

related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the review's position and contentions. (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. (*Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed actions participate by the close of the 45-day comment period so that substantive comments and objects are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statements.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the draft environmental impact statements should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statements. Comments may also address the adequacy of the draft environmental impact statements or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments on the draft EIS should be directed to the responsible official: Rick Prausa, Forest Supervisor, Lewis and Clark National Forest, 1101 15th Street North, Great Falls, MT 59401.

Dated: August 19, 2002.

Rick Prausa,

Forest Supervisor.

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DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106-393) the Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on August 27 at 6 p.m. in Thompson Falls, Montana for a business meeting. The meeting is open to the public.

DATES: August 27, 2002.

ADDRESSES: The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

FOR FURTHER INFORMATION CONTACT: Lisa Krueger, Designated Forest Official (DFO), District Ranger Plains/Thompson Falls District, Lolo National Forest at (406) 826-4321, or Brian Avery, District Ranger, Cabinet Ranger District, Kootenai National Forest at (406) 827-3533.

SUPPLEMENTARY INFORMATION: If the meeting location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, the Sanders County Ledger, Daily Interlake and the Missoulian.

Dated: August 16, 2002.

Brian Avery,

Committee Coordinator, District Ranger, Cabinet Ranger District.

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DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596-AB94

Clarification of Extraordinary Circumstances for Categories of Actions Excluded From Documentation in an Environmental Assessment or an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of final interim directive.

SUMMARY: The Forest Service is adopting an Interim Directive to guide employees in complying with the National Environmental Policy Act and the Council on Environmental Quality (CEQ) regulations for certain actions which can be categorically excluded from documentation in an environmental assessment or an environmental impact statement. The Interim Directive clarifies the consideration of extraordinary circumstances as they apply to categorical exclusions. The intent of this

Interim Directive is to facilitate employees' consistent interpretation and application of CEQ regulations and related agency policy.

EFFECTIVE DATE: This Interim Directive No. 1909.15-2002-2 is effective August 23, 2002.

ADDRESSES: This Interim Directive is available electronically from the Forest Service via the World Wide Web/Internet at <http://www.fs.fed.us/im/directives>. Single paper copies of this Interim Directive also are available by contacting Dave Sire, Forest Service, USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW., Washington, DC 20250-1104.

FOR FURTHER INFORMATION CONTACT: Dave Sire, Ecosystem Management Coordination Staff, 202-205-2935, or Julia Riber, Ecosystem Management Coordination Staff, 406-329-3678.

SUPPLEMENTARY INFORMATION: On September 20, 2001, the Forest Service published a proposed Interim Directive to Forest Service Handbook (FSH) 1909.15, Chapter 30, which would partially revise the agency's direction on the use of categorical exclusions (66 FR 48412). The intent of this proposed Interim Directive was to assist employees in interpreting and complying with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations for certain actions which can be categorically excluded from documentation in an environmental assessment (EA) or an environmental impact statement (EIS). The proposed Interim Directive would have added three new categories for special use authorizations involving administrative changes when no changes are proposed in the authorized activities or facilities. The proposal also included a modification of handbook text to clarify agency policy concerning extraordinary circumstances.

Nearly 26,000 responses in the form of letters, postcards, and e-mail messages were received during the 60-day comment period. These comments came from private citizens, elected officials, and from groups and individuals representing businesses, private organizations, and Federal agencies. Responses consisted of over 800 original letters and over 25,000 form letters.

Public comment on the Interim Directive addressed a wide range of topics, many of which were directed at general Forest Service management direction, particularly the management of roadless areas. Most comments revealed a significant split in opinion on

the proposal. Many people opposed the proposed Interim Directive or recommended further restriction of the use of categorical exclusions, while many others supported the proposed Interim Directive or favored further expansion of the use of categorical exclusions. Some respondents agreed that existing direction concerning extraordinary circumstances needs clarification.

