Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: December 11, 2006.

Gary L. Benes,

Forest Supervisor.

[FR Doc. 06–9716 Filed 12–14–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB86

National Environmental Policy Act Documentation Needed for Developing, Revising, or Amending Land Management Plans; Categorical Exclusion

AGENCY: Forest Service, USDA.

ACTION: Final directive.

SUMMARY: The Forest Service is revising procedures for implementing the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations. The procedures are being revised through issuance of a final directive that amends Forest Service Handbook (FSH) 1909.15, chapter 30. This chapter describes categorical exclusions; that is, categories of actions which do not individually or cumulatively have a significant effect on the human environment, and therefore, normally do not require further analysis and documentation in either an environmental assessment (EA) or an environmental impact statement (EIS). The amendment adds one such category of actions to the Agency's NEPA procedures for final decisions on proposals to develop, amend, or revise land management plans.

DATES: *Effective Date:* This amendment is effective December 15, 2006

ADDRESSES: The new Forest Service categorical exclusion is set out in FSH 1909.15, chapter 30, which is available electronically via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.* Single paper copies are available by contacting Anthony Erba, Forest Service, USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW., Washington, DC 20250–1104. Additional information and analysis can be found at *http://www.fs.fed.us/emc/nfma.*

FOR FURTHER INFORMATION CONTACT: Anthony Erba, USDA Forest Service, Ecosystem Management Coordination Staff, (202) 205–0895. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 4 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2005, the Forest Service published the 2005 planning rule (70 FR 1023) establishing procedures for National Forest System compliance with the NFMA. That planning rule provided that approval of a plan, plan amendment, or plan revision may be categorically excluded from National Environmental Policy Act (NEPA) documentation in accordance with Forest Service NEPA procedures. On the same date, the Forest Service published a proposed amendment to its NEPA procedures to provide for such a categorical exclusion. Specifically, the categorical exclusion proposed on January 5, 2005 (70 FR 1062) would require four changes in chapter 30 of FSH 1909.15.

1. A category would be added to section 31.2 that would allow development, amendment, and revision of plan components, or portions thereof, to be categorically excluded unless extraordinary circumstances exist.

2. A paragraph would be added to section 30.3 to define the extraordinary circumstances pertinent to the new category. It would specify that the inclusion of a project or activity decision in a plan component may constitute an extraordinary circumstance.

3. A paragraph would be added to section 30.3 to clarify that the extensive public participation requirements in the land management planning regulations at 36 CFR 219.9 are sufficient to satisfy the scoping requirements currently included in section 30.3.

4. A paragraph would be added to section 32.2 to clarify that the plan approval document required by the land management planning regulations at 36 CFR 219.7(c) is sufficient to satisfy the decision memo requirements of chapter 30.

In response to comments on the proposed categorical exclusion and to clarify meaning, three revisions were made to the original proposal as follows.

1. The wording of the category to be added to section 31.2 was changed to remove the phrase ''except where extraordinary circumstances exist'' because the phrase is not necessary. The following wording was added to further clarify the actions that meet this category's definition: ''that provide broad guidance and information for project and activity decision-making in a National Forest System unit.'' Consistent with the Supreme Court decision in *Ohio Forestry Ass'n* v. *Sierra*

Club (523 U.S. 726 (1998)), the Agency further refined the category by adding language stating that ''[p]roposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments'' are outside the scope of this category. The Agency also added that such proposals for action shall be considered separately under Forest Service NEPA procedures.''

2. The paragraph to be added to section 30.3 defining the extraordinary circumstances pertinent to the new category for land management plans was deleted. The Agency added wording to the existing paragraph 2 further clarifying when extraordinary circumstances exist. This definition of extraordinary circumstances applies to any proposed action, including proposals to develop, amend, or revise land management plans. The added wording makes it clear that there must be a cause-effect relationship between the proposed action and any potential effects to the listed resources, and if such a relationship exists, the degree of the effect resulting from the cause-effect relationship determines whether extraordinary circumstances exist: ''The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is (1) The existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions and (2) if such a relationship exists, it is the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.''

A final decision on a proposed action is viewed as causing effects on the resources listed in section 30.3(2) when effects may occur without additional action by the agency other than routine administrative actions implementing the decision. For projects and activities, the final decision point is typically the decision to approve the project or activity, typically accompanied by a final environmental impact statement, environmental assessment, or categorical exclusion determination. There would normally be a ''cause-effect relationship'' between the project or activity and the environmental impacts. For example, there would normally be a ''cause-effect relationship'' between the decision to approve a timber sale and the direct, indirect, and cumulative effects on the environment of the timber sale project.

However, for land management plans developed under the 2005 planning rule, a cause-effect relationship of this nature typically does not exist. For example, to establish a ''cause-effect relationship'' for a land management plan, plan revision, or plan amendment, it is not sufficient to find that one or more plan components increase or decrease the likelihood of effects from future actions on one of the resources listed in section 30.3(2). Rather, it is necessary to conclude that a plan component by itself, without further analysis and decision-making by the agency, will either allow otherwise disallowed, or prohibit otherwise unprohibited, actions by the agency or other parties that may have effects on the listed resources.

In all cases, it is the agency's intent that the existence or non-existence of a ''cause-effect'' relationship continues to be established by the professional judgment of the responsible official based on available information and that no statistical, mathematical, or other formal method of proof is required.

History

The Forest Service is responsible for managing 192 million acres of national forests, national grasslands, and other areas, known collectively as the National Forest System (NFS). The Chief of the Forest Service, through a line organization of regional foresters, forest or grassland supervisors, and district rangers, manages the surface resources and, in some instances, the subsurface resources of those lands. Management is guided by land management plans prepared in accordance with the National Forest Management Act (NFMA) (16 U.S.C. 1600 *et seq.*) and its implementing regulations (36 CFR 219). The first implementing regulations were adopted in 1979 and revised in 1982. The implementing regulations adopted in 2005 replace the 1982 regulations.

The NFMA requires the Secretary to promulgate regulations ''specifying procedures to insure that land management plans are prepared in accordance with the [NEPA] including, but not limited to, direction on when and for what plans an environmental impact statement * * * shall be prepared'' (16 U.S.C. 1604 (g)(1)). In the implementing regulations adopted in 1979 and 1982, the Secretary required that environmental impact statements be prepared when developing plans, significant plan amendments, and plan revisions. The Forest Service believed this would provide a more efficient and effective overall planning process.

As a means of achieving NFMA land management objectives, the 1979 and 1982 planning rules included a requirement that the planning process include development of multiple alternative plans to identify ''the alternative that comes nearest to maximizing net public benefits * * *'' (36 CFR 219.12(f), September 30, 1982, as amended). The Forest Service took the approach of requiring multiple alternatives even though nothing in the NFMA (or any other substantive statute directing management of the National Forest System) demands that the Forest Service develop or consider alternative management regimes or alternative programs when developing land management plans, plan amendment, or plan revisions. The NFMA alternatives were to include a range of resource outputs, projects and activities, and expenditure levels. The 1982 planning rule also established requirements for an ''analysis of the management situation'' and ''benchmark analyses.'' These were used to define a range of resource production possibilities for various alternatives. The formulation of alternatives was intended to help the decision-maker maximize the use of various resources, consistent with the protection of other resources and objectives. The Forest Service believed at that time that plans were essentially a collection of 15 year's worth of projects.

Both the 1979 and 1982 planning rules required that alternatives be compared using the range of hypothetical resource outputs that could occur under each alternative. Each alternative contained standards and guidelines that would be analyzed when applied to hypothetical projects and activities. Interdisciplinary teams developing plans comparatively analyzed the effects of plan alternatives based on forecasts and broad predictions of future conditions and budgets. These teams completed this analysis despite other factors (*e.g.*, budget limits, changes in land conditions) that made it unlikely that potential output levels would be realized. The Forest Service essentially speculated about hypothetical projects and activities over a 15-year period.

The Forest Service believed the most efficient planning approach was to integrate the 1982 rule's regulatory requirement to formulate alternatives to maximize net public benefit with the NEPA alternative requirement (*i.e.*, 40 CFR 1502.14). Given the massive resources devoted to approving, amending, and revising plans, the Agency believed that if EISs were prepared at the point of developing plans, plan amendments, and plan revisions, those EISs also would

generally be sufficient for the approval of future proposed projects and activities. If a plan EIS was not adequate for a project or activity approval, the Agency believed that any additional NEPA analysis and documentation needed would tier to or supplement the analysis in the plan EIS.

Forest Service Experience With Plan-Level NEPA Under The 1982 Planning Rule

As the Forest Service gained experience with land management planning, it became clear that the Agency view that plans were essentially a collection of 15 years' worth of projects and decisions was incorrect. Many of these hypothetical projects and activities could not be accurately predicted and never occurred because of circumstances that were beyond the control of the Agency; such as, budget levels and changed land conditions. The Agency also learned that this view was not compatible with adaptive management principles (*e.g.*, monitoring, plan amendments, or plan revisions).

