[3411-15-P]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596-AD28

National Forest System Land Management Planning

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture is amending regulations pertaining to the National Forest System Land Management Planning. This final rule amends the 2012 rule and is intended to clarify the Department's direction for plan amendments, including direction for amending land management plans developed under the 1982 rule.

DATES: This rule is effective [**INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: For more information, refer to the World Wide Web/Internet at: *http://www.fs.usda.gov/planningrule*. More information may be obtained on written request from the Director, Ecosystem Management Coordination Staff, Forest Service, USDA Mail Stop 1104, 1400 Independence Avenue SW, Washington, DC 20250-1104.

FOR FURTHER INFORMATION CONTACT: Ecosystem Management Coordination staff's Assistant Director for Planning Andrea Bedell Loucks at 202-295-7968 or Planning Specialist Regis Terney at 202-205-1552.

SUPPLEMENTARY INFORMATION: The Forest Service proposed changing the existing land management planning rule to clarify the amendment process for land management plans. The proposed rule to amend the 2012 rule (hereafter referred to as the proposed rule) was published in the Federal Register on October 12, 2016, at 81 FR 70381.

Background

The National Forest Management Act (NFMA) requires the Forest Service to develop land management plans to guide management of the 154 national forests, 20 grasslands, and 1 prairie that comprise the 193 million acre National Forest System (NFS). 16 U.S.C. 1604.

The NFMA required the Secretary of Agriculture to develop a planning rule ‘‘under the principles of the Multiple-Use Sustained-Yield Act of 1960, that set[s] out the process for the development and revision of the land management plans, and the guidelines and standards’’ (16 U.S.C. 1604(g)). Compliance with this requirement has had a long history, culminating in the current land management planning rule issued April 9, 2012 (77 FR 22160, codified at title 36, Code of Federal Regulations, part 219 (36 CFR part 219)) (hereinafter referred to as the 2012 rule).

In 1979, the U. S. Department of Agriculture (Department) issued the first regulations to comply with this statutory requirement. The 1979 regulations were superseded by the 1982 planning rule (hereinafter referred to as the 1982 rule).

Numerous efforts were made over the past three decades to improve on the 1982 rule. On November 9, 2000, the Department issued a new planning rule that superseded the 1982 rule (65 FR 67514). Shortly after the issuance of the 2000 rule, a review of the

rule found that it would be unworkable and recommended that a new rule should be developed. The Department amended the 2000 rule so that the Forest Service could continue to use the 1982 rule provisions until a new rule was issued (67 FR 35431, May 20, 2002). Attempts to replace the 2000 rule, in 2005 and 2008, were set aside by the courts on procedural grounds, with the result that the 2000 rule remained in effect. In 2009, the Department reinstated the 2000 rule in the Code of Federal Regulations to eliminate any confusion over which rule was in effect (74 FR 67062, December 18, 2009; 36 CFR part 219, published at 36 CFR parts 200 to 299, revised as of July 1, 2010). In reinstating the 2000 rule in the CFR, the Department specifically provided for the continued use of the 1982 rule provisions, which the Forest Service used for all land management planning done under the 2000 rule. The 1982 rule procedures have therefore formed the basis of all existing Forest Service land management plans.

In 2012, after extensive public engagement, the Department issued a new planning rule to update the thirty-year old 1982 rule. The 2012 rule sets forth directions for developing, amending, revising, and monitoring land management plans (77 FR 21260, April 9, 2012). The 2012 rule is available online at *https://www.gpo.gov/fdsys/pkg/CFR-2013-title36-vol2/pdf/CFR-2013-title36-vol2-part219.pdf*.

On February 6, 2015, the Forest Service issued National Forest System Land Management Planning Directives for the 2012 Planning Rule (planning directives; see 80 FR 6683). The planning directives are the Forest Service Handbook (FSH) 1909.12 and Forest Service Manual (FSM) Chapter 1920, which together establish procedures and

responsibilities for carrying out the 2012 rule. The planning directives are available online at *http://www.fs.fed.us/im/directives*/.

After the issuance of the 2012 rule, the Secretary of Agriculture chartered a Federal Advisory Committee (Committee) to assist the Department and the Forest Service in implementing the new rule. The Committee has been rechartered twice. The Committee has consistently been made up of 21 diverse members who provide balanced and broad representation on behalf of the public; State, local, and tribal governments; the science community; environmental and conservation groups; dispersed and motorized recreation users; hunters and anglers; private landowners; mining, energy, grazing, timber, and other user groups; and other public interests. The Committee has convened regularly since 2012 to provide the Department and Forest Service with recommendations on implementation of the 2012 rule, including recommendations on the planning directives, assessments, and on lessons learned from the first forests to begin revisions and amendments under the 2012 rule. More information about the Committee's membership and work is available online at *http://www.fs.usda.gov/main/planningrule/committee*.

The 2012 Rule and Plan Amendments

There are 127 land management plans for the administrative units of the NFS, all developed using the 1982 rule procedures. Sixty-eight of the 127 land management plans are past due for revision: most were developed between 1983 and 1993 and should have been revised between 1998 and 2008, based on NFMA direction to revise plans at least once every 15 years (16 U.S.C. 1604(f)(5)). The repeated efforts to produce a new planning rule over the past decades contributed to the delay in plan revisions. An

additional challenge was that instead of amending plans as conditions on the ground changed, responsible officials often waited to make changes all at once during a plan revision, resulting in a drawn-out, difficult, and costly revision process.

In promulgating the 2012 rule, the Department intended to create a more efficient and effective planning process. The planning framework set forth in the 2012 rule includes three phases: assessment; plan development, amendment, or revision; and monitoring. The 2012 rule supports an integrated approach to the management of resources and uses, incorporates a landscape-scale context for management, and is intended to help the Forest Service adapt to changing conditions and improve management based on new information and monitoring.

The concept of adaptive management is an integral part of the 2012 rule. Recognizing that adaptive management requires a more responsive and iterative approach to modifying land management plans to reflect new information, the Department's intent when developing the 2012 rule was for the planning framework to encourage and support the more regular use of amendments to update plans between revisions. More frequent amendments should also make the revision process less cumbersome because plans will not become as out-of-date between revisions.

Plans may be amended at any time. The 2012 rule provides that a plan amendment is required to add, modify, or remove one or more plan components, or to change how or where one or more plan components apply to all or part of the plan area (including management areas or geographic areas).

The 2012 rule included a 3-year transition period during which responsible officials could use either the 2012 rule or the 1982 rule procedures to amend plans

approved or revised under the 1982 rule procedures (36 CFR 219.17(b)(2)). The 3-year transition period expired on May 9, 2015, and all plan amendments now must be approved under the requirements of the 2012 rule.

In 2014, the Forest Service began to use the 2012 rule to amend a number of existing land management plans, all of which were developed using the 1982 rule procedures (2012 rule amendments to 1982 rule plans). Currently amendments to 43 Forest Service land management plans are pending. As the Forest Service gained some experience with the process for making 2012 rule amendments to 1982 rule plans and discussed with the Committee early lessons learned, the Committee recommended additional clarity on how to apply the 2012 rule's substantive requirements (requirements related to sustainability, plant and animal diversity, multiple uses and timber set forth within 36 CFR 219.8 through 219.11) when amending 1982 rule plans.

While the 2012 rule includes direction specific to amendments, and while there is evidence of the Department and Forest Service's intent in rule wording, preamble text, and planning directives, the 2012 rule did not explicitly direct how to apply the substantive requirements set forth in the 2012 rule when amending 1982 rule plans. Using the 2012 rule to amend 1982 rule plans can be a challenge because there are fundamental structural and content differences between the two rules. Because of the underlying differences, 1982 rule plans likely will not meet all of the substantive requirements of the 2012 rule. It is therefore important for the Department to clarify how responsible officials should apply the substantive requirements of the 2012 rule when amending 1982 rule plans in a way that reflects Departmental expectations.

While plans developed or revised under the 2012 rule will be expected to meet all of the 2012 rule's substantive requirements at the time those plans are approved, clarity in how to apply the 2012 rule to amend those plans in the future will also be important.

This final rule amending the 2012 rule (hereinafter referred to as the final rule) is intended to clarify the Department's direction for plan amendments, including direction for amending 1982 rule plans. These clarifications reflect NFMA requirements; the Department's intent and the plain wording of the 2012 rule, the preambles for the proposed and final 2012 rule, and the planning directives implementing the 2012 rule; feedback from the Committee; public comments; and Forest Service planning expertise.

Applying the 2012 Rule to Amend Plans

Plans are changed in two distinctly different ways. The NFMA requires revisions "when conditions in a unit have significantly changed," and "at least every 15 years" (16 U.S.C. 1604(f)(5)). As the 2012 rule states, "[a] plan revision creates a new plan for the entire plan area, whether the plan revision differs from the prior plan to a small or large extent" (36 CFR 219.7(a)). The process for a plan revision requires, among other things, preparation of an environmental impact statement (36 CFR 219.7(c)).

The NFMA also provides that "plans can be amended in any manner whatsoever" (16 U.S.C. 1604(f)(4)). As the Department explained in the preamble to the 2012 rule, "[p]lan amendments *incrementally* change the plan as need arises." (77 FR 21161, 21237, April 9, 2012) (emphasis added). Unlike a plan revision, a plan amendment does not create a new plan; it results in an amended plan, with the underlying plan retained except where changed by the amendment. The Department explained its intent that with the 2012 rule, "plans will be kept more current, effective and relevant by the use of more

frequent and efficient amendments, and administrative changes over the life of the plan, also reducing the amount of work needed for a full revision" (Id.).

The 2012 rule provides that, "[t]he responsible official has the discretion to determine whether and how to amend the plan." (36 CFR 219.13(a)). The 2012 rule reinforces this discretion by providing that the rule "does not compel a change to any existing plan, except as required in § 219.12(c)(1)" (which establishes monitoring requirements). (36 CFR 219.17(c)).

Under the 2012 rule, "[p]lan amendments may be broad or narrow, depending on the need for change" (36 CFR 219.13(a)); and amendments "could range from project specific amendments or amendments of one plan component, to the amendment of multiple plan components." (77 FR 21161, 21237, April 9, 2012). Unlike for a plan revision, the 2012 rule does not require an environmental impact statement for every amendment; such a requirement would be burdensome and unnecessary for amendments without significant environmental effect, and "would also inhibit the more frequent use of amendments as a tool for adaptive management to keep plans relevant, current and effective between plan revisions." (Preamble to final rule, 77 FR 21161, 21239, April 9, 2012). Instead, the 2012 rule provides that "[t]he appropriate NEPA documentation for an amendment may be an environmental impact statement, an environmental assessment, or a categorical exclusion, depending upon the scope and scale of the amendment and its likely effects." (36 CFR 219.13(b)(3)).