Because of the volume and nature of comments received on the proposed Interim Directive, the agency has decided to separate the special uses categorical exclusions portion of the proposal from the clarification of extraordinary circumstances. Accordingly, this notice addresses only those comments received on the direction concerning extraordinary circumstances. A separate notice will be published later to address comments on categorical exclusions for the issuance of certain special use authorizations.

Previous Direction

Forest Service Handbook 1909.15, Chapter 30, includes direction for consideration of extraordinary circumstances when Responsible Officials are contemplating categorical exclusion of a proposed action from further analysis and documentation in an EA or EIS.

Prior to this present action, direction on extraordinary circumstances was last revised in 1992. At section 30.5, extraordinary circumstances were defined as conditions associated with a normally excluded action that are identified during scoping as potentially having effects which may significantly affect the environment. At section 30.3, paragraph 2, extraordinary circumstances were described as including, but not limited to the presence of, the following: steep slopes or highly erosive soils; threatened or endangered species or their critical habitat; flood plains, wetlands, or municipal watersheds; Congressionally designated areas such as wilderness, wilderness study areas, or national recreation areas; inventoried roadless areas; research natural areas; and Native American religious or cultural sites, archeological sites, or historic properties or areas. Paragraph 3 of section 30.3 stated that scoping is required on all proposed actions, including those that would appear to be categorically excluded. Moreover, this paragraph provided that if scoping indicated that extraordinary circumstances are present and it was uncertain that the proposed action may have a significant effect on the environment, then personnel must prepare an EA. If scoping indicated that

the proposed action may have a significant environmental effect, an EIS would be prepared.

Summary of the Proposed Clarification of Extraordinary Circumstances

Public and employee confusion has risen with regard to the 1992 direction on the application of a categorical exclusion to a proposed action when a listed resource condition is present. The proposed revisions to Handbook sections 30.3 and 30.5 were intended to clarify the agency's intent that the presence of a listed resource condition in section 30.3, paragraph 2 does not automatically preclude use of a categorical exclusion. The proposed revisions to sections 30.3 and 30.5 included the following:

- *Section 30.3, paragraph 1b.*

References were made to the definition of extraordinary circumstances in section 30.5 and policy in paragraph 2 of section 30.3. Extraordinary circumstances were qualified as instances that could result in significant environmental effect.

- *Section 30.3, paragraph 2.*

Extraordinary circumstances were qualified, stating that extraordinary circumstances occur when a proposed action would have a significant effect on the resource conditions set out in paragraphs 2a through 2g. The proposal went on to state that the Responsible Official may issue a categorical exclusion even when one or more of the resources conditions listed in paragraphs 2a through 2g are present, but only if the official determines on a case-by-case basis that the proposed action would not have a significant effect on the listed resource conditions.

- *Section 30.3, paragraph 3.* Two sentences were removed, which described when to prepare an EA and when to prepare an EIS.

- *Section 30.3, paragraph 4.* A sentence was added to the paragraph reminding readers to consider the need to evaluate new information or changed circumstances if implementing an action that has already been analyzed and documented.

- *Section 30.5.* Extraordinary circumstances were defined as instances where a proposed action normally excluded from documentation in a EA or EIS is identified as having a significant effect on resource conditions set out in section 30.3, paragraphs 2a through 2g.

In response to comment on the proposed Interim Directive, published September 20, 2001, the agency has further refined the Interim Directive as described in the following summary of comments.

Comments on the Need for the Interim Directive

Comment: Many respondents believe that there is no need for the proposed changes. They believe that proposed actions can be analyzed with a concise EA if necessary and, therefore, there is no need to clarify the definition of extraordinary circumstances. Others expressed strong disapproval of the agency's use of categorical exclusions altogether and recommended either further restricting their use or a complete elimination of categorical exclusions.

