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Forest Service

**National Environmental Policy Act
Documentation Needed for Limited
Timber Harvest; Notice**

DEPARTMENT OF AGRICULTURE**Forest Service**

RIN 0596-AB88

National Environmental Policy Act Documentation Needed for Limited Timber Harvest**AGENCY:** Forest Service, USDA.**ACTION:** Notice of final interim directive.

SUMMARY: The Forest Service gives notice of revised procedures for implementing the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations. These revised procedures are being issued by Interim Directive (ID) 1909.15-2003-2 to Forest Service Handbook 1909.15, Chapter 30, Section 31.2, which describes 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.

This ID adds three such categories of actions to the agency's NEPA procedures that are applicable to small timber harvesting projects: Category 12 allows harvest of live trees not to exceed 70 acres with no more than 1/2 mile of temporary road construction; Category 13 allows the salvage of dead and/or dying trees not to exceed 250 acres with no more than 1/2 mile of temporary road construction; and Category 14 allows commercial and non-commercial felling and removal of any trees necessary to control the spread of insects and disease on no more than 250 acres with no more than 1/2 mile of temporary road construction.

EFFECTIVE DATE: This interim directive is effective July 29, 2003.

ADDRESSES: The new Forest Service categorical exclusions are set out in Interim Directive (ID) 1909.15-2003-2, which is available electronically via the World Wide Web/Internet at <http://www.fs.fed.us/im/directives>. Single paper copies are available by contacting Chris Holmes, Forest Service, USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW., Washington, DC 20250-1104. Additional information and analysis can be found at <http://www.fs.fed.us/emc/lth>.

FOR FURTHER INFORMATION CONTACT: Chris Holmes, USDA Forest Service, Ecosystem Management Coordination Staff, (202) 205-1006. 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:**Background**

The Forest Service is responsible for managing 192 million acres in national forests, national grasslands, and other areas known collectively as the National Forest System. The Chief of the Forest Service, through a line organization of regional foresters, forest supervisors, and district rangers, manages the surface resources and, in some instances, the subsurface resources of those lands. The Forest Service, in compliance with the Council on Environmental Quality (CEQ) regulations at Title 40, Code of Federal Regulations, sections 1507.3 and 1508.4 (40 CFR 1507.3, 1508.4), is authorized to identify categories of actions that it has found to have no individual or cumulatively significant effect on the human environment.

On January 8, 2003, the Forest Service published a proposal (68 FR 1026) to revise its directives for implementing the National Environmental Policy Act (NEPA) and CEQ regulations contained in Forest Service Handbook (FSH) 1909.15, Chapter 30, Section 31.2. This proposal would add three categories of actions to this section for limited timber harvesting. These categorical exclusions were numbered 10, 11, and 12. Since the publication of the proposal, the agency has added two new categorical exclusions for fire management activities, which were numbered 10 and 11 (68 FR 33814, June 5, 2003). Accordingly, these categorical exclusions for limited timber harvest have been renumbered 12, 13, and 14.

Category 12 allows harvest of live trees not to exceed 70 acres with no more than 1/2 mile of temporary road construction. The purpose of this category is to allow low-impact silvicultural treatments through timber harvest. This category cannot be used for even-aged regeneration harvest or vegetation type conversion. Even-aged regeneration harvests generally remove most of an existing stand of trees. An example would be the seed tree method of cutting where all trees in a stand are removed except for a few dominant seed-producing trees. Vegetation type conversion is designed to change existing vegetative cover to another type, such as converting a timber stand to an open field. Category 12 does not include these types of treatments. Examples of projects that could be implemented under Category 12 include thinning of overly dense stands of trees

to improve the health and vigor of the remaining trees, and removing individual trees for forest products or fuelwood. Within the 70 acres, this category allows incidental removal of trees for temporary roads, landings, and skid trails as determined by the Forest Service in the timber sale contract specifications.

Category 13 allows the salvage of dead and/or dying trees not to exceed 250 acres with no more than 1/2 mile of temporary road construction. This categorical exclusion allows salvage harvest in areas where trees have been severely damaged by forces such as fire, wind, ice, insects, or disease and still have some economic value as a forest product. The use of Category 13 is limited to salvage of dead and dying trees by timber purchasers. Within the 250 acres, this category allows incidental removal of trees for temporary roads, landings, and skid trails as determined by the Forest Service in the timber sale contract specifications.

Category 14 allows commercial and non-commercial felling and removal of any trees necessary to control the spread of insects and disease on no more than 250 acres with no more than 1/2 mile of temporary road construction. This category allows the agency to apply harvest methods to control insects and disease before they spread to adjacent healthy trees. Within the 250 acres, this category allows incidental removal of trees for temporary roads, landings, and skid trails as determined by the Forest Service in the timber sale contract specifications. Noncommercial activities would not include temporary road construction.

In the development of these categorical exclusions, the Forest Service reviewed the effects of 154 projects, with actions similar to those allowed in the three categories. A few of the projects reviewed resulted in minor soil disturbance and compaction. A few other projects reviewed showed that small numbers of noxious weeds or invasive plants entered the area where the trees had been removed. Based upon a post-implementation field review of these projects by professional experts, the responsible officials found that these impacts were within forest plan standards and were not significant in the NEPA context (40 CFR 1508.27).

With the exception of one project reporting cumulative visual impacts, environmental effects were localized and of limited duration. The visual impacts of this one project were found to be cumulative with those of an old timber harvest visible from a scenic river. These visual impacts were

determined to not be significant since they still met scenery management objectives for the river corridor.

