SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations and notice of proposed rulemaking that are the subjects of this correction are under sections 6011, 6033, 6071, and 4965 of the Internal Revenue Code.

Need for Correction

As published, proposed regulations (REG–142039–06 and REG–139268–06) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (REG–142039–06 and REG–139268–06) which were the subjects of FR Doc.E7–12902), is corrected as follows:

§ 53.4965–4 [Corrected]

1. On page 36933, column 1, § 53.4365–4(c) *Example 2.*, line 12 of the paragraph, the language ''by Notice 2006–16 (2006–9 IRB 538). The'' is corrected to read ''by Notice 2006–16 (2006–9 IRB 538)). The''.

§ 53.4965–8 [Corrected]

2. On page 36936, column 3, § 53.4965–8(e), line 2 of the paragraph, the language ''*periods*. If a transaction (other than a'' is corrected to read ''*periods*. If a transaction other than a''.

PART 301—PROCEDURE AND ADMINISTRATION

3. On page 36938, column 1, paragraph 8, line 2, the language ''301 continues to read, part, as follows:'' is corrected to read ''301 continues to read, in part, as follows:''.

§ 301.6011(g)–1 [Corrected]

4. On page 36938, column 1, § 301.6011(g)–1(a)(2)(i), line 4 of the paragraph, the language ''of its tax-exempt, tax-indifferent or tax-'' is corrected to read ''of its tax-exempt, tax indifferent or tax-''.

5. On page 36938, column 1, § 301.6011(g)–1(a)(2)(ii), line 3 of the paragraph, the language ''exempt, tax-indifferent or tax-favored'' is corrected to read ''exempt, tax indifferent or tax-favored''.

§ 301.6033–5 [Corrected]

6. On page 36939, column 1, § 301.6033–5, line 1 of the paragraph, the language ''[The text of this section is the same'' is corrected to read ''[The text of the proposed amendment to § 301.6033–5 is the same''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–16080 Filed 8–15–07; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 220

RIN 0596–AC49

National Environmental Policy Act Procedures

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rule; request for comment.

SUMMARY: The Forest Service is proposing to move its National Environmental Policy Act (NEPA) implementing procedures from Forest Service Manual (FSM) 1950 and Forest Service Handbook (FSH) 1909.15 to 36 Code of Federal Regulations, part 220 (36 CFR 220). The Agency also proposes to clarify existing NEPA procedures and add new procedures to incorporate Council on Environmental Quality (CEQ) guidance and to better align Agency NEPA procedures with Agency decision processes.

Agency explanatory guidance interpreting CEQ and Agency procedures in regulation will remain in FSH 1909.15. Agency NEPA authority, objectives, policy, and responsibilities will remain in FSM 1950.

This rule would meet 40 CFR 1507.3 by placing Agency-implementing procedures in their proper regulatory position. Maintaining Agency explanatory guidance in directives would facilitate timely Agency responses to new ideas, new information, procedural interpretations, training needs, and editorial changes to assist field units when implementing the NEPA process. Finally, the proposed changes to the Forest Service NEPA procedures are intended to provide an environmental analysis process that fits better with modern thinking on decisionmaking, collaboration, and adaptive management to meet the intent of NEPA through establishing incremental alternative development, and adaptive management principles.

DATES: Comments must be received in writing by October 15, 2007.

ADDRESSES: Comments concerning this notice should be sent by e-mail to *fsnepa@contentanalysisgroup.com,* or by facsimile to 801–397–2601, or via the U.S. Postal Service to: NEPA Implementation Procedures, C/O Content Analysis Group, 1584 South 500 West, Suite 201, Woods Cross, UT 84010. Electronic or facsimile comments are preferred. If comments are sent via U.S. Postal Service, please do not submit duplicate electronic or facsimile comments. Please confine comments to the proposed move of existing NEPA procedures from FSH to regulation, proposed changes to existing NEPA procedures, and proposed new NEPA procedures and explain the reasons for any recommended changes.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Joe Carbone, Ecosystem Management Staff, (202) 205–0884, Forest Service, USDA. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Rule

Council on Environmental Quality (CEQ) regulations at 40 CFR 1507.3 require Federal agencies to adopt procedures as necessary to supplement CEQ's regulations implementing the National Environmental Policy Act (NEPA) and to consult with CEQ during their development and prior to publication in the **Federal Register**. The regulation further encourages agencies to publish agency explanatory guidance for CEQ's regulations and agency procedures.

In 1979, the Forest Service chose to combine its implementing procedures and explanatory guidance in Agency directives (Forest Service Manual 1950 and Forest Service Handbook 1909.15). The blending of NEPA implementing procedures with explanatory guidance requires the Forest Service to provide for public notice and comment and to consult with CEQ, as required by 40 CFR1507.3, when amending any guidance for explaining CEQ or Agency procedures, resulting in an increased administrative burden for the Agency and CEQ.

