

The Agency has received requests for an extension of the comment period for the proposed rule. The requests conveyed concern that the current 75-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the proposed rule.

FDA has considered the requests and is extending the comment period for the proposed rule for 30 days, until July 17, 2019. FDA believes a 30-day extension is appropriate and would help ensure that interested persons have time to fully consider the proposed provisions, which are detailed and interrelated, as well as to fully consider and develop responses to the Agency's specific requests for comment.

Dated: June 7, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 220

RIN 0596-AD31

### National Environmental Policy Act (NEPA) Compliance

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service (Agency) is proposing revisions to its National Environmental Policy Act (NEPA) regulations. The Agency proposes these revisions to increase efficiency in its environmental analysis while meeting NEPA's requirements and fully honoring its environmental stewardship responsibilities. The proposed rule would contribute to increasing the pace and scale of work accomplished on the ground and would help the Agency achieve its mission to sustain the health, diversity, and productivity of the nation's forests and grasslands to meet the needs of present and future generations. Public input has informed the development of the proposed rule, including through an Advance Notice of Proposed Rulemaking. The Agency is now requesting public comment on the revisions in the proposed rule. The Agency will carefully consider all public comments in preparing the final rule.

**DATES:** Comments must be received in writing by August 12, 2019.

**ADDRESSES:** Please submit comments via one of the following methods:

1. *Public participation portal (preferred):* <https://www.regulations.gov/>.

2. *Mail:* NEPA Services Group, c/o Amy Barker; USDA Forest Service, 125 South State Street, Suite 1705, Salt Lake City, UT 84138.

3. *Email:* [nepa-procedures-revision@fs.fed.us](mailto:nepa-procedures-revision@fs.fed.us).

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received online via the public reading room at <https://www.regulations.gov/>, or at U.S. Forest Service, Ecosystem Management Coordination, 201 14th St. SW, 2 Central, Washington, DC 20024. Visitors are encouraged to call ahead to 202-205-1475 to facilitate entry to the building.

**FOR FURTHER INFORMATION CONTACT:**

Christine Dawe; Director, Ecosystem Management Coordination; 406-370-8865. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Forest Service is proposing revisions to its NEPA procedures (36 CFR part 220, which are located at [https://www.fs.fed.us/emc/nepa/nepa\\_procedures/index.htm](https://www.fs.fed.us/emc/nepa/nepa_procedures/index.htm)) with the goal of increasing efficiency of environmental analysis while meeting NEPA's requirements. The Forest Service is not fully meeting agency expectations, nor the expectations of the public, partners, and stakeholders, to improve the health and resilience of forests and grasslands, create jobs, and provide economic and recreational benefits. The Agency spends considerable financial and personnel resources on NEPA analyses and documentation. The Agency is proposing these revisions to make more efficient use of those resources. The Agency will continue to hold true to its commitment to deliver to decision makers scientifically based, high-quality analysis that honors its environmental stewardship responsibilities while maintaining robust public participation. These values are at the core of the Forest Service mission and are compatible with gaining efficiency in NEPA analysis and documentation.

Reforming the Forest Service's NEPA procedures is needed at this time for a

variety of reasons. An increasing percentage of the Agency's resources have been spent each year to provide for wildfire suppression, resulting in fewer resources available for other management activities, such as restoration. In 1995, wildland fire management funding made up 16 percent of the Forest Service's annual spending, compared to 57 percent in 2018. Along with a shift in funding, there has also been a corresponding shift in staff from non-fire to fire programs, with a 39 percent reduction in all non-fire personnel since 1995.

The Consolidated Appropriations Act of 2018 (2018 Omnibus Bill) included a new budget authority for FY 2020 to FY 2027, which will provide federal agencies with a new budget authority of over \$20 billion for fighting wildfires, in addition to regular appropriations. While this budget stability is welcome, the trends discussed above make it imperative that the Agency makes the most efficient use of available funding and resources to fulfill its environmental analysis and decision making responsibilities.

Additionally, the Agency has a backlog of more than 5,000 applications for new special use permits and renewals of existing special use permits that are awaiting environmental analysis and decision. On average, the Forest Service annually receives 3,000 applications for new special use permits. Over 80 million acres of National Forest System (NFS) land are in need of restoration to reduce the risk of wildfire, insect epidemics, and forest diseases.

Increasing the efficiency of environmental analysis would enable the Agency to do more to increase the health and productivity of our national forests and grasslands and be more responsive to requests for goods and services. The Agency's goal is to complete project decision making in a timelier manner, improve or eliminate inefficient processes and steps, and, where appropriate, increase the scale of analysis and the number of activities in a single analysis and decision.

Improving the efficiency of environmental analysis and decision making will help the agency ensure that lands and watersheds are sustainable, healthy, and productive; mitigate wildfire risk; and contribute to the economic health of rural communities through use and access opportunities.

Council on Environmental Quality (CEQ) regulations at 40 CFR 1507.3 require Federal agencies to adopt procedures, as necessary, to supplement CEQ's regulations for implementing NEPA (40 CFR parts 1500-1508), and to

consult with CEQ during their development and prior to publication in the **Federal Register**. CEQ encourages agencies to periodically review their NEPA procedures. The Agency developed the proposed rule in consultation with CEQ.

The Forest Service's NEPA regulations were promulgated in 2008, when the Agency codified its NEPA procedures in the Code of Federal Regulations (CFR), at 36 CFR 220. However, the Agency's NEPA regulations, in large part, still reflect the policies and practices established by the Agency's 1992 NEPA Manual and Handbook. When the Agency promulgated its NEPA regulations in 2008, it stated, "the additions to the Forest Service NEPA procedures in this rule are intended to provide an environmental analysis process that better fits with modern thinking on decisionmaking, collaboration, and adaptive management by describing a process for incremental alternative development and development of adaptive management alternatives" (73 FR 43084). The proposed rule would further modernize the Agency's NEPA policy by incorporating lessons learned and experience gained over the past 10 years.

#### **Advance Notice of Proposed Rulemaking (ANPR)**

The Agency published an ANPR on January 3, 2018 (83 FR 302). The Agency received 34,674 comments in response to the ANPR, of which 1,229 were unique. Most of the unique comments expressed support for the Agency's effort to identify efficiencies in the NEPA process. The unique comments in support of the ANPR all generally acknowledged that there is room for increased efficiency in the Agency's NEPA process. Some of these comments expressed unqualified support for increasing efficiency; other comments supported the Agency's goals, but included caveats that these gains should not come at a cost to public involvement or conservation of natural resources.

There were three form letter campaigns in response to the ANPR. Approximately 33,000 form letter comments came from two form letter campaigns, which urged the Forest Service to reject any proposal to weaken the Agency's NEPA process. The Forest Service received about 600 comments from a third form letter campaign in favor of the Agency's efficiency goals as stated in the ANPR. The Agency will not regard form letters as "votes" as to whether the proposed rule should go forward. The Agency will continue to

take public input into account as it revises its NEPA regulations. The Agency believes it is possible to make its NEPA regulations more efficient while remaining true to NEPA's intent of informed decision making, and without weakening the Agency's NEPA process.

Many of the comments received are beyond the scope of the Agency's NEPA regulations, but pertain to other issues relevant to the Agency's environmental analysis and decision making, such as ensuring sufficient funding is available, hiring and training Agency personnel, the objections processes under 36 CFR 218, and the land management planning processes under 36 CFR 219. An executive summary of comments received in response to the ANPR is available at: <https://www.fs.fed.us/emc/nepa/revisions/index.htm>. Public comments received in response to the ANPR are available at: <https://cara.ecosystem-management.org/Public/ReadingRoom?project=ORMS-1797>.

#### **Section-by-Section Description of Changes in the Proposed Rule**

The order of the sections of the proposed rule has been rearranged to align with the levels of NEPA documentation. The proposed rule would not change the order or headings of 36 CFR 220.1, 220.2, 220.3, or 220.4. The proposed rule would revise the order and headings of 36 CFR 220.5, 220.6, and 220.7 to read as follows:

Section 220.5 Categorical Exclusions  
 Section 220.6 Environmental Assessment and Decision Notice  
 Section 220.7 Environmental Impact Statement and Record of Decision

The proposed rule sequentially addresses general guidance, Categorical Exclusions (CE), Environmental Assessments (EA), and Environmental Impacts Statement (EIS). This is a more logical order than previous versions.

#### **Section 220.3 Definitions**

The proposed rule would add a definition to this section for condition-based management. Condition-based management is defined as a system of management practices based on implementation of specific design elements from a broader proposed action, where the design elements vary according to a range of on-the-ground conditions in order to meet intended outcomes. Condition-based management is not a new management approach for the Forest Service, but the Agency proposes to codify it based on existing practice to provide clear, consistent direction on its use, and to encourage more widespread use. Agency experience has shown that condition-

based management can be useful for landscape-scale projects and analysis. As with adaptive management, not all proposed actions lend themselves to condition-based management, and the proposed rule is not intended to require its use for any particular type of proposed action.

#### **Section 220.4 General Requirements**

Paragraph (c) states the responsible official's obligation to coordinate and integrate the NEPA review with agency decision making, and lists requirements for meeting that obligation. The proposed rule would add "Leading the proposal development and environmental analysis process, to ensure a focused approach" as the first item in the list and renumbers the existing items that follow. This addition emphasizes the importance of the responsible official's active, engaged, and focused involvement in the NEPA process.

The proposed rule would combine and revise paragraphs (d) and (e), resulting in a new paragraph (d), Scoping and Public Notice. These revisions reflect the Agency's proposed approach to scoping and public engagement. Paragraph (d) would maintain the Agency's requirement to provide public notice, through the Schedule of Proposed Actions, of all proposed actions that will be documented with a decision memo, EA, or EIS. The Agency will continue to require scoping for EISs in accordance with CEQ regulations at 40 CFR 1501.7. Outside of the minimum requirements listed at (d)(1) and (2) of this section, additional public engagement is at the discretion of the local responsible official, except where specified by applicable statutes and regulations. For example, the current 36 CFR 218 regulations require public comment for EAs that are subject to the Project-Level Predecisional Administrative Review Process.

As a result of the revision of paragraphs (d) and (e) into one paragraph (d), paragraphs (f) through (i) would be re-designated as (e) through (h), respectively.