Throughout the 27 years of land management planning, the Agency also learned that tiering from the environmental analysis in plan EISs did not provide nearly as much useful information at the project or activity level as the Agency had expected. The effects analysis in Plan EISs was often too general to meet analytical needs for projects and activities. The effects analysis conclusions did not remain current over the life of a plan. In addition, typically because of public input and litigation, the Forest Service found that additional analysis and documentation in EAs and EISs was still necessary for projects and activities. The Forest Service found itself preparing much more site-specific NEPA documentation for projects than it had anticipated when it adopted the 1979 and 1982 planning rules. The relevant analysis typically had to be redone in a project-level NEPA analysis before proposals for projects and activities were approved. Meaningful analysis of a project's effects could not be done until the project design, the project location's environmental conditions, and the management direction applicable to the project based on the project design were known.

When the Agency has attempted to rely solely on a plan EIS to disclose the effects for subsequent on-the-ground actions, courts pointed out the weaknesses associated with this strategy. For example, the Eldorado National Forest created an off-road vehicle (ORV) management plan for the forest without conducting a forest-wide environmental analysis, instead relying on the EIS completed for the 1989 land management plan for the ORV plan. In *Center for Sierra Nevada Conservation* v. *Berry* (No. 2–02–325 LKK/JFM (E.D. Cal. Feb. 15, 2005), a Federal district court concluded:

> The LRMP EIS did not analyze the programmatic environmental impacts of a designated-route-only ORV trail system in Eldorado, nor did it analyze the environmental impacts of any particular ORV routes in the Forest or of permitting travel off of designated routes * * * Therefore, the Forest Service's duty under NEPA was not satisfied by tiering the ORV plan to the LRMP's EIS.

In reaching this conclusion, the district court emphasized the strategic nature of plans, referencing the *Norton* v. *Southern Utah Wilderness Alliance,* 124 S.Ct. 2373 (2004) (SUWA), case (''Such land use plans are 'not ordinarily the medium for affirmative decisions that implement the Agency's projections,' rather, they guide the development of future, more detailed plans.'' 124 S.Ct. 2373, 2382 (2004)).

Land management plans developed under the 2005 planning rule will typically be strategic and aspirational. In 1998 and 2004, the Supreme Court issued decisions that support the Forest Service's conclusion that its land management plans developed under the 2005 planning rule typically will not have independent environmental effects, and thus, will not have significant environmental effects. In *Ohio Forestry Ass'n* v. *Sierra Club*, 523 U.S. 726 (1998), the Supreme Court recognized that, in contrast to proposals for actions that approve projects and activities, the land management plan provisions at issue ''do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil or criminal liability; they create no legal rights or obligations'' (523 U.S. at 733 (1998)). In SUWA, the Supreme Court's description of the Bureau of Land Management's (BLM's) land use plan, developed under the Federal Land Policy and Management Act (FLPMA), is in accord with Forest Service land management plans developed under the 2005 planning rule. The Supreme Court noted that the BLM's land use plans are ''tools by which 'present and future use is projected' * * * [and] generally a statement of priorities,'' 124 S.Ct. 2373 at 2382–83 (2004) (citation omitted; emphasis added by Supreme Court). The Court also noted that BLM's plans are normally not used to make site-specific implementation decisions.

In 1988, even before *Ohio Forestry,* the Chief of the Forest Service established, in response to appeals on plans for the Idaho Panhandle and Flathead National Forests that land management planning for National Forest System units involves two levels of decisions: (1) Approval of plans or amendments and revisions to plans that provide frameworks for project decision-making; and (2) project or activity decisions. Thus, the Forest Service recognizes the distinction between a plan's strategic framework and project decision-making in plan and project documents.

Other case law also has recognized the strategic nature of land management plans. In *Swan View Coalition* v. *Turner,* 824 F. Supp. 923 (D. Mont. 1992), the court noted the nature of plans:

> [T]he Forest Plan is a broad framework for the management of a National Forest which does not directly commit to development. Allowing for additional review at each subsequent stage of development recognizes both the managerial purpose of a Forest Plan to provide mechanisms for monitoring and regulating future development as well as its inherent limitations in predicting what development will actually occur.

Finally, other Federal agencies have recognized the strategic nature of broad planning documents and that meaningful analysis of environmental impacts of these documents is difficult, if not impossible. In 1986, the United States Fish and Wildlife Service (USFWS) clarified the nature of recovery plans and adopted a categorical exclusion for them. The USFWS determined the categorical exclusion was appropriate because:

> Recovery plans are *broad planning documents* * * * Recovery plans *typically do not propose specific actions,* but instead set forth general policies for management and treatment of the species. For these reasons, *meaningful analysis of the environmental impacts of a recovery plan is usually difficult, if not impossible* * * * In addition, recovery *plans impose no obligations* on any agency, entity, or persons to implement the various tasks listed in the plan * * * any recovery actions set forth in a recovery plan that are to be carried out by Federal agencies will be subjected to NEPA analysis at the time they actually are ''proposed'' within the meaning of NEPA.

(November 5, 1986 Memorandum to Regional Directors) (emphasis added). While the purposes of USFWS recovery plans and Forest Service land management plans are different, the strategic nature of the plans is very similar. Like USFWS recovery plans, Forest Service land management plans

typically impose no obligations on any agency, person, or entity and any projects or activities in the plan area will be subject to NEPA analysis and documentation at the time they are proposed.

Forest Service Response to Experience

As a result of this experience under the 1979 and 1982 planning rules, the Forest Service made a number of changes in the 2005 planning rule that are pertinent to the use of a categorical exclusion for planning. The 2005 planning rule modified and clarified the nature of land management plans, emphasizing their strategic and aspirational nature. Plans under the 2005 planning rule will have five principal components: desired conditions, objectives, guidelines, suitability of areas, and special areas (36 CFR 219.7(a)(2)). Plans under the 2005 rule will describe desired conditions and objectives for the plan area, and provide guidance for future decision-making. Plans under the 2005 rule typically will not include proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments. (The five principal components are described further in the next section of this preamble.)

The planning process under the 2005 planning rule now emphasizes public participation and collaboration, and allows for consideration of plan options in an iterative fashion in which those options are developed and narrowed successively. The 2005 planning rule no longer requires the parallel development and analysis of multiple alternatives, and their comparison based on the analysis of projected and hypothetical projects and activities, to identify the alternative that comes nearest to maximizing ''net public benefits.''

The 2005 planning rule creates an expectation that elements sometimes found in plans under the 1982 planning rule, will now be uncommon. The 2005 rule, together with Agency NEPA procedures, establishes specific requirements for those plans where these uncommon elements do occur. For example, plans developed under the 1982 planning rule sometimes included specific final decisions (such as oil and gas leasing) or decisions establishing specific prohibitions (such as decisions prohibiting motorized vehicles in certain areas). In contrast, plans under the 2005 planning rule typically will not include proposals for actions that approve or prohibit projects and activities. Proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments, are outside the scope of this category for land management plans and will be considered separately under Forest Service NEPA procedures (*i.e.*, further analysis and documentation in an EA or EIS or application of a categorical exclusion (*e.g.*, proposals to repair an administrative site or conduct a limited timber harvest that are covered by categorical exclusions 3 in section 3.12 and 12 in section 3.2 respectively)).

Given these changes in the nature of the planning process and the nature of plans themselves, the Forest Service has concluded that actions approving, amending, or revising a land management plan under the 2005 planning rule that provides broad guidance and information for project and activity decision-making do not individually or cumulatively have significant effects on the human environment (40 CFR 1508.4). Plan components typically cannot be linked in a cause-effect relationship over time and within a geographic area to effects on the human environment without proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments. Therefore, the Forest Service concludes that such actions can be categorically excluded from analysis and documentation in an EA or EIS, absent extraordinary circumstances, as provided in Agency NEPA procedures. This final directive establishes a category for plans (*i.e.*, Planning CE) in the Forest Service NEPA Handbook (FSH 1909.15).

Examples of Plan Components Under the 2005 Planning Rule

The following 2005 planning rule plan component examples illustrate why future actions must be proposed before any effects on the human environment can be analyzed and occur. These examples demonstrate that the plan components under the 2005 rule generally will not approve projects and activities or command anyone to refrain from undertaking projects and activities, or grant, withhold or modify contracts, permits or other formal legal instruments.

Desired conditions are the social, economic, and ecological attributes toward which management of the land and resources of the plan area is to be directed (36 CFR 219.7(2)(i)). The desired conditions illustrate how the desired landscape would look or function. Desired conditions will not describe the precise activities to be undertaken to bring the forest to those conditions. Desired conditions in the approved plan, plan amendment, or plan revision do not approve projects and activities, or command anyone to refrain from undertaking projects and activities, or grant, withhold or modify contracts, permits or other formal legal instruments. The following is an example of how a desired condition regarding certain vegetation and species habitat and recreation opportunities will be expressed under the 2005 planning rule:

Watersheds in this management area are dominated by oak-grasslands. On upper slopes and ridges across this area, grasslands (less than 10 percent tree canopy closure) and open oak woodlands (10–60 percent tree canopy closure) are interspersed in variable mixtures. In general, tree density increases as one moves down slope, but densities are variable and transitions gradual. Snag and den tree densities average three stems per acre on a watershed basis. Native grasses and forbs dominate understories. Most mid and lower slopes have open oak forests (60–80 percent tree canopy closure), with understories containing oak regeneration in sufficient numbers to provide for sustaining oak on these sites over time. Multi-layered mixed hardwood mesophytic and riparian forests occur on lower slopes, where, because of topography and moisture, understory fires burn at low intensities or not at all. Within riparian corridors, vegetative filter strips have 80 percent total ground cover comprised of grasses, or forbs. In riparian areas, flooding is the primary disturbance factor.

