.

Comment: Data Sources. One respondent suggested that collecting information and existing data, project analysis, administrative studies, and research are not monitoring.

Response: The final rule removed the data sources paragraph in the 2002 proposed rule at §219.11(c). The purpose of monitoring is to determine the effects of projects, activities, and natural events and whether the effects are maintaining or making

progress toward the desired conditions and objectives for the plan area. These data sources provide information that help meet the objectives of monitoring.

Comment: Plant and animal populations. Several respondents wanted monitoring required for populations of plant and animal species. They felt that this monitoring is necessary to protect populations of species and to meet the NFMA diversity requirements. One respondent suggested that the Forest Service restrict the species to monitor to those for which it has the scientific databases and budgets. Others were concerned that federally listed species and sensitive species need population monitoring to protect them. One respondent suggested that the Forest Service limit monitoring to those activities the agency is required by law to monitor, which this respondent stated would eliminate population monitoring and would focus on habitat monitoring.

Response: The Department developed the diversity requirements in the final rule to meet requirements of NFMA. The Forest Service works directly with the United States Fish and Wildlife Service and the National Marine Fisheries Service to ensure that the management of the NFS maintains the habitat for populations of federally listed threatened and endangered species. The final rule provides the framework for providing ecological conditions within the plan area that contribute to the conservation of these species. Further discussion is in the preamble and within this document in comments related to Section 219.10 - Sustainability. Pursuant to the unit's monitoring program, the Responsible Official will monitor actions directed toward meeting key environmental objectives, such as conservation of federally listed threatened or endangered species.

The final rule provides flexibility for the Responsible Official to setup a monitoring program with public participation to monitor key ecological performance

measures relevant to the plan area. These performance measures may be ecological conditions, populations, population trends, or other information useful to evaluate maintaining or making progress toward desired conditions and objectives for ecosystem diversity and species diversity. The choice of monitoring program is based on the risk associated with the species status and the information needed by the Responsible Official to make informed decisions. Population numbers and population trends are often difficult to obtain and evaluate because of solitary-elusive behavior, migration, mobility of animals, seasonal availability of flowers for identification, rarity of individuals, or other reasons. The Department believes the agency should focus the 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. Where habitat requirements for these species are identified as desired conditions that could contribute to the conservation of the species, the habitat could be monitored.

Section 219.7 – Developing, amending, or revising a plan

The provisions in §§219.4, 219.7, 219.8, 219.9, 219.15, and 219.18 of the 2002 proposed rule have been combined at §219.7 of the final rule so that the following requirements are located in one section: administrative corrections, evaluations, plan approval document, plan development process, planning authorities, and procedural requirements for plan components. The detailed public participation, collaboration, and notification requirements found in §§219.7, 219.8, and 219.12 of the 2002 proposed rule have been moved, with additional detail, and consolidated at §219.9 in the final rule to improve clarity and readability.

Paragraph (a) provides general planning requirements. Paragraph (a)(1) provides requirements for the Plan Document or Set of Documents for the plan. The Plan Documents or Set of Documents will be supplemented with annual monitoring reports and with other information as appropriate to form a refreshed and current analytical base. Because of this more current information base, evaluations will provide a much stronger and more robust base of information for projects and activities than an EIS would have provided if prepared under the 1982 rule.

Paragraph (a)(2) provides requirements for plan components. The plan components were described in the 2002 proposed rule at §219.4. What were termed “plan decisions” in the 2002 proposed rule are called “plan components” in the final rule, because the plan has only one decision: approval of a plan. As discussed within §219.6 response to comment (above), plan components do not include monitoring and evaluation requirements. The final rule clarifies that plan components are neither commitments nor final decisions approving projects and activities. The preamble of the final rule under “The Strategic nature of land management plans” contains further discussion on plan components, desired conditions, objectives, guidelines, suitability of areas, and special areas.

Paragraph (a)(3) of §219.7 provides guidance on how plan components may be changed and paragraph (a)(4) provides guidance on planning authorities. Paragraph (a)(5) provides guidance for planning process (including interdisciplinary approach and requirements for wilderness consideration). Interdisciplinary requirements are the same as the 2002 proposed rule except the final rule explicitly refers to the role of the interdisciplinary team in preparation of evaluation reports (§219.7(a)(5)(i)).

The 2002 proposed rule contained direction to the Responsible Official on how to determine planning issues and the need to change a plan (§219.5). This final rule removes those detailed considerations because they are more appropriately placed in the Forest Service directives. Issues are discussed in §219.7 paragraph (a)(4) of the final rule to clarify that, determination of issues by the Responsible Official is not subject to objection. This provision was found in §219.5(b) of the 2002 proposed rule.

The specific analysis requirements for roadless areas in §219.15(b)(3) of the 2002 proposed rule are described in the wilderness requirements at §219.7(a)(5)(ii) of the final rule. The wording “inventoried roadless areas” in the 2002 proposed rule has been changed in the final rule to “lands possessing wilderness characteristics.” The second sentence of §219.15(b)(3) in the 2002 proposed rule has been changed in §219.7(a)(5)(ii) of the final rule to clarify that 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. Paragraph (a)(6) of §219.7 provides guidance on how options for the plan may be developed with the public.

Paragraph (b) sets out provisions for administrative corrections of a plan that were found at §219.18(b)(1) and (2) of the 2002 proposed rule. There are no changes in corrections (1) and (2) between the proposed and final rules. Correction (3) in the 2002 proposed rule referred to changes in monitoring “methods” and has been changed to monitoring program and monitoring information to clarify that the entire monitoring program shall be developed with public participation (§219.6(b)). The final rule allows Responsible Officials to change the monitoring program with administrative corrections

and public notification, instead of plan amendments, to more quickly reflect the best available science and account for unanticipated changes in conditions. Correction (4), changes in timber management projections, was added to the final rule to correspond to 16 USC 1604 (f)(2). Correction (5), changes in the Plan Documents or Set of Documents, was added to allow for administrative corrections to evaluation reports and so forth.

Paragraph (c) provides requirements for what must be included in a plan approval document. The requirements for content and timing of a plan approval document were found in several sections of the 2002 proposed rule, including §§219.10(a), 219.13, and 219.21. The final rule consolidates the approval document requirements in this paragraph and adds an additional requirement to include the rationale for the approval of the plan, plan amendment, or plan revision. The Department made this change in response to public comment that the Responsible Official should explain why the plan approval was made.

- General organization of comments and responses:

Because of the organization of the 2002 proposed rule, many respondents commented about features of the planning process, such as plan analysis and alternative development that were set out in §219.6 of the 2002 proposed rule. Comments on alternative development are discussed in the planning rule's preamble response to comments (§219.4). Comments and responses about plan analysis processes are located in this section (§219.7). Because of the nature of the reorganization, public comments are grouped into topics within this overall rule section for improved tracking and

readability. The topics are: comments regarding plan components, comments regarding issues and need for change, and comments about analysis and plan development process.

- Comments regarding plan components.

Comment: Change from desired future conditions to desired conditions. Some respondents said that by shifting the focus from “desired future conditions” to “desired conditions” these regulations focus attention to short-term gain.

Response: This change in the rule was made to recognize that desired conditions may be the current conditions.

Comment: Identification of values. Some respondents said the Forest Service should not consult with interested parties in a planning process to identify desired values, because it would create confusion and dissension. They said that values are personal and usually entrenched and attempting to get parties to adjust their values would be an exercise in futility.

Response: The specific requirement in the 2002 proposed rule to identify values has been removed in the final rule. However, a process to identify values can provide insight to development of the desired conditions. This identification is not to promote confusion and dissension, but to seek understanding and, in some cases, a shared perspective.

Comment: Congressional direction. Some people said that desired conditions cannot be developed because the Forest Service does not have clear management objectives from Congress.

Response: The legal mandate for planning is embodied in NFMA, MUSYA, and other laws. During the joint Senate hearings on NFMA in 1976, Senator Hubert

Humphrey said, “This is a complex and scientific profession. We need to provide effective guidance, both in law and regulation, but allow enough flexibility so that professional foresters can do the job, rather than lawyers and judges” (Joint Senate NFMA Hearings, March 22, 1976, at 262). Congress expects the agency to make judgments. The final rule does provide order for development of the plans, but the Department believes that the Responsible Official best approves specific desired conditions, after public collaboration and participation.

Comment: Changing Objectives. One respondent wanted the final rule to require plans to have a plan amendment or plan revision to change the objectives in a plan.

Response: The Department agrees that changes in plan objectives require a plan amendment or plan revision (§219.7(a)(3)).

Comment: Timber harvest objectives. Some respondents said that the rule should require plans to include timber harvest objectives. Some respondents suggested that in addition to the 2002 proposed rule’s long-term sustained-yield requirement (§219.12), objectives should include the timber harvest level associated with desired future conditions and establish probable timber harvest levels, especially based on likely budgets.