Based upon their post-implementation field review of these projects along with past, present, and reasonably foreseeable future actions, the responsible officials found that the individual and cumulative effects of the projects reviewed were not significant in the NEPA context. The Forest Service, therefore, concluded that the activities described in the three categories do not individually or cumulatively have a significant effect on the human environment.

Activities conducted under these categorical exclusions must be consistent with agency and Departmental procedures and with applicable land and resource management plans, and they must comply with all applicable Federal, Tribal, and State laws for protection of the environment. These categorical exclusions shall not apply where there are extraordinary circumstances, such as potentially significant effects on the following: Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species; floodplains, wetlands or municipal watersheds; Congressionally designated areas such as wilderness, wilderness study areas, or national recreation areas; inventoried roadless areas; research natural areas; American Indian and Alaska Native religious or cultural sites; archaeological sites, or historic properties or areas (FSH 1909.15, ch. 30, sec. 30.3, para. 2).

These categorical exclusions differ from those recently promulgated for hazardous fuels reduction and fire rehabilitation (68 FR 33814, June 5, 2003). While some small fuel reduction projects may fit the new categories 12 and 13, most fuel reduction projects done under the auspices of the National Fire Plan will be larger in scope than would be allowed under categories 12 and 13. Most projects implementing the National Fire Plan are larger in size, and involve a combination of activities such as thinning, pruning, and prescribed burning, in addition to timber harvest. Activities using categories 12, 13, and 14 are limited to timber harvest and therefore have a more narrow application.

A 60-day comment period was provided for the proposed interim directive setting out these categorical exclusions (68 FR 1026, January 8, 2003). In addition, the Forest Service gave direct notice of the proposal and invited comment from national

organizations and Federal agencies. A one-page notice was faxed to 73 interested groups. These groups included environmental organizations such as the Defenders of Wildlife, professional societies such as the American Fisheries Society, timber groups such as the Intermountain Forest Industry Association, Federal agencies such as the Environmental Protection Agency, and State organizations such as the Council of State Governments.

Approximately 16,700 comment letters were received from individuals; representatives of Federal agencies; Tribes; State and local government agencies; environmental groups; professional organizations; and both commodity and non-commodity groups. The responses were form letters as well as unique individual letters, some sent electronically and others mailed as paper copy. All suggestions and comments have been reviewed and considered in preparation of this notice of the final interim directive.

In response to comments on the proposed categorical exclusions, five revisions were made to the original proposal.

In Category 12, two changes have been made. (1) The acreage limitation has been changed from 50 to 70. This was based on comments that recommended using the mean of the acreage of the projects reviewed, as was done for the other categories. In the proposal, the rationale for 50 acres was that it was a conservative adjustment to the mean of 70. Public comment questioned the need for this reduction. Use of the mean reflected the consideration by the agency that this acreage is well within the range of acreages in the project data used to support these categories. (2) Also in Category 12, the example concerning fuel loading formerly in paragraph b was removed. Since the original proposal, the Forest Service adopted Category 10 (68 FR 33824, June 5, 2003) that better addresses situations in which this example would be used. Category 10 is found in Interim Directive (ID) 1909.15–2003–1 to Forest Service Handbook 1909.15, Chapter 30, Section 32.1.

In Category 14, the following changes have been made: (1) The restriction of two tree lengths was removed for the harvesting of healthy adjacent trees; (2) the term “green” was changed to “live, uninfested/uninfected trees” for clarification; and (3) “non-commercial” was added to make it clear that the category can apply to “cut and leave” insect and disease control activities. The removal of the restriction of two tree lengths for the harvesting of healthy

adjacent trees was done because this restriction applied primarily to management for control of southern pine beetle and may not be appropriate for outbreaks of other pests such as the sudden oak death pathogen, emerald ash borer, and many bark beetle species other than southern pine beetle. The provision for noncommercial “cut and leave” activities is appropriate for situations in which felling of trees is needed to reduce populations of insects, but sales of that timber would not be economically viable.

Comments on the Proposal

Public comment on the proposal addressed a wide range of topics, many of which were directed generally at the issue of timber harvest and particularly salvage harvest on National Forest System lands. Many people supported the proposal or favored further expansion, while many others 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 conclude that the categories of limited tree harvest do not have significant environmental effects.

Response: These comments were in support of the proposal and need no specific response.

Comment: A number of respondents felt that the Forest Service had not adequately demonstrated a need for the proposed timber management categorical exclusions (CEs). Some respondents requested that the agency demonstrate that the current National Environmental Policy Act (NEPA) process is unduly burdensome for these types of projects.

Response: The categorical exclusions are provided as a tool to improve planning efficiency (40 CFR 1500.4(p) and 1500.5(k)). From 1981 through 1998 the Forest Service categorically excluded some limited timber harvesting activities from documentation in an environmental assessment or environmental impact statement using the category found in Forest Service Handbook (FSH) 1909.15, section 31.2, paragraph 4 (Category 4). Small timber sales implemented through these categorical exclusions provided local managers with the flexibility to respond to localized insect

and disease infestations, improve forest health through thinning, salvage dead and dying trees, and provide merchantable forest products. This category was vacated when a District Court found that there was insufficient evidence in the agency's administrative record to support its establishment. The government did not appeal the District Court's ruling on the case. The loss of this category has resulted in small timber harvests, without the potential for significant impacts, requiring preparation of at least an environmental assessment in order to proceed. This has resulted in extended timeframes and the expenditure of undue energy and funding to complete minor timber harvesting projects.

