

**DEPARTMENT OF AGRICULTURE****Forest Service****DEPARTMENT OF THE INTERIOR**

RIN 0596-AB99

**National Environmental Policy Act Documentation Needed for Fire Management Activities; Categorical Exclusions**

**AGENCY:** Forest Service, USDA, and Department of the Interior.

**ACTION:** Notice of final National Environmental Policy Act implementing procedures.

**SUMMARY:** The Department of Agriculture, Forest Service and the Department of the Interior give notice of revised procedures for implementing the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations. These final implementing procedures are being issued in Forest Service Handbook 1909.15, Chapter 30, Section 31.2, and Department of the Interior Manual 516 DM, Chapter 2, Appendix 1, which describe categorical exclusions, *i.e.*, 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 in either an environmental assessment or an environmental impact statement. The revision adds two such categories of actions to the agencies' NEPA procedures: (1) Hazardous fuels reduction activities; and (2) rehabilitation activities for lands and infrastructure impacted by fires or fire suppression. The Departments reviewed the effects of over 2,500 hazardous fuel reduction and rehabilitation projects and concluded that these are categories of actions which do not individually or cumulatively have a significant effect on the human environment. The agencies have also conducted a review of peer-reviewed scientific literature identifying the effects of hazardous fuels reduction activities, which is available at <http://www.fs.fed.us/emc/hfi>. This combination of reviews give the agencies confidence that the categorical exclusions are appropriately defined. These two categorical exclusions will facilitate scientifically sound, efficient, and timely planning and decisionmaking for the treatment of hazardous fuels and rehabilitation of areas so as to reduce risks to communities and the environment caused by severe fires.

The hazardous fuels reduction category will apply only to activities

identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan" (hereafter called 10-Year Comprehensive Strategy Implementation Plan). An example of the framework's structure is available at <http://www.fireplan.gov/reports/mou/fuelstreatment.pdf>. Moreover, these hazardous fuels reduction activities: (1) Will not be conducted in wilderness areas or where they would impair the suitability of wilderness study areas for preservation for wilderness; (2) will not include the use of herbicides or pesticides; (3) will not involve the construction of new permanent roads or other infrastructure; (4) will not include sales of vegetative material that do not have hazardous fuels reduction as their primary purpose; (5) will not exceed 1,000 acres for mechanical hazardous fuels reduction activities and will not exceed 4,500 acres for hazardous fuels reduction activities using fire; (6) will only be conducted in wildland-urban interface or in Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface.

Activities carried out under the rehabilitation category will take place only after a wildfire. These activities cannot use herbicides or pesticides, nor include the construction of new permanent roads or other infrastructure, and they must be completed within three years following a wildland fire. Activities carried out under the rehabilitation categorical exclusion will not exceed 4,200 acres.

Activities conducted under these categorical exclusions must be consistent with agency and Departmental procedures and with applicable land and resource management plans, and must comply with all applicable Federal, State, and Tribal laws for protection of the environment. These categorical exclusions will not apply where there are extraordinary circumstances, such as adverse effects on the following: threatened and endangered species or their designated critical habitat; wilderness areas; inventoried roadless areas; wetlands; impaired waters; and archaeological, cultural, or historic sites.

In response to comments on the proposed categorical exclusions, several revisions were made to the original proposal: (1) Grazing activities for the maintenance of fuel breaks were removed from the hazardous fuels reduction category; (2) the hazardous fuels reduction category was clarified to explicitly state that a proposed action

could only include the sale of vegetative material where the primary purpose of hazardous fuels reduction; (3) one of the requirements for hazardous fuels reduction activities was revised to state that such activities must be identified through a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan, rather than be consistent with the framework; (4) the hazardous fuels reduction category was modified to make the list of activities an exhaustive one instead of illustrative; (5) the hazardous fuels reduction category was modified to limit its use to wildland-urban interface or in Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface; (6) hazardous fuels reduction activities using fire are limited to 4,500 acres; (7) mechanical hazardous fuels reduction activities are limited to 1,000 acres; (8) fire rehabilitation activities are limited to 4,200 acres; and (9) the definition of rehabilitation was revised to be consistent with the National Wildland Fire Coordinating Group interagency definition.

**EFFECTIVE DATE:** The categorical exclusions are effective June 5, 2003.

**ADDRESSES:** The new Forest Service categorical exclusions are set out in Interim Directive No. 1909.15-2003-1, available electronically via the Internet at <http://www.fs.fed.us/im/directives>. The new Department of the Interior categorical exclusions are set out in 516 DM, Chapter 2, Appendix 1, available electronically via the Internet at <http://elips.doi.gov/table.cfm>. Single paper copies are available by contacting Dave Sire, Forest Service, USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW., Washington, DC 20250-1104 or Willie Taylor, Department of the Interior, Office of Environmental Policy and Compliance (Mail Stop 2342), 1849 C Street, NW., Washington, DC 20240. Additional information and analysis can be found at <http://www.fs.fed.us/emc/hfi>.

**FOR FURTHER INFORMATION CONTACT:** Dave Sire, USDA Forest Service, Ecosystem Management Coordination Staff, (202) 205-2935, or Willie Taylor, Department of the Interior, Office of Environmental Policy and Compliance, (202) 208-3891. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 4 p.m., Eastern Standard Time, Monday through Friday. **SUPPLEMENTARY INFORMATION:** On August 22, 2002, President Bush established the

Healthy Forest Initiative, directing the Department of Agriculture and the Interior and the Council on Environmental Quality to improve regulatory processes to ensure more timely decisions, greater efficiency, and better results in reducing the risk of catastrophic wildfires by restoring forest health.

In response to this direction, the Departments of Agriculture and the Interior proposed two new categorical exclusions on December 16, 2002 (67 FR 77038). The first, addressing hazardous fuels reduction activities, is intended to better protect lives, communities, and ecosystems from the risk of high-intensity wildland fire. The second, addressing rehabilitation activities, is intended to better restore natural resources and infrastructure after a fire. The supplementary information section of the notice published in December contains comprehensive background information on the need, development, and rationale for these categorical exclusions. The specific language for the proposed categories of actions are set out for comment in the notice as follows:

- Hazardous fuels reduction activities (prescribed fire, and mechanical or biological methods such as crushing, piling, thinning, pruning, cutting, chipping, mulching, grazing and mowing) when the activity has been identified consistent with the framework described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan." Such activities:

- Shall be conducted consistent with agency and Departmental procedures and land and resources management plans; and

- Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and

- Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure.

