

[www.fs.fed.us/r8/gwj/](http://www.fs.fed.us/r8/gwj/). This information can also be obtained from the contact information below. More detailed information on the proposed schedule is in the **SUPPLEMENTARY INFORMATION** Section.

**ADDRESSES:** Written comments on the need for change will also be accepted. Send written comments to George Washington Plan Revision, George Washington & Jefferson National Forests, 5162 Valleypointe Parkway, Roanoke, Virginia 24019-3050. Electronic comments should include "GW Plan Revision" in the subject line and sent to: [comments-southern-georgewashington-jefferson@fs.fed.us](mailto:comments-southern-georgewashington-jefferson@fs.fed.us). For further information, mail correspondence to George Washington Plan Revision, George Washington & Jefferson National Forests, 5162 Valleypointe Parkway, Roanoke, Virginia 24019-3050. Additional information on the GWNF Forest Plan is available at: <http://www.fs.fed.us/r8/gwj/>.

**FOR FURTHER INFORMATION CONTACT:** Dave Plunkett, Planning Team Leader, Ken Landgraf, Planning Staff Officer, or JoBeth Brown, Public Affairs Officer, George Washington & Jefferson National Forests, (540)-265-5100.

#### **SUPPLEMENTARY INFORMATION:**

##### **The Need for Change**

The GWNF Forest Plan was last revised in 1993. Planning regulations require that plans be revised at least every 15 years. The 1993 revision was a major effort that involved the participation of many stakeholders. The purpose of the current revision is to examine management direction that needs to change and determine how best to make those changes. The Forest Service has drafted a Comprehensive Evaluation Report. This report is based on monitoring information that has been collected since 1993. The report describes the current social, economic and ecological conditions and trends on the Forest. Based on this information, the Forest Service is proposing a number of changes to the current plan. The proposed changes include the following:

- Follow the 2005 Planning regulations for required components of a Forest Plan
- Change roadless area management to address current policy
- Clarify management of old growth
- Modify riparian area management
- Evaluate if additional potential wilderness areas exist
- Address the use of lightning-ignited wild fire and the level of prescribed burning

- Utilize, where appropriate, new management direction from the 2004 Jefferson Forest Plan
- Examine any needs for additional special biological areas.

##### **Planning Schedule**

After initiation of the planning process, the Forest Service will hold a series of public meetings to discuss the need for change and the Draft Comprehensive Evaluation Report. At the end of these collaborative efforts (around May 2007), the Forest Supervisor will determine which issues will be carried forward for further analysis in the revision process.

Additional public meetings will then be held through the summer of 2007 to discuss development of the Forest Plan components in response to the identified needs for change. In November of 2007 the Forest Service expects to release a Proposed Forest Plan for public review and comment. A notice will be published in the **Federal Register** that will begin a 90-day comment period on the Proposed Forest Plan. The Forest Service will review the comments and then make any appropriate changes to the Proposed Forest Plan. Another notice will then be published in the **Federal Register** to begin a 30-day objection period. This is anticipated to be published around July of 2008. After any objections are resolved, the Forest Plan will be approved by the Forest Supervisor.

##### **Documents Available for Review**

A number of documents are available for review. These are available at the Web site <http://www.fs.fed.us/r8/gwj/>. Additional documents will be added to this site throughout the planning process. Hard copies or CD-ROM versions of the documents can be obtained from the addresses listed above. The current documents include:

- Draft Comprehensive Evaluation Report
- Current (1993) George Washington NF Land Management Plan
- Initial Version of Proposed Forest Plan.

##### **How the Public Can Participate in the Planning Process**

The planning process will emphasize those things that need to change from the 1993 Forest Plan. The focus of the current planning regulations is on establishing a collaborative approach to planning. Therefore, the best opportunity for dialogue is to participate in the discussions at the various public meetings to be held throughout the process. These meetings will all be announced on the GWNF

Web site. In addition, there will be opportunities to provide written comments on draft documents and analyses as they are prepared. A formal comment opportunity will be provided when the Proposed Forest Plan is completed.

Only parties that participate in the planning process through the submission of written comments can submit an objection pursuant to 36 CFR 219.13(a).

##### **How the Public Can Comment on the Need for Change**

A series of public meetings will be held beginning in March of 2007 to discuss the need for change. The dates, times and locations of these meetings are posted on the Forest Web site or can be obtained from the Contacts named above. In addition, written or electronic comments can be submitted to the previously identified addresses.

##### **Responsible Official**

The Forest Supervisor, George Washington & Jefferson National Forests, is the Responsible Official (36 CFR 219.2(b)(1)).

Authority: 36 CFR 219.9(b)(2)(i), 70 FR 1023, January 5, 2005.

Dated: February 8, 2007.

**Maureen Hyzer,**

*Forest Supervisor.*

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## **DEPARTMENT OF AGRICULTURE**

### **Forest Service**

**RIN 0596-AC34**

#### **National Environmental Policy Act Documentation Needed for Oil and Natural Gas Exploration and Development Activities (Categorical Exclusion)**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of issuance of final directive.

**SUMMARY:** The Forest Service is revising procedures for implementing the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations. The procedures are being revised through issuance of a final directive that amends Forest Service Handbook (FSH) 1909.15, chapter 30. This chapter describes categorical exclusions; that is, categories of actions which do not individually or cumulatively have a significant effect on the human environment, and therefore, normally do not require further analysis

and documentation in either an environmental assessment (EA) or an environmental impact statement (EIS). The amendment adds one such category of actions to the Agency's NEPA procedures to facilitate implementation of limited oil and gas projects on leases on National Forest System lands that do not have significant effects on the human environment.

This categorical exclusion only applies to oil and gas leasing activities on National Forest System lands when there are no extraordinary circumstances. Use of this categorical exclusion will allow for approval of a Surface Use Plan of Operations for oil and natural gas exploratory operations 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: (a) One mile of new road construction; (b) one mile of road reconstruction; (c) three miles of individual or co-located pipelines and/or utilities disturbance; (d) four drill sites. More than a single action may be categorically excluded under this category in a new field or associated area when the aforementioned constraints are not surpassed.

In response to comments on the proposed categorical exclusion, two revisions were made to the original proposal: (1) The area in which the category is applicable was clarified to allow for variations between states on how a field is defined and determined; (2) utilities were added to the pipeline provision to address a common practice of co-locating pipelines and utilities in the same location or corridor.

**EFFECTIVE DATE:** This amendment is effective February 15, 2007.

**ADDRESSES:** The new Forest Service categorical exclusion is set out in FSH 1909.15, chapter 30, which is available electronically via the World Wide Web/Internet at <http://fsweb.wo.fs.fed.us/directives/fsh/1909.15/>. Single paper copies are available by contacting Peter Gaulke, Forest Service, USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW., Washington, DC 20250-1104. Additional information and analysis can be found at <http://www.fs.fed.us/emc/nepa/oged/>.

**FOR FURTHER INFORMATION CONTACT:** Peter Gaulke, Ecosystem Management Staff, (202) 205-1521, or Tony Ferguson, Minerals and Geology Staff, (703) 605-4785, Forest Service, USDA.

**SUPPLEMENTARY INFORMATION:**

## Background

The Council on Environmental Quality (CEQ) regulations at 40 CFR 1507.3 provide that agency's National Environmental Policy Act (NEPA) procedures, after notice and comment, may identify categories of actions that do not have significant impacts on the human environment and, consequently, do not require preparation of an environmental assessment (EA) or an environmental impact statement (EIS). Current Forest Service procedures for complying with and implementing NEPA are set out in Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures, chapter 30. This chapter lists the categories of actions that do not require preparation of an EA or an EIS by the Forest Service absent extraordinary circumstances. The Forest Service calls these "categorical exclusions."