This proposal would meet the intent of 40 CFR 1507.3 by placing Agency-implementing procedures in their proper regulatory position. Placing Agency explanatory guidance in directives would facilitate quicker

Agency responses to new ideas, new information, procedural interpretations, training needs, and editorial changes.

Since the last major update of Forest Service NEPA policy in 1992, CEQ has issued guidance the Agency wishes to incorporate in its regulation. The Agency also wants to incorporate several concepts that are currently used, but for which there are no explicit provisions in the current procedures.

Finally, this proposal would allow for better integrating of NEPA procedures and documentation into current Agency decisionmaking processes, including collaborative and incremental decisionmaking.

Almost 30 years ago, CEQ stated in its preamble to the final NEPA implementing regulations (Nov. 29, 1978, 43 FR 55978) that the Environmental Impact Statement (EIS) has ''tended to become an end in itself, rather than a means to making better decisions. They noted further; ''One serious problem with the administration of NEPA has been the separation between an agency's NEPA process and its decisionmaking process. In too many cases bulky EISs have been prepared and transmitted but not used by the decision-maker.'' The innovation at that time was a new requirement for a ''Record of Decision'' (ROD) to show ''how the EIS was used in arriving at the decision.'' At that time, CEQ broadened the focus from emphasis on a single document (EIS) to ''emphasize the entire NEPA process, from early planning through assessment and EIS preparation through decisions and provisions for follow-up.'' Today, after receiving comments on a draft EIS, agencies prepare a final EIS and document their decision in a ROD, tying the analysis from the EIS to the final agency decision.

Almost 20 years later, a CEQ report, ''The National Environmental Policy Act—A Study of Its Effectiveness After Twenty-five Years'' (January 1997) stated that ''frequently NEPA takes too long and costs too much, agencies make decisions before hearing from the public, documents are too long and technical for many people to use'' and according to Federal agency NEPA liaisons, ''the EIS process is still frequently viewed as merely a compliance requirement rather than as a tool to effect better decision-making. Because of this, millions of dollars, years of time, and tons of paper have been spent on documents that have little effect on decisionmaking.'' They point out ''some citizens' groups and concerned individuals view the NEPA process as largely a one-way communications track that does not use their input effectively'' and ''when they are invited to a formal scoping meeting to discuss a well-developed project about which they have heard little, they may feel they have been invited too late in the process.'' Finally, the report states, ''some citizens complain that their time and effort spent providing good ideas are not reflected in changes to proposals.''

A 2005 National Environmental Conflict Resolution Advisory Committee (NECRAC) Report chartered by the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation reflected further on the state of the NEPA process 27 years after CEQ published its regulations and recommended furthering the evolution of making section 102 procedural requirements less an end in themselves and more as a means to fulfill the policies set out in section 101. The report calls for improvements in the ''traditional model for NEPA implementation'' where ''agencies announce their plans, share their analyses of potential impacts of a range of options, solicit public comment, make decisions, deal with the fallout, if any, and move on to the next project.'' This model results in agency decisions ''based on a collection of views and interests'' but ''generally not a collective decision.'' The report goes on to state that while not a failure, the traditional model for NEPA ''does not take full advantage of the many strengths of section 101.''

The NECRAC recognized that ''Americans expect to be able to work things out and make things better over time. It is not inevitable, and it is clearly not desirable, that society's ability to constructively address and resolve conflicts should languish or fail to adapt to changing times. The current state of environmental and natural resource decision-making is dominated by the traditional model, which too often fails to capture the breadth and quality of the values and purposes of NEPA.'' The Committee called for Federal decisionmaking that ''enables interested parties'' to ''engage more effectively in the decisionmaking process'' where ''interested parties are no longer merely commenters on a Federal proposal, but act as partners in defining Federal plans, programs, and projects.''

The Federal Government has placed increasing emphasis on ''cooperating agencies'' ''cooperative conservation,'' ''collaboration,'' and ''environmental conflict resolution.'' CEQ guidance and direction on cooperating agencies and environmental conflict resolution includes:

- CEQ Memorandum for Heads of Federal Agencies: Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of NEPA, July 28, 1999;
- CEQ Memorandum for Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, January 30, 2002; and
- CEQ & OMB Memorandum on Environmental Conflict Resolution, 28 November 2005.

As a part of its continuing efforts to improve the implementation of NEPA, CEQ issued a NEPA Task Force report in 2003 entitled ''Modernizing NEPA Implementation'', which included recommendations to further collaboration in the NEPA process. Other Federal efforts include Executive Order 13352 on Facilitation of Cooperative Conservation, August 26, 2004, and Forest Service continuing emphasis on collaboration in Agency planning, NEPA analysis and decisionmaking (see *http://www.partnershipresourcecenter.org/policy/* for a list of laws and Forest Service policies related to collaboration).

