Regulatory Certifications

Executive Order 12866. Executive Order (EO) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant directives. OIRA has determined that this proposed directive is not significant.

Executive Order 13771. This proposed directive has been reviewed in accordance with EO 13771 on reducing regulation and controlling regulatory costs and has been designated as an “other action” for purposes of the EO.

Congressional Review Act. Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), OIRA has designated this proposed directive as not a major rule as defined by 5 U.S.C. 804(2).

National Environmental Policy Act. The proposed directive FSH 5509.11, chapter 20-Sales would broaden the circumstances in which the Forest Service may convey Federal land using the existing Small Tracts Act authority to include: (1) cemeteries, landfills, and sewer treatment plants authorized under a special use authorization issued by a Forest Service official; (2) parcels 40 acres or less that are physically isolated, inaccessible, or lack National Forest characteristics; and (3) parcels 10 acres or less encroached upon by permanent habitable improvements where there is no evidence the encroachment is intentional or negligent. The land value threshold would also be raised to $500,000 from $150,000. Agency regulations at 36 CFR 220.6(d)(2) (73 FR 43093) exclude from documentation in an environmental assessment or impact statement “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” The Agency has concluded that these proposed directives fall within this category of actions and that no extraordinary circumstances exist which would require preparation of an environment assessment or environmental impact statement.

Regulatory Flexibility Act Analysis. The Department has considered the proposed directive under the requirements of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.). This proposed directive will not have any direct effect on small entities as defined by the Regulatory Flexibility Act. The proposed directive will not impose recordkeeping requirements on small entities; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Department has determined that this proposed directive will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism. The Department has considered the proposed directive under the requirements of EO 13132, Federalism. The Department has determined that the proposed directive conforms with the federalism principles set out in this EO; will not impose any compliance costs on the states; and will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has concluded that the proposed directive does not have Federalism implications.

Consultation with Tribal Governments. The Department has determined that national tribal consultation is not necessary for the proposed directive. The proposed directives would broaden
the situations in which the Forest Service may convey Federal land using the existing Small Tracts Act authority to include: (1) cemeteries, landfills, and sewer treatment plants authorized under a special use authorization issued by a Forest Service official; (2) parcels 40 acres or less that are physically isolated, inaccessible, or lack National Forest characteristics; and (3) parcels 10 acres or less encroached upon by permanent habitable improvements where there is no evidence the encroachment is intentional or negligent. The land value threshold would also be raised to $500,000 from $150,000. Therefore, any project or partnerships that support community and national service, work experience and training to low-income, unemployed, underemployed, or underrepresented persons, including veterans, who may be interested in natural and cultural resource careers or conservation stewardship should be contacted on a project by project basis.

No Takings Implications. The Department has analyzed the proposed directive in accordance with the principles and criteria in EO 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The Department has determined that the proposed directive will not pose the risk of a taking of private property.

Energy Effects. The Department has reviewed the proposed directive under EO 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Department has determined that the proposed directive will not constitute a significant energy action as defined in EO 13211.

Civil Justice Reform. The Department has analyzed the proposed directive in accordance with the principles and criteria in EO 12988, Civil Justice Reform. Upon issuance of the proposed directive, (1) all State and local laws and regulations that conflict with the proposed directive or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this proposed directive; and (3) it will not require administrative proceedings before parties may 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), signed into law on March 22, 1995, the Department has assessed the effects of the proposed directive on state, local, and tribal governments and the private sector. The proposed directive will 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.

Controlling Paperwork Burdens on the Public. The proposed directive does not contain any recordkeeping 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. 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.