In upland portions of this management unit, diverse grass and grass-forb understories provide diverse and abundant herbage, seeds, and insects. Open canopies and the use of periodic fire create this understory condition. This understory condition also supports a diverse assemblage of wildlife. Rare species that are adapted to open forests and grasslands, but have declined due to land-use changes and the alteration of these habitats, are present and distributed in numbers that will provide for self-sustaining populations. These include Henslow's sparrow, whippoor-will, southern prairie aster, barbed rattlesnake-root, buffalo clover, and prairie parsley. Small mammals, such as deer mice (Peromyscus spp.), voles, and rabbits are abundant, supporting increased populations of predators, such as raptors, foxes, and bobcats.

Generally unmodified natural environments characterize this area and users have the opportunity to experience a moderate degree of independence, closeness to nature, solitude, and remoteness, with some areas generally suitable for motorized opportunities and others for non-motorized opportunities. Satisfactory recreational experience is provided for at least 70 percent

of forest visitors annually, as determined from comment forms that show ratings of ''acceptable'' or higher. This area contributes to economic sustainability by providing special interest areas for birders, who frequently use quality outfitter guides for birding tours.

This type of a description states a vision for the desired condition of the forest. Desired conditions provide a context for future proposed projects or activities. Projects and activities will be developed to help achieve or maintain one or more of the desired conditions of the plan.

To be consistent with the plan, a future proposed project or activity can (1) Maintain or help achieve one or more desired future conditions, or (2) be neutral to relevant desired conditions. The statement of desired conditions will typically influence the choice and design of future proposed projects and activities in the plan area. The influence desired conditions have on the direct, indirect, and cumulative effects of future projects or activities is not known and cannot be meaningfully analyzed until such projects or activities are proposed by the Agency.

Objectives are concise projections of measurable, time-specific intended outcomes (36 CFR 219.7(a)(2)(ii)). These outcomes typically result from approved projects or activities. Objectives state aspirations to guide the future proposed projects and activities for the plan area to help maintain or achieve the desired conditions. Even though objectives identify outcomes aimed at achieving or maintaining desired conditions in the plan area and time frames based on current and past trends of Agency capacity (*i.e.*, budget and personnel), they still are aspirational in nature. Objectives in the approved plan, plan amendment, or plan revision do not approve projects and activities, or command anyone to refrain from undertaking projects and activities, or grant, withhold or modify contracts, permits or other formal legal instruments. A binding commitment to these objectives would be impossible since Agency budgets for any given year are not known. Examples of objectives to achieve the desired conditions expressed in the example above are:

Restore 150 acres of nesting and foraging habitat for neotropical migrant birds in 3–5 years.

Create 100 acres of Henslow's sparrow habitat within 10 years.

Decommission about two miles of routes each year. Non-system roads that may be causing environmental damage are prioritized for route decommissioning or rehabilitation.

While objectives describe aspirations in the plan area to help achieve desired conditions, they will not create a binding commitment to undertake future proposed projects and activities. Objectives will not set the location, timing, or method of any future proposed project or activity. Rather, they provide strategic benchmarks that are helpful in evaluating progress toward desired conditions. Projects and activities are typically developed and designed to achieve one or more of the objectives of the plan. Objectives help guide the responsible official set priorities for future proposed projects to meet the desired conditions. For example, the plan objective for creating Henslow's sparrow habitat guides the responsible official to look for the best location to propose projects that create habitat for Henslow's sparrow. The responsible official may compare the existing conditions with the desired conditions described for several watersheds before developing a proposal to create Henslow's sparrow habitat. The responsible official can then choose the location to develop a proposed project that contributes to the desired conditions.

To be consistent with the plan, a project or activity can (1) Help make progress toward one or more objectives, or (2) be neutral to relevant objectives. Objectives will typically influence the choice and design of projects or activities in the plan area. The influence objectives have on the direct, indirect, and cumulative effects of future projects or activities is not known and cannot be meaningfully analyzed until such projects or activities are proposed by the Agency.

Guidelines provide information and guidance that will be applied to future proposed projects or activities to contribute to achieving or maintaining desired conditions (see 36 CFR 219.7(a)(2)(iii)). The term ''guideline'' represents general guidance that will be adopted or, if necessary, adapted, based on site-specific conditions and circumstances. Guidelines in the approved plan, plan amendment, or plan revision do not approve projects and activities, or command anyone to refrain from undertaking projects and activities, or grant, withhold or modify contracts, permits or other formal legal instruments. Examples of guidelines which would guide the design of projects or activities to help achieve the desired conditions and objectives will be expressed in terms like the following:

Human activity in neotropical migrant bird nesting habitat areas should be excluded during a period of March 15 to May 15 with the exception of through travel routes.

For restoration activities, mechanical equipment should not be used within 20 feet of riparian buffers.

Low impact techniques should be emphasized in dispersed recreation areas. The use of ''Use Tread Lightly'' techniques ought to be employed in education and interpretation.

In the nesting habitat guideline example above, the guideline indicates how future proposed projects or activities involving the bird habitat would typically be designed, namely, human presence should be avoided at the designated times. This guideline example does not command anyone to undertake or refrain from undertaking any project or activity. Rather, guidelines describe parameters for activities in the area, recognizing that the site-specific NEPA and other analyses conducted during future project and activity decision-making may support adjustment of the guideline in certain circumstances. Thus, guidelines will typically influence the development of an Agency proposal for future projects and activities in the plan area. The influence guidelines have on the direct, indirect, and cumulative effects of future projects or activities is not known and cannot be meaningfully analyzed until such projects or activities are proposed by the Agency.

Guidelines are intended to be adaptable to changing conditions and circumstances. Future proposed projects and activities typically will be designed in accord with applicable plan guidelines. However, if the responsible official determines that it is appropriate to adapt the guidelines based on specific conditions or circumstances, the responsible official will describe and document the reason for the proposed adjustment and explain the relationship to desired conditions and objectives in the project-level environmental analysis and decision documents. In such cases, a plan amendment typically will not be required.

The use of the term ''guideline'' in the Forest Service's 2005 planning rule emphasizes the strategic nature of plans under the rule. In the 1982 planning rule and the first round of plans, the planning term used was ''standards and guidelines.'' Standards and guidelines were part of the plan's overall management direction that guided management activities on a National Forest System unit. Some plans and plan revisions under the 1982 planning rule term mandatory direction as ''standards'' and general direction with latitude for implementation as ''guidelines.'' Others do not make a distinction between standards and guidelines. For purposes of the

discussion that follows, the term ''standards and guidelines'' refers to management direction provided under the 1982 planning rule.

To clarify the strategic nature of plans, the Forest Service adopted the term ''guidelines'' in the 2005 planning rule. Under the 2005 rule, plans typically will not have standards and guidelines as defined under the 1982 planning rule. The term ''guideline'' under the 2005 planning rule represents general guidance that will be applied based on site-specific conditions and circumstances to future proposed projects and activities. Guidelines will be used to design projects or activities to contribute to achieving a plan area's desired conditions.

Retaining, Revising, or Removing Existing Standards and Guidelines. During development, amendment, or revision of plans under the 2005 planning rule, the responsible official must consider whether to retain, revise, or remove existing standards and guidelines.

The plan approval document will describe the extent to which standards and guidelines from the existing plans are retained or revised and the required evaluation report will identify the decision document, or portion of such document, in which the standards and guidelines were approved, and any prior environmental analysis which pertains to such standards and guidelines. Typically, no further NEPA analysis is required at the time of plan amendment or revision for previously analyzed standards and guidelines that are retained or revised. The influence of such standards and guidelines on the direct, indirect or cumulative effects of future projects and activities will be analyzed at the time such projects and activities are proposed. However, in limited instances the agency may propose to retain an existing or revised standards and guidelines that command the agency or others to undertake or refrain from undertaking projects and activities. Such a proposal is outside the scope of the category and shall be considered separately under Forest Service NEPA procedures, at which point the agency shall determine whether any previous environmental analysis pertaining to the retained or revised standards and guidelines is still adequate or whether it needs to be supplemented.

When standards and guidelines are removed, the required evaluation report will identify which standards and guidelines are removed and provide a rationale for the removal. Typically no further NEPA analysis is required at the time of plan amendment or revision to remove standards and guidelines. The influence of the removal of standards and guidelines on the direct, indirect, and cumulative effects of future projects and activities will be analyzed at the time projects and activities are proposed. However, in limited instances a proposal by the agency to remove standards and guidelines may result in an immediate environmental impact because the removal would allow projects and activities to occur or require them to stop occurring without a subsequent proposed action by the agency. Such a proposal is outside the scope of this category and shall be considered separately under Forest Service NEPA procedures.

