



**FOREST SERVICE HANDBOOK  
NATIONAL HEADQUARTERS (WO)  
WASHINGTON, DC**

**FSH 1909.15 – NATIONAL ENVIRONMENTAL POLICY ACT HANDBOOK**

**CHAPTER 30 – CATEGORICAL EXCLUSION FROM DOCUMENTATION**

**Amendment No.:** 1909.15-2013-1

**Effective Date:** September 12, 2013

**Duration:** This amendment is effective until superseded or removed.

**Approved:** GREGORY C. SMITH  
Acting Associate Deputy Chief, NFS

**Date Approved:** 08/26/2013

**Posting Instructions:** Amendments are numbered consecutively by handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this handbook was 1909.15-2012-3 to FSH 1909.15\_10.

<b>New Document</b>	1909.15_30	21 Pages
<b>Superseded Document(s) by Issuance Number and Effective Date</b>	1909.15_30 (Amendment 1909.15-2010-1, 09/30/2010)	18 Pages

**Digest:**

Notice of issuance of this directive was published in the Federal Register on September 12, 2013 (78 FR 56153).

32.2 - Adds categorical exclusions 18, 19, and 20 established in 36 CFR 220.6, September 12, 2013.

32.3 - Revises hyperlinks to guidance documents for the categorical exclusions established by Section 390 of the Energy Policy Act of 2005.

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## FSH 1909.15 - NATIONAL ENVIRONMENTAL POLICY ACT HANDBOOK CHAPTER 30 - CATEGORICAL EXCLUSION FROM DOCUMENTATION

The Council of Environmental Quality (CEQ) regulations provide for categorical exclusions (CEs) to implement the National Environmental Policy Act (NEPA) for the purpose of reducing delay and paperwork. CEQ regulations allow Federal agencies to exclude from documentation in an environmental assessment (EA) or environmental impact statement (EIS) categories of actions that do not individually or cumulatively have a significant effect on the human environment. Based on the Agency's experience and knowledge, the responsible official can conclude that if the action fits within an identified category and analysis shows there are no extraordinary circumstances, then the action would not have significant effects. The following guidance on appropriate use of CE must be read in conjunction with applicable sections of this handbook, specifically chapter 10.

For ease of reference, [Council on Environmental Quality \(CEQ\) regulations](#) for implementing requirements of the NEPA are set out in boldface type and block-indented and [Forest Service regulations](#), that supplement the CEQ regulations, are in boldface type and italicized and block-indented.

### 31 - FACTORS TO CONSIDER

#### 31.1 - 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 sections 220.6 (d) and (e). (36 CFR 220.6(a)).*

#### 31.2 - Extraordinary Circumstances

*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:*

- (1) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;*
- (2) Flood plains, wetlands, or municipal watersheds;*
- (3) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;*
- (4) Inventoried roadless areas or potential wilderness areas;*
- (5) Research natural areas;*

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- (6) American Indians and Alaska Native religious or cultural sites, and  
(7) Archaeological sites, or historic properties or areas.*

*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 determine whether extraordinary circumstances exist. (36 CFR 220.6(b))*

In considering extraordinary circumstances, the responsible official should determine whether or not any of the listed resources are present, and if so, the degree of the potential effects on the listed resources. If the degree of potential effect raises uncertainty over its significance, then an extraordinary circumstance exists, precluding use of a categorical exclusion.

### **31.3 - 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. (36 CFR 220.6(c))*

Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded (sec. 11). Scoping is important to discover information that could point to the need for an EA or EIS versus a CE. Scoping is the means to identify the presence or absence of any extraordinary circumstances that would warrant further documentation in an EA or EIS. Scoping should also reveal any past, present, or reasonably foreseeable future actions with the potential to create uncertainty over the significance of cumulative effects. Scoping complexity should be commensurate with project complexity.

The flow chart at section 11.6, exhibit 01, shows how scoping can be applied in the CE process to help determine at an early point whether the use of a CE is appropriate.