- Activities (such as reseeding or planting, fence construction, culvert repair, installation of erosion control devices, and repair of roads and trails) necessary for the rehabilitation of habitat, watersheds, historical, archeological, and cultural sites and infrastructure impacted by wildfire and/or wildfire suppression. Such activities:

- Shall be conducted consistent with agency and Departmental procedures and land and resource management plans; and

- Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure.

#### Comments on the Proposal

Almost 39,000 responses in the form of letters, postcards, faxes, and e-mail messages were received during the comment period. These comments came from private citizens, elected officials, and groups and individuals representing businesses, private organizations, and Federal agencies. Responses consisted of nearly 1,900 individual letters and over 37,000 form letters.

Public comment on the proposal addressed a wide range of topics, many of which were directed generally at the President's Healthy Forest Initiative and hazardous fuels reduction. Many people supported the proposal or favored further expansion, while many other opposed the proposal or recommended further restrictions.

*Comment:* Some respondents voiced general agreement with the proposal. Some indicated that they think current analysis and documentation requirements 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 agencies had done sufficient analysis to include that the categories of hazardous fuels reduction activities and fire rehabilitation activities do not individually or cumulatively have significant effects. Still others agreed that the collaboration requirements ensure that local affected communities will be involved.

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

*Comment:* Some respondents stated that the proposal is not needed inasmuch as current laws and policies allow sufficient action to be taken to lower the forest fire risk in urban-wildland interface areas. They stated that agency policies already provide sufficient authority of using categorical exclusions.

*Response:* The Forest Service and the land management agencies within the Department of the Interior have various categorical exclusions for fire management in their NEPA procedures. Consequently, there are inconsistencies among agencies. Some agencies have the ability to categorically exclude some or all hazardous fuels reduction activities and some of or all fire rehabilitative activities while others cannot. For

example, the U.S. Fish and Wildlife Service has utilized similar categories for fire management activities since 1997. In contrast, before the issuance of the categories set out in this notice, a jointly proposed Forest Service and Bureau of Land Management (BLM) hazardous fuels reduction activity using prescribed fire would have required BLM to prepare an environmental assessment, while the Forest Service may have categorically excluded such an action. These final categories provide a tool for more efficient planning of hazardous fuels reduction and fire rehabilitation activities. Having the same categories available to all of these land management agencies will facilitate inter-agency coordination and allow for more efficient planning and more timely decisions across agency jurisdictions. It will also provide greater consistency of practice. The addition of these categories, however, does not represent a substantial change for some agencies nor does it replace or prevent the use of existing categories with similar purposes. See "Comparision of USDA Forest Service and Department of the Interior Agency Categorical Exclusions" at <http://www.fs.fed.us/emc/hfi>.

*Comment:* Some respondents stated that the proposal inappropriately adopts a nationwide approach over a site-specific approach and that certain geographical regions or areas with specific ecological characteristics should not be included in the category. They suggested that fire does not play a significant role in some areas due to high precipitation and humidity. Suggestions included taking the Southern Appalachian forests, national monuments, Eastern forests, forests in the Pacific Northwest, old growth, and alpine forests out of these categories of actions.

*Response:* Data on hazardous fuels reduction and fire rehabilitation activities was collected from field units within the Forest Service, Bureau of Land Management, Bureau of Indian Affairs, Fish and Wildlife Service, and National Park Service, across the United States. Based on a review of this data, it is the professional judgment of the Departments that the categories of actions identified in the hazardous fuels reduction and fire rehabilitation categorical exclusions do not individually or cumulatively have significant effects on the human environment. The data represents a broad spectrum of hazardous fuels reduction activities across vegetation types, geographic regions, and agency jurisdictions. Indeed, it is this broad representation of activities that leads the

agencies to conclude that the hazardous fuels reduction and fire rehabilitation categories should not be restricted to any specific geographic area, vegetation type, or jurisdiction. Additional information is available at <http://www.fs.fed.us/emc/hfi>. The categorical exclusion are provided as a tool to improve planning efficiency.

The applicability of hazardous fuels reduction activities and the level of NEPA documentation appropriate to any given area is a matter for informed professional judgment on the part of the local resource manager. The hazardous fuels categorical exclusion has been modified to limit its use to areas in wildland-urban interface or in Condition Classes 2 or 3 in Fire Regime Groups, I, II, or III, outside the wildland-urban interface. Further, hazardous fuels reduction actions using this category will be identified through a collaborative process as described in "A Collaborative Approach for Reducing Wildland Fire risks to communities and the Environment 10-Year Comprehensive Strategy Implementation Plan" (hereafter called the 10-Year comprehensive Strategy implementation Plan). Therefore, if hazardous fuels reduction activities are not needed or appropriate, they are not likely to be identified through this process.

The rehabilitation category is to be used only for rehabilitation of resources and infrastructure after a wildfire, so it is already limited to those areas impacted by wildland fire and wildfire suppression. Further restricting this category to certain geographic areas may exclude areas that, while not typically susceptible to wildland fire, may be subject to wildland fire because of conditions such as extreme drought, blow down, or insect infestation.

Moreover, the two categories will not apply where there are extraordinary circumstances, such as adverse effects on the following: threatened and endangered species or their designated critical habitat; wilderness areas; inventoried roadless areas; wetlands; impaired waters; and archaeological, cultural, or historic sites.

*Comment:* Some respondents stated that the public cannot adequately comment until they have reviewed the results of the required Council on Environmental Quality (CEQ) consultation for the proposed categorical exclusions.

*Response:* Pursuant to regulations at 40 CFR 1505.1 and 1507.3, the USDA Forest Service and the Department of the Interior consulted with CEQ during the development of the categorical exclusions. Prior to the publication of

these final categorical exclusions, CEQ provided written confirmation that amending the Forest Service and Department of the Interior NEPA procedures by adding the new categorical exclusions was in conformity with NEPA and the CEQ regulations.

*Comment:* Some respondents stated that the agencies should have provided addresses listing where hard copies of information can be obtained. These respondents said that they do not have access to the Internet and that they have not been able to obtain information.

*Response:* Two contacts and their phone numbers were provided in the **Federal Register** notice (67 FR 77038) as sources for additional information. Paper copies of the information were available on request from the two contacts.

*Comment:* Some respondents questioned why the public should have to cite specific laws, regulations, or policies when making comments.

*Response:* There was no request for the public to cite specific laws, regulations, or policies when making comments.

*Comment:* Some respondents stated that, according to the **Federal Register** notice, instructions for applying the proposed fire management categorical exclusions will not be issued until after the procedures are finally established; thus neither the agencies nor the public can comment on how, where, and how often these categorical exclusions will be utilized.