Oil and gas development is widespread throughout the National Forest System (NFS). The Federal Onshore Oil and Gas Leasing Reform Act of 1987, 30 U.S.C. 226 (FOOGLRA) grants both the Secretary of the Interior (acting through the Bureau of Land Management) and the Secretary of Agriculture (acting through the Forest Service) authority and responsibility regarding oil and gas leases on NFS lands, and both agencies have the authority to determine the stipulations under which leasing will be permitted (30 U.S.C. 226(h); 43 CFR 3101.7-2(a)). FOOGLRA provides that the Forest Service shall regulate all surface disturbing activities relating to oil and gas leasing on NFS lands (30 U.S.C. 226(g)). No permit to drill on NFS lands may be granted without the analysis and approval by the Forest Service of a Surface Use Plan of Operations (SUPO) covering proposed surface disturbing activities within the lease area.

The Forest Service has established an incremental decisionmaking framework for the consideration of oil and gas leasing activities on NFS lands that is set out in 36 CFR 228.102. In general, the various steps undertaken are as follows: (1) Forest Service leasing analysis; (2) Forest Service notification to Bureau of Land Management (BLM) of lands administratively available for leasing; (3) Forest Service review and verification of BLM leasing proposals; (4) BLM assessment of Forest Service conditions of surface occupancy; (5) BLM offers lease; (6) BLM issues lease; (7) Forest Service review and approval of lessee's SUPO; and (8) BLM review and approval of lessee's application for permit to drill (APD). The categorical exclusion set out in this notice applies

exclusively to the Forest Service's review and approval of an applicant's SUPO.

In 2001, the President issued Executive Order (E.O.) 13212 to expedite the increased supply and availability of energy to our Nation. E.O. 13212 set forth "For energy-related projects, agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation, and where appropriate." In response, the National Energy Policy and the Forest Service Energy Implementation Plan were developed. These two initiatives called for streamlining the processing of APDs and other energy-related permits in an environmentally sound manner. This categorical exclusion furthers the President's goals set forth in E.O. 13212.

On August 8, 2005, the Energy Policy Act of 2005 was signed into law. Section 390 of the Energy Policy Act of 2005 establishes categorical exclusions under NEPA that apply to five categories of oil and gas exploration and development activities conducted pursuant to the Mineral Leasing Act (30 U.S.C. et seq., as amended). The categorical exclusion in this notice is not intended to overlap or duplicate the categories in Section 390 of the Energy Policy Act of 2005. Taken in concert, this categorical exclusion and the five statutory categories discussed above further the goals set forth in E.O. 13212.

For decades, the Forest Service has analyzed, approved, and administered SUPOs for oil and gas exploration and development on NFS lands. As part of the Forest Service Energy Implementation Plan process, the planning and environmental review process for oil and gas leasing was reviewed by field personnel. This review indicated that the Forest Service and BLM land management planning process, leasing process, and SUPO and APD review processes for oil and gas exploration and development frequently caused agency personnel to extend timelines and expend undue staff, time, and funding in order to complete the planning and environmental documentation for minor exploration and/or development projects.

The Agency reviewed 73 site-specific oil and natural gas projects on National Forest System lands in development of the new categorical exclusion and determined that the category of actions included does not individually or cumulatively have a significant effect on the human environment. The Agency

also considered peer-reviewed scientific literature identifying potential effects of oil and gas development activities on wildlife and fishery populations, soils, and groundwater. The combination of the field review and literature review, available at <http://www.fs.fed.us/emc/nepa/oged/>, gives the Agency confidence that the categorical exclusion is appropriately defined. The Forest Service believes the level of effects associated with future activities within the new category would also be below the level of significant environmental effects.

#### Response to Comments

A 60-day comment period on the proposed category was initiated on December 13, 2005 (70 FR 73722). A total of 108 responses in the form of letters, e-mails, and faxes were received during the comment period. These comments came from private citizens, elected officials, and individuals and groups representing businesses, the oil and gas industry, and conservation organizations.

Public comment on the proposed category addressed a wide range of topics, many of which were directed generally at use of categorical exclusions under the National Environmental Policy Act. Many people supported the proposal or favored further expansion, while many others opposed the proposal or recommended further restrictions on oil and natural gas exploration and development on National Forest System lands.

*Comment:* Some respondents voiced general agreement with the proposed category. Some indicated that they thought current analysis and documentation requirements for oil and gas exploration and development are too burdensome and that the proposal would provide for more efficient management. Others believed that the proposal had appropriate limitations on the use of the categorical exclusions, and that the Forest Service had done sufficient analysis to conclude that this category of oil and gas activities normally does not individually or cumulatively have significant effects on the quality of the human environment.

*Response:* These comments were in support of the proposal and need no specific response. A summary of the remainder of public comments and the agency's responses follows.

*Comment:* Some respondents expressed concern and opposition to oil and gas exploration and development on National Forest System lands stating that these activities are inappropriate uses and incompatible with the mission of the Forest Service. Some respondents

suggest that allowing for oil and gas development creates areas of "single use" on National Forest System lands.

*Response:* Oil and gas exploration and development is consistent with the Forest Service mission. Lands administered by the agency are managed by law for multiple-use (16 U.S.C. 528). The agency is directed to manage the various renewable surface resources of the National Forests to best meet the needs of the American people (16 U.S.C. 531). Under the Federal Onshore Oil and Gas Leasing Reform Act of 1987, the Forest Service is charged with regulating surface-disturbing activities conducted on agency lands pursuant to any lease issued under that Act and determining reclamation and other actions as required in interest of the conservation of surface resources (30 U.S.C. 226, 17(g)).

*Comment:* Several respondents suggested the Forest Service focus its efforts on alternative energy development.

*Response:* Alternative and renewable energy supply and development is included in the Energy Policy Act of 2005. The subject of this category is the effective and efficient management of certain oil and gas activities on NFS lands. The category appropriately responds to the circumstances and needs associated with this task.

*Comment:* Some respondents believe that the proposed category is contrary to the State Petitions for Inventoried Roadless Area Management Rule, and that inventoried roadless areas should, therefore, be excluded from the category. Other respondents believed that inventoried roadless areas should be included in the proposed category.

*Response:* First, the category is not in conflict with the State Petitions rule. The State Petitions for Inventoried Roadless Area Management Rule (36 CFR part 294) is a procedural rule that allows Governors to petition for State-specific rulemaking that may alter the management direction for inventoried roadless areas contained in existing land management plans. The Department has been clear that during the petitioning process, the management of roadless lands is governed by the applicable forest plan. The State Petitions Rule honors valid existing rights, including existing permits, contracts or other instruments authorizing occupancy and use of National Forest System lands.

The State Petitions Rule enables the Governors and Forest Service to give oil and gas resources the same consideration that other resources receive when considering alternatives for managing inventoried roadless areas. The rule also requires the Forest Service

to inform the public of the consequences of foregone oil and gas production possibilities.

Second, it should be noted that this category would only be invoked in instances where the BLM has already approved a lease. The category is not a screening process for which lands should be available for leasing. Rather, it is a mechanism for assuring efficient consideration of environmental effects in certain situations. Additionally, the proposed category would only be available for use where leasing activities are consistent with the applicable forest plan and regulation, and any regulation promulgated pursuant to the State Petitions Rule. Importantly, neither the 2001 Roadless Rule, nor the 2005 State Petition Rule, prohibited the exercise of valid existing rights.

Finally, it should be noted that under the Forest Service's categorical exclusion process, the agency does evaluate potential impacts to inventoried roadless areas through its examination of extraordinary circumstances. While the mere presence of an inventoried roadless area does not disqualify use of the categorical exclusion, the responsible official will evaluate potential impacts. Use of the category would not be available where it is determined that the effect of the action on a resource condition such as an inventoried roadless area creates an extraordinary circumstance.

