

§ 46.210

(d) Congress may establish categorical exclusions by legislation, in which case the terms of the legislation determine how to apply those categorical exclusions.

§ 46.210 Listing of Departmental categorical exclusions.

The following actions are categorically excluded under paragraph 46.205(b), unless any of the extraordinary circumstances in section 46.215 apply:

(a) Personnel actions and investigations and personnel services contracts.

(b) Internal organizational changes and facility and bureau reductions and closings.

(c) Routine financial transactions including such things as salaries and expenses, procurement contracts (*e.g.*, in accordance with applicable procedures and Executive Orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

(d) Departmental legal activities including, but not limited to, such things as arrests, investigations, patents, claims, and legal opinions. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA in accordance with 40 CFR 1508.18(a).

(e) Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

(f) Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (*e.g.*, limited size and magnitude or short-term effects).

(g) Management, formulation, allocation, transfer, and reprogramming of the Department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.)

(h) Legislative proposals of an administrative or technical nature (including such things as changes in authorizations for appropriations and minor boundary changes and land title

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transactions) or having primarily economic, social, individual, or institutional effects; and comments and reports on referrals of legislative proposals.

(i) Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

(j) Activities which are educational, informational, advisory, or consultative to other agencies, public and private entities, visitors, individuals, or the general public.

(k) Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities:

(1) Shall be limited to areas—

(i) In wildland-urban interface; and

(ii) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface;

(2) Shall be identified through a collaborative framework as described in “A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan;”

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

(4) Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and

(5) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction. (Refer to the ESM Series for additional, required guidance.)

(l) 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 must comply with the following (Refer to the ESM Series for additional, required guidance.):

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

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

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

§ 46.215 Categorical exclusions: Extraordinary circumstances.

Extraordinary circumstances (see paragraph 46.205(c)) exist for individual actions within categorical exclusions that may meet any of the criteria listed in paragraphs (a) through (l) of this section. Applicability of extraordinary circumstances to categorical exclusions is determined by the Responsible Official.

(a) Have significant impacts on public health or safety.

(b) Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

(c) Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)].

(d) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

(e) Establish a precedent for future action or represent a decision in principle about future actions with poten-

tially significant environmental effects.

(f) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

(g) Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.

(h) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species.

(i) Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

(j) Have a disproportionately high and adverse effect on low income or minority populations (EO 12898).

(k) Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007).

(l) Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and EO 13112).

§ 46.220 How to designate lead agencies.

(a) In most cases, the Responsible Official should designate one Federal agency as the lead with the remaining Federal, State, tribal governments, and local agencies assuming the role of co-operating agency. In this manner, the other Federal, State, and local agencies can work to ensure that the NEPA document will meet their needs for adoption and application to their related decision(s).

(b) In some cases, a non-Federal agency (including a tribal government) must comply with State or local requirements that are comparable to the NEPA requirements. In these cases, the Responsible Official may designate the non-Federal agency as a joint lead agency. (See 40 CFR 1501.5 and 1506.2 for