As the Forest Service integrates the NEPA process and EIS into its collaborative and cooperative decisionmaking, the Agency needs an option to provide EIS documentation that reflects the way this interactive and incremental decisionmaking occurs. There is a need to ensure that the EIS is used in ''arriving at the decision.'' In order to do this, Forest Service NEPA procedures need an option to reflect a more modern environmental analysis process that fits better with today's collaborative processes and is used differently than the traditional NEPA documentation model currently assumes. A ''one size fits all'' approach to NEPA documentation has not been effective. The option of providing documentation that reflects the collaborative processes as described in these procedures will allow the Forest Service to document the analysis that best fits the particular situation. As the NECRAC Report points out, there continues to be focus on preparing NEPA documents such as an EIS or environmental assessment (EA) for litigation rather than to facilitate an informed decision process. The proposed NEPA documentation requirements are intended to enable interested parties to engage more effectively in the decisionmaking process rather than merely as

commenters on proposals and documents.

Rather than a document to be used only for a final Agency decision, the EIS could evolve as the decision evolves incrementally and be useful throughout the process. The EIS would then be used as a tool to foster a collaborative and incremental decision-making process rather than an end in itself. The record would reflect a history of how the detailed statement was used in collaborative and incremental decisionmaking and the final draft and final EISs would address a more narrowly focused Agency action for a final decision. The responsible official will make available preliminary draft and/or preliminary final EISs to keep interested parties informed as the analysis progresses. While the proposed regulation does not require a decision to be made collaboratively, it does allow the Agency to meet the procedural requirements of section 102 (2) of NEPA while fostering fulfillment of the act's purpose in section 101.

Proposed NEPA procedures to allow for better alignment of an EIS with Agency decisionmaking include: (1) Allowing proposals and alternative(s) to be explored and modified throughout the NEPA process (36 CFR 220.2 (e)), and (2) allowing the circulation of multiple preliminary detailed statement(s) without filing requirements (36 CFR 220.2(g)(2)).

The intent is to use environmental information effectively by multiple parties during the NEPA process rather than only at distinct comment periods for a draft and final impact statement. This is to allow efficient and effective use of an EIS to influence Agency decisionmaking as interested parties regularly exchange and discuss issues; differences; and necessary environmental, social, and economic effects analyses while alternatives are explored, evaluated, and modified throughout the process. The intent is to focus on a deliberative public process and appropriate disclosure outlined in section 102 of NEPA to promote the act's purposes.

The Agency is also proposing to incorporate adaptive management into its procedures. This would allow procedural flexibility to manage natural resources in light of uncertainties.

As Agency NEPA procedures are being moved from the Forest Service Directive System to the Code of Federal Regulations, the following key changes would be made:

- Clarify actions subject to NEPA by summarizing the relevant CEQ regulations in one place.
- Recognize Agency obligations to take immediate emergency responses and emphasize the options available for subsequent proposals to address actions related to the emergency when normal NEPA processes are not possible.
- Incorporate CEQ guidance language regarding what past actions are ''relevant and useful'' in illuminating or predicting direct and indirect effects of a proposed action when doing cumulative effects analysis.
- Clarify that an alternative(s) including the proposed action may be modified through an incremental process.
- Clarify that adaptive management strategies may be incorporated into an alternative(s), including the proposed action.
- Incorporate CEQ guidance that states EAs need only analyze the proposed action if there are no unresolved conflicts concerning alterative uses of available resources.

Section-by-Section Description of Proposed Changes

The majority of implementing procedures found in FSH 1909.15 will transfer to 36 CFR part 220 and remain intact with organizational and grammatical changes added to reflect regulatory requirements. Rule organization, additions to current procedures, and significant changes to current procedures are outlined below.

Agency explanatory guidance interpreting CEQ regulations and this rule will remain in FSH 1909.15.

CEQ guidance memos, court cases, and Agency manual and handbook direction can be reviewed at *http://www.fs.fed.us/emc/nepa.*

Section 220.1 Purpose and Scope. This section outlines the intent of the rule and identifies to which authority the rule is subject.

Section 220.2 Applicability. This section establishes that all Agency organizational elements are subject to the rule.

Section 220.3 Definitions. This section incorporates from FSH 1909.15 definitions for Decision Document, Decision Memo, Decision Notice, Environmentally Preferable Alternative, and adds definitions for Adaptive Management, Preliminary Environmental Impact Statements, Reasonably Foreseeable Future Actions, and Responsible Official.