Response: The final rule has added §219.12, to address certain requirements of NFMA, such as identification of suitable land uses and NFMA requirements. However, guidance for timber harvest from 16 U.S.C. 1604 and 1611 shall be included in the Forest Service directives. Procedures to estimate probable timber harvest levels will be addressed in Forest Service directives.

Comment: Too many standards. Some respondents believed that current plans have too many standards leading to so many monitoring and evaluation criteria that the process of implementing the plan has become burdensome.

Response: The requirement for standards has been replaced with a requirement for guidelines in the final rule. Many of the standards in current plans unnecessarily repeat existing policy or laws. Some of the existing plan standards would be better stated as goals, objectives, or process guidance. 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.

Comment: Adaptable standards. Some respondents commented on the 2002 proposed rule requirement that standards generally be adaptable and include performance measures. They said that having “adaptable standards” implies a threshold that may be changed based on a non-public process. Some said that dynamic planning may not be needed in low-disturbance environments with minimal impacts.

Others said that adaptable standards are consistent with current planning philosophy as a critical feature of a successful dynamic planning process. They said that ecosystems are always changing and that our knowledge and value of ecosystems change. Some said that actions need to be significantly bold to test hypotheses so that short-term risk aversion does not bring more significant long-term risks.

Response: The “adaptable standard” wording has been removed from the final rule. The final rule provides for an open and adaptable planning process of plan approval, on-the-ground management, monitoring, evaluation, and plan amendment or plan revision as needed. Responsible Officials will use the management reviews under

the EMS and monitoring results to evaluate the performance and effectiveness of guidelines.

- Comments regarding issues and need for change.

Comment: Development of issues. One group suggested that the Responsible Official be required to review the best available science when determining whether or not issues or opportunities warrant a plan amendment or plan revision. Several respondents were concerned that they would not be able to object to issues to be considered in plan amendments or plan revisions. They felt there should be some avenue to ensure that Responsible Officials not discount important issues before the planning analysis ever occurs. Some felt that scope, complexity, intensity, geographic scale, or budget should not be considered when determining whether or not issues or opportunities warrant a plan amendment or plan revision. One respondent suggested that the final rule include community stability as a reason to amend or revise a plan.

Response: The Department believes that there are numerous social, economic, and ecological factors to consider when deciding what issues or opportunities warrant a plan amendment or plan revision. However, Responsible Officials cannot consider every issue and the Responsible Official should have the discretion to make this determination. Further, the Department believes it unwise to make mandatory national provisions that might not fit the needs of an individual planning unit, because the development of issues occurs with the public at the local level.

Comment: Need for change. One respondent suggested that the final rule require an analysis process similar to the “Analysis of Management Situation” (AMS) required

by the 1982 rule. Additionally, one group felt that the collection and use of updated baseline data should be required when revising plans.

Response: The final rule provides the Responsible Official the discretion to decide how to change the plan when doing a plan amendment or plan revision; however, the final rule also requires the Responsible Official to invite the public to comment on initiating a plan development, plan amendment, or plan revision (§219.9(b)(3)). The final rule does not describe detailed requirements to consider when developing the need for change, because the Department believes these potential criteria are more appropriately placed in the Forest Service directives. The Responsible Official must ensure comprehensive evaluations include current conditions and trends based on available information as appropriate (§219.6(a)(1)).

- Comments regarding the analysis and plan development process:

Comment: Skills of interdisciplinary teams. One organization suggested that the final rule should set requirements for the makeup and skills of the plan interdisciplinary team.

Response: The Department wrote the proposed and final rules to provide parameters that will work for all units of the NFS. New plans, plan amendments, or plan revisions will need to address a variety of issues that will vary by unit. The Responsible Official will form the interdisciplinary team to provide the best skills to address those specific issues. Therefore, the final rule does not prescribe the specific skills for an interdisciplinary team except that it will be interdisciplinary in nature. The Forest Service directives will provide guidance on interdisciplinary teams, and provide

accountability for providing necessary skills and training to employees to conduct their work related to environmental performance.

Comment: Roadless area protection. A number of respondents requested that the 2000 Roadless Area Conservation Rule (roadless rule) be implemented immediately to protect all remaining roadless areas from active management. Some said that roadless areas provide a critical stronghold for biodiversity and are vital to the lives and survival of wildlife. Some felt the proposed planning rule would eliminate mandatory considerations protecting roadless areas from Off-Highway Vehicles (OHVs), abusive forest management, and ecological integrity of roadless areas.

Response: On July 14, 2003, in the *State of Wyoming v. USDA* lawsuit, the U.S. District Court for the District of Wyoming issued a permanent injunction and set aside the roadless rule (*State of Wyoming v. USDA*, No. 010CV086-D (D.Wyo)). The ruling concluded that the roadless rule was published in violation of NEPA and the Wilderness Act. The Department, however, is committed to protecting and managing roadless values on NFS lands. The Responsible Official considers these values during the planning process for the plan's desired conditions and objectives, which will involve local, regional, and national interests, and use the best available local information.

Comment: Non-inventoried roadless areas and wilderness. Many respondents believed all remaining roadless areas on NFS lands, particularly roadless areas of 1,000 acres or more, should be protected from commodity extraction and road development. A primary reason cited for this view was the need to preserve ecologically significant areas upon which plant and animal species are dependent. A number of respondents requested clarification of how the 2002 proposed rule will direct the Forest Service to evaluate and

protect all non-inventoried roadless areas. Some felt that there are de facto roadless areas suitable for wildernesses that are not classified as inventoried roadless areas. They felt that these areas should be considered during the planning process for possible wilderness designation. Others felt there should be an expansion of special management areas surrounding the remaining roadless lands to protect habitat and facilitate species recovery.

A number of respondents requested clarification of how the 2002 proposed rule would direct the Forest Service to evaluate and protect inventoried and non-inventoried roadless areas. They felt that it was not clear what will happen to those roadless areas not recommended for wilderness designations. Some recommended that the wilderness study areas should return to their original land use designation. Some said roadless areas need to be protected for the solitude, recreational opportunities, clean drinking water, and critical fish and wildlife habitat that they provide. Others stated that these lands are unjustly given special protection; that they belong to all Americans; that they should be open to multiple-use management and development, including mining, timber harvest, and road construction; and that they should not be treated like wilderness. These same respondents believed that roadless areas not recommended for wilderness are simply forced into an unmanaged state for reevaluation until the next planning event.

Response: The Department agrees that lands not currently designated as wilderness but that have wilderness characteristics should be identified, evaluated, and considered for recommendation as wilderness during plan development or plan revision. Section 219.7(a)(5)(ii) of the final rule is written to ensure that the Responsible Official

considers all lands that possess wilderness characteristics for recommendation as potential wilderness during plan development or plan revision.

Section 219.8 – Application of a new plan, plan amendment, or plan revision

This provision found in §219.10 in the 2002 proposed rule has been redesignated at §219.8 as part of the overall reorganization of the final rule. This section of the final rule describes how and when new plans, plan amendments, or plan revisions are applied to new or ongoing projects. The general outline and intent of this section in the final rule is similar to the corresponding section of the 2002 proposed rule. However, paragraph (b) was added in the final rule to clarify the application of new plans, amendments, and revisions to authorizations, projects, or activities subsequent to plan approval.

Paragraph (a) of the final rule retains the intent of the 2002 proposed rule but has also changed the organization and has made wording changes to improve clarity.

In response to public comment, paragraph (b) was added to the final rule to describe how projects or activities developed after approval of the plan must be consistent with applicable plan. Paragraph (c) is similar to paragraph (b) of the 2002 proposed rule with minor changes to improve clarity. Paragraph (d) is similar to paragraph (c) of the 2002 proposed rule with changes to clarify how new information will be considered.

Paragraph (e) is similar to paragraph (d) of the 2002 proposed rule with modifications to improve clarity. The term “projects and activities” has been substituted for “site-specific project or action.” To conform to the wording of the NFMA, projects and activities must be consistent with the applicable plan. Similarly, paragraph (f) is based on paragraph (e) of the 2002 proposed rule.

Comment: New information. Some respondents commented about the 2002 proposed rule provision that provides that nothing in this rule requires deferral, suspension, or modification of approved projects in light of new information (§219.10(c)). They said this provision is in violation of the NEPA regulations at 40 CFR 1506.1.

Response: The final rule at §219.8(d), like the 2002 proposed rule, does not require automatic deferral, suspension, or modification of project or activity decisions in light of new information. The Department intends this provision to reaffirm that projects are not automatically suspended because of this rule when new information arises. However, projects and activities are subject to the agency's NEPA procedures; thus, new information may lead to the Responsible Official stopping or modifying the project or activity. Again, the intent of this provision is just to affirm that these adjustments are not automatic.

While this rule does not require that a project be stopped while new information is considered; it would enable Responsible Officials to act more quickly in response to such new information. The Responsible Official may use information directly in the new project or activity after the analysis is completed. The Responsible Official must document the analysis in the appropriate matter as required by Forest Service NEPA procedures. If new information does change plan components, the amendment process is now more efficient, while still involving public notice and comment, so that the new information can be used more quickly (§219.8(d)).

