



EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY  
WASHINGTON, D.C. 20503

November 10, 2020

The Honorable James E. Hubbard  
Under Secretary, Natural Resources and Environment  
U.S. Department of Agriculture  
1400 Independence Avenue, Room 240E  
Washington, DC 20250

Dear Under Secretary Hubbard:

Thank you for consulting with the Council on Environmental Quality (CEQ) on the U.S. Department of Agriculture, Forest Service (USFS) addition of new and revised categorical exclusions pertaining to special use authorizations, infrastructure management activities, and restoration and resilience activities, and the addition of a Determination of National Environmental Policy Act Adequacy (DNA) provision, to the USFS NEPA implementing procedures at 36 CFR part 220. The CEQ regulations implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500–1508) provide that agencies, in consultation with CEQ, develop or revise, as necessary, agency specific procedures to implement NEPA and the CEQ regulations. 40 CFR 1507.3.

On January 3, 2018, USFS issued an advance notice of proposed rulemaking (ANPRM) (83 Fed. Reg. 302) announcing its intent to revise its NEPA procedures. On June 13, 2019, USFS published a proposed rule (84 Fed. Reg. 27544) proposing revisions to its NEPA procedures. While the USFS rulemaking process was ongoing, CEQ initiated its own rulemaking process to update the government-wide NEPA implementing regulations, publishing an ANPRM on June 20, 2018 (83 Fed. Reg. 28591). On January 10, 2020, after publication of USFS's proposed rule, CEQ published a proposed rule to revise its regulations (85 Fed. Reg. 1684). On July 16, 2020, CEQ published a final rule substantially revising its regulations (85 Fed. Reg. 43304). In light of CEQ's revised regulations, the scope of USFS's final rule is more limited than proposed; it only amends its NEPA procedures to add new and expanded categorical exclusions and the procedure for determination of NEPA adequacy. In its final rule, USFS states that it will reconsider other proposed changes to its NEPA procedures, along with the associated comments when USFS conducts its review and revision of its NEPA procedures in accordance with the direction in CEQ's revised regulations. 40 CFR 1507.3(b).

In its June 13, 2019 proposed rule, USFS solicited comments from the public through a 60-day public comment period that was announced in the *Federal Register* and extended for 14 days in response to requests from the public (84 Fed. Reg. 39244). In its notice, USFS proposed to establish six new categorical exclusions related to recreation special uses, administrative sites, recreation sites, and restoration and resilience projects, along with two categorical exclusions for certain road management projects. USFS also

proposed to consolidate two categorical exclusions covering clerical modification or reauthorization of existing special uses into one. Additionally, USFS proposed to expand two categorical exclusions to cover (1) approval, modification, or continuation of special use authorizations on up to 20 acres of NFS lands and (2) decommissioning of both unauthorized roads and trails and National Forest System roads and trails. USFS also prepared and made available to the public for review the *Supporting Statement: Categorical Exclusions For Certain Special Uses, Infrastructure, and Restoration Projects* (Supporting Statement), that outlines the process the USFS followed to substantiate the establishment of the categorical exclusions. The USFS also proposed the addition of a DNA provision, which outlines a process for determining whether a previously completed USFS NEPA analysis can satisfy NEPA's requirements for a subsequently proposed action. USFS received roughly 103,000 comment submissions, of which roughly 6,200 were unique, individual comments, with the remainder consisting of form letters. USFS provides a detailed summary of the comments on the proposed categorical exclusions and the DNA provision in the final rule amending its NEPA procedures.

After considering the public comments on the new and revised categorical exclusions and new DNA provision, and after consulting with CEQ, USFS revised the text of these amendments to its NEPA procedures and the Supporting Statement to address clarifications and to support discussions to the changes of the categorical exclusion text. CEQ has reviewed USFS's final rule to revise its NEPA procedures at 36 CFR part 220 to ensure conformity with NEPA and the CEQ regulations. Based on this review, CEQ concludes that the USFS categorical exclusions and DNA provision, as described in the attached *Federal Register* notice, is in conformity with NEPA and the CEQ regulations implementing the procedural provisions of NEPA. The new procedures will be effective upon publication of the final rule in the *Federal Register*.

CEQ appreciates USFS's responsiveness to its comments and recommendations.

Sincerely,



Viktoria Z. Seale  
Chief of Staff and General Counsel