

[3411-15]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 220

RIN 0596-AD31

National Environmental Policy Act (NEPA) Compliance

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture, Forest Service (Agency) is adopting a final rule amending its National Environmental Policy Act (NEPA) regulations. The final rule establishes new and revised categorical exclusions (pertaining to certain special use authorizations, infrastructure management activities, and restoration and resilience activities) and adds the determination of NEPA adequacy provision to the Agency's NEPA regulations. These amendments will increase efficiency in the Agency's environmental analysis and decision-making while meeting NEPA's requirements and fully honoring the Agency's environmental stewardship responsibilities. Public comment has informed and improved the final rule.

DATES: This rule is effective November 19, 2020.

ADDRESSES: Additional information is available online at

<https://www.fs.fed.us/emc/nepa/revisions/index.shtml>.

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.

§ 220.4 General requirements.

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(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 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.

3. Amend § 220.6 by:

- a. Removing and reserving paragraph (d)(10);
- b. Adding paragraphs (d)(11) and (12);
- c. Removing “through (17)” and adding “through (25)” in its place in paragraph (e) introductory text;
- d. Revising paragraph (e)(3);
- e. Removing and reserving paragraphs (e)(10) and (15);
- f. Revising paragraph (e)(20); and
- g. Adding paragraphs (e)(21) through (25).

The additions and revisions read as follows:

## § 220.6 - Categorical exclusions.

\* \* \* \* \*

(d) \* \* \*

(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;
- (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) \* \* \*

(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.

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(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 No. 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.

(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.

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James E. Hubbard,

Under Secretary,

Natural Resources and Environment.

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