Comment: Higher-level review. Some respondents said that delays in implementing timber sales would be compounded because plan consistency

considerations quickly become a Chief's responsibility and will be subject to lengthy legal challenges.

Response: Consistency requirements in the final rule are similar to those in the 1982 and 2000 rules, so there should not be any new delays or greater involvement by the Chief than currently occurs. The final rule has changed the heading of paragraph (e) to "Ensuring project or activity consistency with plans" to clarify the subject of this section. As discussed in the response for §219.13, the final rule requires prompt written response to objections before a Responsible Official approves a plan.

Comment: Research projects. Some respondents agreed with the 2002 proposed rule provision that requires testing and research to be consistent with standards. They said that testing and research should also undergo public disclosure processes. Others supported an exemption to standards, commenting that exemptions or modifications are currently so cumbersome, protracted, and uncertain that bold new research is avoided, if not prohibitive. They said that the irony is that many current standards are based on past research.

Response: As discussed in the preamble, the final rule eliminates standards and replaces them with guidelines. In addition, the final rule eliminates the 2002 proposed rule provision at §219.10(e) that requires testing and research to be consistent with standards because this provision is unnecessary. Pursuant to NFMA, all projects must be consistent with the applicable plan. There is no exemption for testing and research. The Responsible Official should provide for research projects and activities in the plan, and if necessary, the Responsible Official may modify the plan through an amendment specific to the research project.

Section 219.9 – Public participation, collaboration, and notification

This section of the final rule consolidates 2002 proposed rule provisions found in §219.12, and the text in the 2002 proposed rule related to public notification in §§219.7-Amending a plan, 219.8-Revising a plan, and 219.21-Notice of plan decisions and effective dates. The purpose of this section is to describe the requirements for public collaboration, participation, and notification. The final rule consolidates the requirements for public notification and comment periods into this section to clarify the provisions.

The Department changed the text to improve the readability and to clarify. Section 219.12 of the 2002 proposed rule used the terms “collaboration, cooperation, and consultation.” To make clear the content of this section, the final rule §219.9 uses the terms “public participation, collaboration, and notification.” Both the proposed and final rules require that the Responsible Official provide for opportunities for the public to “openly and meaningfully” participate in planning. However, the final rule has removed the language “early and frequent” because while desirable, the Department believes it was impossible to measure compliance with this provision. Forest Service directives are the best location for techniques for public participation and collaboration.

The final rule strengthens the 2002 proposed rule by adding requirements to provide opportunities for public involvement in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program, (§219.9(a)). In the final rule, paragraph (b), plan amendments are treated the same as new plans or plan revisions, unless the amendment would apply only to a proposed project or activity. Plan amendments associated with project or activity decisionmaking follow the appropriate NEPA procedures, as well as notice and

comment and appeal or objection requirements for the project or activity. Interim amendments have been removed from the final rule.

Comment: Public Participation. Some commented that trust in the agency was weakened by the changes in the rule that they perceived reduce public participation opportunities. They felt that the result of this reduction in public participation would likely result in more litigation.

Response: The Department strongly endorses and supports public participation and collaboration in planning and, as described more fully in the response to other comments, believes that the final rule enhances open and meaningful public participation.

Comment: American Indian concerns. Some Tribal members commented that it is important to accord Indian Tribes special attention. In particular, one respondent asked that Tribes should be allowed access to special areas and that plans should protect sacred sites.

Response: The Department recognizes the important government-to-government relationship between the Forest Service and federally recognized Indian Tribes. The Department welcomes tribal participation in planning and hopes that tribes work with the Responsible Official during planning to identify and provide input on protection and management of these important areas. Issues such as access to special areas and protection of sacred sites are important concerns that Responsible Officials should address during the planning process as appropriate.

Comment: Engaging federally recognized Indian Tribes. There were several comments about Tribal participation, Federal responsibility, and Tribal rights. One group said that Tribes should be involved in all aspects of planning. Another said that Tribes

had a wealth of information that would be helpful for the context of economic development, sustainability, and recreation. Another respondent suggested that the reference to trust responsibility should be removed from the final rule text because the Forest Service does not have trust responsibility like the Department of the Interior and because this provision of the rule gives Indian Tribes the last say in planning decisions.

Response: The final rule changes the caption from “engaging Indian Tribes” to “engaging Tribal governments”; however, the final rule retains the wording of the 2002 proposed rule except for minor changes to improve the clarity of the final rule. Trust responsibility extends not just to the Department of the Interior but attaches to the Federal Government as a whole. The Forest Service generally satisfies its responsibilities to Tribes when it complies with applicable laws; this provision of the rule does not give Tribes the last say in planning decisions.

Comment: Collaboration. Several respondents wanted clarification of what was meant by the term “collaboration.” One respondent suggested that the final rule drop the word because “collaboration implies a process that the agency has no intention of employing.” Another group felt that the planning rule should require the Responsible Official to incorporate collaboration provisions into all agreements and plans. One suggestion was to add the word “coordination” to the title of the section.

Response: The §219.12 caption of the 2002 proposed rule used the terms “collaboration, cooperation, and consultation.” To make clear the content of this section, the final rule §219.9 caption uses the term “public participation, collaboration, and notification.” The Department realizes that collaboration means different things to different people. However, the Department feels that collaboration is a key part of public

involvement. The Department defines collaboration as people working together jointly, using cooperation, and interchange to solve problems. The final rule allows a wide range of public involvement tools and processes but continues to emphasize collaboration. As previously stated, other public involvement tools, such as collaborative learning, public meetings, open houses, workshops, and formal and informal comment opportunities, are still available and will be used as needed by the Responsible Official.

Comment: Consensus versus collaboration. One group supported collaboration but wanted to make sure the final rule did not construe it to be consensus. Additionally, they wondered if collaboration was needed for developing plans since they said, “no decisions are to be made during planning.”

Response: The intent of this final rule is for Responsible Officials to work toward agreement on as many issues as possible. The Department acknowledges that plan components, such as desired conditions or objectives, are not actions that have immediate effects on the environment; however, plans do provide an important framework for future management actions. Collaboration is beneficial in the development of this framework. However, decisionmaking will not be done on a consensus basis, as ultimately, the Department has statutory obligation to manage the NFS, and, therefore, the Responsible Official must decide whether to approve a plan, plan amendment, or plan revision.

Comment: Clarification of terms. One respondent was concerned that §219.12 of the 2002 proposed rule in paragraphs (a)(1) and (a)(3) states that individuals and Indian tribes must be given “opportunities to participate,” while in paragraph (a)(2) states that State and local governments and other Federal agencies must be provided the opportunity to “be involved.” They asked for an explanation of the difference.

Response: The Department supports participation in planning from interested individuals and organizations; State, local governments, and Federal agencies; and Tribal governments. However, the final rule does recognize the special relationship the Forest Service has to other governments, including Tribal governments, in planning. The difference in language in §219.9(a)(1), (2), and (3) reflects this difference.

Comment: Equal opportunity for involvement. Several respondents felt there was a bias against certain groups in the public involvement process. One person felt that it was very difficult to stay involved because planning took so long. Some respondents wanted the Forest Service to involve more thoroughly recreation groups in planning.

Response: The Department would like all interested parties to be involved in the planning process. The final rule continues to require opportunities for active public interaction and involvement. The Department agrees that plan development, revision, and amendment has taken too long and has developed this final planning rule so that planning is more strategic in nature, and there is more emphasis placed on monitoring, evaluation, and plan amendment. By clearly drawing the line between the plan and the development of projects and activities, the time it takes to complete a plan should be shorter than the timeframes experienced under the 1982 planning rule. However, as discussed previously in these responses to comments, there are opportunities for the public to continue to be involved in many stages of planning, including monitoring.

Comment: State and local input. Several respondents suggested that the Forest Service should “privilege the input” of State and local governments and agencies. One respondent suggested that elected officials at State and local levels should have more influence since they actually represent the public. One county thought the Forest Service

should not take any action without concurrence from the county. One respondent suggested that proposed §219.12(a)(2) should change “land management agency” to “resource management agency” as some agencies have no land to manage but do manage resources. Others supported the cooperating agency status that many had used in the planning process; some suggested the 2002 proposed rule would reduce their influence.

Response: The Department is very interested in working with State and local government and elected officials during the planning process. The Department believes that this special relationship can continue with State and local governments and agencies as needed. Under existing authorities, the Responsible Official may enter into agreements with State and local governments to cooperate in land management planning using mechanisms as memorandums of understanding, partnership agreements, and other means. The Department agrees that there is a need to include the appropriate government agencies in public participation and collaboration efforts, so the final rule has been changed at §219.9(a)(2) to say “other resource management agencies.”

Comment: Other planning efforts. One respondent supported the concept that the Forest Service considers participating in other land management planning efforts.

Response: The Department has written the proposed and final rule to encourage all interested parties to participate in the planning process. The Department expects the Forest Service to participate in other planning efforts where appropriate.