*Response:* The only instructions not yet produced are those providing Department of the Interior agencies guidance for the format and content of memos that will document the agency's use of either of these two categorical exclusions. Historically, requirements for documenting decisions concerning categorically excluded activities have varied across agencies within the Department of the Interior. The new Department of the Interior instructions will be consistent with existing Forest Service requirements and provide for standardized documentation for using the hazardous fuels reduction and fire rehabilitation categorical exclusions among agencies. The Forest Service requirements are available at <http://www.fs.fed.us/im/directives/fsh/1990.15/1909.15,30.txt>. The Department of Interior instruction can be found at <http://www.doi.gov/oepe/esms.html>.

*Comment:* Some respondents said they believe that the proposal will restrict public involvement and that timber harvest for purposes other than hazardous fuels reduction will be categorically excluded.

*Response:* The hazardous fuels reduction categorical exclusion explicitly states that it may only be used where the primary purpose of the project is hazardous fuels reduction. Moreover, it is restricted to activities identified through a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan. As stated in the 10-Year Comprehensive Strategy Implementation Plan, "Local level collaboration should involve participants with direct responsibility for management decisions affecting public and/or private land and resources, fire protection responsibilities, or good working knowledge and interest in local resources. Participants should include Tribal representatives, local representatives, local representatives from Federal and State agencies, local governments, landowners and other stakeholders, and community-based groups with a demonstrated commitment to achieving the four goals described in the Comprehensive Strategy 10-Year Implementation Plan (improve fire prevention and suppression, reduce hazardous fuels, restore fire-adapted ecosystems, and promote community assistance). Existing resource advisory committees, watershed councils, or other collaborative entities may serve to achieve coordination at this level. Local involvement, expected to be broadly representative, is a primary source of planning, project prioritization, and resource allocation and coordination at the local level."

This requirement supports public involvement and collaboration, and helps ensure a focus on reducing wildland fire risks. Through such collaboration, actions believed necessary to abate the risk of high-intensity wildfire will be identified. This collaboration will, where appropriate, seek to address conflicts concerning alternative uses of resources and be used by the federal agencies to consider, as appropriate, reasonable alternatives to recommend courses of action. 42 U.S.C. 4332(2)(E). The hazardous fuels reduction category will utilize a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan even after the ten years of the 10-Year Comprehensive Strategy Implementation Plan have passed. In addition, the use of the hazardous fuels reduction category is limited to the reduction of fuels in the wildland-urban interface or in Condition Classes 2 or 3

in Fire Regime Groups I, II, or III, outside the wildland-urban interface.

*Comment:* Some respondents asked the agencies to clarify the public involvement process for the rehabilitation categorical exclusion.

*Response:* Responsible officials will consider options for involving potentially interested and affected agencies, organizations, and persons in the analysis process, commensurate with public interest in a proposed action, regardless of how the analysis is documented.

*Comment:* Various respondents questioned the methodology used to gather and interpret activity information used in the agencies' conclusion that the proposed category of hazardous fuels reduction actions do not individually or cumulatively have a significant environmental effect on the human environment. Some do not believe there is sufficient evidence for this conclusion. Others suggest various biases are reflected in the activities selected. Some respondents suggested that the time period in which the data were collected from field units was too short to gather accurate data.

*Response:* To identify activities for review, the Forest Service relied on a national database implemented in October 2000. The database includes fuel hazard reduction and rehabilitation and stabilization projects accomplished in fiscal years 2001 and 2002. The Forest Service reviewed 100 percent of the completed projects in the database. The Department of the Interior, having comprehensive fuel hazard reduction and rehabilitation and stabilization project records dating back many years, chose a 100 percent sample of projects accomplished in fiscal year 2002 and a 10 percent random sample of projects accomplished in fiscal years 1998 through 2001. As the request of both the Forest Service and Department of the Interior, field units added additional hazardous fuels reduction and rehabilitation projects that had not been entered in their respective national databases. The information request was distributed to field units to verify and supplement the project information because that is the organizational level where project information would be readily available. Field units responded to questions about projects for which they had already reported accomplishments through their agency reporting systems. Field units responded with over 3,000 hazardous fuels reduction and fire rehabilitation projects. The information supplied included 30 different data items for each activity, including information on activity location and size, vegetation

cover type, fuels treatment type, predicted environmental effects, actual environmental effects after activity completion, and mitigation measures. Over 2,400 of the projects reviewed had some form of validation of the environmental effects predicted, in the form of formal monitoring, forest plan monitoring, or personal observation. Some of these included multiple activities. Environmental effects included ecological, aesthetic, historic, cultural, economic, social, or health effects as defined in 40 CFR 1508.8. The agencies identified some inconsistencies and missing information in the data provided by the field units and followed up with specific units for clarification.

The agencies relied on the professional judgment of the responsible officials concerning the significance of environmental effects. The agencies believe that resource specialists and stakeholders involved in the design and analysis of each specific on-the-ground project were best qualified to identify resulting environmental effects or whether extraordinary circumstances were present.

*Comment:* Some respondents questioned the fire statistics presented in the proposal. Some said that the fire statistics fail to provide sufficient information to make any conclusions that justify the proposal.

*Response:* The fire statistics in the preamble to the proposal were drawn from the Administration's "Healthy Forests: An Initiative for Wildfire Prevention and Stronger Communities" and "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy." Statistics for past fire seasons are also available from the National Interagency Fire Center at <http://www.nifc.gov/stats>. The statistics were provided to explain why the agencies believed the proposal was necessary and timely. These statistics are not a basis for evaluating the significance of the environmental effects of hazardous fuels reduction or rehabilitation activities.

The proposal is focused on how the attendant environmental analyses will be documented. The CEQ regulations implementing NEPA direct agencies to reduce excessive paperwork by using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. The agencies believe that the projects they reviewed provided

ample information to define the two categorical exclusions.

*Comment:* Some respondents believe that the initiative is contrary to the Roadless Area Conservation Rule which prohibits road construction in roadless areas unless needed to protect public health and safety under an imminent threat of a catastrophic event that would cause the loss of life or property. Others say that roadless areas should be included in the proposed categorical exclusions.

*Response:* Categorically excluded actions must be consistent with applicable law, regulations and policy. The Roadless Area Conservation Rule (36 CFR 294) prohibits certain activities in inventoried roadless areas. Further, Forest Service NEPA procedures continue to require an environmental impact statement for proposals that would substantially alter the undeveloped character of an inventoried roadless area of 5,000 acres or more (FSH 1909.15, Section 20.6(3)).

*Comment:* Some respondents state that the agencies should strengthen the proposed fire management categorical exclusions by adding a paragraph that specifies that they also apply in extraordinary circumstances in either Presidential Disaster Declaration areas, or areas where it is demonstrated that a high risk to human life, safety, property, or infrastructure exists.