The proposed rule outlines an approach for "right-sizing" the public engagement and scoping processes to each proposed action. The proposed rule language aligns with additional guidance being added to the draft directives, specifically in the Forest Service Handbook. This guidance encourages early and ongoing engagement with the public and other external partners (such as other Federal agencies, Tribes, States, and local

governments) that is not limited to a single NEPA process.

The proposed rule would add a new paragraph (i), Determination of NEPA Adequacy. This paragraph outlines a process for determining whether a completed Forest Service NEPA analysis can satisfy NEPA's requirements for a subsequent proposed action. The process requires the consideration of the following factors: The similarity between the prior decision and the proposed actions, the adequacy of the range of alternatives for the proposed action, any significant new circumstances or information since the prior decision, and the adequacy of the impact analysis for the proposed action. The Determination of NEPA Adequacy is modelled after the Department of Interior, Bureau of Land Management's use of that procedure. Other Federal agencies also provide for comparable approaches in their NEPA procedures. Adding the Determination of NEPA Adequacy to Forest Service NEPA procedures would provide the Agency an opportunity to be more efficient by reducing redundant analyses of substantially similar proposed actions with substantially similar impacts, and is consistent with CEQ policy to reduce paperwork and avoid redundancy.

The proposed rule would move the provisions on adaptive management from current §§ 220.5(e) and 220.7(b)(iv) to § 220.4(j). This change would add adaptive management to the general requirements section of the regulation; the current regulation discusses adaptive management separately under the sections on EAs and EISs.

The proposed rule would also add a new paragraph (k) for condition-based management, specifying that the proposed action and one or more alternatives may include condition-based management.

The proposed rule would also add a new paragraph (l) on supplementation and new information, specifying when supplements are required.

#### *Section 220.5 Environmental Impact Statement and Record of Decision*

The proposed rule would revise the heading of § 220.5 to read as follows: *Section 220.5 Categorical Exclusions*. The proposed rule would revise all of the paragraphs of § 220.5 by replacing all of the text with new text based on current § 220.6, paragraphs (a) through (f). Additionally, revisions are proposed within these paragraphs (a) through (f) to provide clarity, revise the list of extraordinary circumstances, and propose changes and additions to categorical exclusions in paragraphs (d) and (e).

#### *Clarifications Regarding Categorical Exclusions (CE)*

The proposed rule would clarify in paragraph (a) that a proposed action may be categorically excluded if it is within one or more of the categories listed in 7 CFR part 1b.3, 36 CFR 220.5(d), or 36 CFR 220.5(e). Categorical exclusions are categories of actions that normally will not result in individual or cumulative significant impacts on the quality of the human environment and, therefore, do not require analysis or documentation in either an EA or EIS (40 CFR 1508.4). Where a proposed action consists of multiple activities, and all of the activities that comprise the proposed action fall within one or more CEs, the responsible official may rely on multiple categories for a single proposed action. This approach shall not be used to avoid any express constraints or limiting factors that apply to a particular CE. This clarification to paragraph (a) is consistent with CEQ's definition of CEs as categories of actions that do not individually or cumulatively have a significant effect on the environment.

Paragraph (a) further explains that CEs are independently established and constraints or limitations in a particular categorical exclusion do not constrain or limit the operation of other categorical exclusions. For example, an express spatial or temporal limitation in one CE should not be construed to apply to another similar CE that is otherwise silent on spatial or temporal limits.

The proposed rule would adjust and refine instructions for evaluating extraordinary circumstances. The proposed rule would revise the list of resource conditions to be considered in determining whether extraordinary circumstances warrant analysis and documentation in an EA or EIS. The proposed rule would remove "sensitive species" from item (i). The Agency's 2012 planning regulations marked a transition away from the term "sensitive species," and retention of the term in the NEPA procedures is unnecessary. All land management plans have direction to provide for the diversity of plant and animal communities and support the persistence of native species in the plan area. All Forest Service projects must comply with relevant land management plans; therefore, it is not necessary to include sensitive species in the list of resource conditions.

The proposed rule also would add wild and scenic rivers to the list of Congressionally designated areas in § 220.5(b)(1)(iii), and move potential wilderness areas from (b)(1)(iv) to (b)(1)(iii) to add it to the list of

Congressionally designated areas. The proposed rule would revise § 220.5(b)(1)(iv) to include roadless areas designated under 36 CFR part 294, including Idaho and Colorado Roadless Areas.

In § 220.5(b)(2), the proposed rule would clarify the degree of effects threshold for determining whether extraordinary circumstances exist. The proposed rule explains that extraordinary circumstances exist when there is a cause-and-effect relationship between the proposed action and listed resource conditions, and the responsible official determines that there is a likelihood of substantial adverse effects to the listed resource conditions. Additionally, the proposed rule explains that when evaluating extraordinary circumstances, the responsible official may also consider whether the long-term beneficial effects outweigh short-term adverse effects.

The proposed rule would revise § 220.5(c) to clarify that in addition to the § 220.4(d) requirements for public notice in the Schedule of Proposed Actions, the responsible official may choose to conduct additional public engagement activities to involve key stakeholders and interested parties. Additional public engagement would be conducted commensurate with the nature of the decision being made.

#### *Changes to Existing CEs and Proposed New CEs*

The proposed rule would add several new CEs. The Forest Service developed these CEs pursuant to CEQ's regulations at 40 CFR 1507.3 and the November 23, 2010, CEQ guidance memorandum on "Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act" ([https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA\\_CE\\_Guidance\\_Nov232010.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf)).

The Forest Service is uniquely situated when compared to other Federal agencies in terms of using CEs to satisfy NEPA's procedural requirements. The Forest Service manages the National Forest System to sustain multiple uses of its renewable resources in perpetuity while maintaining the long-term health and productivity of the land. To achieve this goal, each unit of the National Forest System is managed according to a land management plan. A land management plan is a programmatic document supported by an EIS and Record of Decision. A land management plan guides the sustainable, integrated resource management of the resources within the plan area in the context of the broader landscape. Land

management plans “must provide for social, economic, and ecological sustainability within Forest Service authority and consistent with the inherent capability of the plan area” (36 CFR 219.8).<sup>1</sup> Ecological sustainability refers to the capability of ecosystems to maintain ecological integrity (36 CFR 219.19).

Each Forest Service proposed action, including those authorized with a CE, must be consistent with the applicable land management plan (16 U.S.C. 1604(i)). Forest Service proposed actions, including those authorized with a CE, are developed using an interdisciplinary approach to identify design features to limit adverse environmental effects; ensure consistency with land management plans; and take into account applicable plan goals, objectives, and desired conditions, and other applicable laws, regulations, and policies.

Categorical exclusions do not apply where there are extraordinary circumstances in which a normally excluded action may have a significant environmental effect (40 CFR 1508.4). Nor do these administratively established CEs represent a final determination of the level of NEPA review to be undertaken, as the responsible official still retains discretion to prepare an EA or EIS. Activities conducted under these CEs must be consistent with Agency procedures and applicable land management plans, and must comply with all applicable Federal and State laws for protecting the environment. The proposed CEs were developed considering other applicable Agency procedures and policies, and specific limitations were imposed on some of the categories based on these considerations. The Agency believes it is appropriate to establish these CEs as a means to reduce paperwork and delays, consistent with CEQ regulations for implementing NEPA at 40 CFR 1500.4(p) and 1500.5(k).

In accordance with CEQ’s 2010 guidance memorandum, the Forest Service reviewed and analyzed past actions, including their supporting NEPA documentation, to develop initial outlines of potential new CEs. The Agency convened discussions on the proposed CEs with Agency leaders and subject matter experts to further refine the proposals. The Agency also

conducted follow up engagement with Forest Service personnel familiar with the previously implemented actions, on units where those actions were located, to determine whether the effects of projects as implemented were consistent with predictions in the NEPA analysis. The Forest Service also reviewed and analyzed the comparable CEs of other federal agencies for benchmarking the proposals. The Agency’s proposal is based on data from implementing comparable past actions; the expert judgment of the responsible officials who made the findings for projects reviewed for this supporting statement; information from other professional staff, experts, and scientific analyses; and a review and comparison of similar CEs implemented by other Federal agencies. Based on its review of all the information provided, the Forest Service believes that actions covered by the proposed CEs would not individually or cumulatively have significant effects on the human environment, as defined at 40 CFR 1508.27.

The Forest Service has prepared supporting statements for each of its proposed new CEs. These supporting statements summarize the administrative record and rationale for the new CEs. The supporting statements support the Forest Service’s initial determination that each CE does not individually or cumulatively have significant impacts. The supporting statements provide the background and context for why these proposals were developed and how they fit in with Agency and Departmental priorities; explain existing policy related to the activities covered by the proposed CE; and document the process by which the Forest Service developed the proposals. The supporting statements are available online at <https://www.fs.fed.us/emc/nepa/revisions/index.htm>. For additional information on any of the proposed CEs described below, please see the associated supporting statements, which include a larger discussion of the rationale for the proposed CEs. The justification for proposed CEs (d)(11), (d)(12), and (e)(3), is included in the supporting statement for Certain Special Uses Projects and its associated appendices. The justification for proposed CEs (e)(20–25) is included in the supporting statement for Certain Infrastructure Projects and its associated appendices.

The justification for proposed CE (e)(26) is included in the supporting statement for Certain Restoration Projects and its associated appendices.

*Section 220.5(d) Categories of Actions for Which a Project or Case File and Decision Memo Are not Required*

The proposed rule would consolidate the existing CE at (e)(15), which requires a decision memo, with the existing CE at (d)(10), which does not require a decision memo, as a new CE at (d)(11). CEs (e)(15) and (d)(10) would be removed. The existing CEs both cover clerical modification or reauthorization of existing special uses. Both of these CEs apply only when modification or reauthorization of an existing special use does not involve changes in the authorized facilities or increase the scope or intensity of authorized activities. Both of these CEs are also used only when the permit holder is in full compliance with the terms and conditions of the special use authorization. These criteria would also apply to the new CE at (d)(11). Due to their similarities, there is often confusion over which CE to use. Consolidation of the existing CEs would increase efficiency and reduce confusion over which category to apply when issuing special use authorizations to replace an existing or expired special use authorization, when such issuance is a purely clerical action to account for administrative changes. Establishment and use of this consolidated CE would also help to reduce the backlogs for processing renewals of existing authorizations.