Section 220.4 General Requirements. This section establishes procedures that apply to NEPA documents. Paragraph (a) Sets forth which Agency actions are subject to NEPA requirements by compiling pertinent sections from CEQ regulations in one place. Paragraph (b) clarifies expectations for Agency NEPA compliance in the case of emergencies. This section clarifies that responsible officials can take immediate actions in response to the immediate effects of emergencies necessary to mitigate harm to life, property, or important resources without complying with the procedural requirements of NEPA, the CEQ regulations, or these proposed regulations. Furthermore, responsible officials can take urgent actions to respond to the immediate effects of an emergency when there is not sufficient time to comply with the procedural requirements of NEPA, the CEQ regulations, or these proposed regulations by consulting with the Washington Office (and CEQ in cases where the response action is expected to have significant environmental impacts) about alternative arrangements. Paragraph (c) states how the NEPA process is to be integrated with Agency decisionmaking. Paragraph (d) incorporates FSH language for the Schedule of Proposed Actions. Paragraph (e) incorporates FSH language on scoping and further states that a Schedule of Proposed Actions is not intended to be used as the sole scoping mechanism for a proposed action. Paragraph (f) consolidates and amends FSH language by incorporating CEQ guidance of June 24, 2005, which clarifies what past actions should be considered in a cumulative effects analysis. Paragraph (g) establishes language on the management of classified information. Paragraph (h) establishes language on incorporation by reference; and (i) clarifies situations involving applicants.

Section 220.5 Environmental Impact Statements (EIS). This section incorporates language from chapter 20 of the FSH. Paragraph (a) lays the foundation for which Agency actions with significant environmental effects normally require the preparation of an EIS. Existing FSH language, establishing specific classes of actions requiring an EIS would be moved to the rule with the exception of the present category for EISs required by law or regulation. This category is not needed as there are no laws or regulations presently requiring an EIS for a specific class of actions and if there are any in the future, such laws and regulations would apply regardless of this rule. Also, the rule lists classes of actions that ''normally'' require an EIS rather than the current language requiring an EIS. The change is consistent with the CEQ regulations at 40 CFR 1507.3(b)(2)(i). Paragraph (b) incorporates FSH language on the development and content of a Notice of

Intent. Paragraph (c) incorporates FSH language on the cancellation of a Notice of Intent. Paragraph (d) allows for variation in content and format of an EIS as long as it is consistent with CEQ regulations. Paragraph (e) amends FSH language on the development of alternatives by establishing that:

(1) No specific number of alternatives is required or prescribed;

(2) The No Action alternative may be considered through the effects analysis by contrasting the impacts of the proposed action and an alternative(s) with the current condition and expected future condition;

(3) As the decisionmaking/analysis process progresses an alternative(s), including the proposed action, may be modified through an incremental process. This enhances the collaborative decisionmaking process by allowing the responsible official, interested and affected persons, and agencies to make appropriate adjustments to the alternative(s) as the analysis progresses; and

(4) Adaptive management strategies may be incorporated into an alternative(s), including the proposed action. Adaptive management strategies would be clearly articulated and the effects of said strategies analyzed in the document.

Paragraph (f) establishes language on the documentation of environmental effects related to incremental alternative development and adaptive management. Paragraph (g) amends FSH language on circulating and filing the draft and final EIS by including language that allows for making multiple preliminary EIS(s) available to the public. Paragraph (h) incorporates FSH language on the distribution of the record of decision.

Section 220.6 Categorical Exclusions. This section incorporates implementing language found in chapter 30 of the FSH. The headings are changed to be more explanatory but the content remains the same as the current FSH. No new categorical exclusions are proposed.

Section 220.7 Environmental Assessment (EA). This section incorporates implementing language found in chapter 40 of the FSH. Paragraph (a) consolidates FSH language outlining when an EA shall be prepared and indicating that there is no standard document format. Paragraph (b) establishes new language outlining what information shall be included in an EA based on CEQ guidance; specifically an EA must include: a description of the need for the project; a description of the proposed action and reasonable alternative(s) that meet the proposal's need for action; a brief description of analysis to determine whether to prepare an EIS; and a list of Tribes, agencies, and persons consulted.

Consistent with the National Environmental Policy Act, Section 102(E) and 40 CFR 1501.2(c), when there are no unresolved conflicts concerning alternative uses of available resources, the Agency need only analyze the proposed action. While this provision is not intended to limit the alternatives to be considered, it recognizes situations where there are no conflicts and therefore no compelling need for alternatives. A stand-alone No Action alternative is not required. The environmental analysis may document consideration of a no-action alternative through the effects analysis by contrasting the impacts of the proposed action and any alternatives with the current condition and expected future condition if the proposed action were not implemented. As the decisionmaking/analysis process progresses, the alternative(s), including the proposed action, may be modified through an incremental process. This enhances the collaborative decisionmaking process by allowing the responsible official, interested and affected persons, and agencies to make appropriate adjustments to the alternative(s) as the analysis progresses. The modifications made during the process should be documented and available to the public and in the record. Adaptive management strategies may be incorporated into an alternative(s), including the proposed action. Adaptive management strategies should be clearly articulated and the effects of said strategies analyzed in the document. Paragraph (c) incorporates FSH language on content for a Decision Notice. Paragraph (d) incorporates FSH language on availability of the EA, Decision Notice, and Finding of No Significant Impact.