*Comment:* One respondent suggested that Executive Order 13212 does not support the proposed category.

*Response:* The Forest Service disagrees that the proposed category is inconsistent with Executive Order (E.O.) 13212. On May 18, 2001, E.O. 13212 directed Federal agencies to expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The Department conforms its policy to Executive orders and believes that it is appropriate to take applicable Executive orders, such as E.O. 13212, into account in promulgating regulations and issuing directives.

*Comment:* Some respondents commented that the proposed category was an attempt by the Forest Service to circumvent compliance with the National Environmental Policy Act (NEPA).

*Response:* Categorical exclusions are an integral part of NEPA compliance, and use of categorical exclusions in no way evades compliance with NEPA. The Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA direct

Federal agencies to identify those typical classes of actions which normally do not require either an environmental impact statement or environmental assessment (40 CFR 1507.3). CEQ defines such classes of actions as categorical exclusions. "Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3), and for which, therefore, neither an environmental assessment nor an environmental impact statement is required." (40 CFR 1508.4).

In subsequent guidance regarding NEPA regulations, CEQ explained that the use of categorical exclusions avoids unnecessary documentation of minor environmental effects in environmental assessments and allows agencies to focus their environmental review efforts on the major actions that will have a significant effect on the environment (48 FR 34263 (1983), also see 40 CFR 1500.4(p)). CEQ also encourages agencies to identify categorical exclusions using broadly defined criteria that characterize types of actions that normally do not have significant environmental effects, including cumulative effects (48 FR 34263 (1983)).

*Comment:* Several respondents suggested that the Forest Service should set time limits for completing NEPA analysis, documentation, and decisionmaking using the proposed categorical exclusion. It was also suggested that the use of a categorical exclusion can frequently take longer to approve than the more complex environmental assessments.

*Response:* As noted above, The CEQ has explained that the use of categorical exclusions avoids unnecessary documentation of minor environmental effects in environmental assessments (48 FR 34263 (1983)).

It is the experience of the Forest Service that the use of categorical exclusions has resulted in more efficient and expedited decisionmaking as compared to that of an environmental assessment. Forest Service experience is that an environmental assessment typically takes 4 to 6 months or longer to complete. A categorical exclusion usually takes 1 month or less to complete, representing a time savings of 3 to 5 months. This categorical exclusion is intended to improve efficiency in planning activities that normally do not have significant environmental effects.

*Comment:* Some respondents said the role and application of extraordinary circumstance screens is insufficient and open to abuse. Other respondents suggested that, without NEPA analysis, categorically excluded actions would not consider current information or surveys, and managers would be unaware of extraordinary circumstances that preclude the use of a categorical exclusion.

*Response:* The NEPA procedures in Forest Service Handbook (FSH) 1909.15, chapter 30, list the categories of actions that the Agency has found will not typically have individually or cumulatively significant effects on the human environment. These procedures also provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect. This chapter includes a list of "[r]esource conditions that should be considered in determining whether extraordinary circumstances related to the proposed action warrant further analysis and documentation in an EA [environmental assessment] or an EIS [environmental impact statement] \* \* \*" Section 30.3 also states, "The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is (1) the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and (2) if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist."

The Forest Service has consistently considered best available science and current information when approving the use of a categorical exclusion. Pursuant to existing direction, the Forest Service must conduct a sufficient review to determine that no extraordinary circumstances preclude the use of categorical exclusions (FSH 1909.15, sec. 30.3). This determination may include appropriate surveys, consideration of the best available science, consultation with Tribes, and coordination with agencies that have regulatory responsibilities under other statutes, such as the Endangered Species Act, National Historic Preservation Act, Clean Water Act, and Clean Air Act. Responsible officials will consider, on a project-by-project basis, whether or not extraordinary circumstances exist.

*Comment:* Several respondents asked that the Forest Service conduct NEPA analysis for this proposal, including a cumulative effects analysis on the impacts of the proposed category.

*Response:* The CEQ does not require agencies to prepare a NEPA analysis or document before establishing Forest Service procedures that supplement the CEQ regulations for implementing NEPA (see Regulatory Certifications section, titled "Environmental Impact").

*Comment:* A considerable amount of comment revolved around public notification and involvement when using the proposed categorical exclusion and the effect on the public's role in decisionmaking. Some respondents believed that the Forest Service's use of categorical exclusions would allow the Forest Service to bypass important procedural steps for project planning, such as public notification and involvement. Other respondents stated that use of the proposed categorical exclusion would restrict public involvement activities. Still other respondents commented that scoping is not warranted for actions that may be categorically excluded.

*Response:* As directed by CEQ regulations (40 CFR 1507.3), the Forest Service has developed Agency policy for implementing NEPA and CEQ's regulations. As noted in Forest Service Handbook (FSH) 1909.15, chapter 10, section 11: "Although the Council on Environmental Quality (CEQ) Regulations require scoping only for EIS [environmental impact statement] preparation, the Forest Service has broadened the concept to apply to all proposed actions." FSH 1909.15, chapter 30, section 30.3(3) further states: "Scoping is required on all proposed actions, including those that would appear to be categorically excluded."

As part of the scoping process for proposals potentially covered by this categorical exclusion, the responsible official must determine the extent of interest and invite the participation of affected Tribes, Federal agencies, State agencies, local agencies, and other interested parties, as appropriate. The Forest Service is committed to fulfilling its public involvement responsibilities with all parties interested in projects potentially qualifying for these categorical exclusions.

Although not intended to be a substitute for scoping, the Forest Service also provides notice of upcoming proposals through the use of a Schedule of Proposed Actions (see FSH 1909.15, ch. Zero Code, sec. 07). The schedule gives early and informal notice of proposals to make the public aware of Forest Service activities and provide an opportunity for the public to indicate their interest in specific proposals. Schedules may be distributed in hard copy by the respective forest and can be found at <http://www.fs.fed.us/sopa>.

Pursuant to the Federal Onshore Oil and Gas Leasing Reform Act of 1987, the Bureau of Land Management and the surface management agency are required to post for public review a notice of proposed activities as found on the Application of Permit to Drill (APD).

*Comment:* Some respondents commented that oil and gas development activities are beyond the scope of what activities should be allowed for under a categorical exclusion.

*Response:* Based on site-specific project-level analysis of environmental effects and the belief that the profile of projects reviewed representing the Agency's past practices is indicative of its future activities, the Forest Service concludes that the category of action proposed does not individually or cumulatively have a significant effect on the human environment. While confident of the conclusion, the Agency, nevertheless, has established limitations on the type and extent of activities to be approved under this categorical exclusion.

*Comment:* Some respondents stated that the proposed category is inappropriate as it goes beyond congressional intent as expressed in the Energy Policy Act of 2005, Section 390. Other respondents felt that the proposed category is inconsistent with Section 390 and the intent and activities of the two should be incorporated. Others suggested that the effects of the Energy Policy Act of 2005 should be realized before the Forest Service undertakes an effort of this type.

*Response:* Section 390 of the Energy Policy Act of 2005 establishes categorical exclusions under NEPA that apply to five categories of oil and gas exploration and development activities conducted pursuant to the Mineral Leasing Act (30 U.S.C. et seq., as amended). Independent of the categorical exclusion in this directive, the Forest Service has provided direction to the field on the use of Section 390. Nothing in the Energy Policy Act of 2005, Section 390 precludes agencies from adding additional categorical exclusions to their respective NEPA procedures.

