

Notices

Federal Register

Vol. 69, No. 128

Tuesday, July 6, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Public Meeting, Davy Crockett National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106-393) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of Agriculture, Forest Service, Davy Crockett National Forest Resource Advisory Committee (RAC) meeting will meet as indicated below.

DATES: The Davy Crockett National Forest RAC meeting will be held on July 29, 2004.

ADDRESSES: The Davy Crockett National Forest RAC meeting will be held at the Davy Crockett Ranger Station located on State Highway 7, approximately one-quarter mile west of FM 227 in Houston County, Texas. The meeting will begin at 6 p.m. and adjourn at approximately 9 p.m. A public comment period will be at 8:45 p.m.

FOR FURTHER INFORMATION CONTACT: Raoul Gagne, District Ranger, Davy Crockett National Forest, Rt. 1, Box 55 FS, Kennard, Texas 75847; Telephone: 936-655-2299 or e-mail at: rgagne@fs.fed.us.

SUPPLEMENTARY INFORMATION: The Davy Crockett National Forest RAC proposes projects and funding to the Secretary of Agriculture under section 203 of the Secure Rural Schools and Community Self Determination Act of 2000. The purpose of the July 29, 2004, meeting is to discuss the operational requirements of the RAC, including a process to solicit and evaluate project proposals. These meetings are open to the public. The public may present written comments to the RAC. Each formal RAC

meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: June 29, 2004.

Raoul W. Gagne,

Designated Federal Officer, Davy Crockett National Forest RAC.

[FR Doc. 04-15221 Filed 7-2-04; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596-AB73

National Environmental Policy Act Documentation Needed for Certain Special Use Authorizations

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of final directive.

SUMMARY: The Forest Service is revising procedures for implementing the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations for certain actions, which can be categorically excluded from documentation in an environmental assessment or an environmental impact statement. These final implementing procedures will be issued in an amendment to Forest Service Environmental Policy and Procedures Handbook (FSH) 1909.15, Chapter 30, sections 31.12 and 31.2. This amendment creates two new categorical exclusions for the amendment to or replacement of special use authorizations involving administrative changes when no changes are proposed in the authorized facilities and no increase in the scope or intensity of authorized activities is proposed. The intent of these categorical exclusions is to facilitate employees' consistent interpretation and application of CEQ regulations and related agency policy.

The Forest Service is also making technical changes to the Zero Code Chapter and Chapters 10, 30, and 40 of FSH 1909.15. These technical changes do not substantively change the agency's NEPA procedures. The amendments incorporate into parent

text of the agency policy and procedures previously set forth in interim directives to Chapter 30; reformat the Handbook; and make minor editorial changes throughout the Handbook. The amendment to Chapter 30 revises incorrect section codes 31.1a and 31.1b to 31.11 and 31.12 respectively. Accordingly, references to section 31.1b in the proposal to revise the agency's NEPA procedures (66 FR 48412) now relate to section 31.12.

EFFECTIVE DATE: These amendments Nos. 1909.15-2004-1 through 4 are effective July 6, 2004.

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

FOR FURTHER INFORMATION CONTACT: Dave Sire, Ecosystem Management Coordination Staff, 202-205-2935 or Melissa Hearst, Lands Staff, 202-205-1196.

SUPPLEMENTARY INFORMATION:

Summary of the Categorical Exclusions for Certain Special Use Authorizations

A special use is defined in 36 CFR Part 251, Subpart B as "All uses of National Forest System lands, improvements, and resources, except those provided for in regulations governing the disposal of timber (part 223) and minerals (part 228) and the grazing of livestock (part 222) * * *". The Forest Service controls the occupancy and use of National Forest System lands, improvements, and resources through issuance of special use authorizations, such as permits, leases, or easements.

It is important to note that ski areas and organizational camps are the two types of special uses of National Forest System lands that are not addressed by the new final categorical exclusions. Ski area permits are addressed by an existing categorical exclusion (FSH 1909.15 sec. 31.12 para. 9). The ministerial issuance or amendment of an organizational camp special use authorization is not subject to the

National Environmental Policy Act (16 U.S.C. 6231 *et seq.*).

In April 1997, the Forest Service completed a study of its special uses program to identify changes needed to manage the program in a more efficient and customer service oriented manner. The study may be viewed at <http://www.fs.fed.us/recreation/permits/final1.htm>. The study revealed a large backlog of unprocessed special use applications involving administrative changes of ownership or control of authorized facilities or activities, or applications for a new special use authorization to replace an expired authorization. The study concluded that a primary cause of this backlog is the inconsistent application and misinterpretation of agency policy found in Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures Handbook, Chapter 30, which addresses categorical exclusion from documentation in an environmental assessment (EA) or environmental impact statement (EIS). Some units were categorically excluding administrative changes to special use authorizations, while others preparing EAs, which emphasized a need for clarification.