SIDE-BY-SIDE COMPARISON OF MAJOR CHANGES TO EXISTING PROCEDURES

Current procedures	Proposed procedures
Emergency Response [§ 220.4(b)]	
Quotes CEQ regulation (1506.11) and directs Agency official to call the Washington Office for other than fire suppression.	Clarifies responsibilities for initial actions related to an emergency as well as proposals to address subsequent actions related to emergencies beyond initial response.
Cumulative Effects (Past Actions) [§ 220.4(e)]	
Paraphrases CEQ definition of cumulative impacts and states that consideration must be given to past actions.	References CEQ guidance explaining that a past action must be ''relevant and useful'' in illuminating or predicting direct and indirect effects of a proposed action. (CEQ Memo, 6/24/05).
Class of Actions Normally Requiring an EIS [§ 220.5(a)]	
Identifies four classes: proposed actions where an EIS is required by law or regulation; proposals to carry out or approve aerial application of chemical pesticides; proposals that would substantially alter the undeveloped character of an inventoried roadless area; and proposals for major Federal actions that may significantly affect the quality of the human environment.	Existing classes of actions requiring an EIS are now listed as ''normally'' requiring an EIS. Existing class for EISs required by law or regulation is no longer included as there are no specific classes of actions that are currently required by law to prepare an EIS.
Format for an EIS [§ 220.5(d)]	
Focusing on CEQ procedures	References CEQ procedures.

SIDE-BY-SIDE COMPARISON OF MAJOR CHANGES TO EXISTING PROCEDURES—Continued

Current procedures	Proposed procedures
Alternative Development for an EIS [§ 220.5(e)]	
Paraphrases CEQ regulations	Provides an option that alternative(s) and the proposed action may be modified through an incremental process that must be documented and available in the record. Alternative(s) may include an adaptive management strategy that is clearly articulated, analyzed, and pre-specified.
Environmental Effects [§ 220.5(f)]	
Paraphrases CEQ regulations and is prescriptive on what to consider.	References CEQ requirements and describes that the responsible official must disclose any effects considered during the incremental development of an alternative(s) or adaptive management strategy.
Circulation of Preliminary EIS(s) [§ 220.5(g)(2)]	
Does not specifically allow circulation of preliminary detailed statement(s).	Allows for the circulation of preliminary detailed statement(s).
Content for an EA [§ 220.7(b)]	
Quotes CEQ regulation at 40 CFR 1508.9(b)	Clarifies that when no unresolved conflicts concerning alternative uses of available resources exist the Agency need only analyze the proposed action. An alternative(s), including the proposed action may be modified through an incremental process. Adaptive management strategies may be incorporated into an alternative(s). (CEQ memos September 8, 2005, and December 9, 2002).

Regulatory Certification

National Environmental Policy Act

The proposed rule would move existing procedures for implementing the National Environmental Policy Act (NEPA) from Agency handbook to 36 CFR part 220 and provide additional direction by regulation. The rule would not directly impact the environment. The CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. III. 1999), aff'd 230 F.3d 947. 954–55 (7th Cir. 2000).

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and *Executive Order 12866, Regulatory Planning and Review.* It has been determined that this is not an economically significant action. This action to issue agency regulations will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This action will not interfere with an action taken or planned by another agency. This action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in National Forest System (NFS) planning and decision-making, this proposed rule to establish Agency implementing procedures for NEPA in the Code of Federal Regulations has been designated as significant and, therefore, is subject to Office of Management and Budget review under E.O. 12866.

In accordance with the Office of Management and Budget (OMB) Circular A–4, ''Regulatory Analysis,'' a cost/benefit analysis was conducted. The analysis compared the costs and benefits associated with the current condition of having Agency implementing procedures combined with Agency explanatory guidance in Forest Service Handbook (FSH) and the proposed condition of having implementing direction in regulation and explanatory guidance in FSH.

Many benefits and costs associated with the proposed rule are not quantifiable. Benefits, including collaborative and participatory public involvement to more fully address public concerns, timely and focused environmental analysis, flexibility in preparation of environmental documents, and improved legal standing indicate a positive effect of the new rule.

Moving implementing NEPA procedures from the FSH to regulation is expected to provide a variety of potentially beneficial effects. The rule would meet 40 CFR 1507.3 by placing Agency-implementing procedures in their proper regulatory position. Maintaining Agency explanatory guidance in the FSH would facilitate timely Agency responses to new ideas, new information, procedural interpretations, training needs, and editorial changes to addresses and internet links to assist field units when implementing the NEPA process. Finally, the proposed changes to the Forest Service NEPA procedures are intended to provide the Forest Service specific options to meet the intent of NEPA through collaboration, the establishment of incremental alternative development, and the use of adaptive management principles.