Comment: Mail notice. One group wanted to make sure that CEQ NEPA regulations for notifying interested individuals and groups in writing is part of the final regulation.

Response: Although the CEQ regulations for notification of a Draft EIS's availability are not pertinent for forest plans, the Department is committed to public notification and involvement. Each unit of the NFS maintains mailing lists of individuals interested in issues on that unit. The planning rule requires notification at four stages during the planning process in either the newspaper(s) of record or the **Federal Register**, or both. The Department anticipates that the Responsible Official will continue to use these existing mailing lists to notify people of various activities in planning, such as development of new information, monitoring results, or other events. The Department does not believe it should specify how the public is to be kept involved beyond the requirements in the planning rule at §219.9, which require availability of the proposed plan for public comment.

Comment: Secure Rural Schools and Communities Act in the Pacific Northwest. One group was interested in how the planning rule will affect the Secure Rural Schools and Communities Act.

Response: There will be no effect from the planning rule on the Secure Rural Schools and Communities Act.

Comment: Consolidation of the public involvement section. One group suggested that the final rule combine §219.12(a)(2), Engaging State and local governments and Federal agencies with §219.12(a)(3), Engaging Indian Tribes.

Response: The Department did not change the final rule in this manner, because the Department believes that separation of these two paragraphs is needed to

illustrate the important, yet unique, roles of these entities. Please refer to the final rule at §219.9(a)(2) and (3).

Section 219.10 – Sustainability

The sustainability provisions found in §219.13 in the 2002 proposed rule have been redesignated at §219.10 as part of the overall reorganization of the final rule. This section of the final rule provides provisions for social, economic, and ecological sustainability. The final rule retains sustainability as the overall goal for NFS planning. It also retains the concept of the interdependent social, economic, and ecological elements of sustainability (§219.10) in the 2002 proposed rule. The final rule does not include many of the specific analytical processes and requirements set out in the 2002 proposed rule. Forest Service directives will contain the analytical requirements.

The Overview of the Final Rule in the preamble to the rule describes this section in detail. The final rule also recognizes that there are many potential plans that Responsible Officials could develop, all of which could contribute to sustainability. While science, social, economic, and ecological information will be considered in planning, there is no single “right” answer, nor is there just one kind of diversity that meets NFMA requirements. The Responsible Official will use the planning rule guidance to work with the public to develop desired conditions, objectives, guidelines, and identification of areas generally suitable for various uses in the area. While the Responsible Official and the public need to know the state of the existing conditions and have current scientific information on how social, economic, and ecological systems could react to Forest Service management and natural events, Responsible Officials ultimately make planning choices on social considerations. What kind and where does

the public want recreation? Where are the forest health problems and how fast can we address them? Are 100,000 acres of a particular habitat enough and do we want to increase the acreage? In summary, within the framework of sustainability provided by a plan, there are almost uncountable “right” choices that can be made.

Finally, a plan by itself cannot guarantee sustainability. A plan can contribute to sustainability by providing a framework to guide projects and activities. However, plans developed under this rule are not commitments for projects and activities, even if such actions are needed for sustainability. Authorization of projects or activities requires additional evaluation, public involvement, consideration of individual and cumulative effects, and appropriate NEPA documentation. In addition, many other factors are influential. Natural events, such as a new noxious weed infestation, can dramatically change landscapes. Economic influences far outside the plan area can change public expectations and local economic life. How and where projects and activities occur varies. Many factors causing species decline are out of Forest Service control. In short, a plan can only establish a framework for ecological conditions that contribute to sustainability and is only one piece of a much larger process. In summary, in compliance with NFMA, the ecological sustainability requirements in the final rule provide the framework to guide on-the-ground management of projects and activities that can contribute to species conservation and provide diversity of plant and animal communities. The rule provides a complementary ecosystem and species diversity approach for ecological sustainability.

Overall Sustainability Issues

Comment: Clarification of MUSYA, sustainability, and management priorities.

Respondents provided a variety of interpretations about the Forest Service multiple-use and sustained-yield mandate and the relationship of that mandate to sustainability. Some respondents emphasized the need to provide a broad range of values, opportunities, and benefits on NFS lands through consulting with the American people. Others asked that the Forest Service clarify how sustainability will be managed and how sustainability relates to other aspects of planning (recreation, timber management, and resource protection).

Specific respondents ranged from those who wanted to ensure sustainability, to those who supported the sustainability language in the 2000 rule, to those who supported the sustainability language in the 2002 proposed rule, and to those who questioned what they perceived as the legality of using sustainability language beyond MUSYA. Respondents representing this last point of view argued that commodity production and active management are the priority of MUSYA direction, not sustainability. Some respondents suggested that there be clear directions in the final rule for land managers to meet what they believe are MUSYA output requirements.

Respondents provided a wide variation of perspectives and interpretations about their desires for NFS management goals and priorities and the focus of sustainability. Some respondents said that the maintenance of ecological integrity needs to take precedence over social and economic considerations, while other respondents supported the equal emphasis given to the three elements of sustainability in the 2002 proposed rule. Some respondents suggested that the approach in the 2002 proposed rule could be skewed in favor of the short-term economic gains, which are easier to measure, without

taking into account the long-term social and ecological effects. Some respondents wanted to see human health, safety, and well-being established as the premier goal for management on NFS lands. Other respondents wanted a high priority stated for commodity production or for OHV and other recreational activities.

Response: The final rule retains provisions of the 2002 proposed rule and departs from the 2000 rule on several important points. The Department views sustainability under the proposed and final rule as a single objective with interrelated and interdependent social, economic, and ecological elements. In contrast to the 2000 rule, this concept of sustainability is linked more closely to the MUSYA in that economic and social elements are treated as interrelated and interdependent with ecological elements of sustainability, rather than as secondary considerations. The Department does not intend this change in emphasis to downplay the importance of ecological sustainability, as the MUSYA provides for multiple use and sustained use in perpetuity without impairment to the productivity of the land.

The final rule also affirms the commitment of the Department to meet the NFMA requirement that plans provide for diversity of plant and animal communities based on the suitability and capability of the specific land area to meet overall multiple-use objectives. The final rule focuses jointly on evaluation of both ecosystem diversity and species diversity to provide a framework for providing the characteristics of ecosystem diversity in the plan area. If the Responsible Official determines that additional provisions in plan components are needed for federally listed threatened and endangered species; species-of-concern, and species-of-interest then the plan must include additional provisions for these species.

MUSYA establishes that the Department administers NFS lands for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. MUSYA authorizes and directs the Secretary to develop and administer the resources for multiple uses and the sustained yield of the several products and services that are obtained from management of the surface resources. MUSYA defines multiple uses as the management of the various renewable surface resources of the NFS lands so that they are used in the combination that will best meet the needs of the American people. MUSYA further provides that sustained yield of the several products and services means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the NFS without impairment of the productivity of the land.

Ecological Sustainability Issues

Comment: Scale of diversity analysis. Some respondents commented on the scale at which diversity should be analyzed. Some asked that the Forest Service limit diversity analysis to the confines of national forest boundaries. Others requested that the Forest Service adopt a broader approach that considers the larger ecosystem as well as the plan area.

Response: Ecological analyses will require consideration of the larger landscapes within which NFS lands exist to provide an ecological context for how NFS lands can contribute to sustainability. Evaluations necessary to carry out this regulation may be as large as or larger than the plan area.

Comment: Cost effectiveness of Options 1 and 2. Citing past budgets established by Congress that some respondents said were too low and past litigation costs, some

respondents requested the Forest Service to consider costs for each option – particularly the costs to conduct species-specific management and monitoring. One recommendation was to have the social and economic effects considered for each option to ascertain the impact on people at the local and regional levels.

Response: A cost-benefit analysis was conducted to compare costs of carrying out the final rule. The differences between options 1 and 2 were estimated. The cost-benefit analysis is available at <http://www.fs.fed.us/emc/nfma/index.htm>. The costs of an evaluation for ecological sustainability when revising a plan are largely governed by the premise that the level of analysis that is needed is commensurate with the risk to species from anticipated levels of projects or activities under the plan. If projections of proposed and possible actions represent a low risk, or existing ecological conditions are close to desired conditions, then analysis costs to develop a plan to provide for ecological sustainability should be considerably less. On the other hand, costs would be more for a plan area where planners project high levels of activities that could pose a risk to species or where the existing ecological conditions are far from the desired conditions. This principle is true for the final rule and for either Option 1 or 2 from the 2002 proposed rule. Evaluation costs for sustainability associated with the final rule should be lower than current planning processes. Monitoring costs for sustainability will likely be higher so total costs will likely even out in the end.

Comment: General concerns for both options. Some respondents raised concerns on the lack of attention to invasive, exotic, and noxious species, as well as fuel loading.