Response: The CEQ regulations (40 CFR 1500.4(p)) encourage the appropriate use of categorical exclusions to reduce paperwork and unnecessary delays. The agency believes that its use of categorical exclusions has been and continues to be appropriate. The agency further believes that the time and expense required by even the most concise EA's is not justified for those actions that qualify for categorical exclusion. Therefore, the agency remains committed to issuance of an Interim Directive.

Comment: Many respondents believe Forest Service direction contained in the 1992 definition (57 FR 43180) of extraordinary circumstances clearly prohibits the use of a categorical exclusion whenever the action takes place in the presence of the resource conditions listed in paragraph 2 of section 30.3 and, therefore, there is no need for clarification.

Response: The Forest Service does not agree. The agency has long held in administrative appeal reviews and in litigation that the mere presence of these resource conditions does not necessarily preclude use of categorical exclusions. Since 1992, handbook direction has focused on the effects of a proposed action in determining if a categorical exclusion is appropriate. As stated in section 30.3, paragraph 3 as adopted in 1992, if uncertainty exists over the significance of environmental effects, a categorical exclusion would not be appropriate.

Comments on Compliance With Law and Regulation

Comment: Citing various court rulings over the use of categorical exclusions when extraordinary circumstances exist, some respondents claimed that the proposed Interim Directive would violate CEQ regulations for implementing NEPA. They claim that it is inappropriate to use categorical exclusions when extraordinary circumstances are present.

Response: The proposal that was issued for comment in September of

2001, described paragraphs 2a through 2g as resource conditions and attempted to clarify that it is the degree of the potential effect of a proposed action on those resource conditions that determines the existence of extraordinary circumstances. In response to comment, chapter 30.3, paragraph 3 has been further modified in the final policy to emphasize that it is the uncertainty over significance of the effects of a proposed action that requires preparation of an EA. Paragraph 2 in section 30.3 lists resource conditions that should be considered in determining whether extraordinary circumstances related to the proposed action warrant additional analysis and documentation in an EA or EIS. The list of resource conditions in paragraph 2 does not preclude consideration of other factors or conditions that the Responsible Official may deem appropriate. Paragraph 2 has also been modified to emphasize that it is the degree of the potential effect of a proposed action on those resource conditions that determines the existence of extraordinary circumstances. This direction is consistent with CEQ regulations requiring that agencies provide for extraordinary circumstances.

Comment: Some respondents believe that the proposed Interim Directive would change the type of activities that may occur within the habitat of threatened and endangered species and that the Forest Service should formally consult with the U.S. Fish and Wildlife Service on this proposal as required by the Endangered Species Act.

Response: The agency has determined that this revision itself will have no effect on threatened or endangered species or their habitat. The proposed Interim Directive will not change the types of activities that may occur within the habitat of threatened and endangered species. Therefore, consultation with the U.S. Fish and Wildlife Service is not required. Any categorically excluded actions proposed within the habitat of threatened or endangered species are still subject to the consultation requirements of the Endangered Species Act.

Comment: Some respondents believe that the proposed Interim Directive would change the types of activities that may occur on American Indian or Alaska Native religious or cultural sites and that the Forest Service should consult with Tribes on this proposal as required by the National Historic Preservation Act and implementing regulations.

Response: The Forest Service wants to reassure these respondents that the

Interim Directive would not change the types of activities it may authorize on or near American Indian and Alaska Native religious or cultural sites. The Interim Directive only clarifies agency policy regarding extraordinary circumstances, which has no effect on religious or cultural sites. Therefore, consultation with Tribes is not required for the promulgation of this Interim Directive.

Comment: Some respondents feel that the proposed change to the Forest Service Handbook section on extraordinary circumstances would change the assumption upon which all the categories listed in chapter 30 were created, specifically, how the use of each category of actions would be constrained by extraordinary circumstances. Therefore, respondents believe that additional effects analysis is now necessary to reassess whether each category of actions does or does not individually or cumulatively have a significant effect on the environment in compliance with the CEQ regulations on categorical exclusions.

