

Black Hills Forest Resource Association

2218 Jackson Boulevard, Suite 10, Rapid City, South Dakota 57702-3452, (605) 341-0875

December 1, 2006

Mr. Horst G. Greczmiel
Associate Director for NEPA Oversight
Council on Environmental Quality (CEQ)
720 Jackson Place, NW
Washington, DC 20503

Dear Mr. Greczmiel:

This letter is in response to the notice published at 71 FR 61468 requesting comments on proposed CEQ guidance for establishing, revising, and using categorical exclusions.

The Black Hills Forest Resource Association is an organization of forest products companies in the Black Hills region of South Dakota and Wyoming. Our members include large and small purchasers of federal timber sales from the Black Hills National Forest. The BHFRA is an active participant in the forest planning and project planning processes and has been an intervener on the Forest Service's behalf in environmental litigation. The effective development and use of categorical exclusions by the Forest Service is of great importance to our membership, and we appreciate the opportunity to comment on the proposed guidance.

II. Purpose of Establishing New Categorical Exclusions

As a matter of clarity, we recommend moving the sentence contained in footnote #4 into the main body of the first paragraph on page 2. The sentence, "A Federal agency should also consider developing categorical exclusions in response to changes in mission or responsibilities....," leaves the meaning of such changes too open to interpretation. One could argue that with any significant administrative policy change, an agency's "mission" had changed and existing categorical exclusions were no longer applicable or at least subject to formal review and revision.

The mention of revising existing categorical exclusions in the same section as establishing new exclusions confuses the issue of whether CEQ recommends that agencies use the same process for both actions. Only in section II and VII are revisions to existing categorical exclusions mentioned with specificity. Section VII suggests that agencies develop their own procedures for identifying and revising outmoded categorical exclusions, but we fear the co-reference here in section II casts doubt upon CEQ's intentions. Agencies should, as is recommended in VII, develop their own procedures for the review and revision of categorical exclusions, as existing categories are primarily known quantities from a documentation standpoint (i.e., should not require the same rigor as new categories) and the feedback loop of monitoring information varies widely among agencies. We recommend removing the reference to revising existing categories from II.



A renewable resource

III. Substantiating a New Categorical Exclusion

A. Elements of a Categorical Exclusion

The choice of words, "any physical or environmental factors that would constrain (a category of action's) use," is in need of qualification. The text of the paragraph does not provide for scenarios wherein such constraints are unnecessary. For example, mowing the lawn at Forest Service offices is neither physically nor environmentally constrained.

We appreciate the need to admonish against "disaggregated or segmented" categories for the purposes of eluding EA or EIS documentation. However, we fear the terms "disaggregated" and "segmented" will come to be ones of legal significance, and absent further clarification in the guidance, will be left entirely open to interpretation by the courts. We recommend that CEQ incorporate such clarification; at what point does an exclusion for small timber harvest activities and one for fuels reduction activities become a "segmented" activity?

Extraordinary circumstances have been the subject of considerable debate recently. We are encouraged that CEQ's review of current agency extraordinary circumstances established their sufficiency in most cases. However, we are concerned that the description of extraordinary circumstances as, "where an otherwise excluded action merits further analysis and documentation in an EA or an EIS," is too absolute. This statement implies that the mere presence of extraordinary circumstances disqualifies an action from exclusion, which is not always the case. We encourage CEQ to make this clarification in section III.A., and also clarify recommendations in section VI.A. pertaining to this issue.

V. Public Involvement in Establishing a Categorical Exclusion

We are concerned that the implementing the guidance's recommendation to provide opportunity for public comment beyond a Federal Register notice is infeasible. Nationwide public meetings, open houses, focus groups, etc., on new categorical exclusions would require a great expenditure of time and resources, with dubious benefits to the information-gathering process. The proposed guidance also leaves much room for debate in recommending that agencies, "tailor the type and length of the public involvement to the nature of the proposed category and its perceived environmental effects." Upon whose perception of environmental effects are agencies to judge what type and length of involvement is required? A public interest group wishing to see agencies summarily halt the development and use of categorical exclusions would predictably claim that the environmental effects of every category were too significant, manufacture contrarian "science," or exercise any number of other delay tactics in a public input process that is not even mandated under NEPA. While we agree that a basic federal register publication and easy access to documenting information are necessary steps, we are unconvinced that going to the extraordinary lengths proposed in this guidance is consistent with or contemplated by 40 CFR 1506.6.

VI. Using an Established Categorical Exclusion

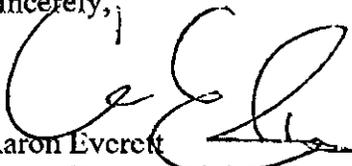
A. Documentation

Please see comment under section III. regarding extraordinary circumstances.

We concur that, in using a categorical exclusion, Federal agencies must also assure compliance with other laws and regulations (although policies generally do not carry the force of law). The proposed guidance would be greatly improved if it addressed and recommended how agencies might consider compliance with other laws and regulations in designing new and revising existing categorical exclusions. In this fashion, a tiering effect might be achieved in how each category is crafted that would alleviate some field-level documentation. This approach would not work, of course, for the National Historic Preservation Act, but might be feasible for something like the ESA compliance and consultation.

Thank you for your time and attention to these comments.

Sincerely,



Aaron Evrett
Forest Programs Manager