The 2012 rule gives responsible officials the discretion, within the framework of the 2012 rule's requirements, to tailor the scope and scale of an amendment to reflect the need to change the plan. No individual amendment is required to do the work of a

revision. While the 2012 rule sets forth a series of substantive requirements for land management plans within §§ 219.8 through 219.11, not every section or requirement within those sections will be directly related to the scope and scale of a given amendment. Although the Department recognizes that resources and uses are connected, the Department does not expect an individual plan amendment to do the work of a revision to bring an underlying plan into compliance with all of the substantive requirements identified in §§ 219.8 through 219.11. The determination of which sections or requirements within those sections apply to an amendment will depend on the purpose and effects of the changes being proposed.

However, a plan amendment must be done "under the requirements of" the 2012 rule (36 CFR 219.17(b)(2)). Therefore the responsible official's discretion is not unbounded. An amendment cannot be tailored so that the amendment fails to meet directly related substantive requirements of the rule. Rather, the responsible official must determine which substantive requirements within §§ 219.8 through 219.11 of the 2012 rule are directly related to the plan direction being added, modified or removed by the amendment, and apply those requirements to the amendment.

As explained above, unlike a plan revision, a plan amendment does not create a new plan; it results in an amended plan, with the underlying plan retained except where changed by the amendment. Therefore, the amended plan will have plan direction changed by the amendment and plan direction that has not been changed. When amending a plan under the 2012 rule, a responsible official may choose not to change portions of the plan, even if those portions are inconsistent with a substantive requirement within §§ 219.8 through 219.11, when such portions are not directly related to the

purpose or effects of the amendment. A unit may have important needs for change beyond those that form the basis of any individual amendment. However, the responsible official's ability to target the scope and scale of an amendment is important for adaptive management, and will be especially critical for responsible officials amending 1982 plans.

For example, the 2012 planning rule requires that the plan must include plan components to provide for scenic character, which is a term of art associated with the scenic management system that was developed in the mid-1990s. If the scope of an amendment to a 1982 plan includes changes to plan direction for the purpose of, or that would have an effect on, scenery management, then the responsible official must apply the 2012 rule requirement about scenic character to the changes being proposed. However, a responsible official is not otherwise required to review and modify a 1982 rule plan to meet the 2012 rule's requirement to provide for scenic character. This is true even if there is also a separate, additional need to change the plan to protect scenery. The responsible official would have to address the scenic character requirement throughout the plan area in a plan revision, but in an amendment, the responsible official has the discretion to more narrowly focus on a specific need for change.

The Department's intent that not every requirement within §§ 219.8 through 219.11 will apply to every amendment of 1982 rule plans is reflected in the following planning directives provision at FSH 1909.12, chapter 20, section 21.3:

> Amendment of a plan developed and approved using the 1982 Rule process requires application of the 2012 rule requirements only to those changes to the plan made by the

> amendment. For example, the 2012 Rule's requirements to establish a riparian management zone (36 CFR 219.8(a)(3)) would apply only if the plan amendment focuses on riparian area guidance.

See also the Handbook's direction regarding documentation of a decision to approve an amendment of a 1982 rule plan: "[f]or plan amendments, the decision document must discuss *only those requirements of 36 CFR 219.8 through 219.11 that are applicable* to the plan components that are being modified or added." (FSH 1909.12 ch. 20, sec. 21.3 (emphasis added)).

Similar recognition is included in the 2012 rule's requirements for project consistency for 1982 rule plans, at 36 CFR 219.17(c).

The distinction made in this provision between consistency within an amended plan with direction developed and approved pursuant to the 2012 rule and direction developed or revised under a prior rule reflects that portions of a 1982 rule plan may be changed by an amendment and other portions may remain unchanged until revision.

During the Department and Forest Service's conversations with the Committee about the Forest Service's early efforts to use the 2012 rule to amend 1982 rule plans, the Committee advised that some members of the public expressed confusion about how to apply the substantive requirements within §§ 219.8 through 219.11 when amending 1982 rule plans.

For example, some members of the public suggested that because resources and uses are connected and changes to any one resource or use will impact other resources and uses, the 2012 rule therefore requires that all of the substantive provisions in

§§ 219.8 through 218.11 be applied to every amendment. Other members of the public suggested an opposite view: that the 2012 rule gives the responsible official discretion to selectively pick and choose which, if any, provisions of the rule to apply, thereby allowing the responsible official to avoid 2012 rule requirements or even propose amendments that would contradict the 2012 rule. Under this second interpretation, some members of the public hypothesized that a responsible official could amend a 1982 rule plan to remove plan direction that was required by the 1982 rule without applying relevant requirements in the 2012 rule.

This final rule clarifies that neither of these interpretations is correct.

The Department recognizes that resources and uses are connected and interrelated. However, an interpretation that the 2012 rule prevents a responsible official from distinguishing among connected resources and requires the application of all of the 2012 rule's substantive requirements to every amendment would essentially turn every amendment into a revision. Such an interpretation would curtail the Forest Service's ability to use amendments incrementally to change a plan, and directly contradicts the Department's intent as expressed in the 2012 rule and supporting material that revisions and amendments serve different functions and that amendments be used to keep plans relevant, current and effective between plan revisions. The 2012 rule gives the responsible official the discretion to determine whether and how to amend a plan, including determining the scope and scale of an amendment based on a specific need to change the plan.

At the same time, the responsible official's discretion to tailor the scope and scale of an amendment is not unbounded; the 2012 rule does not give a responsible official the

discretion to amend a plan in a manner contrary to the 2012 rule by selectively applying, or avoiding altogether, substantive requirements within §§ 219.8 through 219.11 that are directly related to the changes being proposed. Nor does the 2012 rule give responsible officials discretion to propose amendments "under the requirements" of the 2012 rule that actually are contrary to those requirements, or to use the amendment process to avoid both 1982 and 2012 rule requirements (§ 219.17(b)(2)).

This amendment to the 2012 rule clarifies that the responsible official is not required to apply every requirement of every substantive section (§§ 219.8 through 219.11) to every amendment. However, the responsible official is required to apply those substantive requirements that are directly related to the plan direction being added, modified, or removed by the amendment. The responsible official must determine which substantive requirements are directly related to the changes being proposed based on the purpose and effects of the amendment, using the best available scientific information, scoping, effects analysis, monitoring data, and other rationale to inform the determination. The responsible official must provide early notice to the public of which substantive requirements are likely to be directly related to the amendment, and must clearly document the rationale for the determination of which substantive requirements apply and how they were applied as part of the decision document.

This final rule ensures that the Forest Service can use the 2012 rule to amend 1982 rule plans without any individual amendment bearing the burden of bringing the underlying plan into compliance with all of the 2012 rule's substantive requirements, even if unchanged direction in the 1982 rule plan fails to address, meet or is contrary to 2012 rule requirements. Twenty-two forests are currently using the 2012 rule to revise

their 1982 rule plans, but given Forest Service budget constraints and staff capacity, revision of all 127 of the Forest Service's 1982 rule plans will likely take more than 15 years. Because the 2012 rule allowed the continued use of the 1982 rule procedures to complete revisions that were underway at the time the 2012 rule was published (36 CFR 219.17(b)(3)), the most contemporary land management plan published using the 1982 rule procedures was approved in 2016, with a few more to come. The clarifications in this final rule will help ensure that the Forest Service can effectively use the 2012 rule to amend 1982 rule plans until they are revised.

Future amendments to plans developed or revised under the 2012 rule will likely be less complicated than using the 2012 rule to amend 1982 rule plans, because plans developed or revised under the 2012 rule are expected to meet all of the 2012 rule's substantive requirements at the time of approval. However, this final rule clarifies that responsible officials have the discretion to tailor the scope and scale of amendments to adaptively change plans whether an amendment is to a 1982 rule plan or, in the future, to a 2012 rule plan. The final rule also supports transparency and public participation by clarifying notification and documentation requirements for applying the 2012 rule's substantive requirements to amendments.

Clarifications

This amendment to the 2012 rule clarifies that:

- The responsible official has the discretion to determine whether and how to amend a plan, and the scope and scale of a plan amendment, based on a need to change the plan.

- The responsible official must use the best available scientific information to inform the amendment process.
- The responsible official must determine which substantive requirements within §§ 219.8 through 219.11 are directly related to plan direction being added, modified or removed by the amendment and apply those requirements to the amendment in a way that is commensurate with the scope and scale of the amendment.
- The responsible official is not required to apply any substantive requirement within §§ 219.8 through 219.11 that is not directly related to the amendment.
- The determination of which requirements are directly related to an amendment must be based on the purpose and effects (beneficial or adverse) of the changes being proposed, and informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale.
- The responsible official must include information in the initial notice for the amendment about which substantive requirements of §§ 219.8 through 219.11 are likely to be directly related to the amendment.
- The decision document for an amendment must include a rationale for the responsible official's determination of the scope and scale of the amendment, which requirements within §§ 219.8 through 219.11 are directly related, and how they were applied.
- If species of conservation concern (SCC) have not yet been identified for a plan area and scoping or NEPA analysis for a proposed amendment reveals substantial adverse impacts to a specific species, or the proposal would

substantially lessen protections for a specific species, the responsible official must determine whether that species is a potential SCC. If so, the responsible official must apply the requirements of 2012 rule with respect to that species as if it were an SCC.

- An amendment that applies only to one project or activity is not considered a significant change in the plan for the purposes of the NFMA, but is still subject to NEPA requirements.
- The Department corrected a mistake made on July 27, 2012 when the Forest Service inadvertently removed a sentence about the maximum size limits for areas to be cut in one harvest operation in § 219.11(d)(4).

RESPONSE TO COMMENTS

The following is a description of specific comments received on the proposed rule, responses to comments, and changes made in response to comments. Each comment received consideration in the development of the final rule.

General Comments

The Department received the following comments not specifically tied to a particular section of the October 12, 2016 proposed rule.

