

oriented to any specific silvicultural system.

Comment: Several respondents requested clarification of Category 14. Some of these respondents believed the language in the draft notice is excessively permissive while others believed it is too restrictive in terms of the acreage needed to deal with forest health problems.

Response: This category has been changed to clarify that it will apply to both infested/infected trees and adjacent live uninfested/uninfected trees whose removal is determined necessary to control the spread of insects or disease. In addition, the restriction of two tree lengths was removed for the harvesting of healthy adjacent trees, because this restriction applied primarily to management for control of southern pine beetle and may not be appropriate for outbreaks of other pests such as the sudden oak death pathogen, emerald ash borer, and many bark beetle species other than southern pine beetle. This provides the local manager with latitude when responding to rapidly expanding insect or disease situations. The manager, in turn, relies upon advice from professional forest entomologists and pathologists when determining the appropriate treatment. Another clarification is that noncommercial treatments, such as "cut and leave," for example, used for treatment of southern pine beetle, are covered by this category.

The projects reviewed support both salvage and sanitation operations as cutting trees in these categories have the same kind of environmental impacts. For both Category 13 and 14, regeneration of tree species will follow 36 CFR 223.30 (c), as described above for Category 12. Other restoration activities will be governed by site-specific restoration objectives and forest plan standards and guidelines.

Concerns over misuse of this category to allow more trees than those necessary to protect forest health to be harvested can be addressed through agency oversight on the application of this category.

Conclusion

The USDA Forest Service finds that the categories of action defined in the categorical exclusions presented at the end of this notice do not individually or cumulatively have a significant effect on the human environment. The agency's finding is first predicated on the reasoned expert judgment of the responsible officials who made the original findings and determinations in the timber harvest projects reviewed; the resource specialists who validated the predicted effects of the reviewed

activities through monitoring or personal observation of the actual effects; and, finally, the agency's belief that the profile of past small-scale timber harvest activities represents the agency's past practices and is indicative of the agency's future activities.

These categorical exclusions will permit timely response to small timber harvest requests and to forest health problems involving small areas of National Forest System land. Additionally, they would conserve limited agency funds.

The text of the proposed categorical exclusions is set out at the end of this notice.

Regulatory Certifications

Environmental Impact

This final interim directive adds direction for three categorical exclusions to Forest Service Handbook (FSH) 1909.15 for guiding field employees regarding procedural requirements for National Environmental Policy Act (NEPA) documentation for tree harvest activities. The Council on Environmental Quality (CEQ) does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an environmental impact statement; those that require preparation of an environmental assessment; and those that are categorically excluded from documentation in an environmental impact statement or environmental assessment (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures and, therefore, establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are internal procedural guidance to assist employees 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, and the Forest Service has provided an opportunity for public review and has consulted with the CEQ during the development of these categorical exclusions. The determination that establishing categorical exclusions 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. Ill. 1999), aff'd, 230 F.3d 947, 954–55 (7th Cir. 2000).

Regulatory Impact

The categorical exclusions in this final interim directive have been reviewed under Departmental procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a significant regulatory action as defined by Executive Order 12866. Accordingly, this action is subject to OMB review under Executive Order 12866 and OMB has reviewed the categorical exclusions in this interim directive at both the proposed and final stages.

This action to add three categorical exclusions to the Forest Service's NEPA procedures will not have an annual effect of \$100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments. The economic analysis conducted to support this action estimates that it would result in quantifiable annual cost savings to the agency of approximately \$6.4 million due to the reduced analyses that would be required for projects covered by these categorical exclusions. The economic analysis is available at <http://www.fs.fed.us/emc/lth>. 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. This action may, however, interfere with an action taken or planned by another agency or raise new legal or policy issues.

Moreover, this action has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that the categorical exclusions will not have a significant economic impact on a substantial number of small entities as defined by the act because it will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

The agency believes small businesses in general may benefit from a potential increase in small timber harvest opportunities as a result of these new categories. Although the Forest Service finds this increase difficult to quantify, it believes that more timber harvest opportunities may be available when using a categorical exclusion rather than an environmental assessment, resulting in an increase in the amount of timber