Comment: Some respondents commented that the proposal to expand the number of categories was an attempt by the agency to circumvent NEPA compliance.

Response: The use of categorical exclusions is not a circumvention of NEPA compliance. NEPA and its implementing regulations envision a process of disclosing significant environmental impacts of major Federal actions. To avoid repetitive documentation of known non-significant effects of minor actions, the Council on Environmental Quality (CEQ) regulations provide a process for defining categories of activities whose effects are normally exempt from documentation in an environmental assessment or an environmental impact statement. The process of defining these categories is an integral part of the NEPA regulatory framework. In this case, the documented review of activities similar to those included in these categories supports the determination that the three categories defined here describe actions which do not individually or cumulatively have a significant effect on the human environment and meet the intent of the CEQ regulations that govern the establishment of categorical exclusions. The agency is establishing these categories because the appropriate implementation of NEPA requires concentrating agency analysis efforts on major Federal actions and not expending scarce resources analyzing agency actions where experience has demonstrated the insignificance of effects.

Comment: Some respondents believed that Forest Service use of these categories would allow the agency to bypass important procedural steps for projects, such as the notification and involvement of the general public, State agencies, and Tribal governments prior to implementation of proposed projects.

Response: As directed by CEQ regulations (40 CFR 1507.3), the Forest Service has developed agency policy for implementing the NEPA process. As noted in Chapter 10, section 11, of FSH 1909.15: "Although the Council on Environmental Quality (CEQ) Regulations require scoping only for EIS preparation, the Forest Service has broadened the concept to apply to all proposed actions." Chapter 30, section 30.3(3), of FSH 1909.15 further states: "Scoping is required on all proposed actions, including those that would appear to be categorically excluded." As part of the scoping process for proposals potentially covered by these categorical exclusions, the responsible official must determine the extent of interest and invite the participation of affected Federal agencies, affected Tribes, State and local agencies, and other interested parties, as appropriate. The Forest Service is committed to fulfilling its public involvement responsibilities with all parties potentially interested in projects qualifying for these categorical exclusions. The agency is working on additional methods to broaden public awareness of all proposed activities undergoing any level of NEPA review (CEs, EAs, and EISs) through electronic Web-based technology. It is the line officer's responsibility to invite participation of all interested and affected individuals and groups and to do so by whatever method or technology is effective to achieve participation of those individuals or groups.

Comment: Several respondents expressed concern that effects on Tribal governments had not been appropriately analyzed in the rulemaking process as required by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.

Response: The Forest Service recognizes it has trust responsibilities towards Tribes and this responsibility includes a duty to consult with Tribes to obtain meaningful and timely input on agency actions having substantial direct impacts on Tribes. Executive Order 13175 defines policies that have tribal implications as regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The addition of these categorical exclusions to the agency's NEPA procedures is concerned with the level of documentation required for specific types of actions. As such, these policies

do not have Tribal implications as defined in the Executive Order.

Effects on Tribal governments may occur on specific sites where the categories will be used and where there are Tribal interests. Tribes will be contacted during the scoping process and appropriate government to government consultations will be conducted on those projects with Tribal implications even though the project may be categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement.

Comment: Many respondents asked that the Forest Service 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 on Tribal consultation.

Response: The Forest Service agrees. The level of NEPA documentation does not affect agency responsibility to follow other applicable laws, regulations, Executive orders, and policies. For example, categorically excluded timber sales are reviewed for their potential to impact waters listed as impaired by State water quality agencies. When appropriate, the Forest Service conducts appropriate consultation with Federal, State, and Tribal agencies for these projects. For example, agencies must also review the potential effects from these types of actions on threatened and endangered species and on designated critical habitat and consult as appropriate with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration Fisheries. Similarly, categorically excluded actions are reviewed for potential effects on properties protected by the National Historic Preservation Act, and consultation is conducted as appropriate with State and Tribal Historic Preservation Officers. Such consultations help ensure that cumulative effects across jurisdictions will not be significant.

Comment: Numerous respondents commented on the role that "special interest groups" play in affecting the management of the national forests. Some individuals assumed that these categorical exclusions were dictated by industry groups and objected vigorously to commodity use of national forests. Others commented on the role that they

saw environmental groups playing in the direction of national forest management over the past several decades, especially in reducing commodity production from national forests.

Response: NEPA and its implementing regulations outline a process by which Federal Government decision-makers consider the potential environmental impacts of proposals. The NEPA process is applied to proposed actions that are governed by both the enabling legislation and the annual appropriation acts that direct agency actions. Forest Service management of National Forest System lands is founded in legislation such as the Organic Act of 1897, the Bankhead-Jones Act, the Multiple Use Sustained Yield Act, and the National Forest Management Act.

Many comments arguing either for restriction or for expansion of the agency's categorical exclusion authority are based on differing perspectives on the appropriate uses of national forests. The agency is required to manage for multiple uses and to consider the environmental effects as required in the NEPA statute.

These categorical exclusions will allow the Forest Service to improve its efficiency by reducing the delay and paperwork for proposed actions that, in the absence of extraordinary circumstances, do not individually or cumulatively have a significant impact on the human environment (40 CFR 1500.4(p), 1500.5(k)). In addition to complying with environmental statutory requirements, the proposed projects must be consistent with all other agency legislative and regulatory direction and must be consistent with land and resource management plans that govern activities on each national forest. Those projects that are appropriately categorically excluded can therefore meet goals of the multiple-use mission without the preparation of an environmental assessment or an environmental impact statement.