The categorical exclusion in this directive does not, and is not intended to, overlap or duplicate the activities contained in Section 390 of the Energy Policy Act of 2005. It is separate and independent of the provisions of Section 390. It is based on historical use of environmental assessments and field data that support the conclusion that the category generally would not result in significant impacts. It is complementary to Section 390 and meets the intent of

Executive Order (E.O.) 13212 that provides: "For energy-related projects, agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections." Taken in concert, the categorical exclusion in the final directive and the five statutory categories in Section 390 further the goals set forth in E.O. 13212.

*Comment:* One respondent encouraged the Forest Service to mitigate skewed comments resulting from organized letter writing campaigns focusing less on the number of comments and more on the quality and substance of the comments.

*Response:* Every comment received is considered for its substance and contribution to informed decisionmaking, whether it is one comment repeated by many people or a comment submitted by only one respondent. The public comment process is not intended to serve as a survey process to determine public opinion. The emphasis in reviewing public comment is on the content of the comment rather than on the number of times a comment was received. The comment analysis process is intended to identify unique substantive comments relative to the proposal to facilitate their consideration in the decisionmaking process. All comments are considered, including comments that support and that oppose the proposal. That people do not agree on how public lands should be managed is a historical, as well as modern dilemma faced by resource managers. However, public comment processes, while imperfect, do provide a vital avenue for engaging a wide array of the public in resource management processes and outcomes.

*Comment:* Some respondents commented that the Forest Service should track the use and progress of oil and gas exploration and development projects under the proposed categorical exclusion and make this information and associated NEPA documentation available for public review.

*Response:* The Forest Service tracks NEPA-related planning information of projects, including those for oil- and gas-related activities, whose decisions are expected to be documented in a Record of Decision, Decision Notice, some Decision Memos, or Forest Plan Approval Document. This tracking allows for an assessment use of certain categorical exclusions and progress of individual projects. Public viewing of this information is contained in the Schedule of Proposed Actions which is distributed in hard copy and posted at

<http://www.fs.fed.us/sopa> four times a year: January, April, July, and October. The schedule contains a list of proposed actions that will soon begin or are currently undergoing environmental analysis and documentation. It provides information so that the public can become aware of and indicate interest in specific proposals. Oil and gas projects analyzed and documented per this categorical exclusion will be included on the Schedule of Proposed Actions.

*Comment:* A few respondents expressed opinions on subjecting proposed actions under this categorical exclusion to the public notice, comment, and appeal process requirement in the rules at 36 CFR part 215. Some respondents considered the public notice, comment, and appeal process as absolutely essential for responsive decisionmaking.

*Response:* In *Earth Island Institute v. Ruthenbeck*, the Federal District Court for the Eastern District of California ordered that categorically excluded timber sales and 10 specific categorically excluded activities are subject to notice, comment, and appeal under the 36 CFR part 215 rules. Therefore, if use of this categorical exclusion includes activities specified by the court, then notice, comment, and appeal are currently required. Conversely, if activities specified by the court are not included, then notice, comment, and appeal pursuant to 36 CFR part 215 does not apply.

*Comment:* Some respondents opposed to the proposed categorical exclusion feel that any increase in the use of categorical exclusions represents a reduction in environmental review and the use of science in decisionmaking. As a result, they feel that the proposed categorical exclusion could result in adverse impacts to National Forest System lands and resources including roadless areas, wilderness areas, national recreation areas, threatened and endangered species, American Indian sacred sites, and archeological sites.

*Response:* Categorical exclusions are to be used for routine actions that have been found by the Forest Service through experience and environmental review to have no significant environmental effects either individually or cumulatively (40 CFR 1508.4). On August 23, 2002, the Forest Service published a final interim directive to Forest Service Handbook (FSH) 1909.15, chapter 30, which provided direction regarding how actions, which may be categorically excluded, should be considered to determine if they warrant further analysis and documentation in an

environmental assessment or environmental impact statement (67 FR 54622).

Forest Service NEPA procedures require that all proposed actions to be categorically excluded from documentation in an environmental assessment or environmental impact statement must be reviewed for extraordinary circumstances, which may include appropriate surveys and analyses, taking into account best available science, appropriate consultation with Tribes and regulatory agencies, such as those required by the Endangered Species Act, the National Historic Preservation Act, Clean Water Act, and Clear Air Act. Accordingly, this categorical exclusion does not apply where there are extraordinary circumstances, such as potentially significant effects on the following: Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species; floodplains, wetlands or municipal watersheds; congressionally designated areas such as wilderness, wilderness study areas, or national recreation areas; inventoried roadless areas; research natural areas; American Indian and Alaska Native religious or cultural sites; archaeological sites, or historic properties or areas (FSH 1909.15, ch. 30, sec. 30.3, para. 2).

*Comment:* A number of respondents raised issues related to the possible significant cumulative impacts of projects under this proposed categorical exclusion or the impacts of implementing such projects in combination with other activities under other authorities or on other Federal lands. Most of the statements were general, but some mentioned specific impacts, such as those on wildlife or water quality.

*Response:* For each of the 73 oil and gas projects considered in defining this category, the question of whether there were significant cumulative effects was specifically addressed. Reviewers examined the possibility of significant cumulative effects from these activities and all other activities within the appropriate boundaries for potential resource effects. For example, based on an assessment of wildlife conditions in the local habitat area, or water quality impacts relative to a watershed, significant cumulative effects were not observed.

Some public concerns with regard to environmental effects, both individual and cumulative, include those regarding wildlife populations and water quality. As examples, soil and water resources

are protected during oil and gas projects through implementation of State and Environmental Protection Agency approved Best Management Practices and lease level stipulations. For Surface Use Plan of Operations, the Forest Service has the capacity to protect surface resources through the development of conditions of approval.

The Forest Service is required to consult with the U.S. Fish and Wildlife Service (FWS) or National Oceanic and Atmospheric Administration (NOAA) Fisheries whenever any proposed actions or activities may affect an endangered or threatened species or adversely modify designated critical habitat. The Forest Service regularly coordinates and consults with the appropriate State wildlife agency, FWS, and NOAA Fisheries on species protection and conservation efforts to address potential individual and cumulative impacts of Forest Service practices on threatened and endangered wildlife and fish species and their habitat.

It is important to note that if a proposed project may have a significant effect on a species listed or proposed to be listed on the List of Endangered and Threatened Species or on designated critical habitat for these species, the Agency under existing Forest Service NEPA procedures may not use a categorical exclusion.

Concerns were raised regarding a cumulative effect of this categorical exclusion combined with the Energy Policy Act Section 390 categories. This categorical exclusion is designed, in part, to be used in new fields or areas at the preliminary stages of development, which are designed to obtain data needed for planning potential subsequent development and performing meaningful analysis of such development. The use of Section 390 is for wells in existing fields where a site-specific NEPA document for oil or gas exploration/development, or analysis of drilling as a reasonably foreseeable activity has been completed. These documents, in addition to the previously completed leasing analysis, address the cumulative effects of field development.

*Comment:* Some respondents commented that the impacts considered when reviewing the 73 projects used to support the proposed categorical exclusion did not include effects to subsurface resources or the "subsurface footprint." Respondents centered their comments on subsurface impacts, including the appearance of extraction-related sinkholes, which are argued likely to become more evident after the

5-year period following initiation of extraction activities.

*Response:* Regardless of whether a well is analyzed and documented in a categorical exclusion, environmental assessment, or environmental impact statement, the BLM holds the primary responsibility for the drilling plan portion of the APD and protecting the mineral estate of the United States. As part of the drilling plan, the BLM requires casing and cementing procedures to protect the ground water from contamination from deeper aquifers and prevent the loss of oil or gas from the well bore. The casing and cementing programs are also designed to prevent the movement of fluid around the well bore that may result in the rare occurrence of sink holes.