## **32 - CATEGORIES OF ACTIONS EXCLUDED FROM DOCUMENTATION**

### **32.1 - Categories for Which a Project or Case File and Decision Memo Are Not Required**

At the discretion of the responsible official, a project or case file and a decision memo are not required but may be prepared for the categories of actions set forth in sections 32.11 and 32.12.

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### **32.11 - Categories Established by the Secretary**

The rules at [7 CFR 1b.3](#) exclude from documentation in an EIS or an EA the following categories. A supporting record and a decision memo are not required, but at the discretion of the responsible official, may be prepared.

1. Policy development, planning, and implementation that relate to routine activities, such as personnel, organizational changes, or similar administrative functions (cite this category as 7 CFR 1b.3(a)(1)).
2. Activities that deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds (cite this category as 7 CFR 1b.3(a)(2)).
3. Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity (cite this category as 7 CFR 1b.3(a)(3)).
4. Educational and informational programs and activities (cite this category as 7 CFR 1b.3(a)(4)).
5. Civil and criminal law enforcement and investigative activities (cite this category as 7 CFR 1b.3(a)(5)).
6. Activities that are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation (cite this category as 7 CFR 1b.3(a)(6)).
7. Activities related to trade representation and market development activities abroad (cite this category as 7 CFR 1b.3(a)(7)).

### **32.12 - Categories Established by the Chief**

The following categorical exclusions are found at [36 CFR 220.6\(d\)](#)

**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:**

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- (i) Closing a road to protect bighorn sheep during lambing season and*
- (ii) Closing an area during a period of extreme fire danger.*

Cite this category as 36 CFR 220.6(d)(1)

**(2) Rules, regulations, or policies to establish servicewide 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; and*
- (vi) Establishing procedures for amending or revising forest land and resource management plans.*

Cite this category as 36 CFR 220.6(d)(2)

**(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; and*
- (iv) Applying registered pesticides for rodent or vegetation control.*

Cite this category as 36 CFR 220.6(d)(3)

**(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 NFS road;*
- (ii) Grading a road and clearing the roadside of brush without the use of herbicides;*
- (iii) Resurfacing a road to its original condition;*

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*(iv) Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail; and*

*(v) Surveying, painting, and posting landline boundaries.*

Cite this category as 36 CFR 220.6(d)(4)

**(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; and*

*(iv) Applying registered pesticides for rodent or vegetation control.*

Cite this category as 36 CFR 220.6(d)(5)

**(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 NFS, and*

*(ii) Purchasing fee, conservation easement, reserved interest deed, or other interests in lands.*

Cite this category as 36 CFR 220.6(d)(6)

**(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; and*

*(iv) Exchange of administrative sites involving other than NFS lands.*

Cite this category as 36 CFR 220.6(d)(7)

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**(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; and*
- (iii) Approving the gathering of forest products for personal use.*

Cite this category as 36 CFR 220.6(d)(8)

**(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 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; and*
- (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.*

Cite this category as 36 CFR 220.6(d)(9)

**(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), and*



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*(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).*

Cite this category as 36 CFR 220.6(d)(10)

**32.2 - 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)17 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. (36 CFR 220.6(e))*

The following categorical exclusions are at [36 CFR 220.6\(e\)](#).

**(1) Construction and reconstruction of trails. Examples include but are not limited to:**

- (i) Constructing or reconstructing a trail to a scenic overlook and*
- (ii) Reconstructing an existing trail to allow use by handicapped individuals.*

Cite this category as 36 CFR 220.6(e)(1)

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

Cite this category as 36 CFR 220.6(e)(2)

**(3) Approval, modification, or continuation of minor special uses of NFS 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;*

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*(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; and*

*(viii) Approving the continued use of land where such use has not changed since authorized and no change in the physical environment or facilities are proposed.*

Cite this category as 36 CFR 220.6(e)(3)

**(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, and*

*(ii) Planting trees or mechanical seed dispersal of native tree species following a fire, flood, or landslide.*

Cite this category as 36 CFR 220.6(e)(5)

**(6) Timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 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; and*