Proposed Interim Directive to Forest Service Handbook 1909.15, Chapter 30

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

Nearly 26,000 responses in the form of letters, postcards, and e-mail messages were received during the 60-day comment period. These comments came from private citizens, elected officials, and from groups and

individuals representing businesses, private organizations, and Federal agencies. Responses consisted of over 800 original letters and over 25,000 form letters.

Public comment on the proposed interim directive addressed a wide range of topics, many of which were directed at general Forest Service management direction, particularly the management of roadless areas. Most comments revealed a significant split in opinion on the proposal. Many people opposed the proposed interim directive or recommended further restriction of the use of categorical exclusions, both in general and for those proposed for certain special use authorizations, while many others supported the proposed interim directive, or favored further expansion of the use of categorical exclusions. Some respondents agreed that existing direction concerning special use authorizations needed clarification.

Because of the volume and nature of comments received on the proposed interim directive, the agency separated the special use authorization categorical exclusions portion of the proposal from the clarification of extraordinary circumstances. On August 23, 2001, the Forest Service published a final interim directive to Forest Service Handbook (FSH) 1909.15, Chapter 30, which revised and clarified the agency's direction on extraordinary circumstances (67 FR 54622). Accordingly, this notice addresses only those comments received on the proposed categorical exclusions for certain special use authorization actions.

The proposed additions to the Handbook were intended to provide clear direction to agency personnel regarding certain types of special use authorization actions that the agency has concluded do not individually or cumulatively have a significant effect on the human environment, and therefore, may be categorically excluded from documentation in an EA or EIS. The proposed additions to sections 31.1b (now coded 31.12) and 31.2 included the following:

Section 31.1b Categories Established by the Chief

Two new categories of actions were proposed to be added to this section:

10. Amendment to an existing special use authorization during its term, involving no change in the authorized use and occupancy other than administrative changes. Examples include but are not limited to:

a. Amending a special use authorization to reflect administrative

changes, such as changes to the land use rental fee or conversion to a new type of special use authorization for a particular occupancy or use (for example, converting a permit to a lease or easement).

b. Amending a special use authorization to include nondiscretionary environmental standards or updating a special use authorization to bring it into conformance with current laws or regulations (for example, new water quality standards that require monitoring).

11. Change in ownership of authorized improvements during the term of an existing special use authorization, involving no change in the authorized use and occupancy of National Forest System lands other than administrative changes. Examples include but are not limited to issuance of a new special use authorization to a new owner of the authorized improvements, when there is no change to the authorized use and occupancy.

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

One new category was proposed to be added to this section:

10. Issuance of a new special use authorization to the holder of an existing special use authorization when:

a. The existing special use authorization terminates at the end of its term;

b. The holder is in full compliance with the terms and conditions of the terminating special use authorization; and

c. There would be no change in the physical environment or facilities or the scope or intensity of the operations.

Based on further study and review of the comments received, the proposed special use authorization categorical exclusions have been revised and are printed in their entirety at the end of this notice.

Comments on the Need for the Proposed Interim Directive

Comment: Many respondents commented that there is no need for the proposed changes. Some respondents said that proposed actions can be analyzed with a concise EA, if necessary and, therefore, there is no need to create additional categorical exclusions. Others expressed strong disapproval of the agency's use of categorical exclusions altogether and recommended either further restricting their use, or a complete elimination of categorical exclusions. Conversely, other respondents supported the proposed

categories and some advocated that the agency should make greater use of categorical exclusions.

Response: The CEQ regulations (40 CFR 1500.4(p)) encourage the appropriate use of categorical exclusions to reduce paperwork and unnecessary delays. The agency believes that its use of categorical exclusions has been and continues to be appropriate. The agency further believes that the time and expense required by even the most concise EA is not justified for those actions that qualify for categorical exclusion. Categorical exclusions are a legitimate tool for reducing excessive paperwork and to avoid allocating resources where they are not needed, thereby allowing the agency to devote more resources to environmental analysis and documentation for those requests for new special use authorizations that may have significant effects. Therefore, the agency will proceed with issuance of the categorical exclusions.

Comment: The preamble for the proposed categorical exclusions referred to a backlog of unprocessed special use authorizations resulting from inconsistent application of agency policy. One respondent commented that a backlog exists not due to inconsistent application of policy by the agency, but rather because demand is growing for special use authorizations.

