

## Forest Service, USDA

## § 220.3

administrative review of a plan, plan amendment, or plan revision.

*Objection period.* The allotted filing period following publication of a public notice in the applicable newspaper of record (or the FEDERAL REGISTER, if the responsible official is the Chief) of the availability of the appropriate environmental documents and draft decision document, including a plan, plan amendment, or plan revision during which an objection may be filed with the reviewing officer.

*Objection process.* Those procedures established for pre-decisional administrative review of a plan, plan amendment, or plan revision.

*Objector.* An individual or entity who meets the requirements of § 219.53, and files an objection that meets the requirements of §§ 219.54 and 219.56.

*Online.* Refers to the appropriate Forest Service Web site or future electronic equivalent.

*Responsible official.* The official with the authority and responsibility to oversee the planning process and to approve a plan, plan amendment, and plan revision.

*Reviewing officer.* The USDA or Forest Service official having the delegated authority and responsibility to review an objection filed under this subpart.

*Substantive formal comments.* Written comments submitted to, or oral comments recorded by, the responsible official or his designee during an opportunity for public participation provided during the planning process (§§ 219.4 and 219.16), and attributed to the individual or entity providing them. Comments are considered substantive when they are within the scope of the proposal, are specific to the proposal, have a direct relationship to the proposal, and include supporting reasons for the responsible official to consider.

## 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 Environmental impact statement and record of decision.
- 220.6 Categorical exclusions.

220.7 Environmental assessment and decision notice.

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

SOURCE: 73 FR 43093, July 24, 2008, unless otherwise noted.

### § 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 1500–1508.

*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.

*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 further analysis and documentation in an environmental impact statement (EIS) or environmental assessment (EA).

## § 220.4

## 36 CFR Ch. II (7–1–25 Edition)

*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)(1).

*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 informs the public about those proposed and ongoing 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 any 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 peo-

ple 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 practical.

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

(2) Considering environmental documents, public and agency comments (if any) on those documents, and agency responses to those comments;

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

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

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

(d) *Schedule of proposed actions (SOPA).* The responsible official shall ensure the SOPA is updated and notify the public of the availability of the SOPA.

(e) *Scoping (40 CFR 1501.7).* (1) Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded from further analysis and documentation in an EA or an EIS (§220.6).

(2) Scoping shall be carried out in accordance with the requirements of 40 CFR 1501.7. Because the nature and complexity of a proposed action determine the scope and intensity of analysis, no single scoping technique is required or prescribed.

(3) The SOPA shall not be used as the sole scoping mechanism for a proposed action.

(f) *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 Cu-

mulative 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 reasonable foreseeable future actions) on the affected environment. With respect to past actions, during the scoping 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)

(g) *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

## § 220.5

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))

(h) *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)

(i) *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.

(j) *Determination of NEPA Adequacy (DNA).* (1) An existing environmental analysis prepared pursuant to NEPA and the Council on Environmental Quality regulations may be used in its entirety for a new proposed action if the Responsible Official determines that the existing NEPA analysis adequately assesses the environmental effects of the proposed action and reasonable alternatives. The responsible official must determine and document that each of the following elements is met:

(i) The new proposed action is substantially the same as a previously analyzed proposed action or alternative analyzed in detail in the existing NEPA analysis.

(ii) The range of alternatives analyzed in the existing NEPA document(s) is appropriate with respect to the new proposed action.

(iii) Any new information or circumstances relevant to environmental concerns would not substantially change the analysis in an existing NEPA document(s).

(iv) The environmental effects that would result from implementation of the new proposed action are similar to

## 36 CFR Ch. II (7–1–25 Edition)

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 action. Proposed actions undergoing a DNA review shall:

(i) Be included on the SOPA;

(ii) Be subject to scoping;

(iii) Be subject to pre-decisional administrative review, if applicable; and

(iv) Include issuance of a new decision document (decision memo, decision notice, or record of decision) when approved.

[73 FR 43093, July 24, 2008, as amended at 85 FR 73630, Nov. 19, 2020]

### § 220.5 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:* Proposals that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area. Examples include but are not limited to:

(i) Constructing roads and harvesting timber in an inventoried roadless area where the proposed road and harvest units impact a substantial part of the inventoried roadless area.

(ii) Constructing or reconstructing water reservoir facilities in a potential wilderness area where flow regimens may be substantially altered.

(iii) Approving a plan of operations for a mine that would cause considerable surface disturbance in a potential wilderness area.