For the *suitability of areas* plan component, areas within a National Forest System unit will be identified as generally suitable for various uses that are compatible with desired conditions and objectives for that area (36 CFR 219.7(a)(2)(iv)). As stated in the preamble to the 2005 Planning Rule, a land management plan will identify general suitability of areas for various uses. The identification of an area as generally suitable for various uses does not approve projects or activities, command anyone to refrain from undertaking projects and activities, or grant, withhold or modify contracts, permits or other formal legal instruments. Identification of suitable land areas is not a final determination of the suitability of an area for a future proposed project or activity. The identification of generally suitable land areas is guidance for future project or activity decision-making. The influence general suitability identification has on the direct, indirect, and cumulative effects of future projects or activities is not known and cannot be meaningfully analyzed until such projects and activities are proposed by the agency.

In accordance with NFMA, the 2005 planning rule requires the responsible official to identify lands within the plan area as not suitable for timber production. This identification is not a proposal for action prohibiting timber harvest projects or activities. Salvage timber sales and timber harvest activities necessary for other multiple-use purposes may occur in these areas if proposed and approved in the future. There are no effects from identification of areas as not suitable for timber production. The identification influences the development of future proposals for projects and activities. The influence the identification has on the direct, indirect, and cumulative effects of future projects and activities is not known and cannot be meaningfully analyzed until future projects or activities are proposed.

Suitable areas can be identified in several ways, including maps and/or narrative descriptions. Examples of suitability identifications are:

> Areas along, and within 200 feet of, designated motorized travel routes are generally suitable for dispersed camping (*e.g.*, camping outside designated campgrounds).
>
> Areas identified for dispersed recreation are generally suitable for non-motorized recreational use including camping, photography, hiking, fishing, and hunting.
>
> Dispersed recreation areas are generally suitable for timber harvest (including salvage), for multiple-use purposes and to achieve desired vegetation conditions. These areas are generally suitable for commercial use of nontimber forest products.

Identification of generally suitable land areas is guidance that helps a land manager and user understand which areas generally are suitable for uses based on compatibility with desired conditions for a given area. For example, a dispersed recreation area's desired condition would be described as typically undeveloped, or minimally developed, highlighting the area's opportunities for non-motorized recreation. As shown above, this particular area is identified as generally suitable for non-motorized activities, such as camping, photography, hiking, fishing, and hunting. This identification, however, does not approve specific activities or prohibit activities that have not been identified as a generally suitable use for the area. A future proposed project for a use not identified as a generally suitable use may be approved if appropriate based on site-specific analysis and if the proposed project is consistent with other plan components. Although not required for approval of the proposed project, the site-specific NEPA analysis and documentation may lead the responsible official to believe uses of the type approved are generally suitable for the area and propose an amendment to the plan to identify such uses as generally suitable for the area.

Special areas are identified or designated for their unique or special characteristics (36 CFR 219.7(a)(2)(v)). There are four ways special areas may be addressed during plan development, amendment, or revision:

1. An area previously designated may be identified.

2. The responsible official may make a preliminary administrative recommendation for a Congressional designation (*e.g.,* a wilderness or Wild and Scenic Rivers segment).

3. The responsible official may make a preliminary recommendation for an

administrative designation (*e.g.*, Research Natural Area).

4. The responsible official may designate an area (*e.g.*, geological areas).

Special Areas Previously Designated

The responsible official may identify in the Plan Set of Documents an area previously administratively or Congressionally designated. This does not require analysis under NEPA. The effects of such designated areas were assessed and considered when the designation was approved.

Preliminary Administrative Recommendation for Congressional Designation

The responsible official may make a preliminary administrative recommendation for Congressional designation (*e.g.*, a wilderness or Wild and Scenic Rivers segment) in the plan approval document. This is a preliminary recommendation based on inventory and evaluation procedures documented in Forest Service directives. The directives for wilderness evaluation are in Forest Service Manual (FSM) 1923 and Forest Service Handbook (FSH) 1909.12, chapter 70. The directives for Wild and Scenic River evaluation are in FSM 1924 and FSH 1909.12, chapter 80. This recommendation is a preliminary administrative recommendation that will receive further review and possible modification by the Chief of the Forest Service, the Secretary of Agriculture, and the President of the United States. As a matter of Forest Service policy, if the Chief decides to forward preliminary administrative wilderness recommendations to the Secretary, an appropriate NEPA document will accompany the recommendations.

If the Department decides to make a final recommendation for a congressional designation, the appropriate NEPA analysis and documentation will accompany the legislative proposal for designation.

Recommendation for Administrative Designation

The plan responsible official may also make a recommendation to their supervisor for administrative designation that can be acted on by that supervisor or a higher authority within the Department. For example, Research Natural Areas (RNAs) can be recommended by a Forest or Grassland Supervisor and may be designated by the Regional Forester with concurrence by the Station Director. For further examples, see FSH 1909.12, section 11.15, exhibit 1 for a list of special area designation authorities. The appropriate NEPA analysis and documentation will be prepared when the responsible official with the designation authority is considering a proposal to designate an area. It is at this point in the administrative designation process that direct, indirect, and cumulative effects of the proposed administrative designation can be meaningfully analyzed.

Designation of a Special Area

The responsible official also may designate a special area during plan development, amendment, or revision. The types of special areas that the responsible official can designate are those with the following characteristics: Scenic, geological, botanical, zoological, paleonotological, historical, and recreational (see FSM 2372). Designating a special area that simply identifies one or more of these characteristics, and also includes a plan component developed for that particular area, may occur without further NEPA analysis and documentation. For example, a geological area with outstanding formations or unique geological features of the earth's development (*e.g.*, caves, fossils, dikes, cliffs, or faults) may be identified and have a desired condition plan component developed when designated by a responsible official. See FSH 1909.12, section 11.15, exhibit 1.

Some proposed special area designations may include a prohibition on projects or activities in those areas. If the proposed designation includes a prohibition that commands anyone to refrain from undertaking projects and activities in the area, or that grants, withholds or modifies contracts, permits or other formal legal instruments, that proposed designation will be considered separately from the plan under Forest Service NEPA procedures. For example, if a proposal did designate a geological area as a special area that includes a direct prohibition on rock climbing to protect a plant species, appropriate NEPA consideration would be required for that proposed designation.

Examples of plan recommendations for special area designation are:

The Responsible Official recommends the Blue Gulch area for Wilderness designation. This area is north of the Bald Mountain Wilderness area and includes approximately 10,000 acres with a boundary map attached to this approval document. This recommendation is a preliminary administrative recommendation that will receive further review and possible modification by the Chief of the Forest Service, the Secretary of Agriculture, and the President of the United States. The Congress has reserved the authority to make final decisions on wilderness designation.

The Responsible Official recommends Highway 13 through the Blue Gulch area as a scenic byway because it possesses outstanding views and scenic corridor. However, the actual designation authority resides with the Chief. If the Chief decides to designate the area, a separate administrative process will be used.

An example of plan special area designation is:

The Responsible Official designates the Blue Gulch area as a geological area because it possesses outstanding caves, fossils, and cliffs.

Requirements of other laws are not considered plan components under the 2005 planning rule. However, plans will cross-reference these requirements to facilitate land management.

Forest Service Review of EISs Completed for Plan Revisions Under the 1982 Planning Rule

In response to comments on the proposed categorical exclusion, the Forest Service conducted a review of EISs and RODs for plan revisions under the 1982 planning rule (see ''Results of the Review of Revised Land and Resource Management Plan Environmental Impact Statements'' in the Administrative Record). The following conclusions resulted from the review.

- The reviewed text in the plan EISs focused on hypothetical projects and activities or on specific prohibitions. Several reviewed EISs described effects as being related to a plan's management direction, but the effects were projected effects from hypothetical projects and activities under various plan alternatives or the effects of management area prescriptions, in the form of standards that prohibit activities.
- The reviewed RODs and EISs pointed out that a project's site-specific effects depend on the future proposed project design, the environmental conditions of the specific location, and the application of the plan's standards and guidelines to the future proposed project. It is at this point that the influence of standards and guidelines on the effects of the future proposed project can be meaningfully evaluated.
- Several of the reviewed RODs contained specific final decisions (*e.g.*, prohibiting motorized cross-country travel, prohibiting boat use on a specific river segment) that will not normally be included in development, amendment, or revision of land management plans under the 2005 planning rule. Those specific final decisions were identified and their effects analyzed in the plan EIS.

The final environmental impact statement (FEIS) review conclusions further reinforce the Forest Service's determination, based on 27 years experience with land management planning under the 1982 planning rule, that plans under the 2005 planning rule that provide broad information and guidance for project and activity decision-making may appropriately be categorically excluded from analysis and documentation in an EA or EIS. It also helped clarify the extraordinary circumstances that would require further NEPA analysis.

Conclusion

For the reasons set forth herein, the Forest Service has concluded that plans may be categorically excluded from documentation in an EA or EIS as established in these final directives agency NEPA procedures, absent extraordinary circumstances.