Response: The final rule requires the development of plan components that establish a framework to provide the characteristics of ecosystem diversity in the plan

area (§219.10(b)(1)). These characteristics are parameters that describe an ecosystem in terms of the composition (such as major vegetation types, rare communities, aquatic systems, and riparian systems); structure, including successional stages, water quality, wetlands, and floodplains; principal ecological processes, including stream flows and historic and current disturbance regimes; and soil, water, and air resources. Although invasive and noxious species and fuel loads are important concerns, the planning rule is not the appropriate action to address these important problems; however, as appropriate, Responsible Officials may address these risks during plan development, plan amendment, or plan revision.

Comment: Threatened, endangered, proposed, and sensitive species. A number of respondents requested that the Forest Service protect and recover threatened, endangered, proposed, and sensitive species. They asked that the final rule contain management direction that specifically protects and maintains these species. Some respondents suggested a strong viability or ecological sustainability requirement is essential to do this. Citing potential negative effects to threatened and endangered species, some respondents requested that the Forest Service consult with the ESA regulatory agencies before implementing the final rule.

Response: The Department believes that ESA provides sufficient provisions for federally listed threatened and endangered species. 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. Threatened and endangered species receive specific attention in species diversity at §219.10(b)(2). In addition, species-of-concern and

species-of-interest are included. Species-of-concern and species-of-interest are concepts that are similar to the Forest Service's sensitive species designation. Forest Service directives shall provide additional procedures for addressing these species. The final rule has no effect on federally listed threatened and endangered species. The Department has no need to consult with ESA regulatory agencies on a no effect situation.

Comment: "Incidental take" permits and habitat conservation plans. Some respondents requested that the Forest Service stop waivers under ESA for "incidental take" permits.

Response: ESA provides for "incidental take" of federally listed threatened and endangered species (16 U.S.C. 1531-1544). The Department of the Interior (United States Fish and Wildlife Service) and Department of Commerce (National Oceanic and Atmospheric Administration, Fisheries) authorize incidental take, where appropriate, pursuant to ESA procedures.

Comment: Work with State agencies to maintain plant and animal communities. Some respondents wanted the Forest Service to attain the multiple-use objectives outlined in the land management plan by working with State agencies to provide for diversity of plant and animal communities.

Response: The Department agrees the Forest Service should work with State agencies on plant and animal community diversity and management. The rule specifically addresses working with State and local governments at §219.9(a)(2).

Section 219.11 – Role of science in planning

This provision was contained in §219.14 in the 2002 proposed rule, and was redesignated as §219.11 as part of the reorganization of the final rule. As discussed in the

preamble, the final rule requires that the Responsible Official must take into account the best available science (§219.11). The final rule puts the burden on the Responsible Official rather than on the provisions embodied in a plan. The words “consistent with” has been replaced by “taking 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. Other sources of information may include inventories, surveys, assessments, satellite imagery, informal data collection, and other means. In addition, when developing plan components, along with science, the Responsible Official considers public input, competing use demands, budget projections, and many other factors. However, the four requirements from the 2002 proposed rule for documenting science are also in the final rule as requirements for the Responsible Official.

The final rule, like the 2002 proposed rule, states that the Responsible Official may use independent peer reviews, science advisory boards, or other review methods to evaluate science in the planning process. Forest Service directives will provide specific procedures for conducting these evaluations.

The Department modified the provisions in this section of the final rule slightly to improve the readability of this section. The final rule removes the words “Decisions embodied in” from the first sentence to be consistent with the terminology in §219.7(a). In addition, the final rule replaces the words “Demonstrate” at paragraph (a)(1) and the word “Validate” at paragraph (a)(4) with “Document.”

Comment: Appropriate use of science. Some respondents felt that the procedures set out in the 2002 proposed rule for determining the appropriate use of science are good. Others felt that the procedures are too prescriptive, while others felt that there is not

enough procedural direction. Some suggested using science benchmarks. Others were concerned about the true independence of reviewers of the use of science.

Response: In the context of land management planning, science refers to knowledge, information, concepts, and theories based on organized systems of facts that have been learned from study, observation, and experience. Science is initially brought into the planning process through various assessments and other information gathering and synthesis processes. These provisions require the Responsible Official to document how the best available science was taken into account in developing land management plans. The need for independent review of consideration of science must be balanced against the inherent budgetary and time costs of conducting such reviews. The Department believes the final rule strikes the appropriate balance among these views by allowing the Responsible Official to determine the process by which science evaluations will be conducted.

Comment: Discretion. Some respondents indicated that the Responsible Official's discretion in science was too broad, while others felt the amount of discretion was appropriate. Some specific areas of discretion that drew attention were deciding whether to conduct a review, choosing the process for conducting a review selecting reviewers, the intensity of review, and the actual determination of land management decisions, the Responsible Official's role in evaluating scientific information, and the Responsible Official's role in considering that information to ensure consistency of decisions.

Response: The Responsible Official has the authority and responsibility to approve the plan, plan revision, or plan amendment. The final rule requires that science

must be taken into account to inform the approval of the plan, plan amendment, or plan revision. Furthermore, the Responsible Official must document how the science was taken into account in the planning process, and the risk and uncertainties associated with using the science. Further guidance for the Responsible Official to meet these requirements will be provided in the Forest Service directives, including guidance for conducting and staffing science consistency reviews or peer reviews, as well as establishing science advisory boards.

The word “must” appeared in two paragraphs, §§219.14(a) and 219.14(b) of the 2002 proposed rule. The word “must” has been replaced with “may” in paragraph §219.11(b) of the final rule to clarify that the Responsible Official has options about the means to verify that the four steps outlined in paragraph (a) have been appropriately completed. This change does not minimize or relieve the requirement that the Responsible Official must take into account the best available science, as stated in §219.11(a).

Comment: Public involvement. Some comments indicated the view that public involvement is necessary in the science review process.

Response: The Department is committed to providing the public with an opportunity to comment on all aspects of the planning process, including the taking into account the best available science in that process. However, specific technical reviews of the appropriate use of science must be conducted by those with the relevant scientific knowledge and background to evaluate the application of that science in decisionmaking. In approving a plan, revision, or plan amendment, the Responsible Official is informed by both the public and the science community. The Responsible Official shall place the

technical and scientific review documentation in the Plan Documents or Set of Documents and make them available to the public.

Comment: Best available science. Some respondents noted that the term “best available science” is undefined, while others noted that use of best available science in the 2002 proposed rule is similar to that in other laws and regulations.

Response: What constitutes the best available science varies by situation. The Department should not define common terms having common meanings as defined in standard dictionaries. Science is information learned from study, observation, and experience. Best available science is proven science information that has been confirmed and generally accepted. When controversies arise, rational and reasonable methods are used to resolve them, such as peer review. In the final rule, the Responsible Official must document that science was appropriately interpreted and applied to the plan components being approved. Frequently the Responsible Official is faced with a scarcity or lack of scientific information in one or more of the biological, social, and physical sciences relevant to issues and management in a specific plan area. The proposed and final rules strongly endorse the Department’s commitment to taking into account the best available science in planning. As such, the rule ensures that the Responsible Official will be aided in decisionmaking by knowing through documentation that the best available scientific information has been appropriately taken into account, substantial uncertainties and risks have been evaluated and disclosed, and that the science was appropriately interpreted and applied.

The rule also reflects the fact that planning and management decisions cannot wait for scientific information to be complete on all relevant issues, because scientific

information is never complete. Rather, the final rule provides for plans to be approved by the Responsible Official after taking into account the best available science and employs a continual improvement structure through an EMS (§219.5) to generate more complete information as needed that will be incorporated into the planning and management processes in a continuous cycle of learning, identifying needs, and responding accordingly.

Comment: Use of science for sustainability. Some respondents requested that science be used in planning for sustainability. Some respondents wanted to implement the science requirements in the 2000 rule and the 1999 Committee of Scientists' Report. Other respondents raised concerns about the discretion given the Responsible Official in the sustainability section of the 2002 proposed rule, indicating public pressure might prevent more objective, science-based, decisions. Other respondents remarked that science should consist of information that the Responsible Official gathers from local entities. Still others requested that the Forest Service rely on science generated by private industry. A number of respondents stated that the Forest Service should base planning on internal Forest Service data. Citing the breadth of the 2002 proposed rule, some respondents asserted that a committee of scientists should oversee scientific input for sustainability in planning.

Response: "Science" refers to knowledge, information, concepts, and theories based on organized systems of facts that people learn from study, observation, and experience. Science is initially brought into the planning process through various assessments and other information gathering and synthesis processes used for the comprehensive evaluation (§219.6(a)(1)). The taking into account the best available

science in planning provides the Responsible Official with knowledge, methods, and professional expertise to make informed decisions. Nevertheless, most Responsible Officials make resource decisions based on values, while informed by information, such as scientific, legal, and historical as well as local and practitioner knowledge about ecosystems and people. All of this information needs to be of high quality. The Department does not believe that the Responsible Official should be limited to that science made available by local entities or private industry, nor should planning be based solely on internal Forest Service data.