*Comment:* Some respondents stated that the Forest Service should perform a thorough economic evaluation that takes into account the loss of economic benefits that will result from the proposed categorical exclusion. Respondents say that such an evaluation should include consideration of existing uses and functions of National Forest System lands including recreation, flood control, pest control, carbon sequestering, and many other ecosystem services. Much greater attention to the costs and benefits of the proposed categorical exclusion is necessary.

*Response:* The primary economic effects of the proposed categorical exclusion for oil and gas exploration and development are changes in costs of conducting environmental analysis and documentation. Under current NEPA procedures, the level of analysis and documentation required for oil and gas exploration and development often required agency personnel to extend processing timeframes and expend undue resources and funding to complete minor exploration and development projects in an environmental assessment. The purpose of the categorical exclusion for oil and gas exploration and development on National Forest System land under existing Federal leases is to streamline the process of applications for permits to drill. In compliance with Executive Order 12866, the Forest Service has prepared a cost-benefit analysis and has determined that this categorical exclusion 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 Tribal, State, or local governments. The economic effect from this categorical exclusion is expected to result in a reduction in the administrative burden of preparing

unnecessary environmental assessments and findings of no significant impact.

The economic analysis does not evaluate the loss of economic benefits as a result of this change because the Forest Service does not foresee that this new categorical exclusion will have a measurable effect on the number of oil and gas projects approved by the agency. Other factors, such as market forces resulting from fluctuations in price due to weather, natural disasters, and demand, and available industry infrastructure would likely have a more significant effect on the pace of oil and gas exploration and development activities. Additionally, the Forest Service's review and approval of an applicant's surface use plan of operations is one step of an eight step incremental decisionmaking process. Therefore, the agency has assumed that the rule will not change the scope or types of projects being approved, but only result in cost savings due to a more streamlined process for approval.

*Comment:* Numerous respondents questioned the sample size and the procedures used in selecting the 73 projects evaluated in determining that this is a category of actions which does not individually or cumulatively have a significant effect on the human environment. Some respondents stated that the methodology for establishing the category was not publicly available and, therefore, not available for review. Other respondents expressed concern that the time period in which the data was collected was too short for the actual environmental effects to be realized and, therefore, unfairly biased the sample data.

*Response:* The Deputy Chief for the National Forest System instructed field units to perform on-site monitoring and submit corresponding data on 100 percent of oil and gas exploration and development projects that had been assessed in an environmental assessment and approved and constructed, or partially constructed, between October 1, 1999, and September 30, 2004. The projects were selected from this time frame because there have been substantial improvements in technology and environmental protection requirements for oil and gas exploration and development on NFS lands in the last 5 years. Therefore, the projects that were assessed during this period are more representative of how future projects will be designed.

The objective of the on-site monitoring was to determine if surface operations for oil and gas activities approved in site-specific environmental assessments did or did not have

individual or cumulatively significant effects on the human environment and, therefore, could or could not qualify for a categorical exclusion in accordance with the Council on Environmental Quality regulations for implementing NEPA. The Forest Service's review of the 73 projects was not intended to determine whether the projects had effects on the environment, but to determine whether these types of activities had significant effects.

Upon publication of the December 13, 2005, **Federal Register** Notice of the proposed category, the "Methodology for Project Data Collection And Results of Review" paper was posted for public review, along with other supporting documents, on the Forest Service Web site. The paper and other documents remain posted at <http://www.fs.fed.us/emc/nepa/oged/>.

The Forest Service relied on the professional judgment of the responsible officials, using the implementing regulations for NEPA (40 CFR 1500–1508) concerning the significance of environmental effects. The Agency believes that resource specialists and agency-responsible officials involved in the design and analysis of each specific on-the-ground project were best qualified to identify resulting environmental effects and determine whether extraordinary circumstances were present.

*Comment:* Several respondents questioned why the proposed categorical exclusion was limited to new fields and commented that no rationale was given for why existing fields were excluded from the categorical exclusion's use. Some respondents commented that limiting the new categorical exclusion to new fields will unnecessarily prevent expeditious processing of applications for permits to drill associated with infill development and other activities that may have no significant impact on the environment.

*Response:* Parameters of the proposed categorical exclusion (miles of road construction, road reconstruction, pipeline and utility installation, and number of drill sites) were selected because they were found in the site-specific project-level review to individually have no significant impacts on the human environment. With the exception of 25 projects monitored on the Jicarilla Ranger District located in the San Juan Basin, an area that is already largely developed, projects monitored were determined to not have individually or cumulatively significant effects. Therefore, the scope of the categorical exclusion was limited to a single new field to address the

inconclusive cumulative effects results from the Jicarilla Ranger District where numerous production wells are located in single fields.

It is expected that categorical exclusions identified in Section 390 of the Energy Policy Action of 2005 would assist in more efficiently processing applications for permits to drill in existing fields. This category complements Section 390 categorical exclusions within new fields.

*Comment:* Various respondents questioned the methodology used to gather and interpret activity information used in the agency's conclusion that the proposed categorical exclusion does not individually or cumulatively have a significant environmental effect on the quality of the human environment. Some do not believe the evidence is sufficient for this conclusion because it does not adequately typify all potential National Forest System lands that are or may be put under lease and subject to potential development. Others suggest various biases toward certain regions of the country are reflected in the oil and gas projects selected for review.

*Response:* The regional locations of the 73 projects were determined by oil and gas development activities during the 60-month time period. Geographic characteristics of the projects reviewed ranged from relatively flat shrub and grass-covered prairie to rugged, timber-covered mountainous terrain. Projects included in the sample were located across the country from the Colorado Rockies to the eastern broadleaf forests, covering nine different ecological subregions of the United States. Subregions in the west included: Great Plains Palouse Dry Steppe, Southern Rocky Mountain Steppe, Colorado Plateau Semi Desert, and the Great Plains Steppe. Subregions in the southeast included: The Ozark Broadleaf Forest, Outer Coast Plain Mixed Forest, and Southeastern Mixed Forest. Subregions of the east included: Central Appalachian Broadleaf Forest and Eastern Broadleaf Forest. The sample of projects does not include every region with potential oil and gas development activities. Yet, the Agency concluded that this sample size was representative of future oil and gas development activity locations, and the common activities associated with oil and gas exploration and development were adequate to review for significant environmental impacts.

In Alaska, for example, of the 21,969,321 total acres of National Forest System lands, only two areas are known to be geologically permissible for oil and gas production that is, possessing a reasonable probability of having oil and



gas resources. These are the Yakutat Forelands on the Tongass National Forest and the Katalla area on the Chugach National Forest. No oil and gas exploration interest or activities have taken place within the past 40 years on these areas, and no leases currently exist. Though no interest or activities exist today, this categorical exclusion would apply to National Forest System lands in Alaska. Oil and gas exploration and development activities are generally the same whether in the lower 48 states or Alaska, and the application of the category's extraordinary circumstances provides for screens against significant environmental impacts.

*Comment:* Some respondents questioned whether the Forest Service worked collaboratively with other Federal agencies, namely the Bureau of Land Management and the Environmental Protection Agency, in developing the proposed category. Others requested that the Federal agencies work collaboratively on minerals management on Federal lands.

*Response:* In the development and review of the proposed category, the Forest Service coordinated with the Bureau of Land Management, the Environmental Protection Agency, the Council on Environmental Quality, and other Federal Agencies. In general, the Forest Service coordinates with these agencies on all oil and gas activities on NFS lands, as well as State, Tribal and local governments.

In addition, the Forest Service and Bureau of Land Management have coordinated their implementation efforts of the categorical exclusions in Section 390 of the Energy Policy Act of 2005.