Response: The Interim Directive merely clarifies current policy concerning extraordinary circumstances. This Interim Directive does not change the assumptions upon which the categories of actions listed in chapter 30 were created. Therefore, the agency's conclusion that the categories of actions listed in chapter 30 have no individually or cumulatively significant environmental impacts remains unchanged.

Comments on Public Participation

Comment: A considerable amount of comment revolved around the Interim Directive's effect on the public's role in decisionmaking. Many respondents are concerned that the proposal would increase the use of categorical exclusions and thereby decrease the public's opportunity for involvement and oversight of the management of National Forest System lands. Other respondents think that scoping is not warranted for actions that may be categorically excluded.

Response: Forest Service direction requires scoping for all proposed actions subject to NEPA (FSH 1909.15, section 11). Through scoping, the Forest Service identifies any important issues, identifies interested and affected persons, and determines the extent of analysis and documentation that will be necessary for the Responsible Official to make an informed decision on a proposed action. One integral part of this scoping process is determining the appropriate level of public participation. Forest Service Handbook

1909.15, section 11, directs the Responsible Official to consider options for involving potentially interested and affected agencies, organizations, and persons in the analysis process commensurate with public interest in the proposed action, regardless of the type of documentation used.

Comment: Respondents were also concerned that more decisions will be made through a categorical exclusion and, consequently, fewer decisions will be appealable.

Response: As previously noted, the purpose of this Interim Directive is to clarify existing NEPA procedures, not to broaden the use of categorical exclusions. Additionally, appeal of decisions is addressed in the regulations at 36 CFR part 215, not in the agency's NEPA procedures. In a separate effort, the agency is currently reviewing the appeal regulations. If the agency proposes any changes to the appeal regulations, the public will be provided with notice and an opportunity to comment.

Comments on Impacts

Comment: Many of the respondents who were opposed to the proposed Interim Directive 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 Interim Directive 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 agency through repeated environmental review to have no significant environmental effects either individually or cumulatively. Final direction in paragraph 2 of section 30.3 now requires consideration of whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or EIS. Final direction in paragraph 3 of section 30.3 emphasizes that an EA is the appropriate form of documentation when the significance of effects is uncertain.

Additionally, the Forest Service is required to comply with all applicable laws, regulations, and policies for every action it undertakes on National Forest System lands. Therefore, all actions, even those that are excluded from documentation in an EA or an EIS, must comply with laws and regulations governing the protection of resources,

such as roadless areas, wilderness, national recreation areas, threatened and endangered species, American Indian sacred sites, and archeological sites.

Comments on the Interim Directive

Comment: Some respondents questioned how long the Interim Directive (ID) would be in effect or under what circumstances it would terminate.

Response: As was stated in the preamble for the proposed directives published in the September 20, 2001, **Federal Register** (66 FR 48412), the changes are being made through an ID only for administrative efficiency. The agency is proposing modifications to other parts of this chapter; for example, the agency has proposed to add three new categories for certain special use authorizations. Additionally, previously issued IDs need to be incorporated into Chapter 30. In accordance with its policies on directive issuances the agency has chosen to issue this clarification of extraordinary circumstances as an ID. The agency will give notice when Chapter 30 is amended to incorporate these IDs.

Comments on Section 30.3 Policy

Comment: Many respondents contend that the proposed Interim Directive does not comply with the definition of categorical exclusion contained in the CEQ regulations and, therefore, violates NEPA. They were concerned that the proposed language would eliminate the possibility of ever doing an EA for an action listed in the categories. They feared that instead the proposed Interim Directive would lead to a situation where an internal review could be used to determine whether the project may have a significant effect on the environment, which would be in direct conflict with the CEQ establishment of the EA as the appropriate method of determining if a project may have significant effects.