Where scientific information is used in planning, the quality of such information should be ensured by using well-trained professional experts in its development, using appropriate levels of independent peer review or appropriate forms of scientific review outlined in the rule, and quality assurance protocols for monitoring and other data, as well as free and open access by the public (including the scientific community) to data, assumptions, and conclusions. The final rule requires that the Responsible Official document how the best available science was appropriately interpreted and applied. As such, the Department does not believe there is a need for a committee of scientists to oversee scientific input in the planning process.

Section 219.12 – Suitable uses and provisions required by NFMA

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

Departmental Response to comments on the 2002 proposed rule in the preamble provides additional information.

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

Response: The Department believes that broad-based prohibitions on timber harvest or timber harvest practices are not appropriate at the national level, given the range of ecological conditions that exist across the units of the NFS and the multiple-use mandates of MUSY and NFMA. Such restrictions may be appropriate at the plan or project level but should not be part of the planning regulations.

Comment: Unsuitability. Some respondents thought the change in the provisions on unsuitability from the 2000 rule (unsuitable if incompatible with the mission or policies of the NFS) to the 2002 proposed rule (unsuitable if agency resource management directives prohibit the use) denies the discretion of the Responsible Official.

Response: The details and criteria listed in the 2002 proposed rule at §219.4(a)(4) have been replaced by the provision that an area within a National Forest System unit are generally suitable for uses that are compatible with desired conditions and objectives for that area.

Comment: Timber harvest criteria. There were many comments on the 2002 proposed rule with respect to when timber harvest is allowed on land regardless of its

suitability for timber production. Respondents felt that the planning rule should list specific criteria for limiting timber harvest, such as historical and cultural factors. Many felt that the 2002 proposed rule was inconsistent with NFMA.

Response: The final rule provides criteria for identification of lands not suitable for timber production at §219.12(a)(2). One of these criteria is lands where timber production would not be compatible with the achievement of desired conditions and objectives. Plan desired conditions and objectives might consider historical and cultural factors. NFMA (16 U.S.C. 1604 (k)) allows for timber harvest on lands not suited for timber production. Forest Service directives will address additional NFMA limitations on timber harvest.

Comment: Salvage logging. Several respondents felt that there should not be salvage in areas unsuitable for timber production because salvage has negative impacts on the environment. One group felt that environmental standards should be higher for salvage logging than for non-salvage logging. Another group felt that there should be an acreage limit for salvage logging in areas unsuitable for timber harvest. Some felt that there should not be any salvage logging on any lands, while others felt that salvage logging is important to improving the health of NFS lands.

Response: Salvage harvest of timber is a legitimate management practice, acknowledged by Congress in NFMA (16 U.S.C. 1604(k), 1611(b)). The Department believes that the language in the 2002 proposed rule at §219.16(c) on suitability and salvage is an appropriate reflection of the intent of NFMA. The Department believes that specific decisions on the size of salvage units and on whether to salvage dead or dying trees should be made at a project level and not at the national level. Section

219.12(a)2(ii) in the final rule, as did §219.16(c) of the 2002 proposed rule, set out provisions similar to those at §219.27(c)(1) in the 1982 rule. The discussion related to salvage or sanitation harvest at §219.17(c) of the 2002 proposed rule has been removed as these details will be provided in the Forest Service directives.

Comment: Reevaluation of lands classified as unsuitable for timber production.

Some respondents said that it seemed shortsighted to reevaluate lands for suitability every 10 years when plans are revised at least every 15 years. However, one person suggested the reevaluation occur every five years. Another suggested that current technology changes so rapidly that technology should not be a criterion for determining suitability.

Response: NFMA (16 U.S.C. 1604(k)) requires that Responsible Official review lands classified not suitability for timber production at least every 10 years, but NFMA does not require that guidance for this evaluation be in the rule itself. Therefore, this requirement found in §219.16(b) of the 2002 proposed rule is removed from this final rule. Forest Service directives will discuss this requirement. This change does not alter the statutory obligation to review the suitability of such lands for timber production.

Comment: Zoning. A respondent suggested three categories for classifying the land base: (1) environmentally sensitive or valued land areas, (2) those land areas traditionally producing commodities, and (3) land areas needing restoration.

Response: These categories may be useful for some units of the NFS. However, the final rule allows the Responsible Official the flexibility to identify general suitability of areas for various uses that are compatible with desired conditions and objectives for the plan area.

Comment: Timber production levels. One respondent suggested that plans identify three timber production levels. The levels would be: (1) long-term sustained-yield capacity, (2) timber harvest level associated with achieving desired future conditions, and (3) timber harvest levels for sawtimber.

Response: There are NFS units throughout the country where such projections might be appropriate for plans. However, there are other areas where this information is not necessary. The final rule allows the Responsible Official the flexibility to determine how to identify timber harvest levels, subject to the sustained-yield limit.

Comment: Limitations on even-aged management. Some respondents said the limitations on even-aged management should be a project decision.

Response: The Forest Service directives procedures will address limitations on even-aged management. The NFMA, (16 U.S.C. 1604 (g)(3)(F)) provides statutory limitations on even-aged management. Projects must follow statutory provisions.

Comment: Clearcutting. Some respondents said that the final rule should prohibit clearcutting, rather than have the requirement limiting clearcutting to where clearcutting is found to be the optimum method. Others said the final rule should not allow regeneration timber harvest in old-growth forests.

Response: The Department removed the discussion of optimality and clearcutting from the final rule. Forest Service directives will discuss optimality of clearcutting. NFMA (16 U.S.C. 1604 (g)(3)(F)(i)) allows clearcutting but directs that Responsible Officials limit clearcutting to where clearcutting is optimal. There may be cases where regeneration harvest is appropriate, or optimum with respect to clearcutting, even in old-

growth forests. NFMA does not foreclose such options, and the Department believes the rule also should not do so.

Comment: Best management practices. One respondent felt that best management practices (BMPs) are critical to protecting resources.

Response: BMPs are broad management measures approved by the State and the Environmental Protection Agency for the control of nonpoint source pollution and that the Forest Service uses to comply with the Clean Water Act. The Responsible Official is required to use these BMPs to design site-specific prescriptions to protect water quality. The site-specific BMPs can usually be found in the authorization's contract language or in any relevant terms or conditions.

Comment: Economic considerations. Some respondents said that the final rule should require the most economical harvest methods to be employed. They said that the 2002 proposed rule is confusing when it states that harvesting systems will not be selected primarily because they will give the greatest dollar return or the greatest output.

Response: These words about harvesting systems have been removed from the final rule. However, NFMA requires that timber harvest projects be considered in the context of a number of factors and specifically provides that a harvesting system not be selected primarily because it will give the greatest dollar return or the greatest output of timber (16 U.S.C. 1604 (g)(3)(E)(iv)). The Forest Service directives procedures will address limitations on timber harvest.

Comment: Limits on opening size. Some respondents said that the requirement for size of openings should apply only to the created opening and not to the aggregate of adjacent natural and created openings. They said that a Supervisor may wish to place

other restrictions on harvest areas adjacent to natural openings but that such restrictions should be made during the planning process. Some respondents commented that they did not agree with plans setting limits to clearcut size. They said that some species of wildlife prefer larger openings, that the need for proper stand regeneration requires the terrain to dictate size, and that ecosystems have evolved under the dynamics of larger natural disturbance events.

Some respondents said that excepting salvage operations from size-opening standards is needed to be consistent with healthy forest management practices. Others said that residual stands are entirely natural, and removing the cover results in decreased soil stability, decreased thermal and hiding cover, and decreased snag retention. Therefore, large-scale operations should be limited.

Response: The Department removed the discussion of size of openings from the final rule. Forest Service directives will discuss size of openings. NFMA requires that size limits be established for even-aged regeneration harvest, along with provisions to exceed the limit on a case-by-case basis after public notice and review by a line officer at the next higher level (16 U.S.C. 1604 (g)(3)(F)(iv)). NFMA specifically states that these limits do not apply to the size of areas harvested as a result of natural catastrophic conditions, such as fire, insect and disease attack, or windstorm.

NFMA provides an exception from the size-opening requirement for salvage harvest. NFMA states that the maximum size limits for areas cut in one harvest operation do not apply to areas harvested as a result of natural catastrophic conditions (16 U.S.C. 1604 (g)(3)(F)(iv)). NFMA further requires that harvesting be carried out in a manner consistent with conservation of soil, watershed, fish, and wildlife resources (16 U.S.C.

1604 (g)(3)(E)). The Forest Service directives will set the forth the guidance for Responsible Officials for exceptions as a result of natural catastrophic conditions, such as fire, insects attack, disease attack, or windstorm.

Comment: Water conditions. Some respondents commented that the requirements for water conditions are not needed, because in most, if not all, instances, the State water quality authority will be able to notify the agency should there be an impact to water conditions.

Response: The Department removed the discussion of conservation of soil and water resources from the final rule. The Department anticipates that the Forest Service will coordinate with State water authorities as part of required collaboration (§219.9). However, NFMA requires that Responsible Officials ensure that timber will be harvested only where protection is provided for streams, streambanks, and other water resources. Therefore, Forest Service directives will discuss conservation soil and water resources.