General Comments on Rulemaking Effort

Comment: *Several respondents argue for changes to the 2012 rule other than the changes in the proposed rule*. For example, one respondent requested that the term "aquifer" be included after the term "watershed" in each instance that the term "watershed" is used in the existing rule. That same respondent recommends that groundwater monitoring be added to the monitoring program requirements of § 219.12. A respondent requested we focus more on the forestry side to manage timber better. A respondent recommended the planning rule make it clear that "other content" of § 219.13(c)) does not include 1982 rule monitoring plans, so that changing these monitoring plans would require a plan amendment. The respondent also recommended that the rule clarify project consistency requirements regarding amended plans that include direction based on both the 1982 rule and 2012 rule because the two rules interpret the consistency requirement differently. Yet another respondent recommended that the planning rule require buffers to overly restrictive management policies where the communities and other private landowners within the boundaries of the forest require access or forest resources should be considered for economic development of those adjacent lands and community support.

Response: These suggestions focus on parts of the 2012 rule for which changes were not proposed. Because these are outside the scope of the proposal, this final rule is not the appropriate means to make such changes. Pursuant to Executive Order 13563–

Improving Regulation and Regulatory Review, the Department will consider these comments under retrospective review of the planning rule in the future.

Comment: *Planning directives.* A respondent requested the Forest Service issue planning directives about environmental analysis and NFMA diversity requirements to support the rule simultaneously with the rule.

Response: The Department decided to not issue directives simultaneously with the rule because the need to obtain public comment on those directives before we issued them would unnecessarily delay the final rule and could delay pending amendments to existing plans. The Department also believes that, while great effort has been made to foresee how the clarifications in this final rule will operate, it may be more helpful to issue directives if necessary after gaining practical experience through implementation, and learning the extent to which additional clarification is needed.

Comment: *Consultation with affected Alaska Native Corporations and tribes.* An Alaska Native Corporation (ANC) wrote that it appreciated the opportunity to comment on the Planning Rule Amendment. They also said the Forest Service should consult with the ANC and engage in meaningful dialog about these issues much earlier in the process.

Response: The Forest Service contacted the respondent to clarify the intent and scope of their comment. The spokesman for the respondent stated the ANC does not want consultation prior to publication of this final rule, but was simply pointing out some inefficiencies in the process. He said the respondent will be satisfied to see the response to comments.

The Forest Service is fully committed to meeting its responsibilities for consultation, and appreciates the outreach from the respondent. The Forest Service had

determined at the time of the proposal that consultation was not required for this amendment because there was extensive consultation associated with developing the 2012 rule, the proposed changes were simply clarifications of process for that rule, and there are no direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. However, the Forest Service Regional Office in Juneau did send a notice of the Proposed Planning Rule Amendment comment period to Alaska Native Corporations and tribes. The notice said that the Forest Service would meet with any Alaska Native Corporation or Tribe expressing an interest in discussing the proposed changes and how the amendment to the 2012 rule might benefit our collective work in forest management and restoration. The Forest Service will continue to be available to meet with any Alaska Native Corporation or Tribe when implementing the 2012 rule and these clarifications for amending plans under the 2012 rule.

Comment: *Several respondents were supportive of the proposed rulemaking.* Several respondents agreed with the Forest Service that the 2012 rule intended for amendments to be routine, timely, less cumbersome and flexible, allowing for adaptive management. Several respondents said that they support the Department acting to clarify the expectations for plan amendments, including expectations for amending 1982 rule plans.

Response: Thank you for taking the time to comment.

Comment: *Plan amendments should identify and give consideration of rural communities.* A respondent said that consideration of the community's cultural, social

and economic needs, especially in areas struggling economically, should be recognized as the key component in any Plan revision. Another respondent indicated the burden the plan amendment process places on industry supporting small communities particularly local sawmill and ranching industries. These industries were stated to be important to local economies and reliant on National Forests.

Response: The 2012 rule already has many requirements for the consideration of local communities' cultural, social, and economic needs, including during the amendment process. Section 219.4 requires the responsible official to engage local communities, as well as to coordinate with other public planning efforts, including State and local governments, and Tribes. Section 219.4(a)(3) requires that the responsible official request ``information about native knowledge, land ethics, cultural issues, and sacred and culturally significant sites" during consultation and opportunities for Tribal participation. Section 219.6(b) requires in the assessment that responsible officials identify and evaluate existing relevant information about social, cultural, and economic conditions. Section 219.8(b) requires that plans provide plan components to contribute to economic and social sustainability taking into account social, cultural, and economic conditions relevant to the area influenced by the plan. Section 219.10(b)(1)(ii) requires plan components for a new plan or plan revision to provide for "protection of cultural and historic resources," and "management of areas of tribal importance." Section 219.12 requires monitoring progress toward meeting the desired conditions and objectives in the plan, including for providing multiple use opportunities.

In addition, the Forest Service Land Management Planning Handbook requires the plan monitoring program to contain one or more questions and associated indicators

addressing the plan's contributions to communities, social and economic sustainability of communities, multiple use management in the plan area, or progress toward meeting the desired conditions and objectives related to social and economic sustainability (FSH 1909.12, ch. 30, sec. 32.13f).

Comment: *Adaptive management.* Respondents commented that adaptive management is an essential part of the 2012 rule and as such, additional clarifications should be included to facilitate, rather than discourage, adaptive management. Several respondents expressed concern that the existing and the proposed rule would impose burdens that would discourage the responsible official from undertaking plan amendments because of a lack of clarity. They said it was not clear how the Forest Service would determine which substantive provisions of the 2012 rule require changes to the plan. The respondent indicated that this ambiguity may result in less adaptive management. One respondent said the burden associated with staff and financial capability may make some forests less likely to pursue amendments and adaptive management.

Response: The Department agrees that adaptive management and preserving the responsible official's flexibility in amending plans are essential to the 2012 rule. The Department made changes between the proposed and final rule to reduce ambiguity and provide clarity. The final rule explains that responsible officials must determine which specific substantive requirement(s) within §§ 219.8 through 219.11 are directly related to a plan amendment and then apply those requirements to the amendment. The Department removed the paragraph that would have required the responsible official to "[e]nsure that the amendment avoids effects that would be contrary" to the rule requirements, which

some respondents found confusing. The rule is now clearer. For further details on the changes made to support adaptive management and preserve the responsible official's ability to amend plans under the 2012 rule, see "Amend § 219.13 to add paragraph (b)(5)" below.

Comment: *Proposed changes should not apply to plans revised under the 2012 rule.* A respondent stated that a 2012 rule plan is expected to meet all of rule requirements and any amendment to such plan should be evaluated on the basis of how the entire amended plan meets the provision.

Response: The Department believes that when amending any plan the responsible official should not be required to undertake an extensive review of an entire plan and prove that it continues to meet all of the requirements within §§ 219.8 through 219.11. For an amendment of a 2012 rule plan, the responsible official must apply the substantive requirement(s) within §§ 219.8 through 219.11 that are directly related to the amendment. The clear intent of the 2012 rule is that amendments be used to incrementally change plans. The incremental nature of amendments applies whether the amendment is to a 2012 or a 1982 rule plan, and the clarifications in this final rule must preserve that flexibility and 2012 rule intent.

Comment: *Limiting the applicability of 2012 rule requirements when changing land allocations.* One respondent is concerned about the burden the proposed rule imposes on small changes to area allocations. The respondent said that, any change in a land allocation reduces the application of one aspect of the planning rule to favor another (e.g., a change can favor ecological integrity over economic sustainability). The respondents further states that the rule allows the responsible official to find a balance in

the overall plan, but it remains unclear how a change in land allocation for a small area can meet these multiple and perhaps contradictory provisions for just the change being considered.

Response: The 2012 rule did not require that every resource or use be present in every area. The Department clarifies in this final rule that directly related specific substantive requirements within §§ 219.8 through 219.11 apply within the scope and scale of the amendment. Changes in land allocation for a small area would likely require a similarly narrow application of the directly related substantive requirements, depending on the purpose and effects of the changes. It is unlikely that a change in land allocation for a small area would have substantial adverse effects.

Comment: *An alternate approach.* A respondent suggested an alternate approach to the proposed rule that would not require the determination of which rule requirements directly relate to a proposed plan amendment. The respondent suggested instead setting clear sideboards for each type of plan amendment based upon the substantive provisions of the 2012 rule. As an example the respondent suggested not allowing plan amendment if the consequences would lead to a sensitive species or an SCC (if identified) no longer having the ecological conditions necessary to provide for a viable population in the plan area. The respondent further suggests that similar specific sideboards can be identified for other requirements including, air, soil and water, riparian areas key ecosystem characteristics, rare communities, tree diversity, and other items including: sustainable recreation, cultural and historic resources, areas of tribal importance, wilderness, research, wild and scenic rivers.

Response: The Department believes that a rule identifying sideboards for each type of plan amendment and associated substantive provisions of the 2012 rule would be overly complex and may not be able to anticipate or account for variation across the 127 plan areas of the National Forest System. The Department believes the better approach is for responsible officials to apply specific substantive requirements within the 2012 rule to an amendment when directly related to the changes being proposed by that amendment.

Comment: *Environmental Impacts.* One respondent commented on the Environmental Impacts discussion in the Regulatory Certification section. The respondent agreed with the Forest Service that the proposed rule's impacts were within the range of environmental analysis in the January, 2012 environmental impact statement prepared for the planning rule. The respondent added, however, that it disagreed with the Forest Service's additional assertion that the proposed rule amendment falls within a Forest Service categorical exclusion of actions from documentation in an environmental assessment or an environmental impact statement ("rule, regulations, or policies to establish service wide administrative procedures, program processes, or instruction." 36 CFR 220.6 (d)(2)). The respondent contends that the position that categorically excluding planning regulations has been rejected by the courts, and therefore the Department and Forest Service should not apply that category. The respondent cites to *Citizens for Better Forestry v. U.S. Department of Agriculture*, 341 F. 3d 961 (9th Cir. 2003) and *Citizens for Better Forestry v. U.S. Department of Agriculture*, 481 F. Supp.2d 1059 (N.D. Cal. 2007).