Based on the context of this analysis, no one factor creates a significant factor, but taken together does create the

potential for visible improvements in the Agency's NEPA program.

Federalism

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

Consultation and Coordination With Indian Tribal Governments

Pursuant to *Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments'',* the Agency has assessed the impact of this proposed rule on Indian Tribal governments and has determined that it does not significantly or uniquely affect communities of Indian Tribal governments. The proposed rule deals with requirements for NEPA analysis and has no direct effect regarding the occupancy and use of NFS land.

The Agency has also determined that this proposed rule does not impose substantial direct compliance costs on Indian Tribal governments or preempt Tribal law. Therefore, it has been determined that this proposed rule does not have Tribal implications requiring advance consultation with Indian Tribes.

No Takings Implications

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

Civil Justice Reform

This proposed rule has been reviewed under *Executive Order 12988 of February 7, 1996, ''Civil Justice Reform''.* After adoption of this proposed rule, (1) All State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) the proposed rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of this proposed rule on State, local, and Tribal governments and the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Energy Effects

This 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.

Controlling Paperwork Burdens on the Public

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

List of Subjects in 36 CFR Part 220

Administrative practice and procedure, Environmental policy, National forests.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to add part 220 to Title 36 of the Code of Federal Regulations 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 Environmental impact statements.
220.6 Categorical exclusions.
220.7 Environmental assessment.

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 USDA Forest Service 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 1500–1508).

(b) *Scope.* This part supplements, and is to be used in conjunction with, the CEQ regulations and U.S. Department of Agriculture regulations at 7 CFR part 1b.

§ 220.2 Applicability.

This part applies to all organizational elements of the USDA Forest Service.

§ 220.3 Definitions.

The following definitions supplement terms defined at 40 CFR parts 1500–1508.

Adaptive management. A system of management practices based on clearly identified outcomes and monitoring to determine if management actions are meeting desired outcomes; and, if not, facilitating management changes that will best ensure that outcomes are met or re-evaluated. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain.

Decision Document. A record of decision, decision memo, or decision notice.

Decision Memo. A concise written record of the responsible official's decision to implement an action categorically excluded from documentation in an environmental impact statement or environmental assessment. A decision memo is applicable to a prescribed set of categories.

Decision Notice. A concise written record of the responsible official's decision to implement an action when an environmental assessment and finding of no significant impact has 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. Ordinarily, this means the alternative that causes the least harm to the biological and physical environment; it also means the alternative which best protects and preserves historic, cultural, and natural resources.

Preliminary Environmental Impact Statement. An interim environmental

document that a responsible official may use to initiate discussion, solicit comments, and inform interested parties and agency personnel while proposals, alternatives, and environmental effects are explored and considered prior to filing a draft or final environmental impact statement. A preliminary environmental impact statement is an option available for responsible officials to use and is not required.

Reasonably Foreseeable Future Actions. Those activities not yet undertaken, for which there are existing decisions, funding, or identified proposals.

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

§ 220.4 General Requirements.

(a) *Proposed actions subject to the National Environmental Policy Act requirements (42 U.S.C. 4321 et seq.).* A Forest Service proposal is subject to the National Environmental Policy Act 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 (40 CFR 1508.23);

(2) The proposed action is subject to Forest Service control and responsibility (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 (40 CFR 1508.14) that can be meaningfully evaluated (40 CFR 1508.23); and

(4) The proposed action is not statutorily exempt from the requirements of section 102(2) of the National Environmental Policy Act.

(b) *Emergency responses.* (1) If the responsible official determines that an emergency exists that makes it necessary to take emergency actions before completing a NEPA analysis and documentation in accordance with the provisions in §§ 220.5 and 220.7, then these provisions apply.

(2) The responsible official may take emergency actions necessary to control the immediate impacts of the emergency to mitigate harm to life, property, or important 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.

(3) If the responsible official determines that proposed emergency actions beyond actions noted in paragraph (b)(2) of this section are not likely to have significant environmental impacts, the responsible official shall document that determination in an EA and FONSI prepared in accordance with these regulations, unless categorically excluded (§ 220.6). If the responsible official finds that the nature and scope of the subsequent actions related to the emergency require taking such proposed actions prior to completing an EA and FONSI, the responsible official shall consult with the Washington Office about alternative arrangements for NEPA compliance. Consultation with the Washington Office must be coordinated through the appropriate Regional Office.

(4) If the responsible official determines that proposed emergency actions beyond actions noted in paragraph (b)(2) of this section 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 as soon as possible. Alternative arrangements address the proposed actions necessary to control the immediate impacts of the emergency. Other proposed actions remain subject to NEPA analysis and documentation in accordance with these regulations.