To further confirm the determination, the Forest Service prepared an EA for the proposed revision of the Cimarron and Comanche National Grasslands portion of the Pike and San Isabel National Forest land management plan. The Grasslands portion of that plan is being revised using the 2005 planning rule. Based on the EA, the Responsible Official concluded that the proposed plan revision would have no significant effects and recorded this finding in a Finding of No Significant Impact (FONSI) (December 2005, *http://www.fs.fed.us/r2/psicc/projects/forest_revision/draft_gr_ea.pdf*). The Grasslands proposed plan dated December 21, 2005 does not propose approval of any project or activity or command anyone to refrain from undertaking projects and activities, or grant, withhold or modify contracts, permits or other formal legal instruments. The plan components will provide a strategic framework with broad information and guidance—they will not compel any changes to the existing environment. Thus, without a proposal for action that approves projects and activities, or that commands anyone to refrain from undertaking projects and activities, the plan components cannot be linked in a cause-effect relationship over time and within the geographic area to effects on air quality; threatened and endangered species; significant scientific, cultural, and historic resources; water quality; nor other resources. Therefore, the plan will not have a significant effect on the quality of the human environment. The Grasslands plan will be approved later in calendar year 2007. The proposed plan and Environmental Assessment and Finding of no Significant Impact (FONSI) are hereby incorporated into the administrative record for the categorical exclusion (CE).

Comments on the Proposal

The Forest Service provided a 60-day comment period on the proposed land management planning categorical exclusion (Planning CE) (70 FR 1062; Jan. 5, 2005). The Forest Service received 55,000 comments in 3,334 responses (letters, form letters, and petitions). All suggestions and comments have been reviewed and considered in preparation of this notice of the final amendment. The Planning CE has been modified in response to comments and the modified text of the CE can be found at the end of this notice.

Public comment on the proposed Planning CE addressed a wide range of topics. Many comments discussed Forest Service management in general. Other respondents commented on the 2005 planning rule. The preamble to the 2005 planning rule (70 FR 1023, January 5, 2005) provides discussion that responds to these comments on the 2005 planning rule.

Some respondents supported the proposed CE for planning; most did not. Following are summaries of their comments on the proposed Planning CE and the Forest Service responses to those comments.

Comments on the Process Used To Promulgate the Categorical Exclusion

Comment—Extension request for comment period: Several respondents requested an extension to the 60-day comment period. They requested the comment period remain open until 60 days after publication of the interim directives for planning, which were published on March 23, 2005 (see 70 FR 14637). The requestors believed that the extension was needed so that they could better understand how the 2005 planning rule and the categorical exclusion proposal relate to each other.

Response: The 2002 proposed planning rule introduced the concept of using a categorical exclusion for land management planning. The public had a 90-day opportunity to comment then on this concept. Therefore, the Planning CE was not a new idea when the public was asked to comment on it in the January 5, 2005 **Federal Register** notice (70 FR 1023, 1062). Accordingly, the Forest Service did not find it necessary to extend the proposed Planning CE comment period beyond the March 7 closing date.

Comment—National Environmental Policy Act compliance: Some respondents claimed that failure to analyze the proposed categorical exclusion with an environmental impact statement is a violation of the NEPA. They stated that the impacts of adopting a CE in place of an EIS for every land management plan are significant. Others stated that the cumulative effect of the proposed Planning CE, along with other recently adopted CEs, such as the salvage and Healthy Forest Restoration Act categorical exclusions, would allow Forest Service actions to occur without any environmental analysis.

Response: The CEQ does not direct agencies to prepare a NEPA analysis or document, including a cumulative effects analysis, before establishing Agency procedures that supplement the CEQ regulations for implementing NEPA. The requirements for establishing Agency NEPA procedures are set forth in CEQ regulations at 40 CFR 1505.1 and 1507.3. The Forest Service provided an opportunity for public review and consulted with the CEQ during the development of this categorical exclusion. The determination that establishing categorical exclusions does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), aff'd, 230 F.3d 947, 954–56 (7th Cir. 2000).

The Forest Service believes that the point in the planning process when direct, indirect and cumulative effects occur and can be meaningfully analyzed is when projects and activities, or actions that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments are proposed. The Agency continues to require scoping for proposed actions even if the proposed action is covered by one of the categorical exclusions listed within the Forest Service NEPA procedures. If the Agency determines that there are extraordinary circumstances that warrant further analysis, then further appropriate NEPA analysis and documentation is required.

Comment—Extraordinary circumstance definition: A number of respondents said that the Forest Service did not clearly define what extraordinary circumstance would require the Agency to prepare an EA or EIS when developing, amending, or revising a land management plan. They also said that without a clear definition, inconsistency would be guaranteed when determining whether an EIS was required for a land management plan.

Response: The Forest Service agrees that the proposed extraordinary circumstance definition was not clear.

Accordingly, the Agency is revising the policy section (30.3) in this final directive to clarify when extraordinary circumstances apply to land management plan proposals or to proposals for projects or activities,

In the proposed directive (FSH 1909.15, chapter 30), the Agency stated that projects or activities proposed as part of plan development, amendment, or revision may constitute an extraordinary circumstance. In the final directive, the Agency defined the category more narrowly to exclude proposed actions that approve projects and activities or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments from the scope of the category. The Agency then adopted the existing definition of extraordinary circumstances for actions approving plans, plan amendment, and plan revisions. The Agency also added wording to the existing paragraph 2 further clarifying when extraordinary circumstances exist for a proposed action: ''The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. *It is (1) The existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions and (2) if such a relationship exists, it is* the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.'' This added wording clarifies that a proposed action (a land management plan, plan amendment, or plan revision, or a project or activity) must involve a determination whether the proposed action has an effect on any of the listed resource conditions, and, if so, whether the potential degree of the effect warrants further analysis and documentation in an EA or an EIS.

A summary of the changes made to the final directive is found earlier in this preamble under ''Background.''

Comment—Independent scientific review: One respondent expressed the concern that the Forest Service developed the Planning CE without the benefit of recommendations from a committee of scientists.

Response: In developing this categorical exclusion, the Forest Service considered the conclusions from the Committee of Scientists (COS) 1999 report for a more adaptable approach to planning. Secretary Glickman chartered the COS on December 11, 1997. The Committee consists of representatives from a variety of academic disciplines, including but not limited to, forest and range ecology, fish and wildlife biology, silviculture, hydrology, natural resource economics, sociology, public participation and conflict management, ecosystem management, land management planning, and natural resource law. The charter for the COS stated that the Committee's purpose was to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made in the National Forest System land management planning process. The COS stated, on page 117 of their report:

> [P]erhaps the most difficult problem is that the current EA/EIS process assumes a onetime decision. The very essence of small landscape planning is an adaptive management approach, based upon monitoring and learning. Although small landscape planning can more readily do real time cumulative effects analysis * * * this kind of analysis is difficult to integrate with a one-time decision approach. Developing a decision disclosure and review process that is ongoing and uses monitoring information to adjust or change treatments and activities will need to be a high priority * * * At the same time, its emphasis on onetime decisions is inconsistent with an adaptive management approach. This problem may require that a new process for disclosure and review emerge, either through changes in administrative rules or changes in law * * *

(Committee of Scientists Report, March 15, 1999, U.S. Department of Agriculture, Washington, DC 193 pp.) This COS conclusion is one of the considerations the Forest Service used to revise the 1982 planning rule. Establishing the Planning CE would further enhance the Agency's adaptive management and allow timelier plan amendments in response to monitoring information.

Comments on Public and Other Forest Service Participation

Comment—Public involvement: Many respondents expressed the importance of involving the public in all Federal land use decision processes. Many were concerned that without an environmental impact statement, opportunities for public involvement and oversight in the land management planning process will be reduced or eliminated. They were concerned because specific public involvement requirements in the CEQ regulations that apply to the EIS process do not apply to CEs. Many respondents stressed how public comment and review periods are an important piece of this country's democratic process and request that the Forest Service not change it. Many others believe that not using the EIS process would either eliminate, or shorten, the public comment period from 90 to 30 days. Some respondents stated their belief that eliminating EISs for land management plans violates the NFMA public participation requirements. Some indicated a belief that removing the plans from the NEPA EIS requirements would allow more meaningful public involvement.

Response: While categorical exclusions themselves do not require the same system of public involvement as EISs (*i.e.*, required Notice of Intent to prepare an EIS and initiate scoping; comment period for a draft EIS; review period for a final EIS), use of the Planning CE for land management planning needs to be considered together with the requirements for public participation and collaboration contained in the 2005 planning rule (36 CFR 219.9). The 2005 planning rule requires that a collaborative and participatory approach must be used for land management planning. There are three formal public comment opportunities in the land management planning process (36 CFR 219.9):

1. After a Forest Service unit provides the public the required notice that it is initiating a plan, plan amendment, or plan revision and invites the public to comment on the need for change in a plan;
2. During the 90-day comment period for a proposed plan, plan amendment, or plan revision; and
3. During the 30-day objection period prior to approving a plan, plan amendment, or plan revision.

The 90-day comment period (36 CFR 219.9(b)) meets the NFMA requirements for a comment period in the development, review, and revision of land management plans (16 U.S.C. 1604(d)). In addition, the 2005 planning rule specifically requires that the responsible official involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program. Finally, the 2005 planning rule does not preclude extending the 90-day comment period if necessary.