(b) *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 environmental impact statement 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;
- (3) Lead, joint lead, or cooperating agencies if identified; and
- (4) Address(es) to which comments may be sent.

(c) *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).

(d) *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.

(e) *Alternative(s).* The EIS shall document the examination of reasonable alternatives to the proposed action. An alternative should meet the purpose and need and address one or more significant issues related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed. The following procedures are available to the responsible official to develop and analyze alternatives:

(1) 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.

(2) The proposed action and one or more alternatives to the proposed action may include adaptive management. An adaptive management pro-

posal 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 EIS 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.

(f) *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 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.

(g) *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 practical after signing.

#### § 220.6 Categorical exclusions.

(a) *General.* A proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action and if:

(1) The proposed action is within one of the categories established by the Secretary at 7 CFR part 1b.3; or

(2) The proposed action is within a category listed in § 220.6(d) and (e).

(b) *Resource conditions.* (1) Resource conditions that should be considered in

## § 220.6

## 36 CFR Ch. II (7–1–25 Edition)

determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:

(i) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;

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

(iii) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;

(iv) Inventoried roadless area or potential wilderness area;

(v) Research natural areas;

(vi) American Indians 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 (CE). It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.

(c) *Scoping*. If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS.

(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 servicewide 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 servicewide 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

## Forest Service, USDA

## § 220.6

(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 to account only 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 magnitude 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 facility 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; and

(iii) Converting 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 recreation special uses that occur on existing roads or trails, in existing facilities, in existing recreation sites, or in areas where such activities are allowed. 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;

## § 220.6

## 36 CFR Ch. II (7–1–25 Edition)

(ii) Issuance of a permit to host a competitive motorcycle event;

(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 other recreational events; and

(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 (25) 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. If the proposed action is approval of a land management plan, plan amendment, or plan revision, the plan approval document required by 36 CFR part 219 satisfies the decision memo requirements of this section.

(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 handicapped individuals.

(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 utility corridor that crosses a national forest;

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

(vi) Approving new or additional communication facilities, associated improvements, or communication uses at a site already identified as available for these purposes.

(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 ½ 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 ½ 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 ½ 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 ½ 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

## § 220.6

(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) Land management plans, plan amendments, and plan revisions 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 collocated 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

## 36 CFR Ch. II (7-1-25 Edition)

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, geotextiles, 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 National Forest System roads and National Forest System 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 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, 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 at 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) Road management activities on up to 8 miles of NFS roads and associated parking areas. Activities under this category cannot include construction or realignment. Examples include but are not limited to:

- (i) Rehabilitating an NFS road or parking area where management activities go beyond repair and maintenance;
- (ii) Shoulder-widening or other safety improvements within the right-of-way for an NFS road; and
- (iii) Replacing a bridge along an NFS road.

(24) Construction and realignment of up to 2 miles of NFS roads and associated parking areas. Examples include but are not limited to:

- (i) Constructing an NFS road to improve access to a trailhead or parking area;
- (ii) Rerouting an NFS road to minimize resource impacts; and
- (iii) Improving or upgrading the surface of an NFS road to expand its capacity.

(25) Forest and grassland management activities with a primary purpose of meeting restoration objectives or increasing resilience. Activities to improve ecosystem health, resilience, and other watershed and habitat conditions may not exceed 2,800 acres.

## § 220.7

## 36 CFR Ch. II (7–1–25 Edition)

(i) Activities to meet restoration and resilience objectives may include, but are not limited to:

(A) Stream restoration, aquatic organism passage rehabilitation, or erosion control;

(B) Invasive species control and reestablishment of native species;

(C) Prescribed burning;

(D) Reforestation;

(E) Road and/or trail decommissioning (system and non-system);

(F) Pruning;

(G) Vegetation thinning; and

(H) Timber harvesting.

(ii) The following requirements or limitations apply to this category:

(A) Projects shall be developed or refined through a collaborative process that includes multiple interested persons representing diverse interests;

(B) Vegetation thinning or timber harvesting activities shall be designed to achieve ecological restoration objectives, but shall not include salvage harvesting as defined in Agency policy; and

(C) Construction and reconstruction of permanent roads is limited to 0.5 miles. Construction of temporary roads is limited to 2.5 miles, and all temporary roads shall be decommissioned no later than 3 years after the date the project is completed. Projects may include repair and maintenance of NFS roads and trails to prevent or address resource impacts; repair and maintenance of NFS roads and trails is not subject to the above mileage limits.