(c) *Agency Decisionmaking.* (1) Forest Service Manual 1906 outlines Agency planning and decisionmaking. Forest Service Manual 1950 identifies the responsible official for the NEPA process as the Agency employee who has the delegated authority to make and implement a decision on a proposed action.

(2) 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:

(i) Completing the environmental document review before making a decision on the proposal, consistent with 40 CFR 1506.1;

(ii) Considering environmental documents, public and Agency comments (if any) on those documents, and Agency responses to those comments (40 CFR 1505.1(d));

(iii) Including environmental documents, comments, and responses as part of the administrative record (40 CFR 1505.1(c));

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

(v) Making a decision encompassed within the range of alternatives analyzed in the environmental documents (40 CFR 1505.1(e)).

(d) *Schedule of Proposed Actions.* (1) A Schedule of Proposed Actions shall be published quarterly to inform interested persons where to get information about proposed Forest Service actions, including the status of environmental analyses.

(2) The Schedule of Proposed Actions shall include proposals that will result in Agency decision documents (§ 220.3).

(3) Actions proposed and decided between scheduled publications shall be identified in the next schedule.

(4) The Schedule of Proposed Actions shall include a contact for additional information on Forest Service proposals and actions.

(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 environmental assessment or an environmental impact statement (§ 220.6).

(2) Scoping shall be consistent with 40 CFR 1501.7. However, 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 Schedule of Proposed Actions is not intended to be used as the sole scoping mechanism for a proposed action.

(f) *Cumulative Effects Considerations of Past Actions (40 CFR 1508.7).* 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 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.

(g) *Classified information (40 CFR 1507.3(c)).* To the extent practicable, the responsible official shall segregate any information classified in accordance with 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 accordance with applicable regulations.

(h) *Incorporation by Reference.* Consistent with 40 CFR 1502.21, 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.

(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. For situations involving an applicant, the responsible official should initiate the NEPA process upon acceptance of an application in accordance with 36 CFR 251.54(g).

§ 220.5 Environmental Impact Statements.

(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:

(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 of 5,000 acres or more (FSH 1909.12).* Examples include:

(i) Constructing roads and harvesting timber in a 56,000-acre inventoried roadless area where the proposed road and harvest units impact 3,000 acres in only one part of the roadless area.

(ii) Constructing or reconstructing water reservoir facilities in a 5,000-acre unroaded area where flow regimens may be substantially altered.

(iii) Approving a plan of operations for a mine which would cause considerable surface disturbance over 700 acres in a 10,000 acre roadless area.

(3) *Class 3: Other proposals to take major Federal actions that may significantly affect the quality of the human environment.* Examples include:

(i) Approving the use of 1,500 acres of National Forest System land to construct and operate an all-season recreation resort complex.

(ii) Authorizing the Bureau of Land Management to offer the sale of leases for oil and natural gas resources from beneath 400,000 acres of National Forest System lands that have historically demonstrated a relatively high potential for discovery and development of oil and natural gas.

(iii) Approving the construction and operation of an international gas pipeline beneath a previously undeveloped 30-mile long, 1,000-foot wide corridor within an ecologically sensitive area of National Forest System land.

(b) *Notice of Intent.* A notice of intent shall be prepared and published in the **Federal Register** as soon as practicable after deciding that an environmental impact statement will be prepared. In addition to the requirements of 40 CFR 1508.22, notices of intent must 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 environmental impact statement is no longer necessary. A withdrawal notice must refer to the date and page number of the previously published notice.

(d) *Environmental Impact Statement Format and Content.* The responsible official may use any environmental impact statement format and design as long as the statement is in accordance with 40 CFR 1502.10.

(e) *Alternative(s).* The environmental impact statement shall document the examination of reasonable alternatives to the proposed action. Reasonable alternatives should meet the purpose and need and address one or more significant issues (40 CFR 1501.7) 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. In addition to the requirements at 40 CFR 1502.14 the responsible official has an option to use the following procedures to develop and analyze alternatives.

(1) The effects of the no-action alternative may be documented by contrasting the current condition and expected future condition should the proposed action not be undertaken with the impacts of the proposed action and any reasonable alternatives.

(2) To facilitate collaborative processes and sound decisions, the responsible official may collaborate with interested parties to modify the proposed action and alternative(s) under consideration prior to issuing a draft environmental impact statement. 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 may be incorporated by reference in accordance with 40 CFR 1502.21 rather than duplicating the description and analysis in the statement.

(3) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and

environmental effects analysis for the adaptive actions approved.

(f) *Environmental Effects.* In addition to the environmental consequences requirements at 40 CFR 1502.16, the EIS must include the impacts considered during any incremental alternative development process and the environmental effects of any adaptive management strategy.

(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 (40 CFR 1506.9).