*(iv) Prescribed burning to reduce natural fuel build-up and improve plant vigor.*

Cite this category as 36 CFR 220.6(e)(6)

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**(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; and*
- (iii) Cleaning and resurfacing a fish ladder at a hydroelectric dam.*

Cite this category as 36 CFR 220.6(e)(7)

**(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 1 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; and*
- (vii) Approving a plan for exploration which authorizes repair of an existing road and the construction of 1/3 mile of temporary road; clearing vegetation from an acre of land for trenches, drill pads, or support facilities.*

Cite this category as 36 CFR 220.6(e)(8)

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

Cite this category as 36 CFR 220.6(e)(9)

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~~***(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.***~~

“[T]he Forest Service is enjoined from implementing the Fuels CE pending its issuance of a new decision that is consistent with the [Court’s opinion in Sierra Club v. Bosworth](#), 510 F.3d 1016 (9th Cir. 2007) and that complies with 40 C.F.R. §1507.3 (including prior public notice and comment).” *Sierra Club v. Bosworth*, No. 04-2114 (E.D. Cal. November 25, 2008). Unless and until the Agency complies with these requirements, **this category is not to be used**. See also the [Chief’s 1570-1 memo dated December 1, 2008](#).

~~***(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.***~~

Cite this category as 36 CFR 220.6(e)(11)

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**(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, and***
- (ii) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.***

Cite this category as 36 CFR 220.6(e)(12)

**(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 and***
- (ii) Harvest of fire-damaged trees.***

Cite this category as 36 CFR 220.6(e)(13)

**(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, and***
- (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.***

Cite this category as 36 CFR 220.6(e)(14)

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**(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.**

Cite this category as 36 CFR 220.6(e)(15)

**(16) Land management plans, plan amendments, and plan revisions developed in accordance with 36 CFR 219 et seq. that provide broad guidance and information for project and activity decisionmaking in a NFS 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.**

Cite this category as 36 CFR 220.6(e)(16)

**(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; and***
- (iv) Four drill sites.***

Cite this category as 36 CFR 220.6(e)(17)

**(18) Restoring wetlands, streams, riparian areas or other water bodies by removing, replacing, or modifying water control structures such as, but not limited to, dams, levees, dikes, ditches, culverts, pipes, drainage tiles, valves, gates, and fencing, to allow waters to flow into natural channels and floodplains and restore natural flow regimes to the extent practicable where valid existing rights or special use authorizations are not unilaterally altered or canceled. Examples include but are not limited to:**

- (i) Repairing an existing water control structure that is no longer functioning properly with minimal dredging, excavation, or placement of fill, and does not involve releasing hazardous substances;***
- (ii) Installing a newly-designed structure that replaces an existing culvert to improve aquatic organism passage and prevent resource and property damage where the road or trail maintenance level does not change;***

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*(iii) Removing a culvert and installing a bridge to improve aquatic and/or terrestrial organism passage or prevent resource or property damage where the road or trail maintenance level does not change; and.*

*(iv) Removing a small earthen and rock fill dam with a low hazard potential classification that is no longer needed.*

Cite this category as 36 CFR 220.6(e)(18)

**(19) Removing and/or relocating debris and sediment following disturbance events (such as floods, hurricanes, tornados, mechanical/ engineering failures, etc.) to restore uplands, wetlands, or riparian systems to pre-disturbance conditions, to the extent practicable, such that site conditions will not impede or negatively alter natural processes. Examples include but are not limited to:**

*(i) Removing an unstable debris jam on a river following a flood event and relocating it back in the floodplain and stream channel to restore water flow and local bank stability;*

*(ii) Clean-up and removal of infrastructure flood debris, such as, benches, tables, outhouses, concrete, culverts, and asphalt following a hurricane from a stream reach and adjacent wetland area; and*

*(iii) Stabilizing stream banks and associated stabilization structures to reduce erosion through bioengineering techniques following a flood event, including the use of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, riprap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods).*

Cite this category as 36 CFR 220.6(e)(19)