Response: While it is true that there has been some increase in demand for new special use authorizations for new facilities or activities, the categorical exclusions make no changes to how the agency deals with new uses proposed on National Forest System lands. As identified in the preamble to the proposed categorical exclusions (66 FR 48412), the 1997 study determined that much of the backlog of applications was associated with proposed administrative actions related to ongoing or expiring special use authorizations.

Comment: Some respondents stated there was a real need for this proposal because uncertainty caused by not knowing whether or when an ongoing authorization was going to be replaced with a new authorization causes extreme financial and emotional hardship. They suggested that issuance of a new special use authorization to replace an existing authorization prior to its expiration will increase certainty and not disrupt ongoing uses and management of facilities and activities.

Response: The Forest Service agrees. The proposed categorical exclusion at section 31.2, paragraph 10 addressed issuing new special use authorizations when an existing special use authorization terminates at the end of its

term. However, administratively, it would be more efficient to issue the new special use authorization before it expires. Therefore, this categorical exclusion has been modified to address existing special use authorizations that are due to expire, as well as those that have expired, when there is no change to the authorized facilities or in the scope or intensity of the authorized activity, when the applicant or holder is in full compliance with the terms and conditions of the authorization, and the only changes are administrative.

Due to the development of other agency categorical exclusions, the proposed categorical exclusion originally identified as paragraph 10 of section 31.2 is now paragraph 15 of section 31.2.

Comments on Compliance With Law and Regulation

Comment: Many respondents believed the proposed categorical exclusions did not comply with the CEQ NEPA regulations because special use authorizations are used for a broad array of activities including actions that may have the potential for significant effects.

Response: The CEQ regulations define categorical exclusion as a "category of actions which do not individually or cumulatively have a significant effect on human environment * * *" (40 CFR 1508.4). The proposed categories of actions described specific administrative actions to existing special use authorizations that would involve no change in the authorized facilities or activities other than administrative changes. In other words, the categorical exclusion is designed to cover situations where administrative actions would not cause an individually or cumulatively significant effect on the human environment.

Discussions and follow-up took place with special use authorization specialists and environmental policy compliance specialists throughout the Forest Service regarding their experience with special use authorizations of all kinds, in all types of forests, over many years. The specialists involved represent over 800 years of combined experience in Forest Service special uses administration and environmental compliance. They reviewed and discussed the environmental effects of special use authorizations individually and cumulatively over time, of administrative changes, and of the extension of the term or time period of the occupancy and use in situations when the occupancy and use is conducted in accordance with the terms and conditions of the authorization.

After that review, they concluded that the activities described in the final categorical exclusions do not have individual or cumulative significant effects. In those few situations where the potential for significant environmental effects arose, they concluded that the scoping and/or review of extraordinary circumstances in accordance with direction in FSH 1909.15, Section 30.3 resulted in preparation of either an EA or an EIS.

Comment: Some respondents believe that the proposed categorical exclusions did not comply with the CEQ regulations. Their reason was that when considering all of the actions that the Forest Service authorizes through special use authorizations, these actions may have cumulative effects.

Response: The actions that the agency is categorically excluding are specific administrative actions that do not result in significant effects on the environment. As described above, the agency has determined they do not have individually or cumulatively significant effects, and therefore, these categorical exclusions meet the CEQ regulations' definition of categorical exclusions.

Comment: Some respondents stated that many special use authorizations have never undergone NEPA analysis even though the authorizations may have resulted in significant impacts to the human environment. Respondents believed that using a categorical exclusion to amend a current authorization or to issue a new authorization to replace an existing special use authorization, which had not been analyzed under NEPA would not comply with the CEQ regulations.

Response: While it is true that there are some existing special use authorizations that were issued without undergoing a NEPA analysis, this situation occurred generally when the authorization was issued prior to enactment of NEPA and subsequent guidance. Categorical exclusions in paragraph 10 of section 32.12 and paragraph 15 of section 31.2 are for administrative actions that do not change the facilities nor increase the level of activity. The previously noted review of all types of special use authorizations, including those special use authorizations that have not previously been reviewed through the NEPA process, demonstrated that existing special uses in compliance with their authorizations have not had significant environmental effects. Agency experience shows that under the conditions described in the text of the categorical exclusions at the end of this notice, issuing or amending special use authorizations does not individually or

cumulatively have significant effects, and are therefore in compliance with the CEQ regulations. The agency reviewed the proposed categorical exclusions and considered them in conjunction with the recently clarified NEPA procedures concerning extraordinary circumstances (67 FR 54622). The agency review determined its recently clarified NEPA procedures concerning extraordinary circumstances would identify any potentially significant effects on the human environment and the Forest Service would, therefore, preclude use of the categorical exclusions at paragraph 10 of section 32.12 and paragraph 15 of section 31.2 and would assure preparation of the appropriate level of NEPA analysis and documentation.