*Comment:* Several respondents commented that the evidence provided by the 73 projects reviewed is not sufficient to make conclusions on coalbed methane development or in unconventional fields requiring specialized development techniques. These respondents commented that methodology used to support the Forest Service's conclusion that the proposed category for oil and gas exploration and development actions does not individually or cumulatively have a significant environmental effect on the human environment was inadequate and, therefore, these types of activities should be excluded from the proposed categorical exclusion.

*Response:* The 73 projects considered in defining this categorical exclusion included "conventional" oil and gas operations and "unconventional" operations, including coalbed methane projects. Approximately half of the projects monitored were oil projects

with the other half being gas projects. Of the gas projects, about 25 percent were coalbed methane. Because coalbed methane projects often contain multiple wells, approximately 60 percent of all wells studied were coal bed methane. The projects monitored for development of this categorical exclusion did show that oil and gas exploration and preliminary field delineation activities, irrespective of the type of oil or gas reservoir (limestone, sandstone, or coal), have similar environmental effects.

The type of equipment and nature and duration of oil and gas operations that could potentially affect other resources are similar for oil and gas exploration and initial field delineation activities for many types of deposits, including exploration for and development of coalbed methane.

*Comment:* Some respondents commented that they would prefer to see the limitations for road construction or reconstruction, miles of pipeline installation, and number of drill sites of this category decreased, while others would like to see these constraints increased. Some respondents wanted geophysical activities included in this category.

*Response:* To determine the potential impacts of oil and gas activities, data was gathered from 73 oil and gas projects that have been implemented within the past 5 years. None of the projects evaluated had significant impacts on the human environment. Rather than setting any parameters at the limits of the range evaluated, the Forest Service believes it is prudent and conservative not to exceed the mean of each parameter within the proposed categorical exclusion.

Statistical analysis was utilized to determine the mean (average), median, and mode of all compiled data on all 73 projects on which data was collected. While all three are statistically valid measures, the mean values of the 73 projects on which the Forest Service collected data were used in development of this categorical exclusion. The mean resulted in thresholds which created reasonable operability for oil and gas operators with limited environmental impacts on National Forest System lands. Use of the median or mode provided threshold values which were too low (below a value of 1.0) to provide a meaningful scope for future projects.

Limited mineral, energy, or geophysical investigations are currently categorically excluded from documentation in an environmental impact statement or environmental assessment by Forest Service NEPA procedures in FSH 1909.19, 31.2(8) and,

therefore, are not included in this category.

*Comment:* Some respondents commented that the definition of "pipeline" in the proposed category needed clarification. In particular, some respondents believe that utilities, such as electric lines should be included in the proposal, and others stated that pipelines buried within an existing road or pipeline corridor should be exempt.

*Response:* Of the 73 oil and gas projects monitored for development of the proposed categorical exclusion, 16 of 73 project highlighted utilities in their decision, and 50 of 73 projects included pipelines and/or utilities being placed adjacent to or within the previously disturbed and unreclaimed road prism. Thirty-two of the 73 projects specified that the utilities be buried. The category's language has been expanded to include utilities as well as pipelines.

It is common practice to co-locate pipelines, utilities, and roads within the same corridor of disturbance. The BLM's Best Management Practices For Oil & Gas Development on the Public Lands include co-locating pipelines and utilities together to minimize surface disturbance, including roads and utilities sharing common rights-of-way. These Best Management Practices also state that to reduce visual contrast in visually sensitive areas, flow lines and pipelines should be buried, preferably in or adjacent to the roadway, particularly if the lines are long-term. Where road, pipelines, and utilities share common areas of disturbance, the disturbance will not be considered cumulatively against the constraints of the categorical exclusion.

*Comment:* Many respondents felt that the definition of "drill site" was not adequately defined in the proposed category and needed clarification. Other respondents felt that as currently defined, "drill site" allowed too much flexibility in the categorical exclusion's implementation that would ultimately lead to abuse and inconsistent application. Some of the respondents felt that the drill sites should be limited by acres.

*Response:* A drill site, commonly referred to as a "pad", is a location that is needed to accommodate the equipment used to drill a well or wells. A drill site may contain more than one well. Not all wells may ultimately be producers, at which case the drill site is reclaimed. Productive well sites can often be reduced in size following the drilling phase.

The 73 oil and gas projects monitored included a spectrum of drill site sizes from small coalbed methane



development sites, (0.5 acres per site on the Thunder Basin National Grassland) up to 3.5 acres for deep, 10,000 feet well on the Dakota Prairie National Grasslands. Since the sample included all environmental assessments for a 5-year period and individually no project identified significant environmental effects, actual pad size did not correlate to the significance of effects. Therefore, no change to the text of the category is required.

*Comment:* Numerous respondents raised concerns that the Forest Service could misuse the proposed categorical exclusion through the definition of a "field", thereby segmenting larger projects into sizes that qualify under the categorical exclusions. Some respondents commented that such segmentation would violate Council on Environmental Quality NEPA regulations. Other respondents stated they felt there is not a clear process to establish the boundaries of a field. Some respondents noted that a "field" is not established until production is proven, therefore, exploration drill sites could not fall under this categorical exclusion.

*Response:* The Society of Petroleum Engineers defines a field as: "An area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same individual geological structural feature or stratigraphic condition." The field name refers to the surface area, although it may refer to both the surface and the underground productive formations.

The comment about the establishment of fields only after the discovery of oil or gas is correct. If an exploration well is drilled in an area not previously classified as a field, and the well is determined to be productive; then the applicable State oil and gas regulatory agency follows procedures established for that State to define the field. Some States may require more than one productive well before they establish a field. If additional wells indicate that the boundary defining the aerial extent of the field should be changed, State agencies follow established procedures to change the field boundaries. These procedures often include open, public hearings. Information about the delineation of fields and the procedural process for establishing and changing field boundaries vary and can be found on the web pages of many States' oil and gas agencies.

The language in the proposed category has been adjusted for activities adjacent to a new oil and/or gas field to more correctly reflect that certain exploratory proposals could be approved per this categorical exclusion if they met the listed constraints.

"Adjacent to" is defined as within an adjacent spacing unit to a new field or to a first productive well in a new area. Temporary spacing units are determined by the State's oil and gas regulatory agency through an established process based on the formation or pool most likely to be productive. This categorical exclusion is designed for preliminary operations that are necessary to gather both the surface and subsurface resource information necessary to assess the potential for field development.

Regarding segmentation, the responsible official is required to properly identify the characteristics of the proposed action (FSH 1909.15, ch. 10, sec. 11.2). The Forest Service follows the Council on Environmental Quality (CEQ) regulations for all their proposals that may undergo environmental review, including the documentation for categorical exclusions; "proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement" (40 CFR 1502.4(a)). The Forest Service also follows the CEQ definition for determining the scope of a proposed action as defined at 40 CFR 1508.25, which discusses connected and related actions. Consequently, segmenting a larger project into smaller projects in order to meet the stated constraints and be considered under this categorical exclusion is contrary to Forest Service guidance. Forest Service oversight of the application of these categories through internal reviews such as Chief's, regional, and forest reviews emphasizes these compliance requirements and should prevent abuse.

*Comment:* Some respondents assert that the proposed category wrongly assumes that all existing forest plans have comprehensive and recently updated pre-leasing information and, because the perceived intense future oil and gas development on National Forest System lands was not anticipated when most existing plans were written, local forests have not appropriately analyzed the environmental impacts. Other respondents characterized the proposed category as a shell-game where little or no review takes place during general planning and leasing, and then when the time comes for such input and review at the drilling stage, a categorical exclusion might apply which offers little NEPA analysis.