*Response:* The categorical exclusions are based on the agencies' conclusion that these are categories of actions, which do not individually or cumulatively have a significant effect on the human environment. The need for emergency action is not justification for a categorical exclusion. CEQ regulations provide for procedures that allow action in emergencies when an environmental impact statement would be required (40 CFR 1506.11).

*Comment:* Some respondents stated that the agencies should modify the initiative to specify that the proposed fire management categorical exclusions can be used in storm/wind damaged forest areas.

*Response:* The proposed categorical exclusion for hazardous fuels reduction may be used in storm/wind damaged areas as long as the criteria in the text of the categorical exclusion are met. The agencies do not believe that such additional specificity is necessary.

*Comment:* Some respondents suggest specific criteria to further define and limit the proposed categories of actions, e.g., project goals, outcomes, acreage limitations, the number of activities within a single watershed, and the types of forests for which methods apply. Some respondents state that the

agencies should limit the size of the proposed fire management categorical exclusions to 40 acres or less and within one-half mile of communities. Some state that the agencies should limit activity size to no more than 250 acres, while others suggest that the agencies should restrict removal for a specific activity to 250,000 board feet.

*Response:* The categorical exclusions are limited to activities with a specific goal and outcome as suggested by some respondents. Accordingly, activities could include the sale of vegetative material only if hazardous fuels reduction is the primary purpose of the activity. The hazardous fuels categorical exclusion is limited to activities identified through a collaborative process as described in the 10-Year Comprehensive Strategy Implementation Plan. The collaborative process will identify areas that are a priority for treatment using the hazardous fuels reduction categorical exclusion.

Project data was collected from five land management agencies across the United States. The data represents the spectrum of hazardous fuels reduction and fire rehabilitation projects of different sizes across vegetation types, geographic regions, agency jurisdictions. Not all projects reviewed had post activity validation of the predicted environmental effects. The agencies focused on an analysis of the acreage figures from over 2,500 hazardous fuels reduction and rehabilitation activities where the environmental effects were predicted to not be significant and where those predictions were validated. Hazardous fuels reduction activities using fire, ranged in size from less than one acre to 90,000 acres. Mechanical hazardous fuels reduction activities, ranged in size from less than one acre to 11,690 acres. Fire rehabilitation activities, ranged in size from one acre to 39,000 acres.

In response to requests from more specificity of limits, the agencies have further constrained the hazardous fuels categorical exclusion of activities within wildland-urban interface or in Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface.

The wildland urban interface is defined in the Forest Service and Department of the Interior **Federal Register** notice "Urban Wildland Interface Communities Within the Vicinity of Federal Lands That Are at High Risk From Wildfire" published January 4, 2001 (66 FR 753), as an "interface community" and an "intermix community". For purposes of defining these communities, a structure

is understood to be either a residence or a business facility, including Federal, State, and local government facilities. Structures do not include small improvements such as fences and wildlife watering devices.

The "interface community" exists where structures directly abut wildland fuels. The wildland interface community exists where humans and their development meet or intermix with wildland fuel. There is a clear line of demarcation between residential, business, and public structures and wildland fuels. Wildland fuels do not generally continue into the developed area. The development density for an interface community is usually 3 or more structures per acre, with shared municipal services. Fire protection is generally provided by a local government fire department with the responsibility to protect the structure from both an interior fire and an advancing wildland fire. An alternative definition of the interface community emphasizes a population density of 250 or more people per square mile.

The "intermix community" exists where structures are scattered throughout a wildland area. There is no clear line of demarcation; wildland fuels are continuous outside of and within the developed area. The development density in the intermix ranges from structures very close together to one structure per 40 acres. Fire protection districts funded by various taxing authorities normally provide life and property fire protection and may also have wildland fire protection responsibilities. An alternative definition of intermix community emphasizes a population density of between 28–250 people per square mile.

Based on coarse scale national data, Fire Condition Classes measure general wildfire risk as follows:

*Condition Class 1.* For the most part, fire regimes in this Fire Condition Class are within historical ranges. Vegetation composition and structure are intact. Thus, the risk of losing key ecosystem components from the occurrence of fire remains relatively low.

*Condition Class 2.* Fire regimes on these lands have been moderately altered from their historical range by either increased or decreased fire frequency. A moderate risk of losing key ecosystem components has been identified on these lands.

Fire Regime Groups are defined in the 10-Year Comprehensive Strategy Implementation Plan, which is available on a number of Web sites including <http://www.fs.fed.us/emc/hfi>. A fire regime is a generalized description of the role fire plays in an ecosystem. It is

characterized by fire frequency, predictability, seasonality, intensity, duration, scale (patch size), as well as regularity or variability. Five combinations of fire frequency, expressed as fire return interval in fire severity, are defined as Groups I through V. Groups I and II include fire return intervals in the 0–35 year range. Group I includes ponderosa pine, other long needle pine species, and dry site Douglas-fir. Group II includes the drier grassland types, tall grass prairie, and some Pacific chaparral ecosystems. Groups III and IV include fire return intervals in the 35–100+ year range. Group III includes interior dry site shrub communities such as sagebrush and chaparral ecosystems. Group IV includes lodgepole pine and jack pine. Group V is the long interval (infrequent), stand replacement fire regime and includes temperate rain forest, boreal forest, and high elevation conifer species.

In response to requests to consider acreage limitations on the categorical exclusions for hazardous fuel reduction and fire rehabilitation activities, the agencies reviewed the data to determine prudential limits on the scope of these categorical exclusions. Although the data did not establish a relationship between acres treated and environmental effects, the agencies have elected to limit the categorical exclusion for hazardous fuels reduction activities using fire to 4,500 acres, hazardous fuels reduction activities using mechanical methods up to 1,000 acres, and fire rehabilitation activities to 4,200 acres. These acreages are well within the range of the data. This responds to public concerns while maintaining the effectiveness of the categorical exclusions as a management tool.

Using timber volume as a limitation, instead of acreage, does not reflect the size of an activity inasmuch as a small project in one part of the country may result in as much timber volume as a much larger project in another part of the country. Moreover, activities in the review that were identified as having significant environmental effects were not those of a particular activity, location, or size but were identified as having extraordinary circumstances, which precluded the use of a categorical exclusion.