While the 1982 planning rule did not preclude this same level of collaboration, it also did not require it; it only required an opportunity for the public to comment after a notice of intent was published and during the three-month comment period on the proposed plan and accompanying draft EIS. The 2005 planning rule provides greater opportunities for public notification and comment during the land management planning process than required for an EIS. It also requires that a collaborative approach be used in land

management planning. Considering all of the available opportunities to participate, people will not only continue to have access to the land management planning process, they will have the opportunity to participate more meaningfully. The 2005 planning rule overview also discusses public participation in its summary of comments and responses (70 FR 1046; Jan. 5, 2005).

Comment—Less opportunity for public participation and for cooperating agency status: One county official indicates that use of a categorical exclusion for land management plans would eliminate the opportunity for counties to use cooperating agency status during the planning process, which the official considers ''one of the most effective vehicles for county government to constructively participate in [Forest Service] planning.'' Other government officials believed that this categorical exclusion might weaken the ability of the county and other State and local governments to access the planning process in a constructive manner. A State fish and game department official noted its current ability to collaborate with the Forest Service to protect populations of game and non-game vertebrates on the forests will be hindered by removing forest planning activities from scrutiny under NEPA.

Response: The 2005 planning rule provides that ''the Responsible Official must use a collaborative and participatory approach to land management planning * * * by engaging the skills and interests of * * * State and local governments * * *'' (36 CFR 219.9). This requires the responsible official to take into account the jurisdiction and responsibilities of interested and affected parties. The rule also specifically requires the responsible official to meet with and provide early opportunities for government agencies at all levels to collaborate, participate, and assist with the planning process (36 CFR 219.9(a)(2)). The Forest Service is very interested in working with State and local government and elected officials during the planning process. The Forest Service believes that this special relationship can continue with State and local governments and agencies as needed. Under existing authorities, the responsible official may enter into agreements with State and local governments to cooperate in land management planning using mechanisms such as memorandums of understanding, partnership agreements, and other means. The rule does not set out specific responsibilities, leaving it to the responsible official to (1) Meet and work with the State and local governments and (2) determine how those governments can effectively assist in land management planning.

Comment—Eliminating the appeal process: Many of the comments received addressed the appeal process and its relationship to the land management planning process. Some people stated that because the Forest Service is not requiring the use of an EIS, no opportunity to appeal the land management plan would exist. Some people stated that by not having an appeals process, the Forest Service could ignore substantive and procedural violations raised by the public. Other people believed that they would not be able to alert a higher level Forest Service official about public concerns. Finally, some people predicted that the objection process would be more expensive to use, as it would result in more litigation and thus, higher court costs. Some respondents stated that the Planning CE would reduce the amount of appeals and litigation compared to the 1982 planning rule process.

Response: There is no direct relationship between the use of an objection or appeal process and what form of NEPA documentation (CE, EA, and EIS) is used for planning. The 2005 planning rule requires the responsible official to provide an opportunity to object before approving a plan, plan amendment, or plan revision (36 CFR 219.13). The Forest Service believes it is better to address public objections before, rather than after, a plan's approval. It is the Agency's belief that the opportunity to object in the 2005 planning rule will make objectors and the responsible official work collaboratively to resolve concerns before a plan is approved.

An important characteristic of the objection process is that the reviewing official is the responsible official's supervisor (36 CFR 219.16). Therefore, the Regional Forester would review objections associated with a Forest or Grassland Supervisor's plan, plan amendment, or plan revision. This feature of the rule retains the higher-level review similar to what the appeals process offered.

Comments on Analysis

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

Response: A categorical exclusion is one method of complying with NEPA. A categorical exclusion represents a Forest Service determination that the actions encompassed by the category ''do not individually or cumulatively have a significant effect on the human environment'' (40 CFR 1508.4). Plans being developed under the 2005 planning rule typically will not include proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments. Plan components provide a strategic framework and guidance—they will not compel changes to the existing environment. Achieving desired conditions depends on future management decisions that will help effect a change toward or maintain these desired conditions over time. Thus, without a proposal for action that approves projects and activities, or that commands anyone to refrain from undertaking projects and activities, or that grants, withholds or modifies contracts, permits or other formal legal instruments, the plan components cannot be linked in a cause-effect relationship over time and within the geographic area to any resource. Therefore, the plan will not have a significant effect on the quality of the human environment.

A summary of the FEIS review is found earlier in this preamble under ''Forest Service Review of EISs Completed for Plan Revisions under the 1982 planning rule''. From this FEIS review, the Forest Service learned that the environmental analysis in the reviewed plan EISs typically focused on hypothetical projects and activities. Several reviewed EISs described effects as being related to a plan's management direction, but in fact, the effects were projected effects from hypothetical projects and activities under various plan alternatives or the effects of management area prescriptions, in the form of standards that prohibited activities. Plans under the 2005 planning rule typically will not include proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits

or other formal legal instruments. Such proposals will be considered separately under Forest Service NEPA procedures (*i.e.*, application of a categorical exclusion or further analysis and documentation in an EA or EIS).

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

Comment—Alternatives: Several respondents commented that by not using an environmental impact statement for land management planning, no alternatives will be considered other than the one proposed by the Forest Service. They were concerned that this would preclude the consideration of alternatives proposed by the public. Some suggested that alternatives play an important role in educating the public about the possible outcomes for national forests and grasslands. Others believed that evaluating alternatives allows Forest Service managers to make decisions that are more informed.

Response: A discussion of how alternatives were required by the 1982 planning rule is found earlier in this preamble under ''History.'' In summary, with the 1982 rule, Forest Service believed the most efficient planning approach was to integrate the rule's regulatory requirement to formulate alternatives to maximize net public benefit with the NEPA alternative requirement (*i.e.*, 40 CFR 1502.14). However, the new 2005 planning rule does not require alternatives because the 2005 planning rule envisions an iterative approach to plan development, in which plan options are developed and narrowed successively (36 CFR 219.7(a)(6)). The Agency anticipates that the responsible official and the public will iteratively develop and review various plan options of plan components, including options offered by the public. Together, they will work collaboratively to narrow the options for a proposed plan instead of focusing on distinct alternatives. The Forest Service has found that developing and considering distinct alternatives in an EIS can be divisive because people often rally behind certain alternatives and maintain adversarial positions rather than working together to solve problems and reach agreements. The Forest Service developed this iterative option approach to planning to encourage people to work together, understand each other's values and interests, and find common solutions to the important and critical planning issues the Agency faces.

When proposed projects and activities are analyzed and documented in an environmental assessment or environmental impact statement, the Forest Service will consider alternatives to the proposed action in accordance with NEPA. Projects and activities including timber sales, fish habitat or watershed improvement projects, livestock grazing use, oil and gas surface use plan of operations approval, and travel management provide the opportunity to evaluate and analyze NEPA alternatives. Such site-specific decisions may cover different geographic scales. For instance a travel management decision may be forest-wide or be limited to one travel route.

Comment—Use of a CE for wilderness proposals: A few respondents expressed concern that a categorical exclusion does not provide the level of analysis required for making recommendations on wilderness and Wild and Scenic Rivers.

Response: Wilderness and Wild and Scenic Rivers require congressional designation. The responsible official may make a preliminary administrative recommendation for Congressional designation (*e.g.* a wilderness or Wild and Scenic Rivers segment) in the plan approval document. As a matter of Forest Service policy, if the Chief decides to forward preliminary administrative wilderness recommendations to the Secretary, an appropriate NEPA document will accompany the recommendations. Additional discussion of the wilderness recommendation process can be found earlier in this preamble under *''Preliminary Administrative Recommendation for Congressional Designation.''*

Comment—Effects on project and activity efficiency: Some respondents believed that categorically excluding land management plans will increase the analysis necessary for project or activity decisions and therefore, reduce efficiency gained during the planning process. Some stated that without a plan EIS, cumulative effects and impacts to forest-wide resources would now have to be evaluated in each project decision. One county official suggested that the CE proposal be delayed until a process can be developed that streamlines planning at all levels, rather than shift the analysis burden from one planning level to another. Some commented that the Forest Service should be able to more actively and efficiently manage the National Forests System lands with the Planning CE. One respondent suggested that the categorical exclusion will result in more flexibility to respond to changing ecosystem conditions.

Response: Inherent in these comments is the assumption that land management plan EISs consistently provided useful and up-to-date information for project or activity analysis including sufficient cumulative effects analysis for reasonably foreseeable projects and activities. After 27 years of NFMA planning experience, the Forest Service has determined that plan EIS cumulative and landscape-level effects analyses are mostly speculative and quickly out of date (see the ''Comment—Disclosure of Environmental Effects'' and the Response above). Landscape conditions, social values, and budget availability change between when a plan EIS effects analysis occurs and when most project and activity decisions are made. Large-scale disturbances, such as drought, insects and disease, fires, and hurricanes dramatically and unexpectedly change conditions on hundreds to thousands of acres. Public use of a plan area can change dramatically in a relatively short time period, as has occurred with off-highway vehicles. Hence, the Forest Service has found that a plan EIS typically does not provide useful, current information about potential direct, indirect, and cumulative impacts of project or activity proposals. Such effects will be analyzed and disclosed when the Forest Service knows the proposal design and the environmental conditions of the specific location.