Comment: Many respondents expressed opinions on the issue of subjecting decisions allowed under these categorical exclusions to the public notice, comment, and appeal process. Some respondents considered the public notice, comment, and appeal process as absolutely essential for responsive decision-making. Others felt the appeals process is unnecessarily burdensome and lengthy, leading to agency inability to conduct land management activities in a timely manner.

Response: The agency recently completed rulemaking to revise the

agency's administrative appeals process at 36 CFR part 215, which is mandated by the Appeal Reform Act (ARA) of 1993. The agency's interpretation of public notice, comment, and appeal opportunity under the ARA is outlined in the **Federal Register** notice for the final rule (68 FR 33582, June 4, 2003). The agency believes that including affected and interested individuals in project planning early in the process is more effective than applying the additional procedures for notice, comment, and appeal contained in the appeals rule and that applying the provisions of the appeals rule to categorically excluded actions is neither intended nor required by the ARA. Thus, proposed activities that are categorically excluded are not subject to the requirements of the appeals rule at 36 CFR 215.4(a) and 36 CFR 215.12(f).

Comment: A number of respondents raised issues related to the possible significant cumulative impacts of projects under these categories or the impacts of implementing such projects in combination with other activities under other authorities. Most of the statements were general, but some mentioned specific impacts such as those on wildlife or water quality. Some of these respondents reiterated quotes contained in the **Federal Register** notice for the proposal (68 FR 1026, January 8, 2003) that noted that categorically excluded actions must not individually or cumulatively have a significant effect on the human environment.

Response: For each of the 154 timber sales considered in defining these categories, the question of whether there were significant cumulative effects was specifically addressed. The reviewers examined the possibility of significant cumulative effects from these activities and all other activities within the appropriate boundaries for potential resource effects. For example, based on assessment of wildlife conditions in the local habitat area, or water quality impacts relative to a watershed, significant cumulative effects were not observed.

There are many statutory requirements and agency policies and guidelines that protect the environment from both individual and cumulative environmental effects. Many of these are described in the document "Detailed Rationale for Categorical Exclusions" located at <http://www.fs.fed.us/emc/hfi/rationale.pdf>.

The previous use of Category 4 was limited (it was applied to only 0.03% of National Forest System land in 1998) due to restrictions in the event of extraordinary circumstances, as well as other factors in forest plan standards

and guidelines that limit forest management activities. These same factors are expected to influence the number of projects in the future.

Some public concerns with regard to environmental effects, both individual and cumulative, include those regarding wildlife populations and water quality. Soil and water resources are protected during timber harvest projects through implementation of State and EPA approved Best Management Practices (BMPs) as described in a later response.

With regard to wildlife, the Forest Service is authorized by the Endangered Species Act (ESA) to carry out programs for the conservation of endangered and threatened species, and must ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any endangered, threatened, or proposed species, or result in the destruction or adverse modification of designated critical habitat.

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

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

Comment: A number of concerns were expressed with regard to retention of snags, retention of downed woody material, and old growth. These concerns related to both wildlife habitat and ecosystem structure and function. There were also concerns related to visual impacts of the activities covered in the proposed categories.

Response: Forest plan standards and guidelines address structural components of wildlife habitat; for example, snag retention, coarse woody debris left onsite, and old growth retention. They also address visual management. All Forest Service actions within a national forest, including

categorically excluded actions must by statute be consistent with the forest plan (16 U.S.C. 160–4(i)).

Comment: Several respondents asked that the agency conduct NEPA analysis for this proposal, including a cumulative effects analysis on the impacts of this proposed ID and other recent rulemakings.

Response: A response to this comment is found in the Regulatory Certifications section, titled “Environmental Impact.” The Council on Environmental Quality (CEQ) does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA.

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

Response: Forest Service NEPA procedures in FSH 1909.15 and current land and resource management planning regulations at 36 CFR part 219 do not presently provide a categorical exclusion for revisions or amendments to land and resource management plans.

The Forest Service may, if it finalizes and implements its planning rule as proposed (67 FR 72816, December 6, 2002), 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 (EA) or environmental impact statement (EIS). The public would have an opportunity to review and comment on such an amendment to the Forest Service Handbook if such a categorical exclusion is proposed. 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 1500.4(p) and 1508.4). Any action that is not consistent with an applicable land and resource management plan 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, both for land and resource management plans and for project-level planning.

Comment: Some respondents said the application of extraordinary circumstances screens is insufficient and open to abuse. Others stated a belief that timber harvests automatically trigger analysis and documentation in an EA or EIS since they contain elements specifically listed as requiring this level of documentation, including “controversy,” “uncertainty,” and “precedent for future action” and, as such, cannot be categorically excluded.

Response: When using these three categorical exclusions, the responsible officials will consider, on a project-by-project basis, whether or not any of the Forest Service extraordinary circumstances apply. The responsible official will prepare a project file and decision memo that will be available for public review (FSH 1909.15, ch. 30, sec. 32.3). The decision memo contains the responsible official’s rationale for categorically excluding an action and selecting that particular category, and includes a determination that no extraordinary circumstances exist.

Years of experience by the Forest Service with Category 4 and earlier categories, including both low-impact silvicultural and sanitation/salvage projects, indicate that categories 12, 13, and 14 would not set a precedent. In addition, 32 of the projects reviewed were documented using EAs and Findings of No Significant Impact (FONSIs). For these projects, the FONSI indicated that the effects were not significant. The EAs for these projects included an assessment of the degree of the controversy about effects, uncertainty about effects, and precedent for future action, and found them to be not significant (40 CFR 1508.27).