These acreage limits for the hazardous fuels reduction and fire rehabilitation categories differ from those in a separate Forest Service proposal for three categorical exclusions for limited timber harvest (68 FR 1026). In conducting the review for its limited timber harvest categories, the Forest Service selected projects that would have qualified

under the agency's former Categorical Exclusion 4, which allowed up to 1 million board feet of salvage and 250,000 board feet of merchantable wood products. As previously discussed, volume per acre can vary considerably from place to place or by treatment method. However, by limiting timber harvests in the Forest Service's review for its limited timber harvest categorical exclusions to actions limited by a specified volume, the projects in the review were still inherently limited in acreage. Conversely, the activities reviewed for the hazardous fuels reduction and fire rehabilitation categorical exclusions were not constrained by a acreage or board feet limitations. Accordingly, the acreage limits proposed for the Forest Service's three limited timber harvest categorical exclusions are smaller than the acreage limits in these hazardous fuels and fire rehabilitation categorical exclusions. Since the Forest Service's limited timber harvest categorical exclusion data is constrained, it is not comparable to the hazardous fuels and fire rehabilitation categorical exclusions data.

*Comment:* Some respondents stated that the initiative contradicts the original intent of categorical exclusions, which is to expedite minor, routine administrative actions. According to these respondents, there will be more stringent requirements for administrative actions such as moving and trail maintenance than for vegetation management on hundreds of thousands of acres of land, under this initiative.

*Response:* Categorically excluded actions include those that are minor, routine, and administrative. Forest Service NEPA procedures do apply the term "routine" in reference to some of the actions that are currently categorically excluded. In addition, the categorical exclusions are intended to expedite actions that fit within categories of actions that do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an EA nor an EIS is required. In this case, the agencies have analyzed a substantial body of data. As the agencies' experience with environmental analysis for natural resource management activities grows, it stands to reason that additional categorical exclusions will be defined.

*Comment:* Some respondent said the application of extraordinary circumstances screens is insufficient and open to abuse. Others stated a belief that hazardous fuels reduction and fire rehabilitation actions automatically trigger the Department of the Interior's

exceptions to categorical exclusions, including "controversy," "uncertainty," and "precedent for future action" and, as such, cannot be categorically excluded.

*Response:* When using these two categorical exclusions, the responsible officials will consider, on a project-by-project basis, whether or not any of the Department of the Interior's exceptions and Forest Service extraordinary circumstances apply. The responsible official will prepare a decision memo that will be available for public review.

*Comment:* Some respondents suggested that the agencies monitor categorically excluded hazardous fuels and rehabilitation activities actions to ensure that they do not have significant environmental effects.

*Response:* Monitoring would take place after the categories are established and after they are used for a particular action. Monitoring is not relied upon as a basis or rationale for establishing these categorical exclusions. Although the data established that the covered activities do not individually or cumulatively have a significant effect on the human environment, the agencies, nevertheless, recognize the need for a scientifically sound and consistent approach to environmental monitoring for both hazardous fuels reduction and rehabilitation actions and agree that a monitoring program should apply to a representative sampling of those hazardous fuels reduction and rehabilitation projects conducted using these new categorical exclusions. Therefore, guidance for the development of monitoring protocols, one for fuels treatments and one for rehabilitation actions, is being prepared. It will be peer reviewed and is scheduled for completion in May. Monitoring protocols will be prepared shortly thereafter. The agencies will monitor the effects of categorically excluded hazardous fuels reduction and fire rehabilitation activities to assess whether the categorical exclusions are being applied within their prescribed parameters and to confirm the agencies' assessment of their individual and cumulative environmental impacts.

*Comments:* Some respondents suggested changing the categorical exclusion language to specify that the proposed fire management categorical exclusions will be "guided by" rather than "be consistent with" the 10-Year Comprehensive Strategy Implementation Plan. They state that failure to implement such changes will result in new causes for appeals and litigation due to "inconsistency."

*Response:* The agencies have modified the proposal to limit it to

activities identified through a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan. The change was made to eliminate any confusion concerning consistency.

*Comment:* Some respondents stated the initiative's list of routine actions (e.g., reseeding and replanting) is misleading inasmuch as the effects from the listed actions are not comparable to the effects that will be created by road construction, skid trail and landing construction, and timber harvest. Some respondents also stated that phrases such as "small combustibles," "overstocked stands," and "brush thinning" are inadequate with reference to likely timber harvest activities under the initiative.

*Response:* Reseeding and replanting are allowed under the fire rehabilitation category, which does not include skid trail and landing construction, or timber harvest. Fuel reduction activities involving the sale of vegetative material are allowed under the hazardous fuels category only where the primary purpose of the activity is hazardous fuels reduction. Thinning brush and overstocked stands characterize common tasks allowed under the hazardous fuels reduction categorical exclusion. The phrase "small combustibles" was not used in the proposed or final text. The examples provided in the proposal were intended to illustrate a range of possible activities. The text of the hazardous fuels reduction categorical exclusion defines the specific actions for which each may be applied.

The agencies' review of hazardous fuels reduction and fire rehabilitation projects encompassed the specific activities included in the two categorical exclusions. Hazardous fuels reduction activities reviewed involved broadcast burning and burning of piles, and mechanical treatments consisting of crushing, piling, thinning, pruning, cutting chipping, mulching, and mowing.

*Comment:* Some respondents assert that the stated requirements that activities must be consistent with land and resource management plans is misleading since Forest Service plans will be categorically excluded.

*Response:* Forest Service NEPA procedures do not presently provide a categorical exclusion for amendments to land and resource management plans. The Forest Service may, if it implements its proposed planning rule, identify a category of plan decisions which do not individually or cumulatively have a significant effect on the human environment and may, therefore, be

categorically excluded from NEPA documentation in an environmental assessment or an environmental impact statement. The public would have an opportunity to review and comment on such an amendment to the Forest Service handbook if such a categorical exclusion proposal is made.

It should be noted that under the proposed Forest Service planning regulations, new plans, plan revisions, and amendments continue to require a rigorous public involvement process. Categorical exclusions apply to the level of documentation required under CEQ's regulations implementing NEPA (40 CFR 150.4(p) and 1508.4). Any action that is not consistent with an applicable land and resource management plan's standards, guidelines, goals, and objectives would require a plan amendment. The Forest Service will continue to conduct the appropriate level of environmental analysis and disclosure commensurate with the significance of environmental effects, for both land and resource management plans and project-level planning.

*Comment:* Some respondents suggested that the agencies should clearly define such terms as "hazardous fuels," "primary purpose," "ecosystem integrity," and "adverse effect" as they pertain to extraordinary circumstances.

*Response:* "Hazardous fuels" consist of combustible vegetation (live or dead) such as grass, leaves, ground litter, plants, shrubs, and trees, that contribute to the threat or ignition, and high fire intensity and/or high rate of spread. The term "primary purpose" is not a term of art and has only the dictionary definition. Synonymous phrasing is that the "main reason" for the activity must be hazardous fuels reduction.