Proposed new CE (d)(12) would cover the issuance of a new authorization or amendment of an existing authorization for activities that occur on existing roads or trails, in existing facilities, or in areas where activities are consistent with the applicable land management plan or other documented decision. In the Agency’s experience, the potential for special uses to have significant effects on the human environment is generally avoided when special uses occur on existing NFS roads or NFS trails, in existing facilities, or in areas where activities are consistent with the applicable land management plan or other documented decision. New CE (d)(12) would create more efficiencies in the processing of both new authorizations and renewals of existing authorizations.

*Section 220.5(e) Categories of Actions for Which a Project or Case File and Decision Memo Are Required*

The proposed rule would expand existing CE (e)(3) to cover the approval, modification, or continuation of special uses of NFS lands that require less than 20 acres of land. The current version of CE (e)(3) is limited to minor special uses

<sup>1</sup> Similarly, National Forests managed under land management plans developed pursuant to the 1982 planning regulations “shall provide for multiple use and sustained yield of goods and services from the National Forest System in a way that maximizes long term net public benefits in an environmentally sound manner” (36 CFR 219.1(a) (1982)).

that require less than five contiguous acres of land. The proposed rule would also remove the term "minor." The presence of "minor" in CE (e)(3) has caused confusion among Agency personnel because it is not a term of art in this context. The Agency has substantial experience authorizing special uses. A review of EAs and associated FONSI's relevant to this proposed CE found that approval, modification, or continuation of special uses that require less than 20 acres of NFS lands does not have the potential to have significant effects on the environment. The level of effects associated with the proposed actions in the CE are expected to be below the threshold for significant environmental effects.

The proposed rule would expand the scope of CE (e)(20) to include lands occupied by National Forest System roads and trails. The current version of this CE, which was established in 2013, is limited to lands occupied by unauthorized roads and trails. CE (e)(20) would allow activities that restore, rehabilitate, or stabilize lands occupied by roads and trails to a more natural condition. The proposal to expand CE 20 to include NFS roads and trails was made based on a review of implementation of existing CE (e)(20), a review of the record and supporting statement from when CE (e)(20) was established (which has been incorporated in the record), subject matter expertise, and a review of other road and trail management projects that included decommissioning activities for NFS roads and NFS trails. A review of EAs and associated FONSI's for the projects that included the proposed activities found that none of them predicted significant effects on the human environment. Regardless of whether the activity undertaken is the restoration of lands occupied by an NFS road or NFS trail or unauthorized road or trail, the actions and environmental impacts are generally the same.

Proposed new CE (e)(21) would cover the construction, reconstruction, decommissioning, relocation, or disposal of buildings, infrastructure, or other improvements at an existing administrative site, as that term is defined in section 502(1) of Public Law 109-54 (119 Stat. 559; 16 U.S.C. 580d note). Use of this CE would be limited to existing administrative sites, and used alongside other established Agency processes, such as those processes used for facility master planning and identifying the appropriate level of analysis for a specific project. Many Forest Service administrative facilities are in need of reconstruction or major

repair or could be decommissioned or disposed of, reducing the Agency's footprint. Accumulating deferred maintenance can result in deterioration of performance, increased repair costs, a decrease in asset value, along with health and safety concerns. The activities proposed in CE (e)(21) would help the Agency more efficiently address these issues. The proposed CE was developed with input from subject matter experts. A review of projects and their associated EAs and FONSI's found that no significant effects were predicted on the human environment. Based on a review of past actions, a review of CEs implemented by other agencies, and the Forest Service's extensive experience implementing projects that allow for the use and management of administrative sites, the Forest Service has concluded that this proposed category of actions does not have individual or cumulative significant effects and, therefore, should be categorically excluded from documentation in an EA or EIS.

Proposed new CE (e)(22) would cover the construction, reconstruction, decommissioning, or disposal of buildings, infrastructure, or improvements at an existing recreation site. This would include infrastructure or improvements that are adjacent or connected to an existing site and provide access or utilities for that site. Recreation sites include, but are not limited to, campgrounds and camping areas, picnic areas, day use areas, fishing sites, interpretive sites, visitor centers, trailheads, ski areas, and observation sites. This CE would apply to both existing recreation sites managed by the Forest Service and sites managed under special use authorities. Use of this CE would be limited to existing recreation sites and used alongside other established Agency processes, such as those processes used for facility master planning and for screening special use permit applications (36 CFR 251).

Proposed new CE (e)(23) would cover the conversion of an unauthorized or non-NFS trail or trail segments to an NFS trail, when determined appropriate by the responsible official and consistent with applicable land management plan direction, travel management decisions, trail-specific direction, and other related direction. When considering conversion of an unauthorized trail to an NFS trail, the responsible official should also consider whether the converted route would meet Trail Management Objectives and provide the desired recreation experience, and the route's long-term maintenance needs.

Similar to the Agency's administrative sites, recreation sites and facilities are also in need of major repair or decommissioning. Additionally, unauthorized trails that have been created over time by users do not meet technical or environmental protection standards. Proposed CEs (e)(22) and (23) would help the Forest Service more efficiently address recreation management needs in order to reduce environmental and public safety concerns. A suite of recreation management and trails management projects completed using an EA and their associated FONSI's were reviewed during development of these proposed CEs, along with input from subject matter experts and review of other Agency CEs. Based on this review, consideration of projects being developed in compliance with other policies and practices mentioned above, and subject matter expertise, the Agency does not expect that the proposed actions undertaken in proposed CEs (e)(22) and (23) would individually or cumulatively have significant environmental effects. Proposed new CE (e)(24) would cover the construction or realignment of up to 5 miles of NFS roads, reconstruction of up to 10 miles of NFS roads and associated parking areas, opening or closing an NFS road, and culvert or bridge rehabilitation or replacement along NFS roads. The mileage limitations included in this proposed CE were established from a review of previously implemented actions, discussions and coordination with Agency transportation program managers, and a review of existing CEs related to roads management in use by other Federal agencies.

Proposed new CE (e)(25) would cover the conversion of an unauthorized or non-National Forest System (non-NFS) road to an NFS road. When determining whether to convert a non-NFS road to an NFS road, the responsible official would also consider outcomes related to the local unit's travel analysis process, travel management decisions, and overall goals and objectives of the transportation program.

Proposed CEs (e)(24) and (25) were developed with a focus on increasing efficiency and management of National Forest System roads. The Forest Service infrastructure includes over 370,000 miles of roads and 13,000 road and trail bridges. Recreational use and need for access to NFS lands on NFS roads continues to increase; these roads are also used for resource protection. Deterioration of roads over time increases risk of erosion, landslides, and slope failure, which creates environmental and safety concerns.

These proposed CEs would help the Forest Service more efficiently address some of these growing concerns. Based upon a review of previously implemented projects and subject matter expertise and building on the Agency's extensive background in managing NFS roads and associated infrastructure, such as bridges, the Forest Service anticipates that the level of effects associated with proposed actions covered by the proposed CEs to be below the threshold for significant environmental effects.

Proposed new CE (e)(26) would cover ecosystem restoration or resilience activities, in compliance with the applicable land management plan, taking into account plan goals, objectives, or desired conditions. Activities to improve ecosystem health, resilience, or other watershed conditions cannot exceed 7,300 acres. When commercial or non-commercial timber harvest activities are proposed (§ 220.5(a)(26)(i)(H) and (i)(I)), they must be carried out in combination with at least one additional restoration activity to qualify for the CE, and harvested acres cannot exceed 4,200 of the 7,300 acres. The Forest Service defines restoration as "the process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed. Ecological restoration focuses on reestablishing the composition, structure, pattern, and ecological processes necessary to facilitate terrestrial and aquatic ecosystems sustainability, resilience, and health under current and future conditions" (36 CFR 219.19 and FSM 2020).

The Forest Service reviewed recently implemented actions to develop this proposed CE by randomly selecting a sample of 68 projects from over 718 projects completed under an EA from fiscal years 2012 to 2016. The average of commercial and non-commercial harvest activities from the 68 sampled EAs was 4,237 acres, and the average of total project activities was 7,369 acres. Further information on these projects is available in the supporting statement for Certain Restoration Projects and its associated appendices.

Proposed CE (e)(26) was developed with the intent to allow the Agency to more efficiently implement projects that include restoration activities to improve forest health and resiliency to disturbances and to improve terrestrial and aquatic habitat and other watershed conditions. The Agency has implemented forest and watershed restoration projects for decades. Through this experience, the Agency has found that in certain circumstances the environmental effects of some

restoration activities have not been individually or cumulative significant. Based on this experience, professional expertise, and analysis of EAs and associated FONSI for previously implemented projects, the Agency does not expect that the restoration activities proposed in this CE would result in potentially significant effects.

Proposed new CE (e)(27) would cover a Forest Service action that will be implemented jointly with another Federal agency where the action qualifies for a CE of the other Federal agency. If the Forest Service chooses to use another Federal agency's CE to cover a proposed action, the responsible official must obtain written confirmation from the other Federal agency that the CE applies to the proposed action. Proposed actions covered by this CE would remain subject to applicable land management plan direction and other applicable laws, regulations, and policies.

#### *36 CFR Section 220.6 Categorical Exclusions*

The proposed rule would revise the heading of § 220.6 to read as follows: *Section 220.6 Environmental Assessment and Decision Notice*. The proposed rule would revise all of the paragraphs of section 220.6 by replacing all of the text with new text based on current § 220.7, paragraphs (a) through (d). Additionally, revisions are proposed within these paragraphs, including adding a paragraph on public involvement.

The proposed rule would revise paragraph (a) to state that an EA, which is prepared to determine whether to prepare either a FONSI or EIS, may be prepared in any format. This revision emphasizes the primary purpose of preparing an EA according to CEQ's regulations at 40 CFR 1508.9. The proposed rule would add new paragraph (c) and relabel the subsequent items in § 220.6. Paragraph (c) would clarify that in addition to the public notice requirements listed at § 220.4(d), and any requirements specified by applicable statutes or regulations (such as 36 CFR part 218), the responsible official may choose to conduct additional public engagement opportunities to involve key stakeholders and interested parties. Additional involvement would be conducted commensurate with the nature of the decision being made.