The 2005 planning rule sets up a process where more up-to-date information and analyses will be available to inform project and activity decisions by requiring the Agency to establish an Environmental Management System (EMS) and prepare comprehensive evaluation reports, prepare annual evaluation reports, and to perform on-going monitoring and evaluations. The comprehensive evaluation report must be completed for plan development and plan revisions and updated at least every five years (36 CFR 219.6(a)). This comprehensive evaluation will provide a broad overview of current conditions and trends relevant to the plan area. This evaluation, supplemented with information from annual evaluations and information from the EMS will be part of the continually updated Plan Set of Documents and will be considered in project or activity design and analysis. These will provide a more accurate and effective analysis context for project and

activity environmental effects than had been provided in plan EISs, thereby making project-level analysis more efficient.

Comments on Compliance With Law and Regulation

Comment—Tribal trust responsibility: One American Indian group expressed concern about the Forest Service's tribal trust responsibilities and indicated that the Planning CE would result in less environmental evaluation of projects, leading to water quality and habitat effects on tribal treaty-reserved rights. This group stated that ''[a] key component of the Forest [Service]'s trust responsibility is the duty to protect the tribal treaty-reserved resources. This includes both the resources themselves and the habitat upon which they depend.'' They also commented that the Planning CE would result in less evaluation and consideration of the Federal government plan's impacts on tribal trust resources. They requested that the Forest Service explain how the Planning CE complies with the Forest Service American Indian policy.

Response: The preamble for the proposed Planning CE states that the categorical exclusion will not significantly affect communities of Indian tribal governments, primarily because establishing the Planning CE as part of the Forest Service's NEPA procedures does not directly affect occupancy and use of land. Regarding consideration of effects on American Indians, the 2005 planning rule imposes an obligation, independent of NEPA, on Forest Service officials to consult early with tribal governments (36 CFR 219.9(a)(3)). The intent is to work cooperatively with Tribes where planning issues affect their interests. Given this early consultation, issues regarding tribal treaty-reserved rights can be identified and resolved as the plan is developed, amended, or revised. Nothing in this Planning CE changes the Forest Service responsibility to honor the government-to-government relationship between Tribes and the Federal Government and conduct the appropriate consultation and coordination with Indian Tribal Governments (*Executive Order 13175—Consultation and Coordination with Indian Tribal Governments*, dated 6 November 2000).

Comment—Violation of NEPA because a plan is a major Federal action: Some respondents believed that land management plans significantly affect the environment and are therefore, major Federal actions triggering the NEPA requirements for an EIS (40 CFR 1508.18). Some stated that the NEPA requirements for an EIS are triggered because land management plans are included in the category of Federal actions that are described as ''formal plans'' in the CEQ regulations at 1508.18(b)(2). Some respondents expressed the view that by determining the types of land uses that will occur within areas of a National Forest, the Forest Service makes decisions in its land management plans that ultimately can result in significant effects even though the plans themselves may not approve specific projects or activities.

Response: As explained in the overview to the 2005 planning rule (70 FR 1023; Jan. 5, 2005), the CEQ regulations define ''major Federal action'' as including ''actions with effects that may be major'' and state, ''major reinforces but does not have a meaning independent of significantly'' (40 CFR 1508.18). The CEQ regulation goes on to state that Federal actions fall within several categories, one of which is the ''[a]doption of formal plans, such as official documents prepared or approved by Federal agencies which guide or prescribe alternative uses of Federal resources'' (40 CFR 1508.18). However, as is further explained in the 2005 planning rule overview, not all Federal actions are major Federal actions significantly affecting the quality of the human environment. Plans developed under the 2005 planning rule typically will not include proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments. As such, plans have no independent environmental effects. Applicable plan components will guide the design of projects and activities in the plan area. The environmental effects of projects and activities will be analyzed under NEPA when they are a proposal for Agency action:

> ''Proposal'' exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists. (40 CFR 1508.23)

Plans will be strategic and aspirational in nature and typically will not direct alternative uses of resources nor determine the types of land uses that will occur. Plans developed under the 2005 planning rule will identify areas as generally suitable for uses that are compatible with desired conditions and objectives for that area. This identification does not create a right to that use or mean that the use will ever occur. This identification, also, does not approve specific activities or prohibit activities that have not been identified as a generally suitable use for the area. A future proposed project for a use not identified as a generally suitable use may be approved if appropriate based on site-specific analysis and if the proposed project is consistent with other plan components. Although not required for approval of the future project, the site-specific NEPA analysis and documentation may lead the responsible official to believe uses of the type approved are generally suitable for the area and propose an amendment to the plan to identify such uses as generally suitable for the area.

Comment—Court requires EISs for plans: Two respondents cited a 2003 ruling made on the Six Rivers Fire Plan as proof that an environmental impact statement is required for a plan.

Response: In Environmental Protection Information Center v. Forest Service, No. C–02–2708 (N.D.Cal. Sept. 5, 2003), a Federal district court concluded that the Six Rivers National Forest Fire Management Plan contained decisions that required NEPA analysis and documentation in an EA or EIS. The Department believes that the ruling only applied only to the decisions in the Six Rivers National Fire Management Plan, and not land management plans prepared pursuant to the 2005 planning rule.

Comment—Cases do not support categorical exclusion: Some respondents took issue with reliance on *Ohio Forestry Ass'n* v. *Sierra Club,* 523 U.S. 726 (1988), and *Norton* v. *Southern Utah Wilderness Alliance,* 124 S.Ct. 2382 (2004) (SUWA). Several noted that *Ohio Forestry* was simply a ripeness case—the Supreme Court did not hold that land management plans are inherently unreviewable and noted that plans that incorporate final decisions have immediate effects and are reviewable.

Response: The preamble to the proposed Planning CE noted that plan development, amendment, and revision is generally not the stage at which actions are proposed to accomplish the goals contained in land management plans (70 FR 1064; Jan. 5, 2005). The preamble further pointed out that this view of land management plans was supported by the previously cited Supreme Court decisions, *Ohio Forestry*

and *SUWA.* While the respondents believed that *Ohio Forestry* is simply a ripeness case, its implications are in fact quite broad. As the Supreme Court has noted repeatedly, ripeness is ''peculiarly a matter of timing'' (*Regional Rail Reorganization Act cases,* 419 U.S. 102, 140 (1974)). In *Ohio Forestry,* the Supreme Court held the portion of the land management plan at issue, which identified logging areas and goals, did ''not command anyone to do anything or to refrain from doing anything'' (523 U.S. 733). The plan therefore, was not ripe for review because the Forest Service had not yet made decisions that approved actions. However, the Court did acknowledge that plans, or portions of plans, which include decisions having immediate effects were in a different category (523 U.S. at 738–39). The Supreme Court repeated this view in *SUWA,* stating that ''a land use plan is generally a statement of priorities; it guides and constrains actions, but does not (at least in the usual case) prescribe them'' (124 S.Ct. at 2383). *Ohio Forestry* and *SUWA* are, therefore, significant because they acknowledge the fundamentally strategic nature of planning. In the specific context of those cases, the strategic nature of planning, contrasted against the more concrete nature of project-level activity, led the Court to determine that judicial review of plans was inappropriate.

The consideration of timing, as well as the contrast between planning and projects, supports a categorical exclusion for land management planning. To a greater extent than before, plans under the 2005 planning rule will be strategic and aspirational in nature, setting desired conditions and objectives and guidance for subsequent on-the-ground projects or activities. At the point of a proposed project or activity, the Forest Service can meaningfully evaluate the project or activity's environmental effects (40 CFR 1508.23). Where a project or activity is approved in connection with plan development, amendment, or revision, that approval will be analyzed in an appropriate NEPA document.

Thus, *Ohio Forestry* and *SUWA* both acknowledge the fundamental nature of land management plans as tools to guide later decisionmaking that generally will not have a significant effect on the environment.

Comment—Violation of NFMA analysis requirements: Several respondents stated that use of a categorical exclusion for planning would violate NFMA. These respondents interpret NFMA as requiring the preparation of EISs for plans and/or precluding the Forest Service from using a categorical exclusion for land management planning. One respondent stated that other provisions of NFMA regarding plans, such as the requirements to specify guidelines for species diversity and timber harvest, means that plans must have significant environmental effects which preclude the use of a categorical exclusion, or, at a minimum, that this determination should be made on a case by case basis.

Response: The NFMA does not require EISs for plan development, amendment, or revision. Rather, NFMA requires the Secretary to promulgate regulations ''specifying procedures to insure that land management plans are prepared in accordance with [NEPA] including, but not limited to, direction on when and for what plans an environmental impact statement * * * shall be prepared'' (16 U.S.C. 1604(g)(1)). Thus, Congress gave the Secretary the authority to determine ''when and for what plans'' an EIS is needed.

The Forest Service has complied with this requirement by specifying in the 2005 planning rule that land management planning will follow established Forest Service NEPA procedures and that, absent extraordinary circumstances, an appropriate categorical exclusion would be relied upon (36 CFR 219.4). Use of a categorical exclusion is itself a form of NEPA compliance and nothing in NFMA precludes the use of a categorical exclusion for land management planning. Indeed, the plain wording of NFMA at 1604(g)(1) confirms that the Forest Service has the discretion to determine the appropriate method of NEPA compliance.