**(20) Activities that restore, rehabilitate, or stabilize lands occupied by roads and trails, excluding National Forest System roads and National Forest System trails to a more natural condition that may include removing, replacing, or modifying drainage structures and ditches, reestablishing vegetation, reshaping natural contours and slopes, reestablishing drainage-ways, or other activities that would restore site productivity and reduce environmental impacts. Examples include but are not limited to:**

*(i) Decommissioning a road that is no longer a National Forest System road to a more natural state by restoring natural contours and removing construction fills, loosening compacted soils, revegetating the roadbed and removing ditches and culverts to reestablish natural drainage patterns*

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*(ii) Restoring an unauthorized trail to a natural state by reestablishing natural drainage patterns, stabilizing slopes, reestablishing vegetation, and installing water bars; and*

*(iii) Installing boulders, logs, and berms on an unauthorized road segment to promote naturally regenerated grass, shrub, and tree growth.*

Cite this category as 36 CFR 220.6(e)(20)

### **32.3 - Categories Established by Statute**

Congress has statutorily established the following CEs. The responsible official should be familiar with each category, as they have varying procedural requirements.

1. Oil and Gas Leases. Section 390 of the Energy Policy Act of 2005 establishes CEs for five types of actions related to oil and gas exploration and development conducted pursuant to the Mineral Leasing Act (30 U.S.C. et seq., as amended) on Federal oil and gas leases. For guidance on using these CEs see the [Deputy Chief's 1950 memo to Regional Foresters dated September 1, 2011, entitled Energy Policy Act of 2005](#).  
Adjusted Use of Section 390

Categorical Exclusions for Oil and Gas due to *Western Energy Alliance v. Salazar*, No. 10-237 (D. Wyo. August 12, 2011). (The portions of the [June 9, 2010 Deputy Chief's 1950 memo to Regional Foresters](#) not addressed in the September 1, 2011 memo remain in effect.) Section 390 ([42 U.S.C. 15942](#)) provides as follows:

a. NEPA REVIEW.—Action by the Secretary of the Interior in managing the public lands, or the Secretary of Agriculture in managing National Forest System Lands, with respect to any of the activities described in subsection (b) shall be subject to a rebuttable presumption that the use of a categorical exclusion under the National Environmental Policy Act of 1969 (NEPA) would apply if the activity is conducted pursuant to the Mineral Leasing Act for the purpose of exploration or development of oil or gas.

b. ACTIVITIES DESCRIBED.—The activities referred to in subsection (a) are the following:

(1) Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.



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(2) Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well.

(3) Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.

(4) Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.

(5) Maintenance of a minor activity, other than any construction or major renovation or a building or facility.

Cite this authority as 42 U.S.C 15942

2. Applied Silvicultural Assessments. Section 404 of the Healthy Forests Restoration Act categorically excludes applied silvicultural assessments for information gathering and research purposes. Section 404 ([16 U.S.C 6554](#)) provides as follows:

Applied silvicultural assessment and research treatments carried out under this section on not more than 1,000 acres for an assessment or treatment may be categorically excluded from documentation in an environmental impact statement and environmental assessment under the National Environmental Policy Act of 1969.

Cite this authority as (16 USC 6554(d)).

Applied silvicultural assessments must be peer reviewed by scientific experts including non-Federal experts. This CE is subject to the extraordinary circumstances provisions (sec. 31.4).

For guidance on use of this CE, see Title IV of the [Healthy Forests Restoration Act 16 U.S.C 6551-6556](#).

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### 32.4 - Statutory NEPA Exception

Organizational camp special use authorizations. The National Forest Organizational Camp Fee Improvement Act of 2003 ([\*16 U.S.C. 6231 et seq\*](#)) establishes that the ministerial issuance or amendment of an organizational camp special use authorization is not subject to NEPA. Sections 502(c) and 507 (16 U.S.C. 6231, 6236) provide as follows:

502 (c) Definitions. In this Act:

- (1) The term “organizational camp” means a public or semipublic camp that—
- (A) is developed on National Forest System lands by a nonprofit organization or governmental entity;
  - (B) provides a valuable service to the public by using such lands as a setting to introduce young people or individuals with a disability to activities that they may not otherwise experience and to educate them on natural resource issues; and
  - (C) does not have as its primary purpose raising revenue through commercial activities.