*Response:* The Forest Service has mechanisms for updating oil and gas lease information. At the time a parcel is processed for leasing, the parcel goes through a review to assure the stipulations are correctly applied. As

new information is identified, the Forest Service reviews and determines if the information is of importance and necessitates additional or adjusted stipulations.

Conditions of Approval, applied to Surface Use Plan Operations, may be adjusted or changed when warranted after a review of new information. The Forest Service considers all relevant information when evaluating Surface Use Plans of Operations.

Regardless of the type of NEPA document used or the age or complexity of prior analysis, the Forest Service develops mitigations for each drill site per the terms of the lease. Minimum surface use requirements are established in 36 CFR 228.108 and On-Shore Order #1. Directions for bonding requirements are in 36 CFR 228.109.

*Comment:* Some respondent comments noted confusion over the staged decisionmaking process involved with oil and gas development on Federal lands. Some respondents stated that the proposal would frustrate the staged decisionmaking approach established by Congress for onshore oil and gas development. Other respondents commented that the proposed categorical exclusion is inconsistent with Forest Service oil and gas regulations in that the use of the proposed category would be the first NEPA analysis conducted for the field.

*Response:* The Department of the Interior, Bureau of Land Management (BLM), acts as the onshore leasing agent for the Federal Government. The BLM schedules and conducts competitive bid lease sales, collects the bonus bids and issues leases to the successful bidders. As a land management agency, the Forest Service makes initial determinations on whether or not lands will be available for leasing, and under what conditions (stipulations) the leases will be issued. Forest Service decisions about leasing are made in conjunction with approved forest or grassland land management plans, as well as in separate forest-wide or area-specific leasing decisions. Oil and gas leasing availability decisions are made in compliance with the National Environmental Policy Act as well as other laws such as the Endangered Species Act and the National Historic Preservation Act, and includes public notice and opportunity for comment. The BLM may be a cooperating agency in these efforts. Final determinations regarding lease offerings and stipulations are ultimately made by the BLM.

The Energy Policy and Conservation Act (EPCA) directed the BLM, in cooperation with the Forest Service, to

summarize Forest Service and BLM plan leasing decisions. In two phases, the highest potential onshore geologic basins were studied. The studies show that for the National Forest System lands studied 47 percent are off-limits to any surface exploration or development (due to legal and administrative withdrawal, a "no leasing" decision or a "no surface occupancy" lease), 19 percent are available to exploration and development under standard lease terms and restrictions, and 34 percent are subject to additional restrictions beyond the standard lease terms and restrictions for additional protection of other forest or grassland resources or uses. The study shows that oil and gas exploration or development activity is not allowed or is restricted where such activity would have significant adverse environmental effects or be incompatible with other forest or grasslands uses or management schemes. The screening that occurs at the leasing decision stage contributes significantly to the findings of no significant environmental impacts of the 73 projects studied.

At the stage that this categorical exclusion would be used, Forest Service and BLM leasing decisions have been made, and stipulations have been determined and applied to the lease. The lease has been issued with certain constraints, and development is subject to the terms of the lease. When a review of a SUPO has been completed, the Forest Service responsible official may approve the plan as submitted, approve the plan with specified conditions, or disapprove the plan with stated reason (36 CFR 228.107(b)(2)).

*Comment:* Some respondents suggested that the Forest Service monitor categorically excluded oil and gas exploration activities to ensure that they do not have significant environmental impacts. Other respondents expressed opinions over what is perceived as a poor track record on the Forest Service's part in monitoring and; thus, it could not be trusted to maintain their monitoring and enforcement obligations.

*Response:* Forest and land management plans already provide for monitoring of management activities regarding applicable laws, regulations, and standards and guidelines; effectiveness of project implementation, including any specified mitigation measures; validation of models and assumptions used in the planning processes; and environmental impacts. Projects implemented under these categories will be included in these ongoing monitoring efforts.

In addition to forest plan determined monitoring, Forest Service personnel regularly inspect oil and gas wells and facilities and compliance with the respective permit terms and conditions in the Surface Use Plan of Operations (SUPO) thus, minimizing or prohibiting effects on other resources. Actions required in the SUPO to help mitigate various resource concerns are monitored to ensure they are appropriately implemented. Upon identifying operations not in compliance with permit terms and conditions and/or contributing to undesirable effects, Forest Service personnel take steps to ensure that noncompliant activities are corrected. Such steps include, but are not limited to, requiring the operator to take corrective actions and requesting assistance from the Bureau of Land Management to enforce lease terms and conditions.

For oil and gas exploration and development on National Forest System lands environmental protection is provided for in an element of overlap or redundancy during the implementation of Best Management Practices (BMPs) and mitigation measures. Individual NEPA analysis on the SUPO, a component of the APDs, includes site-specific BMP and mitigations measures, and implementation monitoring then occurs and informs future development of BMPs, or mitigation measures.

Further, respective State inspectors routinely enter Federal lands and inspect wells and facilities for compliance with State laws, regulations, and requirements.

### Conclusion

The Forest Service, U.S. Department of Agriculture (Forest Service) finds that the category of action defined in the categorical exclusion presented at the end of this notice does 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 oil and gas 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 judgment that the profile of past oil and natural gas exploration and development activities represents the Agency's past practices and is indicative of the Agency's future activities.

This categorical exclusion will permit timely response to an applicant's SUPO for limited oil and gas exploration and development activities involving small

areas of National Forest System land. Additionally, it will conserve limited agency funds.

The text of the final categorical exclusion is set out at the end of this notice.

### Regulatory Certifications

#### *Environmental Impact*

The revision to Forest Service Handbook 1909.15 would add direction to guide field employees in the Forest Service regarding requirements for NEPA documentation for particular oil and gas exploration and development activities. The Council on Environmental Quality 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 require preparation of an environmental impact statement; those that require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (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 agencies 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. 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*

This directive has been reviewed under USDA procedures and Executive Order 12866, as amended by 13422, on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a significant regulatory action as defined by the Executive order. Accordingly, OMB has reviewed this directive.

The primary economic effects of the categorical exclusion for review of SUPO associated with oil and gas lease operations are changes in costs of conducting environmental analysis and

preparing NEPA documents. The new categorical exclusion would reduce agency costs by reducing the documentation requirements for certain oil and gas exploration and development on National Forest System land under existing Federal leases.

Effects on local economies and small business entities are expected to be nearly the same using either an environmental assessment or categorical exclusion for oil and gas exploration and development activities. There is potential for an increase in certain oil and gas exploration and development projects, as well as an increase in site administration since they would be faster and cheaper to prepare.

Agency costs for categorical exclusions were discounted at 3 percent and 7 percent discount rates for 10-year period from 2006 to 2015. By using 3 percent discount rate, total discounted cost for categorical exclusions were estimated at \$7.1 million with an annualized cost of \$0.81 million, while the total discounted cost for environmental assessments would be \$42.7 million with an annualized cost of \$4.9 million. An annualized cost saving of \$4.05 million for categorical exclusions is estimated by using a 3 percent discount rate. While using a 7 percent discount rate for the same timeframe, the results show that total discounted cost for categorical exclusions were estimated at \$6 million with an annualized cost of \$0.8 million, the total discounted cost for environmental assessments would be \$36 million with an annualized cost of \$4.8 million. An annualized cost saving of \$4 million is estimated for categorical exclusions by using a 7 percent discount rate. This quantitative assessment indicates a cost savings for the Agency using categorical exclusions for reviewing SUPO for oil and gas exploration and development projects.

The Cost-Benefit Analysis prepared for this categorical exclusion can be found on the World Wide Web at <http://www.fs.fed.us/emc/nepa/oged/>.