Comment: Interdisciplinary review. Some respondents said that other factors, such as recreation, should be added to the list of considerations during a systematic interdisciplinary approach to assess the impacts of timber harvest.

Response: The Department removed the discussion of timber harvest projects and interdisciplinary review from the final rule. NFMA requires interdisciplinary review of cuts designed to regenerate an even-aged stand of timber to review the consistency of the sale with the multiple uses of the general area (16 U.S.C. 1604 (g)(3)(F)(ii)). This requirement to review the consistency of the sale with the multiple uses of the general area would include impacts to recreation, one of the multiple uses recognized in MUSYA.

Section 219.13 – Objections to plans, plan amendments, or plan revisions

This provision found in §219.19 of the 2002 proposed rule has been redesignated at §219.13 as part of the overall reorganization of the final rule. This section establishes the objection process by which the public can challenge plans, plan revisions, or plan amendments. Because Responsible Officials would not typically develop plans, plan amendments, and plan revisions using EISs or EAs, the Department eliminated unnecessary language in the final rule. The final rule also eliminates details on responding to objections, because this information is more appropriate in the Forest Service directives. These changes make the final rule easier to read and follow. The final rule also removes the requirement that only original substantive comments may be submitted as objections.

Paragraph (a) of §219.13 of the final rule has changed the title of §219.19(a) of the 2002 proposed rule from “exceptions” to “opportunities to object” to better describe the subject of the paragraph. The final rule has added text in §219.13(a) to provide for the pre-decisional objection process required by the Healthy Forest Restoration Act (HFRA) for certain projects and to improve readability. The provisions for an interim amendment have been removed, because interim amendments have been removed from the final rule. Additionally, §219.19(a)(4) of the 2002 proposed rule is now §219.13(a)(2) of the final rule. This sentence has been changed to make it clear that if any Department Official at a level higher than the Chief of the Forest Service is the Responsible Official, there is no opportunity for administrative review.

The public notice of the objection period discussion of §219.19(b) in the 2002 proposed rule has been moved to §219.9(b) of the final rule. At §219.13(b) the final rule

has clarified that the period to submit an objection is within 30 days following publication date of the legal notice in the newspaper of record. Requirements to submit objections are in the final rule. However, detailed procedures for public notice of the objection period are removed from this final rule and will be included in the Forest Service directives.

The final rule has added text in §219.13(b) to clarify the filing period for submitting objections. The term “representative contact” in the 2002 proposed rule has been replaced with “lead objector” in the final rule for consistency with the objection process in 36 CFR part 218 subpart A. The language has also been changed to clarify the relationship between the Reviewing Officer and the lead objector. Section 219.19 (d)(2)(ii) of the 2002 proposed rule has been changed at §219.13(b)(2) of the final rule to clarify that the objector has to state the issues; the parts of the plan, plan amendment, or plan revision to which the objection applies, and how the objecting party is adversely affected.

Section 219.19(e) of the 2002 proposed rule (Responding to objections) is now §219.13(c) in the final rule. The final rule at §219.13(c) further clarifies the role and responsibility of the Reviewing Officer. This change gives discretion to the Reviewing Officer in carrying out the objection provisions. The final rule has added §219.13(c)(2) to this paragraph to clarify that the decision of the Reviewing Officer is the final decision of the Department. Further guidance for the Reviewing Officer to respond to objections will be provided in the Forest Service directives, including guidance for dismissal of objections, resolution of objections, and response of Reviewing Officer on objections.

Section 219.19 paragraph (f) of the 2002 proposed rule is now §219.13(d) of the final rule and has been modified to improve clarity. Section 219.19 paragraph (g) of the 2002 proposed rule is now §219.13(e) of the final rule; the rule text has remained unchanged.

References to appeals of plan amendments adopted as part of project or activity decisions, previously at §219.20 of the 2002 proposed rule, have been moved to §219.13(a)(1) of the final rule to have requirements for objections and the reference to appeals in the same section. The final rule uses the phrase “plan amendment is approved contemporaneously with a project or activity decision,” which is a change from the language in the 2002 proposed rule (“plan amendments in conjunction with a site-specific decision”) to clarify that activities are also included. The word “contemporaneously” is used instead of “conjunction” to clarify that the project or activity is at the same time as but not a part of the plan amendment. The term “site-specific” was removed as unnecessary. Other changes have been made in the final rule to improve the readability and clarity of this section.

Comment: Interested parties. One respondent asked for a clarification of the role in the objection process described in §219.19 in the 2002 proposed rule of “interested individuals and organizations” as described in §219.12 of the 2002 proposed rule.

Response: The phrase “interested individuals and organizations” was used at §219.12 in the 2002 proposed rule about collaboration, cooperation, and consultation. The objection process was designed to be consistent with the protest procedures of BLM to the extent practicable, because the Department believes those procedures have been more effective in resolving public land management disputes in a prompt fashion than

have the appeal regulations applicable to approval of plans, plan amendment, or plan revision (36 CFR 219.17). The BLM does not have a requirement in its regulations (43 CFR 1610.5-2) for interested individuals and organizations to be included as intervenors in the objection process.

The final rule does not preclude the Reviewing Officer from involving parties in addition to the objector(s) and the Responsible Official when making a response to the objection. Interested individuals and organizations also can object to plans, plan amendments, or plan revisions, subject to the conditions specified in §219.13 of the final rule.

Comment: Restrictions and exceptions. Some respondents said that the final rule should include provisions that restrict a Reviewing Officer from discussing an “appeal” with the Responsible Official, make decisions by the Secretary of Agriculture subject to the objection process, and allow other Federal agencies to object. Some respondents felt there were too many ways for the Forest Service to exclude participation in the objection process and set up avenues for the agency to do “whatever it wants.” Additionally, one respondent felt that there would be no consistency in how the objection resolution process is applied and this process would occur outside of the public participation arena.

Response: The Department intends the objection process to be an open process that allows the Reviewing Officer the opportunity to engage with the objector(s) and the Responsible Official. The Reviewing Officer is able to consider all information before responding with the written response. The final rule removes the provision from the 2002 proposed rule that allows the Reviewing Officer to discuss the objection with the

Responsible Official and the objector(s) to avoid the implication that the Reviewing Officer may meet with only the objector and the Responsible Official.

With respect to exempting decisions by the Department (§219.13(a)(2)) from the objection process, there is no higher level to object to for a plan, plan amendment, or plan revision; furthermore, the Department has rarely made decisions for plans. Additional text has been added in the final rule at §219.13(a)(2) to clarify that there is no opportunity for an objection if the decision is made at the Department level.

The final rule at §219.13(a) retains the 2002 proposed rule's prohibition on objections by other Federal agencies, reflecting the Department's position that an objection process is not a suitable means to resolving concerns between agencies of the executive branch. There are interagency and inter-Departmental methods more appropriate than the objection process to address other agencies' issues and concerns.

Comment: Pending objections. A respondent felt that plans should be implemented regardless of "pending appeals." Another felt that no timber sales should occur "until appeals are fairly resolved." Additionally, some respondents felt that "frivolous" objectors should be charged with costs to the Government, possibly through bonding.

Response: The Department realizes that resolution of objections may take time. This process is based on the protest procedures of BLM. In addition, the Department believes, those BLM procedures have been effective because actions do not take effect until objections are resolved. To do so could undermine the credibility of the objection process. The Department also recognizes that the Responsible Official cannot stop all activity until the Reviewing Officer responds to the objection. Therefore, under the final

rule, as in the 2002 proposed rule, the existing plan will remain in effect to guide project decisionmaking until the effective date of a new plan, plan amendment, or plan revision (§ 219.8(c)). The Forest Service does not have the authority to collect payment for costs of objections.

Comment: Notice of objection. A respondent suggested that each person who participated in the planning process should be notified when the plan is available for objection. They felt that notice in the **Federal Register** or the newspaper of record did not adequately inform those who are interested.

Response: The Department believes that the public notice requirements of the final rule provide adequate opportunities for those who participated in the planning process through the submission of written comments to be informed of their right to object under §219.13. Notifying each such individual separately would be unnecessarily cumbersome and expensive.

Section 219.14 – Effective dates and transition

This provisions found in §§219.21 and 219.22 of the 2002 proposed rule has been combined at §219.14 to organize similar concepts in one location. This section specifies when a plan, plan amendment, or plan revision will take effect along with how ongoing planning efforts may be modified to conform to the requirements of the final rule.

Paragraph (a) of §219.21 of the 2002 proposed rule has been consolidated in the final rule at §219.9(b) with the rest of the public notification requirements. In the 2002 proposed rule at §219.21, the first sentence of paragraph (b) set an effective date of 30 days after publication of the notice of decision for significant amendments and an immediate effective date for other amendments. The final rule sets an effective date of

30-days after publication of notice of its approval for all plan amendments, except for those made as part of a project or activity decision; therefore, the second sentence from §219.21(b) of the 2002 proposed rule has been removed in this final rule.