"Ecosystem integrity" is defined in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy" as the completeness of an ecosystem that at geographic and temporal scales maintains its characteristic diversity of biological and physical components, composition, structure, and function. The use of the term "adverse effect" was used in conjunction with the agencies' descriptions of extraordinary circumstances in their NEPA procedures. Specific agency direction pertinent to identifying extraordinary circumstances may be found in Forest Service Handbook 1909.15, section 303.3 (67 FR 54622), and Department of the Interior Manual 516 DM 2, Appendix 2.

*Comment:* Some respondents commented that the proposal was misleading because it stated that the

proposed hazardous fuels reduction categorical exclusion would not cover timber sales that do not have hazardous fuel reduction as their primary purpose, but then several pages later stated that products would be sold.

*Responses:* The intent of the statement concerning timber sales was to point out that only timber sales with hazardous fuel reduction as their primary purpose could be categorically excluded under the proposal. The categorical exclusion for hazardous fuels reduction allows for the sale of vegetative material as one method for removal. The sale of vegetative material includes all types of products from plant material, including biomass, posts, poles, and sawlogs. The hazardous fuels reduction categorical exclusion has been edited to add that activities may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction.

*Comment:* Some respondents suggested that, without NEPA analysis, categorically excluded actions would not consider the best available science and managers would be unaware of extraordinary circumstances that preclude the use of a categorical exclusion.

*Response:* The agencies have repeatedly conducted NEPA analyses for hazardous fuels reduction and fire rehabilitation projects using the best available science. Based upon the projects reviewed for these categorical exclusions, the agencies have concluded that these categorical exclusions describe categories of actions which do not individually or cumulatively have a significant effect on the human environment.

Consistent with existing direction, agencies must conduct sufficient review to determine that no extraordinary circumstances exist when using categorical exclusions. This determination includes appropriate surveys and analyses, using the best available science, attendant in appropriate consultation with Tribes and consultation with regulatory agencies, such as those required by the Endangered Species Act, the National Historic Preservation Act, Clean Water Act, and Clear Air Act.

The agencies will take the additional measure of monitoring to determine that these categories are being appropriately used and to further validate the agencies' conclusions regarding environmental significance.

*Comment:* Some respondents stated that NEPA and other environmental laws have served the country well for years, and the agencies should follow these laws in conducting fuels reduction

efforts. Respondents suggest that if rule changes are needed, they should be made through Congress, not through administrative actions.

*Response:* The agencies are not changing laws or regulations. The CEQ regulations implementing NEPA provide for three levels of environmental documentation: environmental impact statements; environmental assessments; and categorical exclusions. The agencies are following CEQ's regulations, which direct agencies to define categorical exclusions to reduce excessive paperwork. Activities conducted under those categories must be consistent with all applicable Federal, State, local, and Tribal laws and requirements imposed for protection of the environment.

*Comment:* Some respondents indicated that there should be no restriction on new road construction, while others believe that no roads should be constructed, as the absence of roads indicates an activity is too far from a community. Other respondents suggested that up to one mile of low-standard road should be allowed, while others believed that roads should only be constructed in rare cases.

*Response:* Hazardous fuels reduction activities and rehabilitation activities involving new permanent roads are not included in the proposed categorical exclusions. Proposals for activities that involve new permanent road construction would be analyzed and documented in an environmental assessment or an environmental impact statement.

*Comment:* Some respondents suggested that any road construction should only be carried out following a thorough environmental analysis. Others indicated that culverts should not be replaced or upgraded without a watershed analysis.

*Response:* The categorical exclusions provide only for construction of temporary roads. Where temporary road construction or culverts are being proposed, agencies must review the proposed action to ensure that no extraordinary circumstances exist.

*Comment:* Some respondents suggested that the categorical exclusions should specify that temporary roads will be constructed only where the project ensures that they will be reclaimed/obliterated upon activity completion.

*Response:* Whether temporary roads are needed and to what extent, along with how they are closed, reclaimed, and/or obliterated are project-specific decisions and therefore appropriately decided at the project level.

*Comment:* Some respondents asked the agencies to clarify the role of grazing

in the proposal. Other respondents suggest that the agencies should not allow grazing to be categorically excluded as a fuels reduction technique because grazing removes grasses, allowing woody vegetation to invade, which contributes to hotter, more intense fires.

*Response:* The grazing activity included in the proposed hazardous fuels reduction categorical exclusion, as the sole biological method, was intended to be limited to livestock grazing to maintain fuelbreaks. Subsequent review determined that only four of the projects reviewed involved livestock grazing for fuelbreak maintenance. While some agencies have effectively used livestock grazing to maintain fuelbreaks in certain circumstances without significant environmental effects, the agencies believe they have not gathered sufficient data for its inclusion in this categorical exclusion. The agencies will continue to review the effects of this type of activity. Therefore, the hazardous fuels reduction categorical exclusion has been modified to remove "biological" and "grazing" from the list of included activities.

*Comment:* Some respondents stated that some prescribed burns have resulted in unanticipated effects such as burns too cool/hot to meet objectives and increases in noxious weeds/non-target grasses.

*Response:* The agencies' review of hazardous fuels reduction and fire rehabilitation projects found 11 cases where the actual results were other than what was predicted. These cases reported that prescribed fires burned either cooler or hotter than anticipated. Cooler than expected burns resulted in less fuel being consumed by fire, and, therefore, not completely achieving the project's fuel reduction objective. Hotter than expected burns resulted in increased scorch of tree crowns and more tree mortality than predicted. In some instances undesirable grass species occupied the site after treatment. In each of these cases, however, the unanticipated effects were found not to be significant.

*Comment:* Some respondents asked that the categorical exclusion for rehabilitation be modified to include, but not be limited to, specific suggested activities such as fire and safety hazard tree removal, natural or mechanical soil rehabilitation, and rehabilitation of recreation sites.

*Response:* The rehabilitation categorical exclusion does not include removal of fire and safety hazard trees. Removal of fire hazards is addressed in the hazardous fuels reduction categorical exclusion. Safety hazard

trees associated with roads, trails, recreation facilities, and administrative sites may be removed as part of routine maintenance of those facilities. Most agencies already categorically exclude these maintenance activities from further analysis and documentation in an environmental assessment or environmental impact statement. Post-fire soil rehabilitation, either natural or mechanical, and recreation site rehabilitation are included in the category of actions described in the rehabilitation categorical exclusion. The list of examples is not exhaustive.

*Comment:* Some respondents indicated a belief that the proposal for rehabilitation is unnecessary as existing legal frameworks provide for emergency fire rehabilitation.