Response: Like the respondent, the Department has determined that the scope and scale of the final rule are such that the rule's effects are within the range of effects of the

environmental impact statement prepared for the 2012 rule. As the respondent noted, with respect to the 2012 rule, which entirely replaced a prior planning rule, the Forest Service did not rely on the categorical exclusion for rules but prepared an environmental impact statement for that rule. Planning rules that entirely replaced prior rules were also the subject of the court decisions the respondent refers to. However, the Department holds the position that for certain changes to a planning rule, the categorical exclusion may properly apply.

Section-By-Section Explanation of the Final Rule

The following section-by-section descriptions are provided to explain the approach taken in the final rule.

Subpart A—National Forest System Land Management Planning

Revise § 219.3 – Role of science in planning.

The final rule is unchanged from the proposed rule for this section. The Department added the words "for assessment; developing, amending, or revising a plan; and monitoring," to the first sentence of § 219.3. This change was made to clarify that the best available scientific information is to be used to inform the plan amendment process, as well as all other parts of the planning framework (36 CFR 219.5). Specifically mentioning each part of the planning framework makes the wording of this section more consistent with other sections of the rule.

Revise § 219.3 – Response to Comments

Comment: *Support the clarification*. Several respondents expressed support for the amendment to § 219.3 to clarify that the requirement to use the best available scientific information applies equally to plan amendments.

Response: Thank you for taking the time to comment.

Amend §§ 219.8 through 219.11 to revise the introductory text

The final rule is unchanged from the proposed rule for these sections. The Department added the words "a plan developed or revised under this part" to the introductory text of §§ 219.8 through 219.11 to clarify that the combined set of requirements in each section apply only to entire plans developed or revised under the current planning rule. It was not the Department's intent to imply that an individual plan amendment must meet all of the requirements of §§ 219.8 through 219.11. This clarification distinguishes between new plans and plan revisions, which must comply with all of the requirements in §§ 219.8 through 219.11, and amendments, which do not.

Amend §§ 219.8 through 219.11– Response to Comments

Comment: *Support the principle that amendments do not require the application of all of the requirements within §§ 219.8 through 219.11*. While no comments directly addressed the changes to §§ 219.8 through 219.11, respondents supported the principle that amendments are different from revisions, and that the 2012 rule should not be interpreted to imply that an amendment must incorporate every substantive requirement within §§ 219.8 through 219.11. Many respondents noted that such an interpretation would trigger premature plan revision and would inappropriately curtail the Forest Service's use of the amendment process to make targeted and efficient changes to plans in response to pressing needs. These respondents strongly supported the Department's stated intent for this amendment to the 2012 rule to preserve the Forest Service's flexibility in using amendments to support adaptive management by clarifying that

amendments do not require the application of all of the substantive requirements within these sections.

Response: The Department agreed and retained the changes to §§ 219.8 through 219.11, which clarify that plans *developed* or *revised* under the 2012 rule must meet the combined set of requirements among and within §§ 219.8 through 219.11. However, *amendments* are not required to meet all of the substantive requirements within these sections. Direction for amendments is clarified at § 219.13.

Amend § 219.13 to revise paragraph (a)

The final rule is unchanged from the proposed rule for this section. The Department added the words "and to determine the scope and scale of any amendment" to the end of the third sentence of paragraph (a). This change clarifies that responsible official's discretion to determine whether and how to amend any plan includes the discretion to determine the scope and scale of any amendment. The Department received no comments on this revision.

Amend § 219.13 to revise the introductory text of paragraph (b)

The Department added the words "For every plan amendment," to the introductory text of paragraph (b), so it is clear that the procedural and other requirements outlined in § 219.13(b) apply to all amendments. The proposed rule used similar wording "For all plan amendments," but the Department changed "all" to "every" in the final rule for grammar's sake to conform the wording to the singular use of the word "amendment" in the paragraphs that followed. The Department also changed the caption of this paragraph from "Amendment process" to "Amendment requirements" to reflect the clarified text in paragraph (b)(5) and in §§ 219.8 through 219.11. The Department received no comments on this revision.

Amend § 219.13 to revise paragraph (b)(1).

In the final rule, the Department changed the punctuation at the end of paragraph (b)(1) to a period, from a semicolon, to reflect similar punctuation at the end of the other paragraphs under paragraph (b). The Department made no other changes to paragraph (b)(1).

Amend § 219.13 to revise paragraph (b)(2).

To respond to comments about the proposed rule, the Department added a requirement to include information in the initial notice for the amendment about which substantive requirements of are likely to be directly related to the amendment.

Amend § 219.13(b)(2) – Response to Comments

Comment: *Inform the public early in the process*. A group of respondents stated that the responsible official should inform the public early in the amendment process – likely as part of the preliminary identification of the need to change the plan – about which substantive provisions within §§ 219.8 through 219.11 may be implicated by an amendment, and should allow the public to provide input through the scoping process. The comment noted that early notification would be consistent with the 2012 rule's focus on transparency and public participation.

Response: The Department agreed and added the requirement to paragraph (b)(2) of § 219.13.

Amend § 219.13 to revise paragraph (b)(3)

The final sentence of paragraph (b)(3) was modified to state that project specific amendments are not considered a significant change in the plan for the purposes of the NFMA. In addition a conforming change was also made to § 219.16(a)(2).

The Department made these changes so that an amendment that applies only to one project or activity is not considered a significant change in the plan for the purposes of the NFMA, in response to comments about the proposed rule. This change also clarifies that an amendment that is considered a "significant change in the plan for the purposes of the NFMA" does not trigger a revision-type process; it is subject to the same procedures and requirements otherwise included in § 219.13, as well as the 90-day comment period required by § 219.16(a)(2).

An amendment that applies only to one project or activity may still have significant environmental effects and require the preparation of an environmental impact

statement. The Department added clarification in § 219.16(a)(2) to address minimum NEPA requirements for an amendment that applies only to one project or activity for which a draft EIS is prepared.

Amend § 219.13(b)(3) – Response to Comments

Comments: *According to the proposed rule a site-specific project amendment would be "significant," and trigger the process requirements for a plan revision.* Several respondents expressed concern about preserving the Forest Service's ability to use amendments that would apply only to one project or activity. One respondent stated that paragraph (b)(3), which provides that an amendment prepared with an EIS would be a significant amendment, would make even a project-specific amendment significant. The respondent further stated that significant amendments under NFMA trigger the requirements for a revision. The respondent requests that the Forest Service rewrite and clarify § 219.13(b)(3) so that an EIS for a project containing a plan amendment does not trigger, in effect, a forest plan revision.

Response: The final rule includes an exception that when an amendment applies only to one project or activity the amendment is not considered a significant change to the plan for the purposes of NFMA (such a project and associated amendment may have significant effects and require the preparation of a draft EIS under NEPA). Corresponding changes were made to § 219.16(a)(2).

However, the Department disagrees with the respondent's assertion that if an amendment is significant for the purposes of the NFMA, a revision is automatically triggered. The 2012 rule supports and this final rule preserves the responsible official's discretion to determine the scope and scale of amendments, including amendments that

may be broad or have a significant effect. The process and content requirements included in § 219.13 satisfy the NFMA requirements for a significant amendment.

A brief clarification here may be helpful. The 1982 rule had required the Forest Service to undertake the plan revision process (except for wilderness analysis) when "a proposed amendment would result in a significant change in such plan." (36 CFR 219.10(f) (2000), (16 U.S.C. 1604(f)(4)). The Forest Service soon learned that the requirement of the 1982 rule to follow the same steps for a significant amendment as for a revision was excessively burdensome. In its 1991 Advanced Notice for proposed rulemaking to revise its land and resource planning regulations, the Forest Service's preliminary proposal would have limited the evaluation process for what it called a "major amendment" to "only . . . the changes being proposed and not the entire forest program." (56 FR 6508, 6523, February 15, 1991)). Since that time, the Forest Service land management planning rules issued by the Department have distinguished the requirements for significant amendments and plan revisions.

The 2012 rule retained that distinction and did not carry forward the 1982 rule's requirement that the Forest Service undertake the plan revision process when a proposed amendment would result in a significant change to the plan. The NFMA does not require the Forest Service to carry out the entire process for revision for every significant amendment. Rather, as the 2012 rule provided and the clarifications in this amendment to the 2012 rule reinforce, the responsible official has the discretion to determine the scope and scale of an amendment, and the associated processes and requirements are tailored to the changes being proposed. In some cases, the nature of the proposed changes to the plan may require an analysis of the entire plan direction, so that the Forest Service must

"[re]determine forest management systems, harvesting levels, and procedures" in light of the multiple uses for which the forest is administered; and reconsider and if appropriate, adjust the "planned timber sale program" and the proportion of probable methods of timber harvest." 16 U.S.C. 1604 (e) and (f). However, other amendments, including amendments that require the preparation of an environmental impact statement, may not affect these matters, and would require less analysis. The direction in paragraph (b)(5) of this final rule would require the appropriate application of the 2012 rule's requirements in a way that satisfies the related NFMA requirements.

The reason the Department included the final sentence of paragraph (b)(3) in the 2012 rule was to avoid applying two different standards for determining significance between the requirements of NFMA and NEPA. In the end, all plans must "provide for multiple use and sustained yield of products and services" and all the other specific information required by the NFMA. (16 U.S.C. 1604 (e) and (f)). The 2012 rule requires in § 219.1(f) that plans meet all applicable laws and regulations; nothing in this amendment changes that requirement.

The Department's position is that the NFMA's requirements for significant amendments are satisfied by the requirements to prepare an environmental impact statement and to provide at least a 90 day comment period on the proposal and draft EIS, in addition to the other requirements for amendments included in § 219.13. The final rule retains these requirements.

Amend § 219.13 to add paragraph (b)(4)

The Department retained the proposed paragraph (b)(4) but slightly modified the wording for clarity. The Department removed the phrase "without altering the existing direction" and added the word "simply."

The Department added paragraph (b)(4) as a clarification that each plan component added or changed by a plan amendment must conform to the applicable definition for desired conditions, objectives, standards, guidelines, and suitability of lands set forth in § 219.7(e). The planning directives in the Handbook (FSH 1909.12, ch. 20, sec. 21.3) already state this requirement: "All additions or modifications to the text of plan direction that are made by plan amendments using the 2012 rule must be written in the form of plan components as defined at 36 CFR 219.7(e)." This paragraph brings the requirement into the text of the 2012 rule to help consolidate procedural requirements for amendments.