#### *Section 220.7 Environmental Assessment and Decision Notice*

The proposed rule would revise the heading of § 220.7 to read as follows: *Section 220.7 Environmental Impact*

*Statement and Record of Decision*. The proposed rule would revise all of the paragraphs of § 220.7 by replacing all of the text with new text based on current § 220.5, paragraphs (a) through (g). Additionally, revisions are proposed within these paragraphs (a) through (g), including adding a paragraph on public notice and scoping.

The proposed rule, in paragraph (a) of this section, would revise the list of classes of actions normally requiring an EIS. The proposed rule would add development of a new land management plan or land management plan revision in accordance with 36 CFR 219.7. The proposed rule also would add mining operations that authorize surface disturbance on greater than 640 acres over the life of the proposed action. The proposed rule would remove classes of actions that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area. The Agency proposes this change in part because the activities that have the greatest potential to affect the roadless character of these lands are addressed separately by the Roadless Area Conservation Rule and state-specific roadless rules at 36 CFR part 294. Potential wilderness areas are a class of Congressionally designated lands where management must conform with the establishing statute's requirements, and therefore presumptive preparation of an EIS is not required. The responsible official would continue to prepare an EIS for proposed actions where impacts may be significant.

Proposed new paragraph (b) would require scoping for an EIS to be carried out in accordance with CEQ requirements at 40 CFR 1501.7. Paragraph (b) also clarifies that no single scoping technique is required or prescribed; however, while public notice shall be provided in the Schedule of Proposed Actions as required at § 220.4(d), the Schedule of Proposed Actions shall not be the sole scoping mechanism. Current paragraphs (b) through (g) would be re-designated as (c) through (h), respectively.

The proposed rule would revise current paragraph (e) relating to EIS alternatives and re-designate it as paragraph (f). The proposed rule would clarify that each alternative other than the no action alternative must meet the purpose and need. The proposed rule also would eliminate the requirement for alternatives to address one or more significant issues related to the proposed action. Alternatives may, but are not required to, address issues related to the proposed action. For example, an alternative may simply

address a different way of responding to the purpose and need for action, consistent with CEQ's requirement to develop alternatives "in any proposal which involves unresolved conflicts concerning alternative uses of available resources" (40 CFR 1501.2(c); 1507.2(d)). "Unresolved conflicts" and issues often overlap, but not in every instance.

### Proposed Revisions to Forest Service Directives

#### *Forest Service Manual 1950 and Handbook 1909.15*

The Forest Service will propose revisions to its directives, Forest Service Handbook (FSH 1909.15) and Manual (FSM 1950), in conjunction with this rulemaking. FSM 1950 provides descriptions of Forest Service NEPA authority, objectives, policy, and responsibilities. Forest Service Handbook 1909.15 provides explanatory guidance interpreting CEQ and Forest Service procedures in regulation. A subsequent notice will be published in the **Federal Register** announcing the availability of the proposed directives and list information on how to comment on the proposed directives. When the notice is published, the proposed directives and a copy of the **Federal Register** notice will be posted at <https://www.fs.fed.us/emc/nepa/revisions/index.htm>.

### Regulatory Certifications

#### *National Environmental Policy Act*

The proposed rule would revise agency procedures and guidance for implementing NEPA. Forest Service NEPA procedures are procedural guidance to assist 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 CEQ set forth the requirements for establishing agency NEPA procedures in its regulations at 40 CFR 1505.1 and 1507.3. The CEQ regulations do not require agencies to conduct NEPA analyses or prepare NEPA documentation when establishing their NEPA procedures. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 230 F.3d 947, 954–55 (7th Cir. 2000).

#### *Energy Effects*

This proposed rule has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive Order.

#### *Consultation and Coordination With Indian Tribal Governments*

This proposed rule has been reviewed under Executive Order 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments. The Forest Service is sending letters inviting federally recognized Tribes and Alaska Native Corporations to begin consultation on the proposed rule. The Forest Service will continue to conduct government-to-government consultation on the rule until the final rule is published.

Pursuant to Executive Order 13175, the Agency has assessed the impact of this proposed rule on Indian tribal governments and has determined that the proposed rule would not significantly or uniquely affect communities of Indian tribal governments. The proposed rule deals with administrative procedures for complying with the requirements of the National Environmental Policy Act and, as such, has no direct effect on the occupancy and use of NFS land.

The Agency has also determined that this proposed rule would not impose substantial direct compliance costs on Indian tribal governments. This proposed rule does not mandate tribal participation in the Forest Service NEPA process.

The proposed directives will emphasize and recognize the benefit of including Tribes in public engagement strategies. The proposed directives will also highlight opportunities to leverage existing data from Tribes and analyses, along with other Federal, State, or local agencies to gain efficiency in the NEPA process. Inclusion of Tribes, tribal members, tribal organizations, and Alaska Native Corporations in public engagement strategies is beneficial; however, the proposed directives will also recognize these efforts are not a substitute for fulfilling Tribal consultation requirements.

#### *Executive Orders 12866*

This proposed rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 issued September 30, 1993, on regulatory planning and review, and the major rule provisions of the Small Business Regulatory Enforcement and Fairness Act (5 U.S.C. 800). The Office of Management and Budget (OMB) has determined that this is a significant rule as defined by E.O. 12866 and therefore will be subject to interagency review.

Many benefits and costs associated with the rule are not quantifiable. Benefits (or cost reductions) derived from the opportunities for public engagement to more fully address public concerns, timely and focused environmental analysis, flexibility in preparation of environmental documents, and improved decision making indicate a positive net benefit of the proposed rule. The proposed rule aims to increase efficiency of environmental analysis while remaining true to NEPA's intent of informed decision making and without weakening the Agency's NEPA process. The proposed rule is expected to increase the pace and scale of forest and grassland management operations on the ground, thereby helping sustain the health of forests and grasslands and meet the needs of the public. The direct benefits of the proposed rule are, therefore, reduced costs and time spent on environmental analysis, where costs include those incurred by the Forest Service as well as by proponents or the public engaged in the environmental analysis process. The indirect benefits to the public are also expected to increase, as the proposed rule would provide for timelier development of, access to, and use of forest ecosystem goods and services, which are provided by healthier and more productive forests.

For example, by implementing Determination of NEPA Adequacy, the Agency anticipates reductions in time and cost as a result of reducing redundant analyses. Use of condition-based management provides flexibility to account for changing conditions on the ground over time. Condition-based management also allows the Agency to satisfy NEPA despite uncertainty through validation of data and assumptions relied upon in NEPA analysis prior to implementation. Use of condition-based management may increase the scope and scale of analyses and the number of activities authorized in a single analysis and decision. These efficiencies may reduce total Agency costs and decisionmaking time. These concepts, however, will take some time to become well-established and widely used; potential benefits will occur over time.

From Fiscal Years 2014 to 2018, the Agency's average annual environmental analysis workload included approximately 1,590 CEs and 277 EAs. The average time to decision for CEs was 206 days and for EAs was 687 days. The proposed rule includes development of 7 new CEs with a decision memo. Focusing on the new CEs, the Agency assumes for the

purpose of this analysis that each CE may be used an average of 1 to 30 times a year. Under these assumptions, the proposed rule may potentially result in 7 to 210 decision memos being completed in lieu of a decision notice. As a result, the Agency may complete NEPA analysis on these projects an average of 1 to 16 months earlier, per project. In practice, these figures will vary dependent upon the project and nature of the CE being used. The Agency also anticipates use of the new CEs to slowly increase over time, taking into account time for adoption across the agency as has been observed during implementation of other new CEs over the course of the past several years. The Agency has recent experience implementing new CEs, such as the three soil and water restoration CEs that were established in 2013 and recent legislative amendments to the Healthy Forests Restoration Act (HFRA) Section 603 and 605, in 2014 and 2018, respectively.

There is potential for some time and cost savings by removing formal scoping periods for some EAs and CEs; however, under existing scoping practices, other work on a project often continues during scoping and not every day is actively spent working on a project. Therefore, it is difficult to quantify estimated savings. The changes proposed place emphasis on right-sizing public engagement opportunities and allow for discretion and flexibility in our scoping and public engagement mechanisms. This approach will allow the Agency to concentrate resources on projects that are potentially more complex or have greater public interest. Increased discretion and flexibility can provide more transparency, provide timelier responses to public needs, and accelerate decisionmaking.

Some members of the public may perceive the changes to scoping as a cost. However, the Agency's public engagement requirements will still exceed the requirements of CEQ's NEPA regulations notifying the public through posting all EISs, EAs, and CEs with an associated decision memo to the Schedule of Proposed Actions. This perceived cost is further reduced in the case of EAs due to the Agency's requirement under 36 CFR 218 to provide notice and an opportunity to comment.

#### *Executive Order 13771*

The proposed rule has been reviewed in accordance with E.O. 13771 on reducing regulation and controlling regulatory costs, and is considered an E.O. deregulatory action. The impacts of

the proposed rule are as discussed above.

#### *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a 'major rule', as defined by 5 U.S.C. 804(2).

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Flexibility Enforcement Act of 1996 and Executive Order 13272, requires an agency to prepare a regulatory flexibility analysis of rules which have received a significant determination by the Office of Management and Budget under Executive Order 12866. The proposed rule only directly affects the Forest Service, and as such, will not have a significant impact on a substantial number of small entities. The proposed rule is expected to have a minor positive indirect effect on small entities, including small government entities, by increasing efficiencies in environmental analysis and decision making, improving clarity, and reducing delays associated with NEPA compliance.

#### *Federalism*

The Agency has considered this proposed rule under the requirements of Executive Order 13132, Federalism. The Agency has concluded that the rule 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.

#### *No Takings Implications*

This rule 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 rule does not pose the risk of a taking of protected private property.

#### *Civil Justice Reform*

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. Under the proposed rule, (1) all State and local laws and regulations that conflict with this proposed rule or

impede its full implementation will be preempted; (2) no retroactive effect is given to this proposed rule; and (3) exhaustion of administrative proceedings before parties may file suit in court challenging its provisions is required.