#### *Federalism*

The Agency has considered this directive under the requirements of Executive Order 13132 issued August 4, 1999, "Federalism." The Agency has made an assessment that the directive conforms with the Federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the National Government and the States, nor on the distribution of power and responsibilities among the

various levels of government. Therefore, the Agency concludes that the directive does not have Federalism implications.

#### *Consultation and Coordination With Indian Tribal Governments*

This directive has been reviewed under Executive Order 13175 of November 6, 2000, "Consultation and Coordination With Indian Tribal Governments." This directive does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. Nor does this directive impose substantial direct compliance costs on Indian Tribal governments or preempt Tribal law. Therefore, it has been determined that this directive does not have Tribal implications requiring advance consultation with Indian Tribes.

#### *No Takings Implications*

This directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 on Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the directive does not pose the risk of a taking of constitutionally protected private property.

#### *Civil Justice Reform*

In accordance with Executive Order 12988, it has been determined that the categorical exclusion in this final directive does not unduly burden the judicial system, and that they meet the requirements of sections 3(a) and 3(b)(2) of the order.

#### *Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of the categorical exclusion in this final directive on State, local, and Tribal governments and the private sector. This categorical exclusion does 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.

#### *Energy Effects*

This directive has been reviewed under Executive Order 13211 on Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. It has been

determined that this directive does not constitute a significant energy action as defined in the executive order.

#### *Controlling Paperwork Burdens on the Public*

This directive does not contain any additional recordkeeping or reporting requirements associated with onshore oil and gas exploration and development or other information collection requirements as defined in 5 CFR part 1320. 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.

Dated: February 9, 2007.

**Abigail R. Kimbell,**  
Chief, Forest Service.

#### **Text of Directive**

**Note:** The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only the section of the FSH 1909.15, Environmental Policy and Procedures Handbook, affected by this directive is included in this notice. Please note, however, that category 16 is reserved. A notice for comment was published for category 16 on January 5, 2005, (70 FR 1062). A final directive for this categorical exclusion has not been adopted as of the date of publication of this **Federal Register** notice. The complete text of FSH 1909.15, chapter 30 may be obtained by contacting the individuals listed in **FOR FURTHER INFORMATION CONTACT** or from the Forest Service home page on the World Wide Web at [www.fs.fed.us/im/directives/fsh/1909.15/1909.15\\_30.doc](http://www.fs.fed.us/im/directives/fsh/1909.15/1909.15_30.doc). The intended audience for this direction is Forest Service employees charged with planning and administering oil and gas exploration and development projects on NFS lands under Federal lease.

#### **FSH 1909.15—Environmental Policy and Procedures Handbook**

#### **CHAPTER 30—CATEGORICAL EXCLUSION FROM DOCUMENTATION**

Add new paragraph 17 as follows:

*31.2—Categories of Action for Which a Project or Case File and Decision Memo Are Required.*

Routine, proposed actions within any of the following categories may be excluded from documentation in an EIS or an EA; however, a project or case file is required and the decision to proceed must be documented in a decision memo (sec. 32). 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 (sec 05); and a list of the people notified of the decision. Maintain a project or case file and

prepare a decision memo for routine, proposed actions within any of the following categories:

\* \* \* \* \*

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:

- a. One mile of new road construction.
- b. One mile of road reconstruction.
- c. Three miles of individual or co-located pipelines and/or utilities disturbance.
- d. Four drill sites.

[FR Doc. E7-2617 Filed 2-14-07; 8:45 am]

BILLING CODE 3410-11-P

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

#### Notice of a Public Meeting on Administration of the Business and Industry Guaranteed Loan Program and the Section 9006 Renewable Energy Systems and Energy Efficiency Improvements Loan and Grant Program

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Rural Business-Cooperative Service (RBS), an agency within the USDA Rural Development Mission area, will hold a public meeting entitled "The Rural Development Lenders Conference." The purpose of this event is to provide an open forum to solicit feedback on the delivery of the Business and Industry and Section 9006 Renewable Energy Systems and Energy Efficiency Improvement Guaranteed Loan Programs in an effort to be more responsive to our customers.

**DATES:** The meeting will be held on March 8, 2007. Pre-registration will begin promptly at 8:30 a.m. EST and the program will begin at 9 a.m. and will conclude by 12:30 p.m.

**ADDRESSES:** 1400 Independence Avenue, SW., Whitten Building, U.S. Department of Agriculture, Washington, DC. Participants should enter the building through the National Mall entrance located on Jefferson Drive. A State or Government-issued valid photo identification (i.e., driver's license) is required for clearance by building security personnel. A Rural Development representative will be available to direct you to the conference room.

**Instructions for Participation:** Although pre-registration is encouraged, walk-ins will be accommodated to the extent that space permits. Registered participants will be given priority for making presentations prior to walk-ins. Anyone interested in providing feedback to improve program administration is encouraged to attend the public meeting. To register and request time for an oral statement, please visit <http://www.rurdev.usda.gov/rbs/busp/rdlendersconf.htm>. The deadline for pre-registration is March 5, 2007. Written comments are also encouraged and can be submitted in advance of the public meeting or provided at the meeting. To submit advanced comments by e-mail, send to [lenders.conf@wdc.usda.gov](mailto:lenders.conf@wdc.usda.gov). If you have problems accessing the Web site, please send an e-mail to the address above.

*The Agency is especially interested in comments on the following topics:*

1. Effectiveness of the Agency's outreach activities.
2. Equity requirements. Other ways to achieve the objective.
3. Suggestions for improving, streamlining, or simplifying the application process for these programs.
4. Other recommendations for improving the delivery of these programs.

**FOR FURTHER INFORMATION CONTACT:** Kenya Nicholas, Business Programs, RBS, Room 6847 South Agriculture Building, Stop 3224, 1400 Independence Avenue, SW., Washington, DC 20250-3224, Telephone: 202-720-1970.

**SUPPLEMENTARY INFORMATION:** The oral and written information obtained from interested parties will be considered in improving program administration of the Business and Industry Program and the Section 9006 Renewable Energy Systems and Energy Efficiency Improvements Program. In order to assure that these programs are meeting constituent needs, RBS is sponsoring a listening forum and soliciting written comments to encourage public participation in gathering feedback and comments and in making recommendations on program improvement. All comments are welcome.

Those who wish to make oral presentations should restrict their presentation to 10 minutes and are encouraged to have written copies of their complete comments, including exhibits, for inclusion in the Agency record. Those who register their attendance at the meeting, but have not requested in advance to present oral

testimony, will be given an opportunity to do so as time permits. Otherwise, the opportunity will be given to submit their views in writing either at or within 15 days of the meeting. Participants who require a sign language interpreter or other special accommodations should contact Kenya Nicholas as directed above.

Dated: February 8, 2007.

**Jackie J. Gleason,**

Administrator, Rural Business-Cooperative Service.

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BILLING CODE 3410-XY-P

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### Performance Review Board Membership

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice.

**SUMMARY:** Notice is given of the appointment of members to a performance review board for Architectural and Transportation Barriers Compliance Board.

**FOR FURTHER INFORMATION CONTACT:** Lawrence W. Roffee, Executive Director, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004-1111. Telephone (202) 272-0001.

**SUPPLEMENTARY INFORMATION:** Section 4314 (c) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service (SES) performance review boards. The function of the boards is to review and evaluate the initial appraisal of senior executives' performance and make recommendations to the appointing authority relative to the performance of these executives. Because of its small size, the Architectural and Transportation Barriers Compliance Board has appointed SES career appointees from other Federal boards to serve on its performance review board. The members of the performance review board for the Architectural and Transportation Barriers Compliance Board are:

- Mary L. Johnson, General Counsel, National Mediation Board.
- Gary Thatcher, Associate Director, International Broadcasting Bureau.