Response: The agency agrees that the language in both the preamble and the proposed directive could be interpreted to bypass the EA process. Therefore, the agency has modified the text in the final Interim Directive to address these concerns. The proposed language and the confusion that resulted from it led to a great many of the concerns voiced by those who were opposed to the proposal. The agency agrees with the numerous respondents who indicated that if there is a question regarding whether environmental effects may be significant, a categorical exclusion would not be appropriate. In response, the final policy reinstates the language

of paragraph 3, which states that it is the uncertainty over significance of the effects of a proposed action that requires preparation of an EA. The proposed Interim Directive at 30.3, paragraph 2, stated that extraordinary circumstances occur when a proposed action would have a significant effect on a set of listed resource conditions. Paragraph 2 now identifies a list of resource conditions that, if present, require the Responsible Official to consider whether extraordinary circumstances related to a proposed action warrant analysis in an EA or EIS. Paragraph 2 also states that the mere presence of these resources does not preclude use of a categorical exclusion. In response to contentions that the definition of extraordinary circumstances is not consistent with the CEQ regulations, the final policy does not contain a definition of extraordinary circumstances. The CEQ regulations direct agencies not to paraphrase the regulations, but to supplement them. The agency sees little value in expanding on CEQ's use of the term "extraordinary circumstances". The agency's final policy, therefore, relies on the context in which CEQ uses the term and provides for extraordinary circumstances as directed by the CEQ regulations at 40 CFR 1508.4.

Comment: Some respondents objected to the concept that a Responsible Official can make a case-by-case analysis of whether a proposed action has extraordinary circumstances and, therefore, whether or not it can be excluded from documentation in an EA or EIS. They did not think this complies with CEQ regulatory requirements for an agency to develop specific criteria and classes of actions for categorical exclusions.

Response: The CEQ regulations at 40 CFR 1507.3 direct agencies to include specific criteria for and identification of those typical classes of actions that normally do not require either an EA or EIS. Those categories of actions are identified along with appropriate criteria for their use in handbook sections 31.1b and 31.2. The agency believes that an appropriate evaluation of the potential effects of a proposed action can and should be made by the Responsible Official prior to the placement of the proposed action in a category for exclusion. The text in paragraphs 2 and 3 of section 30.3 have been modified to emphasize that the Responsible Official determines whether or not extraordinary circumstances exist, and further, when it is appropriate to prepare an EA or an EIS.

Comment: A few respondents suggested that the directive should

include clear guidelines by which a Responsible Official can determine when the use of a categorical exclusion is appropriate. Other respondents stated that Forest Service officials have the expertise to assess the relationship between the proposed action and extraordinary circumstances and, therefore, it is appropriate for them to determine the level of NEPA analysis necessary for a proposed action.

Response: Forest Service Handbook, section 11.6, directs Responsible Officials to determine the appropriate level of analysis and documentation based upon the nature of the proposed action; preliminary issues associated with the proposed action; interested and affected agencies, organizations, and individuals; and the extent of existing available documentation. The list of resource conditions (sec. 30.3, para. 2) that require consideration of whether extraordinary circumstances related to the proposed action warrant analysis in an EA or EIS provide sufficient guidance for Responsible Officials to determine the appropriate level of analysis and documentation for a proposed action.

Comment: A few respondents commented that the terms "steep slopes" and "highly erosive soils" were ambiguous and out of date.

Response: The agency agrees that these terms could be subjective and has removed them from paragraph 2 in the final policy.

Comment: The addition of proposed and sensitive species to the list of resource conditions for extraordinary circumstances elicited paradoxical responses from respondents. Those generally favoring the overall new language for extraordinary circumstances opposed this specific change, while those generally opposed to the overall new language for extraordinary circumstances endorsed this part of the Interim Directive.

Response: Paragraph 3 of the final Interim Directive emphasizes that the Responsible Official must determine, based on scoping, whether uncertainty exists over the significance of effects of a proposed action. Additionally, paragraph 2 now indicates that the occurrence of sensitive species requires consideration of whether extraordinary circumstances related to the proposed action warrant analysis in an EA or EIS. Together these two paragraphs address the concerns of both those in favor and those who opposed the proposal.