The Department also included a narrow exception to the plan component formatting requirements of paragraph (b)(4) for amendments to 1982 rule plans. This exception would apply to an amendment or part thereof that would change (add to or reduce) a management or geographic area or other areas to which existing direction applies, but would not change the text of that plan direction. This exception would allow the responsible official to avoid rewriting the plan direction within that management or geographic area to conform to § 219.7(e), because reformatting plan direction might accidentally broaden the scope of the amendment. The Department received one comment on this revision, and that comment supported the addition of this paragraph.

Amend § 219.13 to add paragraph (b)(5)

The Department modified and added wording to paragraph (b)(5) of this section to specify requirements for applying the substantive requirements within §§ 219.8 through 219.11 to a plan amendment. Elements of the direction provided in the final paragraph (b)(5) were found in paragraphs (b)(5) and (6) and (c)(1) and (2) of this section of the proposed rule. Proposed paragraphs (b)(6), (c)(1), and (c)(2) were removed from the final rule. While the direction in proposed rule paragraphs (c)(1) and (2) was limited to amendments of a plan developed or revised under a prior planning rule, the requirements of paragraph (b)(5) of the final rule apply to all amendments.

The Department modified the first sentence of paragraph (b)(5) for two reasons. First, this sentence now more clearly describes the required process for responsible officials to first *determine* and then *apply* substantive requirements that are directly related to changes being proposed. Second, the Department modified the proposed rule's use of the words "[e]nsure that the amendment meets" to "apply such requirement(s) within the scope and scale of the amendment," in order to clarify the Department's intent that the application of directly related substantive requirements be commensurate with the scope and scale of the amendment.

The Department added a sentence to paragraph (b)(5) to clarify that an amendment is not required to bring the amended plan into compliance with all of the substantive requirements of the rule. The Department made this change to apply this clarification to all amendments and to make the wording consistent with the rest of paragraph (b)(5). This sentence makes clear that amendments, unlike revisions, do not require the application of all substantive requirements within §§ 219.8 through 219.11.

The Department added paragraphs (b)(5)(i) and (ii) to provide further clarification on how the responsible official will determine that a specific substantive requirement within §§ 219.8 through 219.11 is directly related to the plan direction being added, modified, or removed by the amendment.

The Department added paragraph (b)(5)(i) to provide additional direction to the responsible official on how to determine whether or not a specific substantive requirement is directly related to the changes being proposed by an amendment. When a specific substantive requirement is associated with either the *purpose* for the amendment or the *effects* (beneficial or adverse) of the amendment, the responsible official must apply that requirement to the amendment. The Department also added wording from the preamble to the proposed rule explaining that the best available scientific information, scoping, effects analysis, monitoring data or other rationale must inform the responsible official's determination.

The purpose of an amendment stems from the need to change the plan, which § 219.13(b)(1) requires that responsible official identify. The responsible official would determine which specific substantive requirements within §§ 219.8 through 219.11 are directly related to that purpose, and then would apply those requirements to the amendment. In addition to the purpose of an amendment, the responsible official must apply specific substantive requirements within §§ 219.8 through 219.11 based on the effects of the amendment. The effects of an amendment can be beneficial or adverse. Where the likely effects are beneficial, the intent of paragraph (b)(5)(i) is that the changes being proposed occur within the context and apply the direction of the directly related

substantive requirement in a way that is commensurate with the scope and scale of the amendment.

The Department added paragraph (b)(5)(ii) to provide direction, in addition to the direction in paragraph (b)(5)(i), to the responsible official on when to determine that a substantive requirement is directly related to the amendment based on adverse effects.

The Department recognizes that an amendment may have adverse effects that are less than "substantial," and that would not require the application of associated substantive requirements. However, if scoping or NEPA effects analysis for the amendment reveals substantial adverse effects, the responsible official must identify and apply the specific substantive requirement(s) within §§ 219.8 through 219.11 associated with those effects.

Paragraph (b)(5)(ii)(A) replaces paragraph (b)(6) of the proposed rule. The Department made this change in response to comments about proposed paragraph (b)(6). The Department's intent is that if a substantive requirement is directly related because of adverse effects (§ 219.13(b)(5)(ii)(A)), then the responsible official may decide to modify the proposal to avoid the adverse effects so that the specific substantive requirement is no longer directly related to the changes being proposed. Otherwise, the responsible official must apply the directly related substantive requirement to determine whether the proposal can proceed or whether additional changes to the plan are required as part of the amendment.

Paragraph (b)(5)(ii)(A) also clarifies that if the proposed amendment would substantially lessen protections for a specific resource or use, the responsible official must identify and apply the associated specific substantive requirement(s). The phrase

"when the proposed amendment would substantially lessen protections for a specific resource or use" replaces the proposed rule paragraph (c)(2) of this section that stated: "If the proposed amendment would remove direction required by the prior planning regulation, the responsible official must apply the directly related requirements within §§ 219.8 through 219.11." This requirement is intended to prevent the removal of protective direction in an underlying plan without the application of the relevant requirements of the 2012 rule.

The Department added paragraph (b)(5)(ii)(B) to help to expedite amendments, including project-specific amendments, which will not have significant environmental effects. The Department anticipates that, for amendments that can be prepared using a categorical exclusion (CE) or environmental assessment (EA) accompanied by a finding of no significant impact (FONSI), it is unlikely that the amendment will have substantial adverse effects that would require the responsible official to apply a substantive requirement that is not otherwise directly related to the changes being proposed. Therefore, under this paragraph, the responsible official may presume that an amendment prepared under a CE or EA will not have substantial adverse effects, barring evidence to the contrary.

The clarifications within paragraph (b)(5) will help the Department and public understand how to apply the substantive requirements within §§ 219.8 through 219.11 when amending plans.

The Department recognizes that resources and uses within the plan area are often connected to one another – nonetheless, the responsible official can distinguish between

rule requirements directly related to the amendment and those that may be unrelated or for which the relationship is indirect. For example:

- Soil and water resources are interrelated, but the responsible official can determine that for a plan amendment that has the purpose of changing standards and guidelines to protect a water body, the water requirements of § 219.8 are directly related, while that section's requirements for soil are not unless the amendment would affect the soil resource.
- A plan amendment to modify recreation access under § 219.10 could be either directly related or unrelated to that section's requirement for the protection of cultural and historic resources, depending upon the nearness and potential effects of the proposed access to the cultural and historic resources in the plan area.

A determination that a substantive requirement is directly related to a proposed amendment does not mean that the amendment must be expanded so that the requirement is applied to the entire plan area, or that the amendment must address every aspect of that specific requirement; the application of the substantive requirement is intended to be commensurate with the scope and scale of the amendment. For example:

- The 2012 rule's requirements for riparian management in § 219.8 would be directly related to an amendment with the purpose of changing plan components in order to reduce sedimentation into a specific riparian area from a particular use, but the responsible official would not be required to apply those requirements to other riparian areas in the plan area. Further, if floodplain values would not be affected by the amendment, it would be

beyond the scope of that amendment for the responsible official to be required to apply § 219.8 riparian management requirements to add plan components for the floodplain values of that riparian area.

- An amendment that changes plan components to support habitat for an at-risk species would require application of § 219.9 to those proposed changes, but would not require application of § 219.9 to the entire underlying plan. For example, if the need to change the plan is to identify lands as suitable for an energy corridor, and the proposed corridor would have substantial adverse effects on critical habitat for a threatened species, then the requirements of § 219.9(b) would be directly related to the amendment as applied to that particular species. The responsible official may therefore be required to add standards or guidelines to protect the critical habitat. However, the determination that § 219.9(b) is directly related to the amendment because of the potential impacts to one species would not trigger the application of § 219.9(b) to evaluate ecological conditions for all other species on the unit.

Amend § 219.13 to add paragraph (b)(5)– Response to Comments

Comment: *Applying the substantive requirements that are directly related.* Several respondents were supportive of proposed paragraph (b)(5), and appreciated the clarification that responsible officials must apply the directly related substantive requirements within §§ 219.8 through 219.11 to plan direction modified, added or removed by an amendment. One respondent supported bringing into paragraph (b)(5) the text in the preamble to the proposed rule that stated the Department's intent that the determination of direct relationship be informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale.

Response: The Department retained the direction in the proposed paragraph (b)(5) that the responsible official must apply the specific substantive requirement(s) within §§ 219.8 through 219.11 that are directly related to the plan direction being added, modified, or removed by the amendment. The Department added paragraph (b)(5)(i) to bring text from the preamble into the final rule and further clarify direction to the responsible official on how to determine that a specific substantive requirement is directly related to the amendment. In addition, the responsible official must document the rationale as required by § 219.14.

Comment: *Amendments do not have to meet all requirements of the rule.* Several respondents supported the principle that the 2012 rule intended that amendments be used to incrementally change plans and facilitate adaptive management, and therefore supported proposed paragraph (c)(1) clarifying that amendments of plans developed or revised under a prior planning regulation do not have to bring an amended plan into compliance with all of the requirements within §§ 219.8 through 219.11. Several

respondents emphasized that the final rule must provide clarity that an amendment does not trigger application of all of the substantive requirements of the 2012 rule.

Response: The Department agreed, moved the concept in proposed paragraph (c)(1) into paragraph (b)(5), and modified the wording to make it clearer and more consistent with the rest of paragraph (b)(5). The new wording makes clear that the responsible official is not required to apply any substantive requirement that is not directly related to the changes being proposed by an amendment.

Paragraph (b) of the final rule applies to all amendments, whereas proposed paragraph (c) applied only to amendments to plans developed or revised under a prior planning regulation. The Department made this change because, although the clarification is most urgent and immediately relevant for amendments to 1982 rule plans, the Department anticipates that similar clarity and flexibility will be needed for amendments to future 2012 rule plans. While plans developed or revised under the 2012 rule must meet all of the substantive provisions of the 2012 rule at the time of approval, the Forest Service will still need the ability to adaptively change those plans in response to conditions that may be rapidly changing. For example, there could be major tree die-offs associated with drought or major fire events that occur a few years after a plan is revised using the 2012 rule, which could make the plan as a whole out of sync with one or more substantive requirements of the 2012 rule. The Forest Service would still need the ability to incrementally change that plan, without re-applying all of the substantive requirements regardless of the scope and scale of the amendment.