Comments on Public Participation

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

Response: The Forest Service will continue to conduct scoping for all proposed actions subject to NEPA (FSH 1909.15, section 11). Through scoping, the Forest Service identifies any important issues, identifies interested and affected persons, and determines the appropriate level of public involvement and the appropriate level of environmental analysis and documentation. When the Forest Service contemplates categorically excluded a proposed action, scoping is used to help determine whether any extraordinary circumstances exist. An integral part of this scoping process is determining the appropriate level of public participation. Forest Service Handbook 1909.15, section 11, directs the Responsible Official to consider options for involving potentially interested and affected agencies, organizations, and persons in the analysis process commensurate with public interest in the proposed action. "Scoping is required on all proposed actions, including those that would appear to be categorically excluded." (FSH 1909.15, section 30.3).

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

Response: The two new categories being established are limited to amendment to or issuance to replace special use authorizations involving administrative changes or where there are no changes in the authorized facilities or increase in the scope or intensity of authorized activities. In the agency's experience, authorizations involving administrative adjustments or continuance of ongoing activities are less likely to be appealed than new actions. The actions covered by these categories are comparable to the types of activities that have been excluded from appeal in the agency's implementing regulations since enactment of the Appeal Reform Act (ARA). The ARA does not require that all actions by the Forest Service, regardless of their scope, be subject to appeal. To the contrary, Congress has delegated the responsibility for delineating which projects should be subject to appeal, and which should not. The agency's interpretation and implementation of the ARA is outlined in the **Federal Register** notice establishing the final rule (68 FR 33582, June 4, 2003). As previously noted, the agency will continue to conduct scoping for all proposed actions subject to NEPA and the responsible official will consider the appropriate level of public involvement commensurate with the level of public interest in a proposed action. The agency believes that including affected and interested individuals in project planning early in the process is more effective than applying the additional appeal procedures.

However, decisions to amend current special use authorizations that are addressed by these new final categorical exclusions may be subject to appeal by parties who hold a special use authorization (36 CFR Part 251 Subpart C). The appeal process in Subpart C is a structured, grievance oriented procedure that provides the elements of due process fundamental to resolving issues arising from a business or legal relationship between the Forest Service and an eligible appellant.

Comments on Impacts

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

species, American Indian sacred sites, and archaeological sites.

Response: Categorical exclusions are to be used for routine actions that have been found by the agency through experience and environmental review to have no significant environmental effects either individually or cumulatively (40 CFR 1508.4). On August 23, 2002, the Forest Service published a final interim directive to Forest Service Handbook (FSH) 1909.15, Chapter 30, which provided direction regarding how actions, which may be categorically excluded, should be considered to determine if they warrant further analysis and documentation in an EA or EIS (67 FR 54622). Agency NEPA procedures require that all proposed actions to be categorically excluded from documentation in an EA or EIS must be reviewed for extraordinary circumstances, which 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 Clean Air Act. Accordingly, these categorical exclusions do 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; national recreation areas; and archaeological, cultural, or historic sites. Pursuant to 36 CFR 251.64, new special use authorizations to replace existing authorizations must comply with Federal and State laws and regulations and must be consistent with land management plan goals and objectives, and where appropriate, standards and guidelines set out in the plan.

Comment: Some respondents stated that they view the NEPA review process when an authorization expires as an opportunity to consider new information, which may bear on the environmental impact of an existing use or occupancy, and an opportunity to assess the impact of an authorization holder's facilities and/or activities. Respondents believed there would be less opportunity and inclination to evaluate these authorized facilities and activities under the proposed categorical exclusions. Provisions for the changes of ownership drew similar comments.

Response: The agency's procedures pursuant to NEPA require scoping on all proposed actions, including those that would appear to be categorically

excluded (FSH 1909.15, section 11). This scoping includes consulting with experts and other agencies familiar with such actions and their direct, indirect, and cumulative effects. Using the information obtained through scoping, the Responsible Official then determines if the proposed action can be categorically excluded from documentation in an EIS or an EA or, alternatively, determines the type of document that should be prepared. Moreover, Forest Service regulations (36 CFR Part 251, subpart B) and policies (Forest Service Manual (FSM) 2700 and FSH 2709.11) governing special uses already require the agency to consider if significant new information or circumstances have developed prior to amending a special use authorization, or prior to replacing an existing authorization. These regulations and policies also specify that, if new significant information or circumstances have developed, then the appropriate environmental analysis must be completed and accompany the decision before an authorization can be amended or issued anew.