*Response:* In January 2003, the Wildland Fire Leadership Council, a cooperative, interagency organization dedicated to achieving consistent implementation of the goals, actions, and policies in the National Fire Plan and the Federal Wildland Fire Management Policy, identified three types of fire recovery activities: Emergency stabilization; rehabilitation; and restoration. Emergency stabilization is defined as planned actions within one year of a wildland fire to stabilize and prevent unacceptable degradation to natural and cultural resources, to minimize threats to life or property resulting from the effects of a fire, or to repair/replace/construct physical improvements necessary to prevent degradation of land or resources. The rehabilitation categorical exclusion does not cover emergency stabilization. The Wildland Fire Leadership Council defines rehabilitation as "Post-fire efforts (<3 years) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire." The Wildland Fire Leadership Council defines restoration as the continuation of rehabilitation beyond three years. The rehabilitation categorical exclusion has been edited to be consistent with the Wildland Fire Leadership Council's definition of rehabilitation. The scope of fire rehabilitation activities allowed under the proposed categorical exclusion has not changed as a result of this new definition. What has changed is the time limit of three years for completion of those activities and a size limit of 4,200 acres.

*Comment:* Some respondents believe that rehabilitation activities should require an environmental impact statement. Others believe that these activities should not be carried out at

all. They say the use of heavy equipment generates noise, air and water pollution, soil compaction, vegetation and habitat changes, and ecosystem modifications greater than those which follow fires. Still others cite research studies (*e.g.*, Beschta, *et al.*, 1995) that report that there is generally no ecological need to act, and that quick actions may create new problems.

*Response:* The agencies have repeatedly conducted NEPA analyses for fire rehabilitation projects using the best available science. Based upon approximately 300 fire rehabilitation projects reviewed, the agencies have concluded that the category of activities described do not individually or cumulatively have a significant effect on the human environment. When using the rehabilitation categorical exclusion, agencies must review the proposed action to ascertain whether extraordinary circumstances exist.

While the Beschta report focused on salvage logging, there are also statements on rehabilitation practices in the report. This report questions, in general, the effectiveness of installation of hard structures and their siting on the landscape. This report also criticizes introduction of non-native species. Situations such as steep slopes, drinking water protection, and threats of invasive species may influence the need to act in local situations. Years of research since the Beschta report have informed current choices of technologies. The utility of fire rehabilitation practices chosen and the need for these practices will be decided on a site-specific basis using current knowledge and technologies. Thus, the projects selected, based on local scientific expertise, will both meet the environmental protection goals for the projects and have no potential to individually or cumulatively have a significant effect on the human environment.

*Comment:* Some respondents requested that herbicide use be allowed under the fire rehabilitation categorical exclusion, while others oppose herbicide use and even want an explicit prohibition against herbicide use on future activities that follow categorically excluded actions.

*Response:* the agencies will continue to review and analyze new information on the effects of herbicides used for hazardous fuel reduction. At the present time, the agencies have elected to not include actions involving herbicide use.

*Comment:* Some respondents are concerned that 30 days was insufficient time to review the proposed categorical exclusions along with the other proposals. Others criticized the release

of the proposal during the Christmas holidays.

*Response:* The agencies extended the comment period through January 31, 2003.

*Comment:* Some respondents expressed frustration with e-mail errors near the comment period deadline.

*Response:* The office receiving e-mail comments notes that many e-mail comments were received during the final days of the comment period. The office receiving the e-mail comments analyzed e-mail server performance. No problems were identified.

*Comment:* Some respondents said they do not believe that the agencies should block e-mail originating from a third party e-mail generator. These respondents said that such e-mail generators are important to groups interested in the environment and that such blocking prevents voices from being heard.

*Response:* The Forest Service regrets any difficulty experienced in submitting comments. The Forest Service is committed to electronic government and is a participant in the Regulations.gov project, which will allow third-party e-mail generators to submit electronic comments. In the meantime, the Forest Service has provided maintainers of public comment web pages with a simple procedure that they can use to keep their messages from being blocked by the Forest Service's spam filter. For more information please contact Sandra Watts, (703) 605-4695.

*Comment:* Some respondents stated that agencies should accept and consider all comments and not just those deemed to be "original and substantive."

*Response:* The agencies agree and accepted and considered all comments. Each comment was considered on its own merits.

*Comment:* Some respondents said that the 10-Year Comprehensive Strategy Implementation Plan should have been included with the proposal.

*Response:* The 10-Year Comprehensive Strategy Implementation Plan is available on a number of Web sites including <http://www.fs.fed.us/emc/hfi>. In addition, two contacts were provided in the **Federal Register** notice for additional information. These contacts were available to provide more information on this strategy.

*Comment:* Some respondents expressed a desire for public hearings to record testimony.

*Response:* The agencies believe that the public comment opportunity provided was the most efficient means of gathering public input for a proposal

of this nature and that public hearings were not necessary.

*Comment:* Some respondents wanted the agencies to specify which implementation tasks within the 10-Year Comprehensive Strategy Implementation Plan are addressed by the proposed fire management categorical exclusions.

*Response:* The categorical exclusions contribute to the implementation task, "Assess state and federal regulatory process governing projects and activities done in conformance with the 10-Year Comprehensive Strategy and Implementation Plan and identify measures to improve timely decision-making." This task is under "Goal Two—Reduce Hazardous Fuels."

*Comment:* Some respondents suggested that the agencies should provide opportunities for public involvement on the initiative following the release of the report from the General Accounting Office on the relationship between administrative appeals and fuels reduction activities.

*Response:* Because of controversy over whether appeals and litigation have delayed implementation of Forest Service hazardous fuels reduction activities, the General Accounting Office was requested to provide information to Congress on the number of decisions involving hazardous fuels reduction activities, the number of these decisions appealed or litigated, and the acreages affected. The agencies did not believe that this information would be helpful in defining these categorical exclusions, nor aid the public in commenting on the agencies' proposal.

*Comment:* Many respondents asked that the agencies adhere to various laws, executive orders, and agency policies such as: the Endangered Species Act, Clean Air Act, Clean Water Act, National Forest Management Act, Migratory Bird Treaty Act, National Historic Preservation Act, Forest Service Transportation System Management Policy, Northwest Forest Plan, the Grizzly Bear Recovery Plan, and executive orders on management of floodplains and wetlands, and Tribal consultation.