Comment: One request for correction of information under the USDA Information Quality Guidelines was received in response to the proposal for categorical exclusions for small timber harvest. Concerns were raised by petitioners under the Data Quality Act that “measurement” must be used instead of “observation” to comply with USDA Information Quality Guidelines. The following is a response to that concern. Both the request for correction, and a more detailed response to the request than that found below, can be found at <http://www.fs.fed.us/goi>.

Response: The Forest Service has evaluated the assessment of the 154 projects that provides the basis for its categorical exclusions, and found that this assessment complies with the USDA Information Quality Guidelines. The USDA Information Quality Guidelines, under “Objectivity of Regulatory Information,” include the following: “Use reasonably reliable and

reasonably timely data and information (e.g., collected data such as from surveys, compiled information, and/or expert opinion).” The expert opinion used to generate the observations in question is documented at <http://www.fs.fed.us/emc/lth>. Specifically, the use of local expertise in resource disciplines such as soils, hydrology, fisheries biology, and wildlife biology is documented in the information on the study of the 154 projects. These experts are highly trained, usually holding degrees in their specialties at the bachelor’s or master’s level. They are also provided ongoing training to assure currency in their discipline. They are familiar with current literature relating to their specialty and local area, as well as applicable laws, regulations, policies, and land and resource management plan standards and guidelines required for protection of the environment. They have field knowledge of local conditions. The combination of this expertise, complemented by the interdisciplinary approach used by the Forest Service in managing environmental resources, render the specialists well qualified to make site-specific judgments as to the effects of a particular practice in a particular area.

In addition, where the local biologist finds that there is potential for an effect on a federally listed species, its designated critical habitat, or species proposed for listing, the project would be evaluated by professionals from the U.S. Fish and Wildlife Service or National Oceanic and Atmospheric Administration Fisheries. A categorical exclusion would not be used if the agency determines that the action may adversely affect listed species, species proposed for listing, critical habitat, or proposed critical habitat.

The USDA Information Quality Guidelines, under “Objectivity of Regulatory Information” also includes considerations of transparency. For this interim directive, the data from the 154 projects were available to the public upon request and on the Web during the comment period.

Comment: Some respondents questioned the size of the sample and the procedures used in selecting the 154 projects evaluated in determining that these categories of activities will have insignificant effects on the human environment.

Response: The Forest Service reviewed 154 small timber sale activities which could potentially have been included in these categories. To identify projects for review, the Forest Service requested field units to review a sample of timber harvests that would have qualified under former Category 4

or were similar in size and scope. Field units were asked to send the Washington Office any results from past monitoring efforts on the effects of: (1) projects that were performed under Category 4, or (2) projects that were done with an environmental assessment (EA) or environmental impact statement (EIS) but fit the requirements of Category 4, or were similar in size and scope. In the request, there was no specific time period for the completion of projects selected.

If past monitoring data did not exist, then each forest that has historically used timber harvest CEs, or projects that are similar in size and scope to Category 4, were asked to monitor at least two randomly selected CEs or projects as defined above. Monitoring was accomplished by reviewing the site after the project was completed based on the professional observations of resource specialists and line officers. All monitoring results were submitted using Web-based forms designed specifically for this monitoring effort. Both individual and cumulative environmental effects were assessed as part of this monitoring procedure. Where forests had only one or two projects that met the request criteria, those projects were selected. Where forests had more than two projects that met the request criteria, projects were chosen using a process that was unbiased with respect to the level of potential environmental effects. A description of how each project was selected is available on the Web site <http://www.fs.fed.us/emc/lth>.

Comment: Some respondents suggested that the Forest Service monitor categorically excluded limited timber harvest activities 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. Forest land and resource management plans already provide for monitoring of management activities to determine compliance with applicable laws, regulations, and standards and guidelines; effectiveness of project implementation, including any specified mitigation measures; validation of models and assumptions used in the planning processes; and environmental impacts. Projects implemented under these categories will be included in these ongoing monitoring efforts.

Comment: Some respondents suggested that, without NEPA analysis, categorically excluded actions would

not consider current scientific information and managers would be unaware of extraordinary circumstances that preclude the use of a categorical exclusion.

Response: The Forest Service has repeatedly conducted NEPA analyses for timber harvest projects using the best available science. Based upon the projects reviewed for these categorical exclusions, the agency concluded that these analyses describe categories of actions which do not individually or cumulatively have a significant effect on the human environment.

Consistent with existing direction, the Forest Service must conduct sufficient review to determine that no extraordinary circumstances exist when using categorical exclusions (FSH 1909.15, sec. 30.3). This determination includes appropriate surveys, use of the best available science, appropriate consultation with Tribes, and coordination with agencies that have regulatory responsibilities under other statutes such as the Endangered Species Act, the National Historic Preservation Act, Clean Water Act, and Clean Air Act.

Comment: Some respondents believed that limited timber harvesting for salvage purposes should not be carried out at all. They said the use of heavy equipment generates noise, air and water pollution, soil compaction, vegetation and habitat changes, and ecosystem modifications greater than the event causing the mortality. Still others cited research studies (e.g., Beschta, R.L.; Frissell, C.A.; Gresswell, R. [and others]. 1995. Wildfire and salvage logging: recommendations for ecologically sound post-fire salvage logging and other post-fire treatments on Federal lands in the West. Corvallis, OR: Oregon State University) that report that there is generally no ecological need to act, and that quick actions may create new problems. Some cited other research studies regarding environmental impacts of timber harvesting.

