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Title 36 - Parks, Forests, and Public Property
Chapter II - Forest Service, Department of Agriculture
Part 220 - National Environmental Policy Act (NEPA) Compliance

§ 220.4 General requirements.

- (a) **Proposed actions subject to the NEPA requirements.** As required by 42 U.S.C. 4321 *et seq.*, a Forest Service proposal is subject to the NEPA requirements when all of the following apply:
- (1) The Forest Service has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated (see 40 CFR 1508.23);
 - (2) The proposed action is subject to Forest Service control and responsibility (see 40 CFR 1508.18);
 - (3) The proposed action would cause effects on the natural and physical environment and the relationship of people with that environment (see 40 CFR 1508.14); and
 - (4) The proposed action is not statutorily exempt from the requirements of section 102(2)(C) of the NEPA (42 U.S.C. 4332(2)(C)).
- (b) **Emergency responses.** When the responsible official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and any required documentation in accordance with the provisions in §§ 220.5, 220.6, and 220.7 of this part, then the following provisions apply.
- (1) The responsible official may take actions necessary to control the immediate impacts of the emergency and are urgently needed to mitigate harm to life, property, or important natural or cultural resources. When taking such actions, the responsible official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practical.
 - (2) If the responsible official proposes emergency actions other than those actions described in paragraph (b)(1) of this section, and such actions are not likely to have significant environmental impacts, the responsible official shall document that determination in an EA and FONSI prepared in accord with these regulations. If the responsible official finds that the nature and scope of proposed emergency actions are such that they must be undertaken prior to preparing any NEPA analysis and documentation associated with a CE or an EA and FONSI, the responsible official shall consult with the Washington Office about alternative arrangements for NEPA compliance. The Chief or Associate Chief of the Forest Service may grant emergency alternative arrangements under NEPA for environmental assessments, findings of no significant impact and categorical exclusions (FSM 1950.41 a). Consultation with the Washington Office shall be coordinated through the appropriate regional office.
 - (3) If the responsible official proposes emergency actions other than those actions described in paragraph (b)(1) of this section and such actions are likely to have significant environmental impacts, then the responsible official shall consult with CEQ, through the appropriate regional office and the Washington Office, about alternative arrangements in accordance with CEQ regulations at 40 CFR 1506.11 as soon as possible.
- (c) **Agency decisionmaking.** For each Forest Service proposal (§ 220.4(a)), the responsible official shall coordinate and integrate NEPA review and relevant environmental documents with agency decisionmaking by:
- (1) Completing the environmental document review before making a decision on the proposal;
 - (2) Considering environmental documents, public and agency comments (if any) on those documents, and agency responses to those comments;
 - (3) Including environmental documents, comments, and responses in the administrative record;
 - (4) Considering the alternatives analyzed in environmental document(s) before rendering a decision on the proposal; and
 - (5) Making a decision encompassed within the range of alternatives analyzed in the environmental documents.
- (d) **Schedule of proposed actions (SOPA).** The responsible official shall ensure the SOPA is updated and notify the public of the availability of the SOPA.
- (e) **Scoping (40 CFR 1501.7).**
- (1) Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded from further analysis and documentation in an EA or an EIS (§ 220.6).
 - (2) Scoping shall be carried out in accordance with the requirements of 40 CFR 1501.7. Because the nature and complexity of a proposed action determine the scope and intensity of analysis, no single scoping technique is required or prescribed.
 - (3) The SOPA shall not to be used as the sole scoping mechanism for a proposed action.

- (f) **Cumulative effects considerations of past actions.** Cumulative effects analysis shall be carried out in accordance with 40 CFR 1508.7 and in accordance with "The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in 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. (40 CFR 1508.7)
- (g) **Classified information.** To the extent practicable, the responsible official shall segregate any information that has been classified pursuant to Executive order or statute. The responsible official shall maintain the confidentiality of such information in a manner required for the information involved. Such information may not be included in any publicly disclosed documents. If such material cannot be reasonably segregated, or if segregation would leave essentially meaningless material, the responsible official must withhold the entire analysis document from the public; however, the responsible official shall otherwise prepare the analysis documentation in accord with applicable regulations. (40 CFR 1507.3(c))
- (h) **Incorporation by reference.** Material may be incorporated by reference into any environmental or decision document. This material must be reasonably available to the public and its contents briefly described in the environmental or decision document. (40 CFR 1502.21)
- (i) **Applicants.** The responsible official shall make policies or staff available to advise potential applicants of studies or other information foreseeably required for acceptance of their applications. Upon acceptance of an application as provided by 36 CFR 251.54(g) the responsible official shall initiate the NEPA process.
- (j) **Determination of NEPA Adequacy (DNA).**
- (1) An existing environmental analysis prepared pursuant to NEPA and the Council on Environmental Quality regulations may be used in its entirety for a new proposed action if the Responsible Official determines that the existing NEPA analysis adequately assesses the environmental effects of the proposed action and reasonable alternatives. The responsible official must determine and document that each of the following elements is met:
- (i) The new proposed action is substantially the same as a previously analyzed proposed action or alternative analyzed in detail in the existing NEPA analysis.
- (ii) The range of alternatives analyzed in the existing NEPA document(s) is appropriate with respect to the new proposed action.
- (iii) Any new information or circumstances relevant to environmental concerns would not substantially change the analysis in an existing NEPA document(s).
- (iv) The environmental effects that would result from implementation of the new proposed action are similar to 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.

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