(2) If preliminary drafts are prepared the responsible official shall make those multiple preliminary draft and preliminary final EISs available to those interested and affected persons and agencies for comment; however, requirements at 40 CFR 1506.10 and 40 CFR 1502.19 shall only apply to the last draft and final EIS.

(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 (40 CFR 1503.1) 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 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 section 220.6(d)(e).

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

(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 areas.

(v) Research natural areas.

(vi) American Indians and Alaska Native religious or cultural sites.

(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.

(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.

(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.

(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 National Forest System 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.

(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.

(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 National Forest System.

(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 National Forest System 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.

(iv) Exchange of administrative sites involving other than National Forest System lands.

(8) Approval, modification, or continuation of minor, short-term (1 year or less) special uses of National Forest System 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 National Forest System land for apiaries.

(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 of actions in this category 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.

(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) Amendment to or replacement of an existing special use authorization that involves only administrative changes and does not involve changes in the authorized facilities or increase in the scope or intensity of authorized activities, or extensions to the term of authorization, when the applicant or holder is in full compliance with the terms and conditions of the special use authorization. Examples include but are not limited to:

(i) Amending a special use authorization to reflect administrative changes such as adjustment to the land use fees, inclusion of non-discretionary environmental standards or updating a special use authorization to bring it into conformance with current laws or regulations (for example, new monitoring required by water quality standards).

(ii) Issuance of a new special use authorization to reflect administrative changes such as, a change of ownership or control of previously authorized facilities or activities, or conversion of the existing special use authorization to a new type of special use authorization (for example, converting a permit to a lease or easement).

(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 (e)16 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.

(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.

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

(3) Approval, modification, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land. 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 one mile of a National Forest.

(v) Approving the installation of a driveway, mailbox, or other facilities incidental to use of a residence.

(vi) Approving an additional telecommunication use at a site already used for such purposes.

(vii) Approving 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 changes 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.

(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 one 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.

(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.

(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 one 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.

(vii) Approving a plan for exploration which authorizes repair of an existing road and the construction of one-third 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.

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

(10) 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:

(i) Shall be limited to areas:

(A) In the wildland-urban interface; or

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

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

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

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

(v) 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.

(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.

(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.

(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.

(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) Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are not changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.

(16) Land management plans, plan amendments, and plan revisions developed in accordance with 36 CFR 219.1 through 219.16 that provide broad guidance and information for project and activity decisionmaking in a National Forest System unit. Proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments, are outside the scope of this category and shall be considered separately under Forest Service NEPA procedures.

(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.

(iv) Four drill sites.

(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.

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

§ 220.7 Environmental Assessment.

(a) *Environment 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 this paragraph 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 range of alternatives considered.

(iv) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(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 finding of no significant impact (40 CFR 1508.9).

(ii) Shall disclose the environmental effects of any adaptive management strategy.

(iii) Shall describe impacts in terms of context and intensity as described in the definition of ''significantly'' at 40 CFR 1508.27.

(iv) May discuss the impact(s) (direct, indirect, and cumulative) of alternatives together in a comparative description or describe the impacts of each alternative separately.

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

(4) Agencies and Persons Consulted.

(c) *Decision Notice.* If an EA and finding of no significant impact (40 CFR 1508.13) 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. Decision notices must document the conclusions drawn and the decision(s) made based on the supporting record, including the EA and finding of no significant impact. While sections may be combined or rearranged in the interest of clarity and brevity, decision notices must include the following content:

(1) A heading, which must identify:

(i) Title of document,

(ii) Agency and administrative unit,

(iii) Title of the project,

(iv) Location of the action, including county, and State;

(2) Decision and rationale.

(3) Brief summary of public involvement.

(4) Findings required by other laws and regulations applicable to the decision at the time of decision. The responsible official must:

(i) Cite the supporting record or analysis document that contains the information used to support the findings;

(ii) Incorporate by reference the finding of no significant impact if not included with the decision notice; and

(iii) Describe how the decision is consistent with applicable laws and regulations.

(5) Implementation date. The responsible official must identify the decision's expected implementation date.

(6) Administrative review or appeal opportunities. The responsible official must state whether the decision is subject to administrative review or appeal, cite the applicable regulations, and indicate when and where to file a request for review or appeal.

(7) Contact person. The responsible official must identify the name, address, and phone number of a contact person who can supply additional information.

(8) Signature and Date. The responsible official must sign and date the decision notice.

(d) *Notification.* The responsible official shall notify interested or affected parties of the availability of the EA, finding of no significant impact and decision notice, as soon as practicable after each document is signed.

Dated: August 8, 2007.

Sally Collins,

Associate Chief.

[FR Doc. E7–15867 Filed 8–15–07; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–8455–8]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Louisiana has applied to EPA for Final Authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant Final Authorization to the State of Louisiana. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by September 17, 2007.

ADDRESSES: Send written comments to Alima Patterson, Region 6, Regional