Comment: *Avoid effects that would be contrary to a rule requirement.* Some respondents were supportive of proposed paragraph (b)(6), which directed the responsible

official to ensure that an amendment avoids effects that would be contrary to a specific substantive requirement within §§ 219.8 through 219.11, but some respondents were not supportive and expressed concerns about how the proposed paragraph would be interpreted. For example, one respondent identified concerns about how a responsible official would demonstrate that an amendment avoided contrary effects, and raised the possibility that this paragraph could inadvertently require the premature application of all of the requirements within §§ 219.8 through 219.11, despite express direction otherwise in proposed paragraph (c)(1). However, another respondent supported ensuring that amendments do not erode plan direction necessary to protect forest resources, and the concept of avoiding effects that would be contrary to a rule requirement.

Response: The Department removed proposed paragraph (b)(6) and replaced it with clearer direction in paragraphs (b)(5)(i) and (ii) of this section. The Department also added a sentence to paragraph (b)(5) to clarify that an amendment is not required to bring the amended plan into compliance with all of the substantive requirements of the rule.

The underlying purpose of proposed paragraph (b)(6) was to ensure that a responsible official does not avoid the application of a substantive requirement otherwise not directly related to the amendment, when analysis shows that an amendment is likely to have substantial adverse effects associated with that substantive requirement. For example, paragraph (b)(6) was intended to avoid a scenario in which an amendment proposes to modify a plan to identify a corridor suitable for energy development, but avoids the application of § 219.9(b) despite the corridor's likely adverse effects on critical habitat necessary to contribute to the recovery of a threatened species.

The Department agrees with respondents that proposed paragraphs (b)(5) and (6)

could be interpreted as creating two slightly different standards for applying the 2012 rule's substantive requirements in a way that might be confusing to implement. The Department also recognized that there could be confusion about how a responsible official would demonstrate compliance with proposed paragraph (b)(6). The Department therefore removed proposed paragraph (b)(6) and brought the intent of that paragraph into paragraph (b)(5). Instead of the direction to avoid effects contrary to a specific requirement, paragraph (b)(5) instead provides that a responsible official must determine that a substantive requirement *is* directly related to the changes being proposed by an amendment when the likely effects of those changes are substantially adverse in a way that implicates that substantive requirement.

The Department's intent with this direction is that if a substantive requirement is directly related to a proposed amendment because of adverse effects, then the responsible official may modify the proposal to avoid the adverse effects so that the specific substantive requirement is no longer directly related to the changes being proposed. Otherwise, paragraph (b)(5) of this section requires that the responsible apply the directly related substantive requirement. For example, if an amendment would have substantial adverse effects to a historic site, the responsible official could modify the proposal so that the changes no longer have any adverse effect on that site, or apply the related substantive requirement (§ 219.10(b)(1)(ii)) to add to the amendment additional plan components that would provide for the protection of that historic site.

As another example, if a proposed amendment would create an energy corridor that would have substantial adverse effects on critical habitat necessary for the recovery of an endangered species, the responsible official could choose to modify the proposed corridor to avoid the critical habitat. Otherwise, the responsible official must apply § 219.9(b) to review whether the plan provides the ecological conditions necessary to contribute to the recovery of that species. If the plan components would be insufficient to provide such ecological conditions, then the responsible official would be required to develop additional, species-specific plan components, including standards or guidelines, to provide such ecological conditions in the plan area.

These changes should address the respondents' concerns, and are responsive to respondents' comments that this amendment to the 2012 rule must clearly preserve the Agency's flexibility to make timely amendments.

Comment: *NFMA diversity requirements and application of the 2012 rule to amended plans.* A respondent was concerned that the existing 2012 rule could be interpreted to allow amendments that would eliminate or weaken direction in 1982 rule plans that was designed to meet the 1982 rule's diversity requirement, but avoid application of the 2012 rule's diversity provisions until plan revision. The respondent contends that this scenario would create an untenable gap, because NFMA requires that regulations be in place that provide for diversity. The respondent supported the concept of proposed paragraph (c)(2), which stated: "If the proposed amendment would remove direction required by the prior planning regulation, the responsible official must apply the directly related requirements within §§ 219.8 through 219.11."

The respondent also supported a possible addition to proposed paragraph (c)(2) that was mentioned in the preamble to the proposed rule, which would allow the responsible official to choose to demonstrate that the amended plan remains consistent with the 1982 rule. The respondent suggested the following wording: "If the proposed amendment would remove direction required by the prior planning regulation, the responsible official must apply the directly related requirements within §§ 219.8 through 219.11 or ensure that the amended plan avoids effects that would be contrary to the prior planning regulations."

In addition, the respondent questioned limiting the applicability of 2012 rule requirements to only the amendment as opposed to an amended plan, and questioned, as a practical matter, how one could determine that an amendment by itself meets substantive requirements without looking at the resulting plan in its entirety.

Response: The Department removed paragraph (c)(2) and instead added direction in paragraph (b)(5)(ii)(A) and paragraph (b)(6) that the responsible official must apply any specific substantive requirement of the rule that is directly related to the amendment when the proposed amendment would *substantially lessen protections* for a specific resource or use. Paragraph (b)(5)(ii)(A) now requires that the responsible official determine that a specific substantive requirement is directly related to an amendment "when the proposed amendment would substantially lessen protections for a specific resource or use." Paragraph (b)(6) addresses the application of the 2012 rule's species-specific requirements when amending a 1982 rule plan, and requires that the responsible official identify whether a species is a potential species of conservation concern (SCC) and, if so, apply the requirements of § 219.9(b) if the proposed amendment would

substantially lessen protections for that specific species. These changes eliminate the potential for an amendment to remove from a plan direction that was necessary to meet the 1982 rule's diversity requirement, but avoid application of the 2012 rule's related requirements, addressing respondent's concern about a potential gap in application between the 1982 rule and the 2012 rule's diversity requirements. For example, if a proposed amendment to a plan developed under the 1982 planning rule would remove direction that was necessary to meet the 1982 rule's requirement to provide for the viability of a specific species, paragraph (b)(5) would require that responsible official apply § 219.9(b) to the proposed amendment with regard to that specific species.

The Department decided against adding the suggested wording that would refer back to the 1982 rule for the reasons outlined in the preamble to the proposed rule, and because the Department believes the changes made in the final rule address respondent's concerns and provide clear direction to responsible officials in a way that meets the Department's original intent for the 2012 rule.

The final rule also continues to require the application of directly related substantive requirements to the changes being proposed by an amendment, and does not require evaluation of the amended plan. In some cases, applying a directly related substantive requirement will lead to the evaluation of plan components across the plan area—for example, to determine whether existing plan components, with the proposed changes, meet the 2012 rule's substantive requirement to provide the ecological conditions necessary for a potential species of conservation concern that would be substantially adversely affected by a proposed amendment. That evaluation, however, is still focused on the amendment itself.

The environmental analysis for an amendment is programmatic. It would include discussions of reasonably foreseeable direct, indirect, and cumulative effects and identify the spatial and temporal extent of the effects. The responsible official would apply the 2012 rule to make any necessary changes to the amendment based on the environmental analysis.

Comment: *One respondent was concerned that the proposed amendment to the 2012 rule could allow amendments that would fail to comply with the National Forest Management Act (NFMA).*

Response: The 2012 rule clearly requires in § 219.1(f) that plans comply with all applicable laws and regulations, including the NFMA. Nothing in this amendment to the 2012 rule affects that requirement.

Comment: *Possible barriers to amendments that apply only to a project and activity.* Several respondents were concerned that the proposed rule could create possible barriers to project-specific amendments. One respondent requested that the Forest Service state in the preamble and the final amendment to the 2012 rule that § 219.13(b)(5), (b)(6), and (c)(2) of the proposed amendment to the rule do not operate to apply the substantive requirements in §§ 219.8 through 219.11 to plan amendments made in project or activity level decisions under § 219.15(c)(4) (project-specific amendments). Other respondents were concerned about the application of § 219.13(b)(3) to project-specific amendments.

Response: The Department modified the requirements in the final rule to address respondents' concerns. The 2012 rule clearly recognized that amendments can be made together with, and apply only to, specific project and activity decisions (§ 219.13(b)(1); § 219.15(c)(4)). The Department added an exception in § 219.13(b)(3) for project and

activity amendments—see an explanation of that change in above section "Amend § 219.13(b)(3) – Response to Comments."

The Department also made changes to the requirements in paragraphs (b)(5) and (b)(6) that should make the amendment process easier. Those paragraphs still apply to all amendments, including amendments made under 36 CFR 219.15(c)(4) that only apply to a project or activity, but the Department believes the clarifications will make it easier to apply the modified requirements to project-specific amendments, particularly those that do not have significant effects. Specifically:

1. The Department clarified in paragraph (b)(5) that the application of directly related substantive requirements is intended to be commensurate with the scope and scale of the amendment. Specifically, the Department modified the words in the proposed rule "Ensure that the amendment meets" to "apply such requirements within the scope and scale of the amendment" in the final rule to make it easier to appropriately tailor the application of paragraph (b)(5). There may be aspects of a specific substantive requirement that would be required for revision, but would be beyond the scope or scale of the amendment. For example, the responsible official would not have to apply a directly related requirement to a geographic area not affected by the amendment. Furthermore, the responsible official may not have to apply every element within a directly related substantive requirement. For example, with respect to the 2012 rule's requirements for riparian areas in § 219.8(a)(3)(i), when a proposed amendment would have substantial adverse effects only with regard to sedimentation in a specific riparian area, the responsible official must apply the direction in § 219.8(a)(3)(i)(C) on deposits of

sediment to that riparian area, but would not have to apply the direction in § 219.8(a)(3)(i)(G) on floodplain values to that riparian area.

While the responsible official is required to apply the directly related substantive requirements to the changes being proposed, the application of those requirements can be as narrow as the amendment. If a project-specific amendment would change only one plan component, or impact only one management area, the responsible official's application of the directly related substantive requirement would reflect the narrow scope and scale of that amendment, and would be based on its purpose and effects.

2. The Department clarified in paragraph (b)(5) that the responsible official is not required to apply any substantive requirements within §§ 219.8 through 219.11 that are not directly related to the amendment.

3. Paragraph (b)(5)(ii)(A) recognizes that an amendment may have adverse effects that are less than substantial, and that would not require the application of an otherwise unrelated substantive requirement within §§ 219.8 through 219.11 to the amendment. Evidence of substantial adverse effects would require the application of the associated substantive requirement, but less than substantial adverse effects would not.