#### *Unfunded Mandates Reform Act*

Pursuant to Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of the proposed rule on State, local, and Tribal governments, and the private sector. This proposed rule would not compel the expenditure of \$100 million or more by any State, local, or Tribal government, or anyone in the private sector. Therefore, this proposed rule is not subject to the requirements of section 202 and 205 of the UMRA.

#### *Controlling Paperwork Burdens on the Public*

This proposed rule does not contain any additional recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law, or are 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.

#### **List of Subjects in 36 CFR Part 220**

Administrative practices and procedures, Environmental impact statements, Environmental protection, National forests, Science and technology.

■ Therefore, for the reasons set forth in the preamble, the Department of Agriculture proposes to amend chapter II of Title 36 of the Code of Federal Regulations by revising part 220 to read as follows:

#### **PART 220—National Environmental Policy Act (NEPA) Compliance**

- Sec.
- 220.1 Purpose and scope.
  - 220.2 Applicability.
  - 220.3 Definitions.
  - 220.4 General requirements.
  - 220.5 Categorical exclusions.
  - 220.6 Environmental assessment and decision notice.
  - 220.7 Environmental impact statement and record of decision.

**Authority:** 42 U.S.C. 4321 *et seq.*; E.O. 11514; 40 CFR parts 1500–1508; 7 CFR part 1b.



**§ 220.1 Purpose and scope.**

(a) *Purpose.* This part establishes Forest Service, U.S. Department of Agriculture (USDA) procedures for compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500 through 1508).

(b) *Scope.* This part supplements and does not lessen the applicability of the CEQ regulations, and is to be used in conjunction with the CEQ regulations and USDA regulations at 7 CFR part 1b.

**§ 220.2 Applicability.**

This part applies to all organizational elements of the Forest Service. Consistent with 40 CFR 1500.3, no trivial violation of this part shall give rise to any independent cause of action.

**§ 220.3 Definitions.**

The following definitions supplement, by adding to, the terms defined at 40 CFR parts 1500 through 1508.

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

*Condition-based management.* A system of management practices based on implementation of specific design elements from a broader proposed action, where the design elements vary according to a range of on-the-ground conditions in order to meet intended outcomes. Condition-based management stems from the recognition that the environment is dynamic, changing as ecosystems respond to changing natural and human-caused events.

*Decision document.* A record of decision, decision notice or decision memo.

*Decision memo.* A concise written record of the responsible official's decision to implement an action categorically excluded from analysis and documentation in an environmental impact statement (EIS) or environmental assessment (EA).

*Decision notice.* A concise written record of the responsible official's decision when an EA and finding of no significant impact (FONSI) have been prepared.

*Environmentally preferable alternative.* The environmentally preferable alternative is the alternative that will best promote the national environmental policy as expressed in NEPA's section 101 (42 U.S.C. 4321). Ordinarily, the environmentally preferable alternative is that which causes the least harm to the biological and physical environment; it also is the alternative which best protects and preserves historic, cultural, and natural resources. In some situations, there may be more than one environmentally preferable alternative.

*Reasonably foreseeable future actions.* Those Federal or non-Federal activities not yet undertaken, for which there are existing decisions, funding, or identified proposals. Identified proposals for Forest Service actions are described in § 220.4(a).

*Responsible official.* The Agency employee who has the authority to make and implement a decision on a proposed action.

*Schedule of proposed actions (SOPA).* A Forest Service document that provides public notice about those proposed Forest Service actions for which a record of decision, decision notice, or decision memo would be or has been prepared. The SOPA also identifies a contact for additional information on proposed actions.

**§ 220.4 General requirements.**

(a) *Proposed actions subject to the NEPA requirements.* As required by 42 U.S.C. 4321 *et seq.*, a Forest Service proposal is subject to the NEPA requirements when all of the following apply:

(1) The Forest Service 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 (*see* 40 CFR 1508.23);

(2) The proposed action is subject to Forest Service control and responsibility (*see* 40 CFR 1508.18);

(3) The proposed action would cause effects on the natural and physical environment and the relationship of people with that environment (*see* 40 CFR 1508.14); and

(4) The proposed action is not statutorily exempt from the requirements of section 102(2)(C) of the NEPA (42 U.S.C. 4332(2)(C)).

(b) *Emergency responses.* When the responsible official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and any required documentation in accordance with the provisions in §§ 220.5, 220.6, and 220.7

of this part, then the following provisions apply.

(1) The responsible official may take actions necessary to control the immediate impacts of the emergency and are urgently needed to mitigate harm to life, property, or important natural or cultural resources. When taking such actions, the responsible official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practicable.

(2) If the responsible official proposes emergency actions other than those actions described in paragraph (b)(1) of this section, and such actions are not likely to have significant environmental impacts, the responsible official shall document that determination in an EA and FONSI prepared in accord with these regulations. If the responsible official finds that the nature and scope of proposed emergency actions are such that they must be undertaken prior to preparing any NEPA analysis and documentation associated with a CE or an EA and FONSI, the responsible official shall consult with the Washington Office about alternative arrangements for NEPA compliance. The Chief or Associate Chief of the Forest Service may grant emergency alternative arrangements under NEPA for environmental assessments, findings of no significant impact and categorical exclusions (FSM 1950.41a). Consultation with the Washington Office shall be coordinated through the appropriate regional office.

(3) If the responsible official proposes emergency actions other than those actions described in paragraph (b)(1) of this section and such actions are likely to have significant environmental impacts, then the responsible official shall consult with CEQ, through the appropriate regional office and the Washington Office, about alternative arrangements in accordance with CEQ regulations at 40 CFR 1506.11 as soon as possible.

(c) *Agency decisionmaking.* For each Forest Service proposal (§ 220.4(a)), the responsible official shall coordinate and integrate NEPA review and relevant environmental documents with agency decisionmaking by:

(1) Leading the proposal development and environmental analysis process, to ensure a focused approach;

(2) Completing the environmental document review before making a decision on the proposal;

(3) Considering environmental documents, public and other agency comments (if any) on those documents,

and agency responses to those comments;

(4) Including environmental documents, comments, and responses in the administrative record;

(5) Considering the alternatives analyzed in environmental document(s) before rendering a decision on the proposal; and

(6) Making a decision encompassed within the range of alternatives analyzed in the environmental documents.

(d) *Scoping and public notice.*

Minimum requirements for scoping and public notice are listed below, except where specified by applicable statutes or regulations (for example, 36 CFR part 218). Additional public involvement is at the discretion of the local responsible official.

(1) The Forest Service will publish to the Schedule of Proposed Actions (SOPA) all proposed actions that will be documented with a decision memo, environmental assessment, or environmental impact statement. The local responsible official shall ensure the SOPA is updated and notify the public of the availability of the SOPA.

(2) Scoping is required for all Forest Service environmental impact statements (40 CFR 1501.7).

(e) *Cumulative effects considerations of past actions.* Cumulative effects analysis shall be carried out in accordance with 40 CFR 1508.7 and in accordance with “The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis” dated June 24, 2005. The analysis of cumulative effects begins with consideration of the direct and indirect effects on the environment that are expected or likely to result from the alternative proposals for agency action. Agencies then look for present effects of past actions that are, in the judgment of the agency, relevant and useful because they have a significant cause-and-effect relationship with the direct and indirect effects of the proposal for agency action and its alternatives. CEQ regulations do not require the consideration of the individual effects of all past actions to determine the present effects of past actions. Once the agency has identified those present effects of past actions that warrant consideration, the agency assesses the extent that the effects of the proposal for agency action or its alternatives will add to, modify, or mitigate those effects. The final analysis documents an agency assessment of the cumulative effects of the actions considered (including past, present, and reasonably foreseeable future actions) on the affected environment. With

respect to past actions, during the public involvement process and subsequent preparation of the analysis, the agency must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects. Cataloging past actions and specific information about the direct and indirect effects of their design and implementation could, in some contexts, be useful to predict the cumulative effects of the proposal. The CEQ regulations, however, do not require agencies to catalogue or exhaustively list and analyze all individual past actions. Simply because information about past actions may be available or obtained with reasonable effort does not mean that it is relevant and necessary to inform decisionmaking. (40 CFR 1508.7)

(f) *Classified information.* To the extent practicable, the responsible official shall segregate any information that has been classified pursuant to Executive order or statute. The responsible official shall maintain the confidentiality of such information in a manner required for the information involved. Such information may not be included in any publicly disclosed documents. If such material cannot be reasonably segregated, or if segregation would leave essentially meaningless material, the responsible official must withhold the entire analysis document from the public; however, the responsible official shall otherwise prepare the analysis documentation in accord with applicable regulations. (40 CFR 1507.3(c))

(g) *Incorporation by reference.* Material may be incorporated by reference into any environmental or decision document. This material must be reasonably available to the public and its contents briefly described in the environmental or decision document. (40 CFR 1502.21)

(h) *Applicants.* The responsible official shall make policies or staff available to advise potential applicants of studies or other information foreseeably required for acceptance of their applications. Upon acceptance of an application as provided by 36 CFR 251.54(g) the responsible official shall initiate the NEPA process.

(i) *Determination of NEPA Adequacy.* (1) NEPA analysis performed for a previous proposed action can suffice for a new proposed action. A Determination of NEPA Adequacy (DNA) is a tool to determine whether a previously completed NEPA analysis can satisfy NEPA’s requirements for a subsequent proposed action. In making this

determination, the responsible official shall evaluate:

(i) Is the new proposed action essentially similar to a previously analyzed proposed action or alternative analyzed in detail in previous NEPA analysis?

(ii) Is the range of alternatives previously analyzed adequate under present circumstances?

(iii) Is there any significant new information or circumstances relevant to environmental concerns that would substantially change the analysis in the existing NEPA document(s)?

(iv) Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document(s)?

(2) A DNA for a new proposed action shall be included in the project record for the new proposed project or activity. New project and activity decisions made in reliance on a DNA shall be subject to all applicable notice, comment, and administrative review processes.

(j) *Adaptive Management.* The proposed action and any alternatives to the proposed action may include adaptive management. An adaptive management proposal or alternative must clearly identify the adjustment(s) that may be made when monitoring during project implementation indicates that the action is not having its intended effect, or is causing unintended and undesirable effects. The NEPA analysis must disclose not only the effect of the proposed action or alternative but also the effect of the adjustment. Such proposal or alternative must also describe the monitoring that would take place to inform the responsible official during implementation whether the action is having its intended effect.