Response: Ecological reasons are not the only reasons for an agency to take action. Salvaging dead and dying timber provides commercial forest products in support of the Forest Service's legally mandated mission. Numerous laws, including the Multiple Use Sustained Yield Act and the National Forest Management Act, establish the basis for managing national forests in a manner to provide goods and services. In addition, salvage activities, in certain situations, can reduce fire hazard from excessive fuel buildup, or prevent the buildup of insect populations in accumulations of dead trees that can

then attack healthy trees; e.g., the spruce beetle. Severe fires and insect infestations can lead to reduced scenic, recreational, wildlife, and timber values on Federal and neighboring Tribal, State, or private land. Public comment from neighbors of Forest Service land expressed their concerns regarding risks to their property from untreated fire or insect hazards on neighboring Forest Service land.

As the Beschta *et al.* report points out, salvage activities can have negative environmental impacts, depending on the condition of the site, the harvesting system, time of the year, and many other factors. However, practices and guidelines have been developed with regard to soil and water protection and wildlife habitat, on appropriate sites that will lead to no significant effects. The Forest Service agrees with Beschta *et al.* that care should be taken in designing salvage projects, as well as other timber sale projects, and the agency has an extensive array of guidelines and procedures to prevent and mitigate negative environmental impacts during these activities.

The fact that none of the 154 sampled projects showed significant environmental impacts indicates that these practices are effective at reducing or eliminating environmental impacts. As described in the rationale for the categorical exclusion for fuels reduction projects <http://www.fs.fed.us/emc/hfi/rationale.pdf>, thinning methods are used for forest stand improvement, wildlife habitat improvement, and hazardous fuels reduction. The body of knowledge concerning these practices is mature. Scientific research and evaluations of project monitoring are reflected in laws, regulations, and agency policy related to implementation of these activities. Some of the many laws, regulations, and policies are described in the rationale document.

One example of these environmental safeguards that apply to proposed timber harvest projects that are described in categories 12, 13, and 14 is the protection of soil and water resources. This protection is provided through implementation of State and EPA approved Best Management Practices (BMPs) as well as forest plan standards and guidelines. BMPs are site-specific design and operating criteria intended to maintain soil productivity and water quality to State standards. Federal agencies incorporate BMPs into project design. For example, to minimize soil compaction, puddling, rutting, and gully with resultant sediment production and loss of soil productivity, the project supervisor and/or Contracting Officer are responsible

for determining when the soil surface is unstable and susceptible to damage and is then responsible for suspending or terminating operations.

BMPs also establish practices for addressing soil and water quality issues associated with temporary roads. BMPs are codified in regional handbooks and provide practices for the treating and decommissioning of roads to reduce impacts on sedimentation.

EPA states that BMPs are the primary mechanism for control of non-point source pollution and compliance with the Clean Water Act. Monitoring of BMP effectiveness has historically been accomplished informally as a part of each project review. Several States also conduct their own more extensive programs to ensure the maintenance of water quality.

The harvesting practices used and mitigation measures implemented in salvage projects will be decided on a site-specific basis by technical specialists who routinely use current scientific literature and technologies, as well as their local knowledge of the soil, wildlife and other environmental conditions in an area. While individual research studies are used by technical specialists to predict environmental effects, site-specific information about practices and local conditions is necessary to make expert judgments about potential environmental effects of a project. In addition, the scope and context of a specific project are considered when determining the significance of environmental impacts of that project under NEPA (40 CFR 1508.27).

Comment: Several respondents expressed concern over the number and location of categorically excluded limited timber harvest activities that could be implemented within a given area or a limited timeframe. Some respondents raised concerns that the agency could misuse the categories by segmenting larger projects into sizes that qualify under the CEs. Some respondents noted that such segmentation would violate CEQ regulations.

Response: The responsible official is required to properly identify the characteristics of the proposed action (FSH 1909.15, ch. 10, sec. 11.2). The agency adopted the following from the CEQ regulations for all their proposals that may undergo environmental review, including the documentation for categorical exclusions, "proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement." The Forest Service also adopted the

CEQ definition for determining the scope of a proposed action as defined at 40 CFR 1508.25, which discusses connected and related actions.

Consequently, segmenting a larger project into smaller projects in order to meet the acreage requirements and be considered under these CEs is contrary to Forest Service guidance. Agency oversight of the application of these categories through internal reviews such as Chief's, regional, and forest reviews, emphasizes these compliance requirements and will prevent abuses.

Comment: Some respondents indicated they believe the Forest Service should set limits on the volume that may be harvested under these categories since it may be possible to exceed the volume available under the previous Category 4 authorization.

Response: In gathering data on the 154 projects used to define the limits of these categories, it was evident that potential environmental impacts are better predicted using acres treated rather than the total volume of timber removed, regardless of acreage. Harvesting a given volume of timber from one acre is likely to have different environmental impacts than harvesting the same volume from tens or hundreds of acres. In addition, timber volumes are estimated in advance of the sale, and there can be errors associated with those predictions; an acreage limit is not as subject to the uncertainties of estimation. Finally, acreage limits are easier to control and administer in the field and easier to describe to the public. It is possible that individual projects would exceed the volume limitations in the previous Category 4. The data from the 154 surveyed projects support the finding that there will be no significant environmental impacts from implementing actions within these acreage limitations.

Comment: Some respondents would prefer to see the acreage limitation of the categories decreased while others would like to see them increased.