4. The Department added paragraph (b)(5)(ii)(B) to make the process easier for many amendments, including project-specific amendments, by providing that when the environmental documentation for an amendment is a decision memo for a categorical exclusion or an environmental assessment accompanied by a finding of no significant impact, the responsible official may presume that the amendment will not have substantial adverse effects, barring evidence to the contrary.

5. The Department removed proposed paragraph (c)(3) and replaced it with paragraph (b)(6), clarifying the process for applying the species-specific requirements of § 219.9(b) when amending plans developed or revised under the prior planning regulation, and replying to respondents' concerns about the previous wording. See further discussion of this change in the section "Amend § 219.13 to add paragraph (b)(6) – Response to Comments" below.

Amend § 219.13 to add paragraph (b)(6)

The Department removed the wording of proposed paragraph (b)(6) that stated: "Ensure that the amendment avoids effects that would be contrary to a specific substantive requirement of this part identified within §§ 219.8 through 219.11." The Department made corresponding changes to paragraph (b)(5). An explanation of why the Department moved and changed the wording from proposed paragraph (b)(6) is provided in the section "Amend § 219.13 to add paragraph (b)(5)."

The Department also removed proposed paragraph (c)(3) that stated: "If species of conservation concern (SCC) have not been identified for the plan area, the responsible official must use the regional forester sensitive species list in lieu of SCC when applying the requirements of § 219.9(b) to a plan amendment for a plan developed or revised under a prior planning regulation."

The Department added new paragraph (b)(6) to clarify the process a responsible official should use when amending a plan developed or revised under a prior planning regulation, if the regional forester has not yet identified the species of conservation concern (SCC) for the plan area. It is possible that in some cases, the regional forester will have already identified SCC within the plan area before plan revision. Paragraph

(b)(6) recognizes that possibility, and focuses on providing direction that applies when SCC have not yet been identified. (A similar process clarification is not needed for the other species identified in § 219.9(b)—threatened and endangered, proposed and candidate species—because those are federally listed rather than identified by the regional forester as part of the planning process.) If SCC have been identified, paragraph (b)(6) would not apply, and the responsible official would follow the direction in paragraph (b)(5).

If SCC have not yet been identified, paragraph (b)(6) requires that, when scoping or effects analysis reveals that a proposed amendment would have substantial adverse impacts to a specific species, or if the proposed amendment would substantially lessen protections for a specific species, the responsible official must determine whether or not that species is a potential SCC. The responsible official will make the determination using the definition provided in the 2012 rule (§ 219.9(c)). This paragraph is consistent with the approach already provided by the 2012 rule in § 219.6(b)(5), which requires the responsible official to "identify and evaluate existing information relevant to the plan area for … potential species of conservation concern present in the plan area," when developing an assessment. See also Forest Service Planning Handbook 1909.12, Chapter 10, section 12.52, which provides guidance for identifying potential SCC.

If the responsible official determines that the species being evaluated is a potential SCC, paragraph (b)(6) requires the responsible official to apply § 219.9(b) with respect to that species as if the regional forester had identified it as an SCC.

By requiring that the responsible official apply the requirements of § 219.9(b) to a specific potential SCC that an amendment could substantially adversely impact, or if an

amendment would substantially lessen protections found in the underlying plan for that species, paragraph (b)(6), along with paragraph (b)(5), carries forward the Department's original intent that the species-specific protections of the 2012 rule apply in the context of amendments. At the same time, this paragraph limits unintended process-related delays or barriers to amendments by making clear that amendments to plans developed under a prior planning regulation can proceed prior to the regional forester's identification of SCC for the plan area.

Amend § 219.13 to add paragraph (b)(6)– Response to Comments

Comment: *Using the Regional Forester Sensitive Species (RFSS) as proxy.* Several respondents were supportive of clarifying how to apply the species-specific protections of the existing rule when amending plans developed under a prior planning regulation, but several respondents expressed concern about using the regional forester sensitive species (RFSS) as a proxy for species of conservation concern (SCC) when SCC have not yet been identified for the plan area, as well as confusion over the scope of proposed paragraph (c)(3). For example, one respondent interpreted the proposed paragraph (c)(3) as requiring that all species on the RFSS list meet the viability requirement in § 219.9(b). Respondents observed that the RFSS list is an imperfect proxy for SCC, with one respondent noting that the RFSS lists may not reflect best available scientific information, were compiled at a regional rather than a unit scale, and did not include a public comment process.

Response: The Department agreed that using the RFSS list as a proxy for SCC is an imperfect and potentially confusing procedural approach. The Department therefore removed from the final rule proposed paragraph (c)(3), which directed the responsible

official, if SCC have not been identified, to use the RFSS list in lieu of identifying SCC when applying the requirements of § 219.9(b) to amend a plan developed under a prior planning regulation.

Instead, the Department replaced proposed paragraph (c)(3) with paragraph (b)(6). Paragraph (b)(6) makes clear that SCC do not need to be identified by the regional forester prior to amending a plan developed or revised under a prior planning regulation, or as part of an amendment. Rather, paragraph (b)(6) operates to provide direction and a mechanism for a responsible official to be able to apply the requirements of § 219.9(b) to a specific potential SCC, when that specific species would be adversely impacted by a proposed amendment. The process identified in this new wording relies on the existing definition of SCC in § 219.9(c), and provides guidance similar to that already included in § 219.6(b)(5), which requires that the responsible official identify potential SCC during the assessment phase (an assessment is required prior to plan development or revision, but is optional for an amendment). See also Forest Service Planning Handbook 1909.12, Chapter 10, section 12.52, which provides guidance for identifying potential SCC.

Amend § 219.14

The final rule is unchanged from the proposed rule for this section. The Department changed the caption of paragraph (a) from "Decision document" to "Decision document approving a new plan, plan amendment, or revision." The Department redesignated paragraph § 219.14(b) as § 219.14(d).

In addition, the Department removed paragraph (a)(2) which requires responsible officials to explain how plan direction meets the provisions of §§ 219.8 through 219.11.

The Department replaced paragraph (a)(2) with two new paragraphs (b) and (c) and renumbered paragraphs (a)(3) through (a)(6).

The new paragraph (b) requires responsible officials to explain in a decision document for a new plan or plan revision how the plan direction meets the provisions of §§ 219.8 through 219.11.

The new paragraph (c) focuses on documentation for a plan amendment. The decision document must include a rationale for the responsible official's determination of the scope and scale of the amendment, which requirements within §§ 219.8 through 219.11 are directly related to that amendment, and how those requirements were applied.

Amend § 219.14 Response to Comments

Comment: *Best available scientific information, scoping, effects analysis, monitoring.* A respondent was supportive of the documentation requirements and stated that § 219.14 should also require that the responsible official discuss how the best available scientific information, scoping, effects analysis, monitoring data, and other rationale was used to determine which substantive provisions apply. They also stated that the responsible official should be required to explain the relationship between the amendment and the amended plan in the decision document, in the appropriate context of meeting rule requirements.

Response: The final rule in § 219.13(b)(5) requires that the responsible official base the determination that a specific substantive requirement is directly related to the amendment on the purpose for the amendment and the effects (beneficial or adverse) of the amendment, and requires that the determination be informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale. The

requirements for documentation in this section remain the same as in the proposed rule. The decision document must explain how the responsible official determined which specific requirements within §§ 219.8 through 219.11 apply to the amendment and how those requirements were applied to the amendment. Section 219.14 requires responsible officials to explain their rationale and explain the information they used to make the determination required by § 219.13(b)(5).

Amend § 219.16 to revise paragraph (a)(2)

To be in agreement with the change made to § 219.13(b)(3) that now includes an exception so that an amendment that applies only to one project or activity is not considered a significant change in the plan for the purposes of NFMA, a conforming change is needed in paragraph (a)(2) of § 219.16.

Therefore, in the final rule paragraph (a)(2) of § 219.16 specifies that a comment period of 90 days is not required for a proposed amendment that would apply only to one project or activity. However, for such amendments, normal NEPA requirements still apply. Therefore, the Department clarifies that the normal comment period is at least 45 days. See also Forest Service Handbook 1909.15, Chapter 20, section 24.1 – Circulating and Filing a Draft Environmental Impact Statement.

Technical Correction to Section 219.11

The Department added a technical correction to fix a mistake made in a correcting amendment to the 2012 rule on July 27, 2012 (77 FR 44144, July 27, 2012). In that correcting amendment, the Forest Service inadvertently removed a sentence about the maximum size limits for areas to be cut in one harvest operation in § 219.11(d)(4). This change would simply restore to § 219.11 the sentence as published in the 2012 rule on April 9, 2012 (77 FR 21161). The Department received no comments on this correction.

Compliance with the Endangered Species Act of 1973, as Amended

In issuing the 2012 rule, the Department prepared both an Environmental Impact Statement (EIS) and a biological assessment to support its final decision. NOAA Fisheries and USFWS each issued a biological opinion pursuant to section 7(a)(2) of the Endangered Species Act. The biological opinions included conservation reviews pursuant

to section 7(a)(l) Act (16 U.S.C. 1536(a)(1) and (2)). Copies of the biological assessment, its addendum, and the biological opinions are in the project record for the 2012 rule and can be viewed online at: http://www.fs.usda.gov/planningrule.

Because this final rule is to clarify the Department's original intent for plan amendment processes and requirements, and the amendment does not change the planning requirements for endangered or threatened species, the Department has concluded that this final rule does not require additional consultation under sections 7(a)(1) and 7(a)(2) of the Endangered Species Act.

Regulatory Certifications

Energy Effects

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

Environmental Impacts

In issuing the 2012 planning rule, the Department prepared both an Environmental Impact Statement (EIS) and a biological assessment to support its final decision. The EIS is available online at *http://www.fs.usda.gov/planningrule*.

The Department has concluded that this final rule does not require additional documentation under the National Environmental Policy Act. Because this final rule is to clarify the Department's original intent for plan amendment processes and requirements, the range of effects included in the Department's prior NEPA analysis covers this final rule. Therefore, there is no need to supplement the National Forest System Land Management Planning Rule Final Programmatic Environmental Impact Statement of January 2012.

Consultation and Coordination with Indian Tribal Governments

This final rule has been reviewed under Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments. It has been determined that this final rule would not have Tribal implications as defined by Executive Order 13175, and therefore, advance consultation with Tribes is not required.