(k) *Condition-based management.* The proposed action and any alternatives may include condition-based management. A condition-based management alternative must clearly identify the management actions that will be undertaken, and any design elements that will be implemented, when a certain set or range of conditions are present. The NEPA analysis must disclose the effects of all condition-based actions, taking into account design elements that limit such actions. Such proposal or alternative must also describe the process by which conditions will be validated prior to implementation.

(l) *Supplementation and new information.* (1) The responsible official shall prepare supplements to either draft or final environmental impact

statements (40 CFR 1502.9(c) or environmental assessments if:

- (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
- (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts and there remains Federal action to occur.

(2) The responsible official may prepare a supplemental information report to document the review of potentially significant new circumstances or information. If a supplemental information report is prepared, it shall be included in the project record.

#### § 220.5 Categorical exclusions.

(a) *General.* A proposed action may be categorically excluded from analysis and documentation in an EA or EIS when there are no extraordinary circumstances related to the proposed action, and the proposed action is within one or more of the categories listed at 7 CFR part 1b.3 or 36 CFR 220.5(d) or (e). All categories are independently established and do not constrain or limit the operation of each other. Multiple categories may be relied upon for a single proposed action when a single category does not cover all aspects of the proposed action.

(b) *Resource conditions.* (1) Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant analysis and documentation in an EA or an EIS are:

(i) Federally listed threatened or endangered species or designated critical habitat and species proposed for Federal listing or proposed critical habitat;

(ii) Flood plains, wetlands, or municipal watersheds;

(iii) Congressionally designated areas, such as wilderness, wilderness study areas, potential wilderness areas, wild and scenic rivers, or national recreation areas;

(iv) Roadless areas designated under 36 CFR part 294;

(v) Research natural areas;

(vi) American Indian and Alaska Native religious or cultural sites; and

(vii) Archaeological sites, or historic properties or areas.

(2) The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. Extraordinary circumstances exist when there is a cause-and-effect relationship between a proposed action and listed resource conditions and the responsible official determines that there is a likelihood of substantial adverse effects.

The responsible official may consider whether long-term beneficial effects outweigh short-term adverse effects in making this determination.

(c) *Public involvement.* In addition to public notice in the SOPA, as required at 220.4(d), the responsible official may choose to conduct additional public engagement activities to involve key stakeholders and interested parties. This additional involvement shall be conducted commensurate with the nature of the decision to be made.

(d) *Categories of actions for which a project or case file and decision memo are not required.* A supporting record and a decision memo are not required, but at the discretion of the responsible official, may be prepared for the following categories:

(1) Orders issued pursuant to 36 CFR part 261—Prohibitions to provide short-term resource protection or to protect public health and safety. Examples include but are not limited to:

(i) Closing a road to protect bighorn sheep during lambing season, and

(ii) Closing an area during a period of extreme fire danger.

(2) Rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions. Examples include but are not limited to:

(i) Adjusting special use or recreation fees using an existing formula;

(ii) Proposing a technical or scientific method or procedure for screening effects of emissions on air quality related values in Class I wildernesses;

(iii) Proposing a policy to defer payments on certain permits or contracts to reduce the risk of default;

(iv) Proposing changes in contract terms and conditions or terms and conditions of special use authorizations;

(v) Establishing a service-wide process for responding to offers to exchange land and for agreeing on land values; and

(vi) Establishing procedures for amending or revising forest land and resource management plans.

(3) Repair and maintenance of administrative sites. Examples include but are not limited to:

(i) Mowing lawns at a district office;

(ii) Replacing a roof or storage shed;

(iii) Painting a building; and

(iv) Applying registered pesticides for rodent or vegetation control.

(4) Repair and maintenance of roads, trails, and landline boundaries. Examples include but are not limited to:

(i) Authorizing a user to grade, resurface, and clean the culverts of an established NFS road;

(ii) Grading a road and clearing the roadside of brush without the use of herbicides;

(iii) Resurfacing a road to its original condition;

(iv) Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail; and

(v) Surveying, painting, and posting landline boundaries.

(5) Repair and maintenance of recreation sites and facilities. Examples include but are not limited to:

(i) Applying registered herbicides to control poison ivy on infested sites in a campground;

(ii) Applying registered insecticides by compressed air sprayer to control insects at a recreation site complex;

(iii) Repaving a parking lot; and

(iv) Applying registered pesticides for rodent or vegetation control.

(6) Acquisition of land or interest in land. Examples include but are not limited to:

(i) Accepting the donation of lands or interests in land to the NFS, and

(ii) Purchasing fee, conservation easement, reserved interest deed, or other interests in lands.

(7) Sale or exchange of land or interest in land and resources where resulting land uses remain essentially the same. Examples include but are not limited to:

(i) Selling or exchanging land pursuant to the Small Tracts Act;

(ii) Exchanging NFS lands or interests with a State agency, local government, or other non-Federal party (individual or organization) with similar resource management objectives and practices;

(iii) Authorizing the Bureau of Land Management to issue leases on producing wells when mineral rights revert to the United States from private ownership and there is no change in activity; and

(iv) Exchange of administrative sites involving other than NFS lands.

(8) Approval, modification, or continuation of minor short-term (1 year or less) special uses of NFS lands. Examples include but are not limited to:

(i) Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide;

(ii) Approving the use of NFS land for apiaries; and

(iii) Approving the gathering of forest products for personal use.

(9) Issuance of a new permit for up to the maximum tenure allowable under the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) for an existing ski area when such issuance is a purely ministerial action to account for administrative changes, such as a change in ownership of ski area improvements, expiration of the current permit, or a change in the statutory authority applicable to the current permit. Examples include, but are not limited to:

(i) Issuing a permit to a new owner of ski area improvements within an existing ski area with no changes to the master development plan, including no changes to the facilities or activities for that ski area;

(ii) Upon expiration of a ski area permit, issuing a new permit to the holder of the previous permit where the holder is not requesting any changes to the master development plan, including changes to the facilities or activities; and

(iii) Issuing a new permit under the National Forest Ski Area Permit Act of 1986 to the holder of a permit issued under the Term Permit and Organic Acts, where there are no changes in the type or scope of activities authorized and no other changes in the master development plan.

(10) [Reserved]

(11) Issuance of a new special use authorization to replace an existing or expired special use authorization, when such issuance is a purely clerical action to account for administrative changes, such as a change in ownership of authorized improvements or expiration of the current authorization, and where there are no changes to the authorized facilities or increases in the scope or intensity of authorized activities. The applicant or holder must be in compliance with all the terms and conditions of the existing or expired special use authorization. Subject to the foregoing conditions, examples include but are not limited to:

(i) Issuing a new authorization to replace a powerline authorization that is at the end of its term;

(ii) Issuing a new permit to replace an expired permit for a road that continues to be used as access to non-NFS lands.

(iii) Issuing a new permit to replace an outfitting and guiding permit that is at the end of its term, or to convert a transitional priority use outfitting and guiding permit to a priority use outfitting and guiding permit.

(12) Issuance of a new authorization or amendment of an existing authorization for activities that occur on existing roads or trails, in existing facilities, or in areas where activities are consistent with the applicable land management plan or other documented decision. Subject to the foregoing condition, examples include but are not limited to:

(i) Issuance of an outfitting and guiding permit for mountain biking on NFS trails that are not closed to mountain biking;

(ii) Issuance of a permit to host a motorcycle enduro ride on existing roads;

(iii) Issuance of an outfitting and guiding permit for backcountry skiing;

(iv) Issuance of a permit for a one time use of existing facilities for fund raising activities and other recreational events.

(v) Issuance of a campground concession permit for an existing campground that has previously been operated by the Forest Service.

(e) *Categories of actions for which a project or case file and decision memo are required.* A supporting record is required and the decision to proceed must be documented in a decision memo for the categories of action in paragraphs (e)(1) through (28) of this section. As a minimum, the project or case file should include any records prepared, such as: The names of interested and affected people, groups, and agencies contacted; the determination that no extraordinary circumstances exist; a copy of the decision memo; and a list of the people notified of the decision.

(1) Construction and reconstruction of trails. Examples include, but are not limited to:

(i) Constructing or reconstructing a trail to a scenic overlook, and

(ii) Reconstructing an existing trail to allow use by individuals with disabilities.

(2) Additional construction or reconstruction of existing telephone or utility lines in a designated corridor. Examples include, but are not limited to:

(i) Replacing an underground cable trunk and adding additional phone lines, and

(ii) Reconstructing a power line by replacing poles and wires.

(3) Approval, modification, or continuation of special uses that require less than 20 acres of NFS lands. Subject to the preceding condition, examples include but are not limited to:

(i) Approving the construction of a meteorological sampling site;

(ii) Approving the use of land for a one-time group event;

(iii) Approving the construction of temporary facilities for filming of staged or natural events or studies of natural or cultural history;

(iv) Approving the use of land for a 40-foot utility corridor that crosses four miles of a national forest;

(v) Approving the installation of a driveway or other facilities incidental to use of a private residence;

(vi) Approving new or additional telecommunication facilities, improvements, or use at a site already used for such purposes;

(vii) Approving the expansion of an existing gravel pit or the removal of mineral materials from an existing community pit or common-use area;

(viii) Approving the continued use of land where such use has not changed since authorized and no change in the physical environment or facilities are proposed.

(4) [Reserved]

(5) Regeneration of an area to native tree species, including site preparation that does not involve the use of herbicides or result in vegetation type conversion. Examples include, but are not limited to:

(i) Planting seedlings of superior trees in a progeny test site to evaluate genetic worth, and

(ii) Planting trees or mechanical seed dispersal of native tree species following a fire, flood, or landslide.

(6) Timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 mile of low standard road construction. Examples include, but are not limited to:

(i) Girdling trees to create snags;

(ii) Thinning or brush control to improve growth or to reduce fire hazard including the opening of an existing road to a dense timber stand;

(iii) Prescribed burning to control understory hardwoods in stands of southern pine; and

(iv) Prescribed burning to reduce natural fuel build-up and improve plant vigor.