(f) *Decision memos.* The responsible official shall notify interested or affected parties of the availability of the decision memo as soon as practical 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 and, if more than one category could have been used, why the specific category was chosen;

(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(c));

(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 review or appeal, the applicable regulations, and when and where to file a request for review or appeal;

(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.

[73 FR 43093, July 24, 2008, as amended at 78 FR 56163, Sept. 12, 2013; 85 FR 73631, Nov. 19, 2020]

### § 220.7 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 from documentation (§ 220.6) and for which the need of an EIS has not been determined (§ 220.5). An EA may be prepared in any format useful to facilitate planning, decisionmaking, and public disclosure 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 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 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 alternative(s) may include a brief description of modifications and incremental design features developed through the analysis process to develop the alternatives considered. The documentation of these incremental changes to a proposed action or alternatives may be incorporated by reference in accord with 40 CFR 1502.21.

(iv) The proposed action and one or more 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 EA 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 whether the action is having its intended effect.

(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 impact(s) 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) *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 (40 CFR 1508.13). 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 or appeal opportunities and, when such opportunities exist, a citation to the applicable regulations and directions on when and where to file a request for review or an appeal;

(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 notice is signed.

(d) *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.

## PART 221—TIMBER MANAGEMENT PLANNING

AUTHORITY: 30 Stat. 34, 44 Stat. 242; 16 U.S.C. 475, 616.

### § 221.3 Disposal of national forest timber according to management plans.

(a) Management plans for national forest timber resources shall be prepared and revised, as needed, for working circles or other practicable units of national forest. Such plans shall:

(1) Be designed to aid in providing a continuous supply of national forest timber for the use and necessities of the citizens of the United States.

(2) Be based on the principle of sustained yield, with due consideration to the condition of the area and the timber stands covered by the plan.

(3) Provide, so far as feasible, an even flow of national forest timber in order to facilitate the stabilization of communities and of opportunities for employment.

(4) Provide for coordination of timber production and harvesting with other uses of national forest land in accordance with the principles of multiple use management.

(5) Establish the allowable cutting rate which is the maximum amount of timber which may be cut from the national forest lands within the unit by years or other periods.

(6) Be approved by the Chief, Forest Service, unless authority for such approval shall be delegated to subordinates by the Chief.

(b) When necessary to promote better utilization of national forest timber or to facilitate protection and management of the national forests, a management plan may include provisions for requirements of purchasers for processing the timber to at least a stated degree within the working circle, or within a stated area, and, when appropriate, by machinery of a stated type; and agreements for cutting in accordance with the plan may so require.

[13 FR 7711, Dec. 14, 1948, as amended at 28 FR 723, Jan. 26, 1963; 34 FR 743, Jan. 17, 1969]

## PART 222—RANGE MANAGEMENT

### Subpart A—Grazing and Livestock Use on the National Forest System

Sec.

- 222.1 Authority and definitions.
- 222.2 Management of the range environment.
- 222.3 Issuance of grazing and livestock use permits.
- 222.4 Changes in grazing permits.
- 222.6 Compensation for permittees' interest in authorized permanent improvements.
- 222.7 Cooperation in management.
- 222.8 Cooperation in control of stray or unbranded livestock, animal diseases, noxious farm weeds, and use of pesticides.
- 222.9 Range improvements.
- 222.10 Range betterment fund.

### Subpart B—Mediation of Term Grazing Permit Disputes

- 222.20 Decisions subject to mediation.
- 222.21 Parties.
- 222.22 Stay of appeal.
- 222.23 Confidentiality.
- 222.24 Records.
- 222.25 Costs.
- 222.26 Ex parte communications.

### Subpart C—Grazing Fees

- 222.50 General procedures.
- 222.51 National Forests in 16 Western States.
- 222.52 National Grasslands.
- 222.53 Grazing fees in the East—non-competitive procedures.
- 222.54 Grazing fees in the East—competitive bidding.

### Subpart D—Management of Wild Free-Roaming Horses and Burros

- 222.60 Authority and definitions.
- 222.61 Administration of wild free-roaming horses and burros and their environment.
- 222.62 Ownership claims.
- 222.63 Removal of other horses and burros.
- 222.64 Use of helicopters, fixed-wing aircraft and motor vehicles.
- 222.65 Protection of wild free-roaming horses and burros when they are upon other than the National Forest System or public lands.
- 222.66 Removal of wild free-roaming horses and burros from private lands.
- 222.67 Maintenance of wild free-roaming horses and burros on privately-owned lands.
- 222.68 Agreements.
- 222.69 Relocation and disposal of animals.