Regulatory Impact

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovated, and least burdensome tools for

achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility

This final rule has also been considered in light of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small business entities as defined by the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required for this final rule.

Federalism

The Forest Service has considered this final rule under the requirements of Executive Order 13132 on federalism. The Agency has determined that the final rule conforms with the federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further determination of federalism implications is necessary at this time.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12630. It has been determined that this final rule does not pose the risk of a taking of private property.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988 on civil justice reform. The Agency has not identified any State or local laws or regulations that are in conflict with this rule or that would impede full implementation of this rule. Nevertheless, in the event that such conflicts were to be identified, (1) all State and local laws and regulations that conflict with the final rule or that would impede its full implementation would be preempted; (2) no retroactive effect would be given to the final rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

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

Controlling Paperwork Burdens on the Public

This final rule does not contain recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Forest Service requested and received approval of a new information collection requirement for subpart B as stated in 36 CFR 219.61 and assigned control number 0596-0158 as stated in the final rule approval (77 FR 21161, April 9, 2012). Subpart B specifies the information that objectors must give in an objection to a plan, plan amendment, or plan revision (36 CFR 219.54(c)).

However, recently the Agency learned that subpart B is not considered an information collection under the Paperwork Reduction Act of 1995. Subpart B is not an information collection because the notice indicating the availability of the plan, plan amendment, or plan revision, the appropriate final environmental documents, the draft plan decision document, and the beginning of the objection period is a general solicitation. No person is required to supply specific information pertaining to the respondent, other than that necessary for self-identification.

List of Subjects in 36 CFR Part 219

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

Therefore, for the reasons set forth in the preamble, the Department amends 36 CFR part 219 as follows:

PART 219—PLANNING

1. The authority citation for part 219 continues to read as follows:

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

2. Revise § 219.3 to read as follows:

§ 219.3 Role of science in planning.

The responsible official shall use the best available scientific information to inform the planning process required by this subpart for assessment; developing, amending, or revising a plan; and monitoring. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to the issues being considered. The responsible official shall document how the best available scientific information was used to inform the assessment, the plan or amendment decision, and the monitoring program as required in §§ 219.6(a)(3) and 219.14(a)(3). Such documentation must: Identify what information was determined to be the best available scientific information, explain the basis for that determination, and explain how the information was applied to the issues considered.

3. Revise the introductory text to § 219.8 to read as follows:

§ 219.8 Sustainability.

A plan developed or revised under this part must provide for social, economic, and ecological sustainability within Forest Service authority and consistent with the inherent capability of the plan area, as follows:

* * * * *

4. Revise the introductory text to § 219.9 to read as follows:

§ 219.9 Diversity of plant and animal communities.

This section adopts a complementary ecosystem and species-specific approach to maintaining the diversity of plant and animal communities and the persistence of native species in the plan area. Compliance with the ecosystem requirements of paragraph (a) of

this section is intended to provide the ecological conditions to both maintain the diversity of plant and animal communities and support the persistence of most native species in the plan area. Compliance with the requirements of paragraph (b) of this section is intended to provide for additional ecological conditions not otherwise provided by compliance with paragraph (a) of this section for individual species as set forth in paragraph (b) of this section. A plan developed or revised under this part must provide for the diversity of plant and animal communities, within Forest Service authority and consistent with the inherent capability of the plan area, as follows:

* * * * *

5. Revise the introductory text to § 219.10 to read as follows:

§ 219.10 Multiple use.

While meeting the requirements of §§ 219.8 and 219.9, a plan developed or revised under this part must provide for ecosystem services and multiple uses, including outdoor recreation, range, timber, watershed, wildlife, and fish, within Forest Service authority and the inherent capability of the plan area as follows:

* * * * *

6. Amend § 219.11 by revising the introductory text and paragraph (d)(4) to read as follows:

§ 219.11 Timber requirements based on the NFMA.

While meeting the requirements of §§ 219.8 through 219.10, a plan developed or revised under this part must include plan components, including standards or guidelines, and other plan content regarding timber management within Forest Service authority and the inherent capability of the plan area, as follows:

* * * * *

(d) * * *

(4) Where plan components will allow clearcutting, seed tree cutting, shelterwood cutting, or other cuts designed to regenerate an even-aged stand of timber, the plan must include standards limiting the maximum size for openings that may be cut in one harvest operation, according to geographic areas, forest types, or other suitable classifications. Except as provided in paragraphs (d)(4)(i) through (iii) of this section, this limit may not exceed 60 acres for the Douglas-fir forest type of California, Oregon, and Washington; 80 acres for the southern yellow pine types of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Oklahoma, and Texas; 100 acres for the hemlock-Sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types.

* * * * *

7. Amend § 219.13 by revising paragraphs (a) and (b) to read as follows:

§ 219.13 Plan amendment and administrative changes.

(a) *Plan amendment.* A plan may be amended at any time. Plan amendments may be broad or narrow, depending on the need for change, and should be used to keep plans current and help units adapt to new information or changing conditions. The responsible official has the discretion to determine whether and how to amend the plan and to determine the scope and scale of any amendment. Except as provided by paragraph (c) of this section, a plan amendment is required to add, modify, or remove one or more plan components, or to change how or where one or more plan components apply to all or part of the plan area (including management areas or geographic areas).

(b) *Amendment requirements*. For every plan amendment, the responsible official shall:

(1) Base an amendment on a preliminary identification of the need to change the plan. The preliminary identification of the need to change the plan may be based on a new assessment; a monitoring report; or other documentation of new information, changed conditions, or changed circumstances. When a plan amendment is made together with, and only applies to, a project or activity decision, the analysis prepared for the project or activity may serve as the documentation for the preliminary identification of the need to change the plan.

(2) Provide opportunities for public participation as required in § 219.4 and public notification as required in § 219.16. The responsible official may combine processes and associated public notifications where appropriate, considering the scope and scale of the need to change the plan. The responsible official must include information in the initial notice for the amendment (§ 219.16(a)(1)) about which substantive requirements of §§ 219.8 through 219.11 are likely to be directly related to the amendment (§ 219.13(b)(5)).

(3) Amend the plan consistent with Forest Service NEPA procedures. The appropriate NEPA documentation for an amendment may be an environmental impact statement, an environmental assessment, or a categorical exclusion, depending upon the scope and scale of the amendment and its likely effects. Except for an amendment that applies only to one project or activity, a proposed amendment that may create a significant environmental effect and thus requires preparation of an environmental impact statement is considered a significant change in the plan for the purposes of the NFMA

and therefore requires a 90-day comment period for the proposed plan and draft environmental impact statement (§ 219.16(a)(2)), in addition to meeting the requirements of this section.

(4) Follow the applicable format for plan components set out at § 219.7(e) for the plan direction added or modified by the amendment, except that where an amendment to a plan developed or revised under a prior planning regulation would simply modify the area to which existing direction applies, the responsible official may retain the existing formatting for that direction.

(5) Determine which specific substantive requirement(s) within §§ 219.8 through 219.11 are directly related to the plan direction being added, modified, or removed by the amendment and apply such requirement(s) within the scope and scale of the amendment. The responsible official is not required to apply any substantive requirements within §§ 219.8 through 219.11 that are not directly related to the amendment.

(i) The responsible official's determination must be based on the purpose for the amendment and the effects (beneficial or adverse) of the amendment, and informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale.

(ii) When basing the determination on adverse effects:

(A) The responsible official must determine that a specific substantive requirement is directly related to the amendment when scoping or NEPA effects analysis for the proposed amendment reveals substantial adverse effects associated with that requirement, or when the proposed amendment would substantially lessen protections for a specific resource or use.

(B) If the appropriate NEPA documentation for an amendment is a categorical exclusion or an environmental assessment accompanied by a finding of no significant impact (§ 219.13(b)(3)), there is a rebuttable presumption that the amendment will not have substantial adverse effects.

(6) For an amendment to a plan developed or revised under a prior planning regulation, if species of conservation concern (SCC) have not been identified for the plan area and if scoping or NEPA effects analysis for the proposed amendment reveals substantial adverse impacts to a specific species, or if the proposed amendment would substantially lessen protections for a specific species, the responsible official must determine whether such species is a potential SCC, and if so, apply section § 219.9(b) with respect to that species as if it were an SCC.

* * * * *

8. Amend § 219.14 as follows:

a. Revise the heading and introductory text to paragraph (a);

b. Remove paragraph (a)(2);

c. Redesignate paragraphs (a)(3) through (6) as paragraphs (a)(2) through (5), respectively;

d. Redesignate paragraph (b) as paragraph (d) and add new paragraph (b);

e. Add paragraph (c).

The revisions and additions read as follows:

§ 219.14 Decision document and planning records.

(a) *Decision document approving a new plan, plan amendment, or revision.* The responsible official shall record approval of a new plan, plan amendment, or revision in a

decision document prepared according to Forest Service NEPA procedures (36 CFR part 220). The decision document must include:

* * * * *

(b) *Decision document for a new plan or plan revision*. In addition to meeting the requirements of paragraph (a) of this section, the decision document must include an explanation of how the plan components meet the sustainability requirements of § 219.8, the diversity requirements of § 219.9, the multiple use requirements of § 219.10, and the timber requirements of § 219.11.

(c) *Decision document for a plan amendment*. In addition to meeting the requirements of paragraph (a) of this section, the decision document must explain how the responsible official determined:

(1) The scope and scale of the plan amendment; and

(2) Which specific requirements within §§ 219.8 through 219.11 apply to the amendment and how they were applied.

* * * * *

9. Amend § 219.16 by revising paragraph (a)(2) to read as follows:

§ 219.16 Public notifications.

* * * * *

(a) * * *

(2) To invite comments on a proposed plan, plan amendment, or plan revision, and associated environmental analysis. For a new plan, plan amendment, or a plan revision for which a draft environmental impact statement (EIS) is prepared, the comment period is at least 90 days, except for an amendment that applies only to one

project or activity. For an amendment that applies only to one project or activity for which a draft EIS is prepared, the comment period is at least 45 days unless a different time period is required by law or regulation or authorized pursuant to 40 CFR 1506.10(d). For an amendment for which a draft EIS is not prepared, the comment period is at least 30 days;

* * * * *

Dated: December 9, 2016.

Robert Bonnie,
Under Secretary,
Natural Resources and Environment.
[FR Doc. 2016-30191 Filed: 12/14/2016 8:45 am; Publication Date: 12/15/2016]