Comment: One respondent suggested defining the term "sensitive" in the Interim Directive so that it is not open to interpretation.

Response: Generally, the agency avoids defining terms that are already defined in other places within its directive system. Almost all of the terms used in the definition of extraordinary circumstances are defined in other places in the Forest Service Handbook or Manual. In this case, the terms “endangered, threatened, and sensitive species” and “designated and proposed critical habitat” are already defined in Forest Service Manual (FSM) 2670. Sensitive species are defined in FSM 2670 as those plant and animal species identified by a Regional Forester for which population viability is a concern.

Comment: Many respondents feel it is inappropriate to use categorical exclusions in some specific areas such as roadless areas, wilderness areas, and municipal watersheds. They point out that, under the proposed interpretation of extraordinary circumstances, the agency could now perform logging, mining, and the construction of roads and motorized trails and utility lines in these areas without the documentation and analysis required by an EA or an EIS.

Response: The agency has responded to this fear by revising proposed paragraphs 2 and 3. Paragraph 3 emphasizes that the Responsible Official must determine, based on scoping whether uncertainty exists over the significance of effects of a proposed action. Paragraph 2 now indicates that occurrence of specific areas such as roadless areas, wilderness areas, and municipal watersheds requires consideration of whether extraordinary circumstances related to the proposed action warrant analysis in an EA or EIS.

Comment: One respondent suggested that the American Indian and Alaska Native religious or cultural sites should be a separate extraordinary circumstance rather than combined with archeological and historic properties or areas.

Response: Paragraph 2 in the final policy separates American Indian and Alaska Native religious or cultural sites from historic properties.

Comment: One respondent objected to the Forest Service proposal to remove the sentences in section 30.3, paragraph 3 that refer to when it is appropriate to document an analysis with an EA or an EIS instead of categorically excluding a proposed action.

Response: After careful consideration, the agency has determined that the direction is clearer if the sentences on EA's and EIS's are included and, therefore, has reinstated them.

Comment: One respondent felt that the language in section 30.3, paragraph 4 regarding when new information

triggers additional NEPA analysis was not clear.

Response: After careful review, paragraph 4 has been removed. It may have had purpose during early implementation of NEPA, but it merely repeats direction already contained in Chapter 10, section 18.

Comments on Section 30.5 Definitions

Comment: One respondent was concerned that the new definition of extraordinary circumstances in section 30.5 omitted the phrase “during scoping”. He felt that phrase was needed in the definition to make it clear that scoping is an important step in determining which projects may be categorically excluded.

Response: The agency shares that concern and has responded by putting these references to scoping back into paragraph 3. The first of these sentences states that if the Responsible Official determines, based on scoping that it is uncertain whether the proposed action may have a significant effect on the environment, an EA must be prepared. The definition of extraordinary circumstances has been removed in the final policy. The agency's final policy relies on the context in which CEQ uses the term and provides for extraordinary circumstances in paragraph 2, as directed by the CEQ regulations at 40 CFR 1508.4.

Environmental Impact

Comment: Some respondents stated that because the Interim Directive addresses extraordinary circumstances, the Forest Service must prepare an environmental assessment or an environmental impact statement on the proposed Interim Directive to comply with NEPA.

Response: Forest Service Handbook 1909.15, section 31.1b (57 FR 43180), excludes from documentation in an environmental assessment or environmental impact statement “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” This Interim Directive to FSH 1909.15 falls within this category of actions. The handbook by definition (Forest Service Manual Chapter 1110; 36 CFR 200.4) sets out procedures and technical instructions for complying with CEQ's regulations. Although the proposed clarification directly addresses extraordinary circumstances, it merely provides guidance and does not compel any activities to occur. Therefore, regardless of the interpretation of the agency's 1992 policy, the agency has found that there are no extraordinary circumstances related to this Interim

Directive that would result in a significant environmental effect. The procedural and technical nature of the proposed change, and the finding that no extraordinary circumstances exist, lead the agency to conclude that preparation of environmental impact statement or environmental assessment is not required for this Interim Directive. In addition, pursuant to 40 CFR 1505.1 and 1507.3, the agency has consulted with the Council on Environmental Quality (CEQ) to ensure full compliance with the purposes and provisions of NEPA and the CEQ implementing regulations.