Response: To determine the potential impacts of limited timber harvesting activities, data were gathered from 154 timber sales that could possibly have been included in one of the proposed categories. None of the projects evaluated had significant impacts on the human environment. Rather than setting the acreage limits at the limits of the range evaluated, the Forest Service believes it is prudent and conservative not to exceed the mean of acres treated under each of the proposed categories. In the original proposal, the acreage limit of 50 for Category 12 was reduced from the actual mean of 70. Public comment questioned the need for this

reduction. Use of the mean reflected the consideration by the agency that the acreage is well within the range of acreages in the project data used to support these categories.

Comment: Some respondents indicated that there should be no restriction on new road construction, while others believed 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 1/2 mile of low-standard road should be allowed, while others believed that roads should be constructed only in rare cases.

Response: In accordance with 36 CFR 212.1, new road construction is defined as an activity that results in the addition of forest classified or temporary road miles. Timber harvest activities involving the addition of forest classified road miles are not included in the proposed categorical exclusions. Proposals for timber harvest activities that involve new classified road construction would be analyzed and documented in an EA or EIS. As defined in 36 CFR 212.1, temporary roads are roads that are authorized by contract, permit, lease, other written authorization, or emergency operation, are not intended to be part of the Forest Service transportation system, and are not necessary for long-term resource management. A total of 35 of the 154 timber sales reviewed required temporary road construction. No significant effects were found in reviewing these projects. The average length of temporary road construction for these 35 sales was 1/2 mile. The agency elected to use this average 1/2 mile temporary road length as a limit for its limited timber harvest categorical exclusions.

All temporary roads constructed for timber harvest projects that qualify for categories 12, 13, and 14, will be conducted under the terms of the timber sale contract. Temporary road construction authorized under timber sale contracts must be consistent with environmental quality standards and must consider minimizing impacts on land and resources, in accordance with 36 CFR 223.30 and 36 CFR 223.38. In accordance with 36 CFR 223.37, temporary roads are treated to reestablish vegetative cover as necessary to minimize erosion. Such treatment shall be designed to reestablish vegetative cover as soon as practicable. Therefore, any potential environmental effects are short-term. Non-commercial "cut and leave" activities are the only activities that may qualify under these categories that would not involve a timber sale contract. Noncommercial

activities would not include temporary road construction.

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

Response: These categorical exclusions provide only for construction of temporary roads and do not propose adding additional road miles to the National Forest System. Where use of these proposed categorical exclusions involving no more than 1/2 mile of temporary road construction, with or without culverts, is being proposed, the responsible official must review the proposed action to ensure that the temporary road construction is consistent with environmental quality standards (36 CFR 223.30) which include minimizing increases in soil erosion and providing favorable conditions of water flow and quality. The responsible official must also determine that no extraordinary circumstances exist, and document those findings in a decision memo (FSH 1909.15, ch. 30, secs. 30.3 and 32.3).

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

Response: As defined in 36 CFR 212.1, temporary roads are roads that are authorized by contract, permit, lease, other written authorization, or emergency operation, are not intended to be part of the Forest Service transportation system, and are not necessary for long-term resource management. In accordance with 36 CFR 223.37, upon completion of the timber sale contract, the purchaser is required to treat temporary roads constructed or used during the authorized activity. This involves the reestablishment of vegetative cover on the roadway and other areas in order to minimize erosion from the disturbed area. Once the authorized timber sale contract is completed, the temporary road becomes unneeded as described in 36 CFR 212.5(b)2 and should be decommissioned or considered for other uses such as trails.

Decommissioning roads involves restoring roads to a more natural state. Activities used to decommission a road include, but are not limited to, the following: reestablishing former drainage patterns, stabilizing slopes, restoring vegetation, blocking the entrance to a road, installing water bars, removing culverts, reestablishing

drainage-ways, removing unstable fills, pulling back road shoulders and scattering slash on the roadbed, completely eliminating the roadbed by restoring natural contours and slopes, or other methods designed to meet the specific conditions associated with the unneeded road. How temporary roads are decommissioned is a project-specific decision and therefore appropriately decided at the project level (36 CFR 212 and FSM 7703.2). The decision to convert a temporary road to another use would entail a new decision that requires additional NEPA review.

Comment: Some respondents stated that the Forest Service should comply with Executive Order 12866, Regulatory Planning and Review, 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 Forest Service has prepared a cost-benefit analysis and has 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 limited timber harvesting to improve forest health and salvage merchantable forest products. The agency estimated an annual savings of \$6.4 million that would otherwise be spent on environmental assessments.

Comment: Several respondents requested clarification of the harvest treatments which could be implemented under Category 12. Some of these respondents indicated too much flexibility was provided to the local manager under uneven-aged techniques. Others believed the limitation on even-aged management treatments should be removed.

Response: The Forest Service Manual (FSM) 2470.5 contains the definitions of silvicultural practices on National Forest System lands. An uneven-aged system is defined at FSM 2470.5 as: "A silvicultural system involving manipulation of a forest to simultaneously maintain: a. Continuous high-forest cover; b. Recurring regeneration of desirable species; c.

Orderly growth and development of trees through a range of diameter or age classes to provide a sustained yield of forest products." Individual tree selection and group selection are the two recognized uneven-aged cutting systems. FSM 2470.5 defines group selection cutting with the groups (openings to regenerate shade-intolerant species) as usually no more than 2 acres in size. Additional instructions may also exist in the forest plans developed for each unit. Timber harvesting activities must be consistent with the objectives of site-specific prescriptions approved by certified silviculturists (FSM 2478.03 (5)). Professional forestry standards and agency oversight ensure uneven-aged techniques are properly prescribed and implemented, including acreage limitations on opening sizes.