Paragraph (a) from §219.22 of the 2002 proposed rule is now §219.14(c) of the final rule. Paragraph (c) provides a description of when plans, plan amendments, and plan revisions are started. Paragraph (b) from §219.22 of the 2002 proposed rule has been modified and included in §219.14(e) of the final rule. Paragraph (c) from §219.22 in the 2002 proposed rule has been removed, because no new plans, plan amendments, or plan revisions were started under the November 2000 rule. Paragraph (d) from §219.22 in the 2002 proposed rule has been rewritten to improve clarity and is now included in §219.14(e) of the final rule. Public notification information from §219.22(e) of the 2002 proposed rule is now in 219.9(b) of the final rule with the other public notification. Section 219.14 paragraph (e)(2) has been added to the final rule to clarify that the Responsible Official may elect to use either the administrative appeal and review procedures of 36 CFR 217 in effect before November 9, 2000, or the objection procedures of the final rule, for certain ongoing plan development, plan amendment, or plan revision processes.

The information in paragraphs (b) and (d) of §219.14 in the final rule are new. Paragraph (b) specifies when the transition period begins and ends. Paragraph (d) clarifies (1) that new plans and plan revisions started after publication of this rule must conform to the requirements of the final rule; (2) that plan amendments started during the transition period may either continue under the planning regulations previously in effect before November 9, 2000 or may conform to the requirements of the new rule if

the Responsible Official establishes an EMS under §219.5; and (3) that after the transition period, new plans, plan amendments, and plan revisions must conform to the final rule, including the establishment of an EMS.

Section 219.14 paragraph (f) has been added to the final rule to clarify how the Responsible Official may address monitoring of management indicator species (MIS) for plans developed under the 1982 rule. The Department discusses monitoring of MIS in the preamble to the final rule.

While the establishment of an environmental management system (EMS) may end the transition period for some NFS units as described in paragraph (b), a Responsible Official is not required to establish an EMS during the transition period. The Department chose to require establishment of an EMS for application of this final rule because including an EMS, unlike other requirements of the rule, provides a structure of procedures and controls for continual improvement in environmental performance that continues post-approval of a plan development, plan amendment, or plan revision. Other portions of the final rule are appropriate for Responsible Official discretion and depend on the nature of the amendment. For example, a proposed change in recreation guidance may not necessitate application of the ecological sustainability requirements.

Paragraph (e) provides provisions on transition for plans, plan amendments, and plan revisions started before the final rule is effective. Paragraph (e)(1) provides discretion to the Responsible Official on the appropriate application of the final rule, with the exception that establishment of an EMS is required.

Paragraph (e)(2) allows the Responsible Official to elect the administrative appeal process or the objection process during the transition period. This provision was not in

the 2002 proposed rule. This continues the past policy described in the Interpretative Rule of January 10, 2001 of Volume 66 of the Federal Register for plans, plan amendments, or plan revisions started under the regulations in effect before November 9, 2000.

Comment: Transition. One respondent commented that the final rule should be more explicit in how “forests presently undergoing a LRMP revision under the 1982 regulations ... develop steps by which they can transition to the new regulations at some point.”

Response: The Department realizes that existing plans may be in different stages of revision on the effective date of this rule. It would be difficult to consider all the possible situations and to write regulations that meet the transition needs of all ongoing planning efforts. Transition processes will need to be designed for each situation. The Department believes the rule should provide general parameters that allow the Responsible Official to make the transition that best fits the individual circumstances.

Comment: Continuation of specific planning efforts. Several respondents commented that the planning rule should ensure continuation of planning efforts, such as the Sierra Nevada Framework and the Northwest Forest Plan.

Response: The final planning rule will not preclude continuation of planning efforts in that it will not affect any plan, plan amendment, plan revision completed before the effective date of this rule; with respect to ongoing plan development, plan amendment, or plan revision started before the effective date of this rule such planning efforts are expected to continue, and the final rule may be applied to complete the process.

Section 219.15 – Severability

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

Section 219.16 – Definitions

This provision was found in §219.23 in the 2002 proposed rule, but has been redesignated at §219.16 as part of overall reorganization of the final rule. This section sets out and defines the special terms used in the final rule.

Definitions Removed from the Final Rule

The following terms in the 2002 proposed rule have been removed from the definitions section in the final rule because they are not used in the final rule text: “assessment area,” “biological diversity,” “culmination of mean annual increment,” “cultural/heritage resources,” “desired non-native species,” “disturbance regime,” “ecosystem structure,” “energy resources,” “environmental disclosure document,” “health,” “high likelihood of viability,” “inventoried roadless areas,” “major vegetation types,” “mean annual increment,” “native species,” “NEPA procedures,” “planning area,” “range of variability,” “research natural areas,” “species-at-risk,” “species diversity,” “species persistence,” “species viability,” “successional stages,” and timber harvest.

Definitions Added in the Final Rule

The Department added additional terms to the definitions section of the final rule. They were added because the terms have been added to the final rule text; they were used

in the 2002 proposed rule, but were not defined; or respondents requested that they be added. These additional terms are “area of analysis,” “environmental management system (EMS),” “ISO 14001,” “public participation,” “species-of-concern,” and “species-of-interest.”

Definitions Revised in the Final Rule

Definitions of the following terms, and in some cases the wording of the terms themselves, have been revised and clarified in the 2002 proposed rule to be consistent with changes to the text of the rule:

Ecological conditions: The phrase “and tree species” has been removed from the definition because tree species are part of definition of diversity of plant and animal communities and, therefore, this portion of the definition was unnecessary. The phrase “species viability” has been removed from the definition because this rule does not use the term “viability” and instead focuses on ecological conditions to support diversity of plant and animal species. Other changes were made to improve clarity.

Ecosystem diversity: Because the final rule text has replaced the term “planning area” with “area of analysis,” the same change has been made in this definition.

Newspaper(s) of record: The phrase “The newspaper(s) of record for projects in a plan area” has been added to clarify this definition.

Plan: The 2002 proposed rule defines a plan as a “repository”; the final rule changes the definition to provide a more accurate description of a plan as “a document or set of documents.” In addition, the definition has been shortened to improve its clarity and readability.

Plan area: The definition in the final rule has been simplified and clarified.

Productivity: An unnecessary sentence repeating provisions from MUSYA in the definition of productivity in the 2002 proposed rule has been removed from the definition in the final rule. In addition, the final rule removed the word “over time” and replaced it with “perpetuity” because “perpetuity” more clearly refers to the long-term nature of productivity.

Responsible Official: The definition in the final rule has been clarified by replacing the phrase “make plan decisions” from the 2002 proposed rule with “approve plans, plan amendments, and plan revisions” in the final rule.

Reviewing Officer: The final rule changes the definition to clarify that the Reviewing Officer is the one who responds to objections.

Species: The definition has been shortened to improve its clarity and readability.

Timber production: The final rule changes the definition to “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.” This definition more completely identifies products and byproducts that are a result of timber production.

Definitions with Little or No Change between the 2002 proposed rule and the Final Rule

There have been no changes or only minor and nonsubstantive changes to the following definitions as they appear in the final rule: “adaptive management,” “Federally recognized Indian Tribe,” “forest land” “visitor opportunities,” and “wilderness.”

Definitions Receiving Specific Comment in the 2002 proposed rule

Following is a description of the comments received on the definitions section of the 2002 proposed rule and the Department’s response to these comments:

Comment: Flexibility of definitions. One group was concerned that the 2002 proposed rule makes definitions so flexible that the Forest Service can use them to reach a pre-determined outcome.

Response: The Department does not agree with the general statement that definitions in the 2002 proposed rule are too flexible. However, the Department has made an extra effort to ensure that the definitions in the final rule are concise and provide clear descriptions of terms to all audiences.

Comment: Environmental baseline. One group wanted this term defined, and suggested that the final rule use the same definition as used in the California Environmental Quality Act.

Response: The term “environmental baseline” is potentially confusing and therefore is not used in the final rule.

Comment: Planning and assessment areas. One organization said that the definitions of “planning area” and “assessment area” are confusing and unclear as to what scale the regulations apply.

Response: The final rule no longer uses these terms, which have been replaced with the term “area of analysis” to reduce confusion.

Comment: Recreation. One recreation organization commented that the 2002 proposed rule does not contain a definition of recreation and that the elements of recreation should be defined.

Response: While the Department agrees that recreation is a very important use of NFS lands, the Department believes that “recreation” is a term readily understood, and

unnecessary to define the term in the planning rule, or to list the many types of recreation that could occur on NFS lands.

Comment: Visitor opportunities. One recreation organization commented that the definition for “visitor opportunities” was unclear and that “many Americans draw significant personal benefits, both tangible and intangible, without ever visiting the NFS lands.”

Response: While the Department agrees that many people appreciate the value of NFS lands without actually visiting them, the definition applies to the opportunities afforded to visitors.