*Response:* The agencies agree. The level of NEPA consideration does not affect agency responsibility to follow applicable laws, regulations, executive orders, and policies. For example, categorically excluded hazardous fuels reduction and fire rehabilitation actions are reviewed for their potential to impact waters listed as impaired by State water quality agencies and for compliance with smoke management plans. When appropriate, the Forest Service and the Department of the

Interior agencies conduct appropriate consultation with Federal, State, and Tribal agencies for hazardous fuels and fire rehabilitation actions. For example, agencies must consult with Tribal governments when an action may have Tribal implications, even though it may be categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement. Agencies must also review the potential effects from these types of actions on threatened and endangered species and designated critical habitat and consult as appropriate with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration (NOAA), Fisheries. Similarly, categorically excluded actions are reviewed for potential effects on properties protected by the National Historic Preservation Act along with appropriate consultation with State and Tribal Historic Preservation Officers. Such consultations help ensure that cumulative effects across jurisdictions will not be significant.

*Comment:* Some respondents stated that rehabilitation work should only be carried out in areas already consumed by fires.

*Response:* The agencies agree. The proposed and final categorical exclusion for rehabilitation activities state that it is for rehabilitation of habitat, watersheds, historical, archaeological, and cultural sites and infrastructure damaged by wildfire and/or wildfire suppression.

*Comment:* Some respondents said that agencies should follow the 10-Year Comprehensive Strategy Implementation Plan and that additional laws or regulations are not needed.

*Response:* The categorical exclusions are prepared in conformity with the law (NEPA) and CEQ regulations. They contribute to the implementation task under the 10-Year Comprehensive Strategy Implementation Plan's "Goal Two—Reduce Hazardous Fuels," which says, "Assess state and federal regulatory process governing projects and activities done in conformance with the 10-Year Comprehensive Strategy and Implementation Plan and identify measures to improve timely decision-making." In addition, the hazardous fuels reduction categorical exclusion will apply only to activities identified through a collaborative framework as described in the 10-Year Comprehensive Strategy Implementation Plan.

*Comment:* Some respondents asked that the agencies work collaboratively with Federal and State agencies in developing proposed activities and

determining effects on wildlife resources prior to approval of specific activities.

*Response:* Hazardous fuels reduction activities will be identified collaboratively with governments and stakeholders, through a collaborative framework as described in 10-Year Comprehensive Strategy Implementation Plan.

*Comment:* Many respondents offered suggestions about Forest Service and Department of the Interior management and funding, where and how to focus hazardous fuels reduction efforts, the efficacy of various hazardous fuels treatments and post-fire rehabilitation measures, technologies for utilization of small-diameter trees, alternative fiber sources, fire suppression tactics, land acquisition, multiple-use, the President's Healthy Forests Initiative, and the 10-Year Comprehensive Strategy Implementation Plan.

*Response:* Respondents offered many creative and original suggestions that addressed issues beyond the proposal. The agencies provided these comments to appropriate personnel for their consideration.

*Comment:* Some respondents stated that the agencies should comply with Executive Order 12866 by assessing the economic costs and benefits of the initiative. Respondents say that this assessment should include the non-market costs of the initiative to landowners, businesses, communities, water quality, recreation, scenery, non-traditional forest products, and game.

*Response:* In compliance with Executive Order 12866, the agencies have determined that these categorical exclusions will not have an annual effect of \$100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments. The economic effect expected to result from this action is a reduction in the administrative burden of preparing unnecessary environmental assessments and findings of no significant impact, and benefits to the environment and nearby communities as a result of expeditious fuel reduction and post-fire rehabilitation activities. These benefits were not quantified due to the level of uncertainty associated with the amount of time saving and the number of projects that would use these categorical exclusions.

### Conclusion

The USDA Forest Service and the Department of the Interior find that the categories of action defined in the categorical exclusions presented at the

end of this notice do not individually or cumulatively have a significant effect on the human environment. The agencies' findings is first predicated on the reasoned expert judgment of the responsible officials who made the original findings and determinations in the hazardous fuels and fire rehabilitation projects reviewed; the resource specialists who validated the predicted effects of the reviewed activities through monitoring or personal observation of the actual effects; synthesis of peer-reviewed scientific publications; and finally, the agencies' belief that the profile of the past hazardous fuels reduction and fire rehabilitation activities represents the agencies' past practices and is indicative of the agencies' future activities.

### Regulatory Certifications

#### *Environmental Impact*

These categorical exclusions add direction to guide field employees in the USDA Forest Service and the Department of the Interior regarding procedural requirements for National Environmental Policy Act (NEPA) documentation for fire management 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, and the USDA Forest Service and the Department of the Interior have provided an opportunity for public review and have consulted with the Council on Environmental Quality during the development of these categorical exclusions. The determination that establishing categorical exclusions do 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*

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

This action to add two categorical exclusions to the agencies' NEPA procedures will not have an annual effect of \$100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments. This action may interfere with an action taken or planned by another agency or 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.

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

#### *Federalism*

The agencies have considered these categorical exclusions under the requirements of Executive Order 13132, Federalism, and have concluded that they conform 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 agencies have determined that no further assessment of federalism implications is necessary.

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

These categorical exclusions do not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore advance consultation with Tribes is not required.

### *No Takings Implications*

These categorical exclusions have 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 proposed categorical exclusions do 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 these categorical exclusions do 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 agencies have assessed the effects of these categorical exclusions on State, local, and Tribal governments and the private sector. These categorical exclusions do 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*

These categorical exclusions have been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that these categorical exclusions do not constitute a

significant energy action as defined in the Executive Order.

### *Controlling Paperwork Burdens on the Public*

These categorical exclusions do 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, impose 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.

Dated: May 29, 2003.

For the Forest Service, U.S. Department of Agriculture.

**Sally D. Collins,**

*Associate Chief.*

Dated: May 29, 2003.

For the U.S. Department of the Interior:

**P. Lynn Scarlett,**

*Assistant Secretary—Policy, Management, and Budget.*

### **Categorical Exclusions**

**Note:** The USDA Forest Service and the Department of the Interior have issued the categorical exclusions in their respective NEPA procedures. The categorical exclusions appear in Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures, ID 1909.15–2003–1, and Department of the Interior Manual 516 DM, Chapter 2, Appendix 1, Departmental Categorical Exclusions. Reviewers who wish to view the entire chapter 30 of FSH 1909.15 may obtain a copy electronically from the USDA Forest Service directives page on the World Wide Web at <http://www.fs.fed.us/im/directives/>. Reviewers who wish to view the Department of the Interior Manual 516 DM may obtain a copy electronically from the Department of the Interior page at <http://elips.doi.gov/table.cfm>.

Following is the text of the two categorical exclusions:

- Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical methods for crushing, piling, thinning, pruning,

cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities:

- Shall be limited to areas (1) in wildland-urban interface and (2) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface;

- Shall be identified through a collaborative framework as described in “A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan;”

- Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans;

- Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness;

- Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction.

- Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities:

- Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans;

- Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and

- Shall be completed within three years following a wildland fire.

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