Regulatory Impact

This final Interim Directive has been reviewed under USDA procedures and Executive Order 12866, Regulatory Planning and Review. It has been determined that this is not a significant action. This action to clarify agency direction will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This action will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this action is not subject to Office of Management and Budget review under Executive Order 12866.

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

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered this final Interim Directive under the requirements of Executive Order 13132, Federalism, and has concluded that the final Interim Directive conforms with the federalism principles set out in this Executive order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

Moreover, this final Interim Directive does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore advance consultation with tribes was not required.

No Takings Implications

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

Civil Justice Reform Act

This final Interim Directive has been reviewed under Executive Order 12988, Civil Justice Reform. It, (1) Preempts all State and local laws and regulations that are in conflict with this proposed Interim Directive or which would impede its full implementation; (2) has no retroactive effects; and (3) does 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), which the President signed into law on March 22, 1995, the agency has assessed the effects of this interim final directive on State, local, and tribal governments and the private sector. This interim final directive 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 final Interim Directive has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final Interim Directive does not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

This final Interim Directive does not contain any additional record-keeping 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, and therefore, imposes no additional paperwork burden on the public. 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.

Conclusion

Having considered the comments received, the Forest Service is adopting an Interim Directive that clarifies direction regarding consideration of extraordinary circumstances for categories of actions that can be excluded from documentation in an EA or an EIS. This change is being implemented through the issuance of an Interim Directive to FSH 1909.15, Environmental Policy and Procedures Handbook, Chapter 30. Although an Interim Directive (ID) expires in 18 months from its issue date, the clarification of extraordinary circumstances is intended to be a permanent revision. The text of this Interim Directive, along with other Interim Directives, will be incorporated into a revision of the entire Chapter 30 soon.

Dated: August 13, 2002.

Sally Collins,
Associate Chief.

Text of Final Interim Directive

Note: The Forest Service organizes its directive system by alphanumeric codes and subject headings. Only those sections of the Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures Handbook, affected by this policy are included in this notice. The intended audience for this direction is Forest Service employees charged with project planning and environmental analysis. Selected headings and existing text are provided to assist the reader in placing the revised direction in context. Paper and electronic copies of this Interim Directive and the entire chapter 30 of FSH 1909.15 are available as set out in the **ADDRESSES** section at the beginning of this notice.

FSH 1909.15—Environmental Policy and Procedures Handbook

Chapter 30—Categorical Exclusion From Documentation

30.3 Policy.

1. A proposed action may be categorically excluded from further analysis and documentation in an environmental impact statement (EIS) or environmental assessment (EA) only if there are no extraordinary circumstances related to the proposed action and if:

- a. The proposed action is within one of the categories in the Department of Agriculture (USDA) NEPA policies and procedures in 7 CFR part 1b, or

b. The proposed action is within a category listed in section 31.1b or 31.2.

2. Resource conditions that should be considered in determining whether extraordinary circumstances related to the proposed action warrant further analysis and documentation in an EA or an EIS are:

- a. Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;
- b. Flood plains, wetlands, or municipal watersheds.
- c. Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas.
- d. Inventoried roadless areas.
- e. Research natural areas.
- f. American Indian and Alaska Native religious or cultural sites.
- g. Archaeological sites, or historic properties or areas.

The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.

3. Scoping is required on all proposed actions, including those that would appear to be categorically excluded. If the Responsible Official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA (ch. 40). If the Responsible Official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS (ch. 20).

(Direction in paragraph 4 is removed.)

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