507 (a) NEPA EXCEPTION.—The ministerial issuance or amendment of an organizational camp special use authorization shall not be subject to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) RULE OF CONSTRUCTION.—For purposes of subsection (a), the ministerial issuance or amendment of an authorization occurs only when the issuance or amendment of the authorization would not change the physical environment or the activities, facilities, or program of the operations governed by the authorization, and at least one of the following apply.

- (1) The authorization is issued upon a change in control of the holder of an existing authorization.
- (2) The holder, upon expiration of an authorization, is issued a new authorization.
- (3) The authorization is amended—
  - (A) to effectuate administrative changes, such as modification of the land use fee or conversion to a new special use authorization form; or
  - (B) to include nondiscretionary environmental standards or to conform with current law.

Cite this authority as 16 U.S.C. 6236.

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## **33 - DOCUMENTATION**

### **33.1 - Decision Memo Not Required**

If a proposed action has been categorically excluded from documentation in an EIS or an EA under USDA categories ([7 CFR 1b.3](#)) or the categories listed in section 32.12, a decision memo is not required; however, any interested and affected persons shall be informed in an appropriate manner of the decision to proceed with the proposed action (sec. 11.7).

The responsible official may choose to prepare a decision memo and create a record supporting the use of a CE. Examples where additional documentation may be beneficial are:

1. Where reasonable questions regarding the existence of extraordinary circumstances may arise (sec. 31.4),
2. Where findings are required by other laws such as, but not limited to National Forest Management Act (consistency with forest land and resource management plan), Endangered Species Act, and the National Historic Preservation Act, or
3. Where it was determined that public interest on the proposed action was high.

### **33.2 - Decision Memo Required**

If the proposed action has been categorically excluded from documentation in an EIS or an EA under the categories listed in section 32.2, document the decision to proceed with the proposed action in a decision memo. Section 33.3 sets forth the format and content of a decision memo. Ensure that the administrative record supports findings made in a decision memo.

When the Chief or the Secretary of Agriculture is the responsible official, the appropriate field unit prepares the decision memo with assistance from the Washington Office Ecosystem Management Coordination staff. The Washington Office Director of Ecosystem Management Coordination coordinates the review and signing of the decision memo, involving the appropriate staff(s), Deputy Chiefs, Chief, or Secretary, as necessary. The signed original is filed in the Ecosystem Management Coordination staff office files. The Director of Ecosystem Management Coordination forwards a copy to the appropriate field unit or Washington Office staff for necessary distribution.

***If the proposed action is approval of a land management plan, plan amendment, or plan revision, the plan approval document required by 36 CFR 219 satisfies the decision memo requirements of this section. (36 CFR 220.6(e))***

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### **33.3 - Format and Content of a Decision Memo**

*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; and*
- (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; and*

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

*(36 CFR 220.6(f))*

If comments are received on a proposed action, briefly explain in the decision memo how those comments were considered.

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### **34 - NOTICE AND DISTRIBUTION OF DECISION MEMO**

*The responsible official shall notify interested or affected parties of the availability of the decision memo as soon as practical after signing.*  
(36 CFR 220.6(f))

Distribute a decision memo or notice thereof to agencies, organizations, and persons interested in or affected by the proposed action.

1. Provide other forms of notice appropriate to the importance of the decision.
2. Enter the date of the decision memo into the PALS database (sec. 06). In addition to the decision itself, the ability of the decision to be implemented is also tracked in the PALS. The voluntary withdrawal of a decision, the reversal of a decision in appeal, or a court case directing constraint of a decision all require notation (action) in PALS.
3. When required by [Executive Order 12372](#), Intergovernmental Review of Federal Programs, send copies to the State single point of contact or, in cases where a State has elected not to establish a single point of contact, the State official(s) involved.