(7) Modification or maintenance of stream or lake aquatic habitat improvement structures using native materials or normal practices. Examples include, but are not limited to:

(i) Reconstructing a gabion with stone from a nearby source;

(ii) Adding brush to lake fish beds; and

(iii) Cleaning and resurfacing a fish ladder at a hydroelectric dam.

(8) Short-term (1 year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than 1 mile of low standard road, or use and minor repair of existing roads. Examples include, but are not limited to:

(i) Authorizing geophysical investigations which use existing roads that may require incidental repair to reach sites for drilling core holes, temperature gradient holes, or seismic shot holes;

(ii) Gathering geophysical data using shot hole, vibroseis, or surface charge methods;

(iii) Trenching to obtain evidence of mineralization;

(iv) Clearing vegetation for sight paths or from areas used for investigation or support facilities;

(v) Redesigning or rearranging surface facilities within an approved site;

(vi) Approving interim and final site restoration measures; and

(vii) Approving a plan for exploration which authorizes repair of an existing road and the construction of  $\frac{1}{3}$  mile of temporary road; clearing vegetation from an acre of land for trenches, drill pads, or support facilities.

(9) Implementation or modification of minor management practices to improve allotment condition or animal distribution when an allotment management plan is not yet in place. Examples include, but are not limited to:

(i) Rebuilding a fence to improve animal distribution;

(ii) Adding a stock watering facility to an existing water line; and

(iii) Spot seeding native species of grass or applying lime to maintain forage condition.

(10) [Reserved]

(11) Post-fire rehabilitation activities, not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds), to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities:

(i) Shall be conducted consistent with Agency and Departmental procedures and applicable land and resource management plans;

(ii) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and

(iii) Shall be completed within 3 years following a wildland fire.

(12) Harvest of live trees not to exceed 70 acres, requiring no more than  $\frac{1}{2}$  mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Removal of individual trees for sawlogs, specialty products, or fuelwood, and

(ii) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

(13) Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than  $\frac{1}{2}$  mile of temporary road construction. The proposed action may include incidental removal of live or

dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees, and

(ii) Harvest of fire-damaged trees.

(14) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than  $\frac{1}{2}$  mile of temporary road construction, including removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Felling and harvest of trees infested with southern pine beetles and immediately adjacent uninfested trees to control expanding spot infestations, and

(ii) Removal and/or destruction of infested trees affected by a new exotic insect or disease, such as emerald ash borer, Asian long horned beetle, and sudden oak death pathogen.

(15) [Reserved]

(16) Plan amendments developed in accordance with 36 CFR part 219 *et seq.* that provide broad guidance and information for project and activity decisionmaking in a NFS 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.

(17) Approval of a Surface Use Plan of Operations for oil and natural gas exploration and initial development activities, associated with or adjacent to a new oil and/or gas field or area, so long as the approval will not authorize activities in excess of any of the following:

(i) One mile of new road construction;

(ii) One mile of road reconstruction;

(iii) Three miles of individual or co-located pipelines and/or utilities disturbance; or

(iv) Four drill sites.

(18) Restoring wetlands, streams, riparian areas or other water bodies by removing, replacing, or modifying water control structures such as, but not limited to, dams, levees, dikes, ditches, culverts, pipes, drainage tiles, valves, gates, and fencing, to allow waters to flow into natural channels and floodplains and restore natural flow

regimes to the extent practicable where valid existing rights or special use authorizations are not unilaterally altered or canceled. Examples include but are not limited to:

(i) Repairing an existing water control structure that is no longer functioning properly with minimal dredging, excavation, or placement of fill, and does not involve releasing hazardous substances;

(ii) Installing a newly-designed structure that replaces an existing culvert to improve aquatic organism passage and prevent resource and property damage where the road or trail maintenance level does not change;

(iii) Removing a culvert and installing a bridge to improve aquatic and/or terrestrial organism passage or prevent resource or property damage where the road or trail maintenance level does not change; and

(iv) Removing a small earthen and rock fill dam with a low hazard potential classification that is no longer needed.

(19) Removing and/or relocating debris and sediment following disturbance events (such as floods, hurricanes, tornados, mechanical/engineering failures, etc.) to restore uplands, wetlands, or riparian systems to pre-disturbance conditions, to the extent practicable, such that site conditions will not impede or negatively alter natural processes. Examples include but are not limited to:

(i) Removing an unstable debris jam on a river following a flood event and relocating it back in the floodplain and stream channel to restore water flow and local bank stability;

(ii) Clean-up and removal of infrastructure flood debris, such as, benches, tables, outhouses, concrete, culverts, and asphalt following a hurricane from a stream reach and adjacent wetland area; and

(iii) Stabilizing stream banks and associated stabilization structures to reduce erosion through bioengineering techniques following a flood event, including the use of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, riprap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods).

(20) Activities that restore, rehabilitate, or stabilize lands occupied by roads and trails, including unauthorized roads and trails and NFS roads and NFS trails, to a more natural

condition that may include removing, replacing, or modifying drainage structures and ditches, reestablishing vegetation, reshaping natural contours and slopes, reestablishing drainage ways, or other activities that would restore site productivity and reduce environmental impacts. Examples include but are not limited to:

(i) Decommissioning a road to a more natural state by restoring natural contours and removing construction fills, loosening compacted soils, revegetating the roadbed and removing ditches and culverts to reestablish natural drainage patterns;

(ii) Restoring a trail to a natural state by reestablishing natural drainage patterns, stabilizing slopes, reestablishing vegetation, and installing water bars; and

(iii) Installing boulders, logs, and berms on a road segment to promote naturally regenerated grass, shrub, and tree growth.

(21) Construction, reconstruction, decommissioning, relocation, or disposal of buildings, infrastructure, or other improvements at an existing administrative site, as that term is defined in section 502(1) of Public Law 109-54 (119 Stat. 559; 16 U.S.C. 580d note). Examples include but are not limited to:

(i) Relocating an administrative facility to another existing administrative site;

(ii) Construction, reconstruction, or expansion of an office, a warehouse, a lab, a greenhouse, or a fire-fighting facility;

(iii) Surface or underground installation or decommissioning of a water or waste disposal system infrastructure;

(iv) Disposal of an administrative building; and

(v) Construction or reconstruction of communications infrastructure.

(22) Construction, reconstruction, decommissioning, or disposal of buildings, infrastructure, or improvements at an existing recreation site either managed by the Forest Service or managed under special use authorities, including infrastructure or improvements that are adjacent or connected to an existing recreation site and provide access or utilities for that site. Recreation sites include but are not limited to campgrounds and camping areas, picnic areas, day use areas, fishing sites, interpretive sites, visitor centers, trailheads, ski areas, and observation sites. Activities within this category are intended to apply to facilities located on recreation sites managed by the Forest Service and those managed by concessioners under

a special use authorization. Examples include but are not limited to:

(i) Constructing, reconstructing, or expanding a toilet or shower facility;

(ii) Constructing or reconstructing a fishing pier, wildlife viewing platform, dock, or other constructed feature at a recreation site;

(iii) Installing or reconstructing a water or waste disposal system;

(iv) Constructing or reconstructing campsites;

(v) Disposal of facilities at a recreation site;

(vi) Constructing or reconstructing a boat landing;

(vii) Replacing a chair lift at a ski area;

(viii) Constructing or reconstructing a parking area or trailhead; and

(ix) Reconstructing or expanding a recreation rental cabin.

(23) Converting a non-NFS or unauthorized trail or trail segment to an NFS trail when determined appropriate by the responsible official and consistent with applicable land management plan direction, travel management decisions, trail-specific decisions, and other related direction. Examples include but are not limited to:

(i) Converting an unauthorized trail that crosses land acquired by the Forest Service to an NFS trail; and

(ii) Converting an unauthorized trail to an NFS trail, including associated repair and reconstruction activities, to enhance access and recreation opportunities.

(24) Construction or realignment of up to 5 miles of NFS roads, reconstruction of up to 10 miles of NFS roads and associated parking areas, opening or closing an NFS road, and culvert or bridge rehabilitation or replacement along NFS roads. Examples include but are not limited to:

(i) Reconstructing an NFS road or parking area to address deferred maintenance;

(ii) Constructing an NFS road to improve access to a trailhead or parking area;

(iii) Modifying the surface of an NFS road;

(iv) Rerouting an NFS road to minimize resource impacts;

(v) Closing an NFS road to address resource impacts; and

(vi) Shoulder widening or other safety improvements within the right-of-way for an NFS road.

(25) Converting an unauthorized or non-NFS road to an NFS road. Examples include but are not limited to:

(i) Converting a non-NFS road that crosses land acquired by the Forest Service to an NFS road; and

(ii) Converting a non-NFS road to an NFS road to enhance access and recreation opportunities.

(26) Ecosystem restoration and/or resilience activities on NFS lands in compliance with the applicable land management plan, including, but not limited to the plan's goals, objectives, or desired conditions. Activities to improve ecosystem health, resilience, and other watershed conditions cannot exceed 7,300 treated acres. If commercial/non-commercial timber harvest activities are proposed they must be carried out in combination with at least one additional restoration activity and harvested acres cannot exceed 4,200 of the 7,300 acres.

(i) Restoration and resilience activities include, but are not limited to:

(A) Terrestrial and aquatic habitat improvement and/or creation,

(B) Stream restoration, aquatic organism passage, or erosion control,

(C) Road and/or trail decommissioning (system and non-system),

(D) Control of invasive species and reestablishing native species,

(E) Hazardous fuels reduction and/or wildfire risk reduction,

(F) Prescribed burning,

(G) Reforestation,

(H) Commercial harvest, and/or

(I) Non/pre-commercial thinning,

(ii) *Road and trail limitation.* A restoration/resilience activity under this category may include:

(A) Construction of permanent roads up to 0.5 miles.

(B) Maintenance or reconstruction of NFS roads and system trails, such as relocation of road or trail segments to address resource impacts.

(C) Construction of temporary roads up to 2.5 miles. All temporary roads constructed for a project under this category shall be decommissioned no later than 3 years after the date the project is completed.

(27) A Forest Service action that will be implemented jointly with another Federal agency and the action qualifies for a categorical exclusion of the other Federal agency. If the Forest Service chooses to use another Federal agency's categorical exclusion to cover a proposed action, the responsible official must obtain written concurrence from the other Federal agency that the categorical exclusion applies to the proposed action.