Uneven-aged systems (individual tree selection and group selection) maintain the canopy of a forest stand and therefore have relatively little effect on the structural and aesthetic properties of stands. Even-aged regeneration harvests, such as clearcutting, seed tree, and shelterwoods, were excluded from use in Category 12. Because the cutting operations involved in Category 12 retain the canopy of the forest, adequate regeneration of tree species is not a concern. However, because projects using this category will use the timber sale contract, they are subject to 36 CFR 223.30 (c). This requires the approving officer to ensure that each timber sale contract, permit, or other authorized form of National Forest timber disposal includes, as appropriate, requirements for regeneration of timber as may be made necessary by harvesting operations.

Comment: Some respondents disputed the need for Category 13 because of the importance of dead and dying trees to the forest ecosystem.

Response: Dead and dying material is an important component of a healthy forest ecosystem. Forest plan standards for snag density (standing dead trees) and cavity habitat will be met when salvage activities take place.

Comment: Some respondents indicated that regeneration harvesting using both even-aged and uneven-aged silvicultural systems should be allowed under Category 13.

Response: Category 13 addresses salvage harvesting. The Society of American Foresters Dictionary of Forestry defines salvage cutting as "the removal of dead trees or trees damaged or dying because of injurious agents other than competition to recover economic value that would otherwise be lost." As such, salvage harvesting is not

oriented to any specific silvicultural system.

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

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

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

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

Conclusion

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

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

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

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

Regulatory Certifications

Environmental Impact

This final interim directive adds direction for three categorical exclusions to Forest Service Handbook (FSH) 1909.15 for guiding field employees regarding procedural requirements for National Environmental Policy Act (NEPA) documentation for tree harvest activities. The Council on Environmental Quality (CEQ) does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an environmental impact statement; those that require preparation of an environmental assessment; and those that are categorically excluded from documentation in an environmental impact statement or environmental assessment (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures and, therefore, establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are internal procedural guidance to assist employees in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3, and the Forest Service has provided an opportunity for public review and has consulted with the CEQ during the development of these categorical exclusions. The determination that establishing categorical exclusions does not require NEPA analysis and documentation has

been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 73 F. Supp. 2d 962, 972-73 (S.D. Ill. 1999), aff'd, 230 F.3d 947, 954-55 (7th Cir. 2000).

Regulatory Impact

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

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

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

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

volume available for small businesses and local mills. It is expected that there would be equal access to economic opportunities to businesses through timber sale contracts, stewardship contracts, and other contracting instruments. Additionally some of these sales are expected to be set aside for small business under the agency's small business timber set-aside program.

Federalism

The Forest Service has considered the categorical exclusions in this final interim directive under the requirements of Executive Order 13132, Federalism, and has 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 agency has determined that no further assessment of federalism implications is necessary.

Consultation and Coordination With Indian Tribal Governments

The categorical exclusions in this final interim directive 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

The categorical exclusions in this final interim directive 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 the categorical exclusions in this final interim directive 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 agency

has assessed the effects of the categorical exclusions in this final interim directive 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

The categorical exclusions in this final interim directive 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

The categorical exclusions in this final interim directive 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: July 23, 2003.

Sally Collins,

Associate Chief.

Text of Final Interim Directive Setting Out Three New Categorical Exclusions

Note: The Forest Service organizes its directive system by alpha-numeric 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 planning and administering small timber harvest projects. Selected headings and existing text are included to assist the reader in placing the interim directive in context. Reviewers who wish to view the entire chapter 30 of FSH 1909.15 may obtain a copy from the address shown earlier in this notice and from the Forest Service home page on the World Wide Web/Internet at <http://www.fs.fed.us/im/directives/fsh/1909.15/1909.15.30.txt>.

FSH 1909.15—Environmental Policy and Procedures Handbook Chapter 30—Categorical Exclusion From Documentation

[To provide context for understanding the new categorical exclusions that are

established as paragraphs 12, 13, and 14 in section 31.2, the introductory text of section 31.2 (identified by italics) follows:]

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

Routine, proposed actions within any of the following categories may be excluded from documentation in an EIS or an EA; however, a project or case file is required and the decision to proceed must be documented in a decision memo (sec. 32). As a minimum, the project or case file should include any records prepared, such as (1) the names of interested and affected people, groups, and agencies contacted; (2) the determination that no extraordinary circumstances exist; (3) a copy of the decision memo (sec. 30.5 (2)); (4) a list of the people notified of the decision; (5) a copy of the notice required by 36 CFR part 217, or any other notice used to inform interested and affected persons of the decision to proceed with or to implement an action that has been categorically excluded. Maintain a project or case file and prepare a decision memo for routine, proposed actions within any of the following categories.

* * * * *

12. Harvest of live trees not to exceed 70 acres, requiring no more than 1/2 mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include but are not limited to:

a. Removal of individual trees for sawlogs, specialty products, or fuelwood.

b. Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

13. Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than 1/2 mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing.

Examples include but are not limited to:

a. Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees.

b. Harvest of fire damaged trees.

14. Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than 1/2 mile of temporary road construction, including removal of infested/infested trees and adjacent live uninfested/uninfested trees as determined necessary to control the spread of insects or disease. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include but are not limited to:

a. Felling and harvest of trees infested with southern pine beetles and immediately adjacent uninfested trees to control expanding spot infestations.

b. Removal and/or destruction of infested trees affected by a new exotic insect or disease, such as emerald ash borer, Asian

longhorned beetle, and sudden oak death
pathogen.

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