Regarding the concern that NFMA provisions, such as those requiring the Agency to specify guidelines for diversity, preclude the use of a CE, the Forest Service believes it meets the NFMA requirement through plan components under the 2005 planning rule, such as desired conditions and objectives. For example, a responsible official might choose to provide for diversity of plant and animal communities, as provided in 16 U.S.C. 1604(g)(3), by providing guidance in the plan to improve habitat for a specific species. Such guidance would have no independent environmental effect. Rather, it could influence the direct, indirect, and cumulative effects of a future project or activity to improve habitat that may be proposed by the responsible official. At that time, the responsible official would use applicable plan components to determine the design of the project or activity based on the environmental conditions of the specific location.

Regulatory Certifications

Environmental Impact

This final directive revises direction guiding Forest Service employees in the requirements for NEPA analysis and documentation for land management planning activities. The Council on Environmental Quality does not direct agencies to prepare a NEPA analysis or document before establishing Agency procedures that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: those that require preparation of an EIS; those that require preparation of an EA; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing categorical exclusions does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), aff'd, 230 F.3d 947, 954–55 (7th Cir. 2000).

Regulatory Impact

This final directive has been reviewed under USDA procedures and *Executive Order 12866, Regulatory Planning and Review.* It has been determined that this is not an economically significant action. This action to issue agency direction will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This action will not interfere with an action taken or planned by another agency. This action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Because of the extensive interest in National Forest System (NFS) planning and decision-making, this CE for developing,

amending, and revising land management plans has been designated as significant and, therefore, is subject to Office of Management and Budget review under E.O. 12866.

Cost/Benefit Analysis

A detailed cost-benefit analysis was prepared, approved, and included in the regulatory impact for the January 5, 2005, Final Rule (36 CFR 219) for National Forest Land Management Planning. That analysis included an examination and discussion on key activities in land management planning for which costs could be estimated under the 1982 and the 2005 planning rules. The 1982 planning rule was used as the baseline for the analysis because all the land management plan revisions completed prior to the issuance of the 2005 planning rule have used the requirements of the 1982 planning rule (*i.e.*, completing an EIS).

Since the Forest Service is merely adjusting its NEPA implementing procedures to carry out the 2005 planning rule, no new assumptions for a cost-benefit analysis have been created. A review of the data and information for 2005 planning rule's detailed analysis has concluded that they are relevant, pertinent, and sufficient in analyzing the costs and benefits of establishing a new CE. No new information exists today that would significantly alter the information contained in the original detailed analysis; therefore, it is hereby incorporated by reference.

The detailed analysis for the 2005 planning rule is posted on the World Wide Web/Internet at *http://www.fs.fed.us/emc/nfma/*, along with other documents associated with that planning rule. The primary economic effects of the new CE for developing, amending and revising a land management plan under the 2005 planning rule are changes in costs for conducting environmental analysis and preparing NEPA documents. The new CE would reduce agency costs by reducing the NEPA documentation requirements for land management plans.

Based on the quantified costs estimated for the 2005 planning rule compared with continued use of an EIS under the 1982 planning rule, the average annual undiscounted cost savings for the 2005 planning rule are estimated to be $22.6 million. This savings focuses on a comparison of each rule's planning activity centers, which specifically compare documentation of an EIS or CE for land management planning. It also demonstrates the savings associated with the streamlined application of NEPA analysis guidance by using a CE under the 2005 planning rule.

Many of the benefits and costs associated with using the CE for plans developed, amended, or revised under the 2005 planning rule are not quantifiable. Other benefits, including collaborative and participatory public involvement to more fully address public concerns, timely environmental analysis, and shortening preparation time for the environmental documents with those changed conditions, such as wildfire, indicate a positive effect of using a CE instead of preparing an EIS.

Federalism

The Agency has considered this final directive under the requirements of *Executive Order 13132, Federalism.* The Agency has concluded that the final directive conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

Consultation and Coordination With Indian Tribal Governments

Pursuant to *Executive Order 13175 of November 6, 2000, ''Consultation and Coordination With Indian Tribal Governments,''* the Agency has assessed the impact of this final directive on Indian Tribal governments and has determined that the categorical exclusion does not significantly or uniquely affect communities of Indian Tribal governments. The final directive deals with requirements for NEPA analysis and documentation for land management planning activities and, as such, has no direct effect regarding the occupancy and use of NFS land.

The Agency has also determined that this final directive does not impose substantial direct compliance cost on Indian Tribal governments. This final directive does not mandate Tribal participation in NFS planning. Rather, the 2005 planning rule, with which this final directive is associated, imposes an obligation on Forest Service officials to consult early with Tribal governments and to work cooperatively with them where planning issues affect Tribal interests.

Civil Rights Impact Analysis

A civil rights impact analysis was conducted for the 2005 planning rule (36 CFR part 219 *et seq.*), which provided for this final directive. This analysis is posted on the World Wide Web/Internet at *http://www.fs.fed.us/emc/nfma/*, along with other documents associated with the 2005 planning rule. That analysis found that there are no adverse civil rights or environmental justice impacts anticipated to the delivery of benefits or other program outcomes on a national level for any underrepresented population or to other United States populations or communities. The final directive would add one category of actions to Agency NEPA procedures for development, amendment, or revision of land management plans. This final directive establishes an agency procedure—it does not in and of itself have effects on the social, economic, or ecological environment or on public participation and involvement.

No Takings Implications

This final directive has been analyzed in accordance with the principles and criteria contained in *Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights,* and it has been determined that the final directive does not pose the risk of a taking of Constitutionally protected private property.

Civil Justice Reform

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

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of this final directive on State, local, and tribal governments and the private sector. This final directive does not compel the

expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Energy Effects

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

Controlling Paperwork Burdens on the Public

This final directive does not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use, and therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Text of Amendment

Note: The Forest Service organizes its directive system by alphanumeric codes and subject headings. Only those sections of the Forest Service Handbook that are the subject of this notice are set out here. Reviewers wishing to review the entire chapter 30 may obtain a copy electronically from the Forest Service's directives Web site on the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.*

Forest Service Handbook

1909.15—Environmental Policy and Procedures Handbook

Chapter 30—Categorical Exclusion from Documentation

* * * * *

30.3—*Policy*

Revise existing paragraph 2, add a new paragraph 4, and redesignate existing paragraph 4 as paragraph 5 as follows:

1. A proposed action may be categorically excluded from further analysis and documentation in an environmental impact statement (EIS) or environmental assessment (EA) only if there are no extraordinary circumstances related to the proposed action and if:

a. The proposed action is within one of the categories in the Department of Agriculture (USDA) NEPA policies and procedures in Title 7, Code of Federal Regulations, part 1b (7 CFR part 1b), or

b. The proposed action is within a category listed in section 31.12 or 31.2 of this Handbook.

2. Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:

a. Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species.

b. Flood plains, wetlands, or municipal watersheds.

c. Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas.

d. Inventoried roadless areas.

e. Research natural areas.

f. American Indian and Alaska Native religious or cultural sites.

g. Archaeological sites, or historic properties or areas.

The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is (1) The existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions and (2) if such a relationship exists, it is the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.

3. Scoping is required on all proposed actions, including those that would appear to be categorically excluded. If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA (ch. 40). If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS (ch. 20).

4. If the proposed action is approval of a land management plan, plan amendment, or plan revision, the public participation requirements of 36 CFR 219.9 satisfy the scoping requirement of paragraph 3 of this section.

5. Section 18 of this Handbook contains related direction regarding correction, supplementation, or revision of environmental documents and reconsideration of decisions to take action.

* * * * *

31.2—*Categories of Actions for Which a Project or Case File and Decision Memo Are Required*

Add a new paragraph 16 as follows:

* * * * *

16. Land management plans, plan amendments and plan revisions developed in accordance with 36 CFR 219 *et seq.* that provide broad guidance and information for project and activity decision-making in a National Forest System unit. Proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments, are outside the scope of this category and shall be considered separately under Forest Service NEPA procedures.

* * * * *

32.2—*Decision Memo Required*

Add the following as a third unnumbered paragraph:

* * * * *

If the proposed action is approval of a land management plan, plan amendment, or plan revision, the plan approval document required by 36 CFR 219.7(c) satisfies the decision memo requirements of this section.

* * * * *

Dated: December 8, 2006.

Dale N. Bosworth,

Chief, Forest Service.

[FR Doc. E6–21370 Filed 12–14–06; 8:45 am]

BILLING CODE 3410–11–P

ANTITRUST MODERNIZATION COMMISSION

Public Meeting

AGENCY: Antitrust Modernization Commission.

ACTIONS: Notice of public meeting.

SUMMARY: The Antitrust Modernization Commission will hold a public meeting on January 11, 2007. The purpose of the meeting is for the Antitrust Modernization Commission to deliberate on possible recommendations regarding the antitrust laws to Congress and the President.

DATES: January 11, 2007, 9:30 a.m. to approximately 5 p.m. Advanced registration is required.

ADDRESSES: Morgan Lewis, Main Conference Room, 1111 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew J. Heimert, Executive Director & General Counsel, Antitrust Modernization Commission: telephone: (202) 233–0701; e-mail: *info@amc.gov*. Mr. Heimert is also the Designated Federal Officer (DFO) for the Antitrust Modernization Commission.