(f) *Decision memos.* The responsible official shall notify interested or affected parties of the availability of the decision memo as soon as practicable after signing. While sections may be combined or rearranged in the interest of clarity and brevity, decision memos must include the following content:

(1) A heading, which must identify:

(i) Title of document: Decision Memo;

(ii) Agency and administrative unit;  
 (iii) Title of the proposed action; and  
 (iv) Location of the proposed action, including administrative unit, county, and State.

(2) Decision to be implemented and the reasons for categorically excluding the proposed action including:

(i) The category of the proposed action;

(ii) The rationale for using the category or categories;

(iii) A finding that no extraordinary circumstances exist;

(3) Any interested and affected agencies, organizations, and persons contacted;

(4) Findings required by other laws such as, but not limited to findings of consistency with the forest land and resource management plan as required by the National Forest Management Act; or a public interest determination (36 CFR 254.3(b));

(5) The date when the responsible official intends to implement the decision and any conditions related to implementation;

(6) Whether the decision is subject to administrative review, the applicable regulations, and when and where to file a request for review;

(7) Name, address, and phone number of a contact person who can supply further information about the decision; and

(8) The responsible official's signature and date when the decision is made.

#### **§ 220.6 Environmental assessment and decision notice.**

(a) *Environmental assessment.* An environmental assessment (EA) shall be prepared for proposals as described in § 220.4(a) that are not categorically excluded (§ 220.5) and for which the need for an EIS has not been determined (§ 220.7). An EA may be prepared in any format useful to determine whether to prepare either an EIS or a FONSI, as long as the requirements of paragraph (b) of this section are met. The EA may incorporate by reference information that is reasonably available to the public.

(b) *An EA must include the following:*

(1) *Need for the proposal.* The EA must briefly describe the need for the project.

(2) *Proposed action and alternative(s).* The EA shall briefly describe the proposed action and any alternative(s) that meet the need for action. No specific number of alternatives is required or prescribed.

(i) When there are no unresolved conflicts concerning alternative uses of available resources (NEPA, section 102(2)(E)), the EA need only analyze the

proposed action and may proceed without consideration of additional alternatives.

(ii) The EA may document consideration of a no-action alternative through the effects analysis by contrasting the impacts of the proposed action and any alternative(s) with the current condition and expected future condition if the proposed action were not implemented.

(iii) The description of the proposal and any alternative(s) may include a brief description of incremental modifications developed through the analysis process. The documentation of these incremental changes to a proposed action or alternatives may be incorporated by reference.

(3) *Environmental Impacts of the Proposed Action and Alternative(s).* The EA:

(i) Shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s), to determine whether to prepare either an EIS or a FONSI (40 CFR 1508.9);

(ii) Shall disclose the environmental effects of any adaptive management adjustments;

(iii) Shall describe the impacts of the proposed action and any alternatives in terms of context and intensity as described in the definition of "significantly" at 40 CFR 1508.27;

(iv) May discuss the direct, indirect, and cumulative impacts of the proposed action and any alternatives together in a comparative description or describe the impacts of each alternative separately; and

(v) May incorporate by reference data, inventories, other information and analyses.

(4) *Agencies and Persons Consulted.*

(c) *Public involvement.* In addition to public notice in the SOPA and other requirements specified by applicable statutes or regulations (such as 36 CFR 218), as required at § 220.4(d), the responsible official may choose to conduct additional public engagement activities to involve key stakeholders and interested parties. This additional involvement shall be conducted commensurate with the nature of the decision to be made.

(d) *Decision notice.* If an EA and FONSI have been prepared, the responsible official must document a decision to proceed with an action in a decision notice unless law or regulation requires another form of decision documentation. A decision notice must document the conclusions drawn and the decision(s) made based on the supporting record, including the EA and FONSI. A decision notice must include:

(1) A heading, which identifies the:  
 (i) Title of document;  
 (ii) Agency and administrative unit;  
 (iii) Title of the project; and  
 (iv) Location of the action, including county and State.

(2) Decision and rationale;  
 (3) Brief summary of public involvement;

(4) A statement incorporating by reference the EA and FONSI if not combined with the decision notice;  
 (5) Findings required by other laws and regulations applicable to the decision at the time of decision;  
 (6) Expected implementation date;  
 (7) Administrative review opportunities and, when such opportunities exist, a citation to the applicable regulations and directions on when and where to file a request for review;

(8) Contact information, including the name, address, and phone number of a contact person who can supply additional information; and

(9) Responsible Official's signature, and the date the decision notice is signed.

(e) *Notification.* The responsible official shall notify interested and affected parties of the availability of the EA, FONSI, and decision notice as soon as practicable after the decision notice is signed.

#### **§ 220.7 Environmental impact statement and record of decision.**

(a) *Classes of actions normally requiring environmental impact statements.*

(1) *Class 1.* Proposals to carry out or to approve aerial application of chemical pesticides on an operational basis. Examples include but are not limited to:

(i) Applying chemical insecticides by helicopter on an area infested with spruce budworm to prevent serious resource loss.

(ii) Authorizing the application of herbicides by helicopter on a major utility corridor to control unwanted vegetation.

(iii) Applying herbicides by fixed-wing aircraft on an area to release trees from competing vegetation.

(2) *Class 2.* Development of a new land management plan or land management plan revision as provided for in 36 CFR 219.7.

(3) *Class 3.* Mining operations that involve surface disturbance on greater than 640 acres over the life of the proposed action.

(b) *Public Notice and Scoping.* Scoping shall be carried out in accordance with the requirements of 40 CFR 1501.7. No single scoping

technique is required or prescribed however, while public notice shall be provided by the SOPA, as required at § 220.4(d), the SOPA shall not to be used as the sole scoping mechanism.

(c) *Notice of intent.* Normally, a notice of intent to prepare an EIS shall be published in the **Federal Register** as soon as practicable after deciding that an EIS will be prepared. Where there is a lengthy period between the agency's decision to prepare an EIS and the time of actual preparation, the notice of intent may be published at a reasonable time in advance of preparation of the draft statement. A notice must meet the requirements of 40 CFR 1508.22, and in addition, include the following:

(1) Title of the responsible official(s);  
 (2) Any permits or licenses required to implement the proposed action and the issuing authority, to the extent known;

(3) Lead, joint lead, or cooperating agencies if identified; and

(4) Address(es) to which comments may be sent.

(d) *Withdrawal notice.* A withdrawal notice must be published in the **Federal Register** if, after publication of the notice of intent or notice of availability, an EIS is no longer necessary. A withdrawal notice must refer to the date and **Federal Register** page number of the previously published notice(s).

(e) *Environmental impact statement format and content.* The responsible official may use any EIS format and design as long as the statement is in accord with 40 CFR 1502.10.

(f) *Alternative(s).* The EIS shall document the examination of reasonable alternatives to the proposed action. Each alternative other than the no action alternative must meet the purpose and need of the proposed action. No specific number of alternatives is required or prescribed. The responsible official may modify the proposed action and alternative(s) under consideration prior to issuing a draft EIS. In such cases, the responsible official may consider the incremental changes as alternatives considered. The documentation of these incremental changes to a proposed action or alternatives shall be included or incorporated by reference in accord with 40 CFR 1502.21.

(g) *Circulating and filing draft and final environmental impact statements.*

(1) The draft and final EISs shall be filed with the Environmental Protection Agency's Office of Federal Activities in Washington, DC (see 40 CFR 1506.9).

(2) Requirements at 40 CFR 1506.9 "Filing requirements," 40 CFR 1506.10 "Timing of agency action," and 40 CFR 1502.19 "Circulation of the environmental impact statement" shall

only apply to the last draft and final EIS, and will not apply to material produced prior to the draft EIS or between the draft and final EIS which are filed with EPA.

(3) When the responsible official determines that an extension of the review period on a draft EIS is appropriate, notice shall be given in the same manner used for inviting comments on the draft.

(h) *Distribution of the record of decision.* The responsible official shall notify interested or affected parties of the availability of the record of decision as soon as practicable after signing.

Dated: May 17, 2019.

**James E. Hubbard,**

*Undersecretary, Natural Resources and Environment.*

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**BILLING CODE 3411-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2018-0511; FRL-9994-92-Region 2]

### Approval of Air Quality Implementation Plans; New York; Infrastructure Requirements for the 2008 Ozone, 2010 Sulfur Dioxide, and 2012 Fine Particulate Matter National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve certain elements of New York's State Implementation Plan (SIP) revisions, submitted to demonstrate that the State meets the requirements of the Clean Air Act (CAA) for the 2008 Ozone; 2010 Sulfur Dioxide; and 2012 particulate matter of 2.5 microns or less (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit for approval into the SIP a plan for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA.

**DATES:** Comments must be received on or before July 15, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R02-OAR-2018-0511 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment

received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Edward J. Linky, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3764, or by email at [Linky.Edward@epa.gov](mailto:Linky.Edward@epa.gov).

#### SUPPLEMENTARY INFORMATION:

- I. What action is EPA proposing?
- II. What is the background information?
- III. What is a section 110(a)(1) and (2) SIP?
- IV. What elements are required under section 110(a)(1) and (2)?
- V. What is EPA's approach to the review of infrastructure SIP submissions?
- VI. What did New York submit?
- VII. How has the State addressed the elements of the section 110(a)(1) and (2) "infrastructure" provisions?
- VIII. What action is EPA taking?
- IX. Statutory and Executive Order Reviews

#### I. What action is EPA proposing?

The EPA is proposing to approve certain elements of the State of New York Infrastructure State Implementation Plan (SIP) as meeting the section 110(a) infrastructure requirements of the Clean Air Act (CAA) for the following National Ambient Air Quality Standards (NAAQS or standard): 2008 Ozone, 2010 sulfur dioxide (SO<sub>2</sub>), and 2012 particulate matter of 2.5 microns or less (PM<sub>2.5</sub>). As explained below, the EPA is proposing to find that the State has the necessary infrastructure, resources, and general authority to implement the standards noted above.

#### II. What is the background information?

Section 110(a)(1) of the CAA requires states to submit for approval into the SIP a plan that provides for the implementation, maintenance, and enforcement of new or revised NAAQS