Comments on the Interim Nature of the Directive

Comment: Some respondents questioned why the proposed categorical exclusions were being issued as an interim directive and how long it would be in effect or under what circumstances it would terminate.

Response: As was stated in the preamble for the proposed interim directive published in the September 20, 2001, **Federal Register** (66 FR 48412), the changes were proposed to be made through an interim directive for administrative efficiency. In further consideration, and in response to this comment, the final categorical exclusions are not issued as an interim directive but rather are incorporated directly into the text of Forest Service Handbook (FSH) 1909.15, Chapter 30.

Comments on the Categories

Comment: Some respondents commented that not all special use authorization holders have equal impacts on the human environment, and therefore, the agency should not assume that a change in legal ownership does not trigger a NEPA analysis.

Response: All authorization holders, regardless of their legal status (e.g., partnership, individual, nonprofit organization, corporation) are responsible for complying with the applicable laws, regulations, and terms and conditions of the special use authorization. By regulation (36 CFR Part 251, Subpart B) and policy (FSM

2700 and FSH 2709.1), applicants for and holders of special use authorizations must be able to demonstrate that they have the technical and financial capability to undertake the use in compliance with the terms and conditions of the authorization. It is this demonstrated evidence of technical and financial capability, and not merely the status of ownership, which has a bearing on the applicant or holder qualifications, which the authorized officer must consider prior to amending or issuing a special use authorization. To highlight this requirement, and in response to this comment, the phrase "and the applicant or holder is in full compliance with the terms and conditions of the special use authorization" was added to the final categorical exclusions.

Consequently, a change in ownership or control of authorized facilities and activities during the term of an existing special use authorization, involving no increase in the authorized facilities or scope or intensity of authorized activities on National Forest System lands (i.e., the activity takes place in the same or smaller geographic area and the amount of the use does not increase), is an example of an administrative change that typically results in no significant effect on the human environment. These were among the types of special use authorizations examined by agency experts and determined to have no significant effects on the human environment, either individually or cumulatively.

Comment: Some respondents were confused by the language in the categorical exclusion proposed for paragraph 11 of section 31.1b because it referred to a change in ownership of "authorized improvements." The respondents were concerned that this did not address situations where there was a change in ownership of uses, such as an outfitting business where there are no physical improvements on National Forest System lands.

Response: Based on respondents' concerns, the final categories do not use the phrase "authorized improvements." The categorical exclusions now use the terms "authorized facilities" and "increases in the scope or intensity of authorized activities" to encompass both situations.

Comment: One respondent stated that the Forest Service must define the term "administrative change" to clarify that it refers only to clerical changes with no substantive changes to the terms of the authorization. They were concerned that it could be interpreted any number of ways. Another respondent asked the Forest Service to clarify terms used in

the proposed categorical exclusions. The respondent suggested that the proposed categorical exclusions would not meet agency intent to facilitate consistent interpretation of policy.

Response: One final categorical exclusions contains examples of what is meant by the term "administrative changes." Specifically, the categorical exclusion in paragraph 10 of section 31.12 includes "* * * administrative changes such as adjustment to the land use fees, inclusion of non-discretionary environmental standards or updating a special use authorization to bring it into conformance with current laws or regulations (for example, new monitoring required by water quality standards.)" In clarifying the term "administrative change," the agency realized that the categorical exclusions proposed for paragraphs 10 and 11 of section 31.1b were very similar in that they addressed administrative changes which occur within the term of an existing authorization. The agency chose to combine the two proposed categorical exclusions (paragraphs 10 and 11 of section 31.1b) and their examples into one category in paragraph 10 of section 31.12 (formerly coded 31.1b) for clarity, and to reduce redundancy. In combining these two categories, the two examples under the proposed categorical exclusion in paragraph 10 were combined into one and a second example was added to illustrate the originally proposed categorical exclusion in paragraph 11. The words "extensions to the term of authorized" were added to the phrase "does not involve changes in the authorized facilities or increases in the scope or intensity of authorized activities" to clarify that the term of the authorization cannot change under the categorical exclusion in paragraph 10 of section 31.12. The word "changes" appeared twice in the same sentence in the proposed section 31.1b example, so in the second instance where the word "change" appears, it was replaced with "adjustment" for readability. In this same example, the word "rental" was found to be redundant and was also deleted to be consistent with agency special uses policy language.

In responding to this comment it became apparent that the proposed categories used different terminology to describe the same condition under which the categories could be used. The requirement for one category was, "no change in the use or occupancy" while the other category required "no change in the physical environment or facilities or the scope or intensity of operations." The two phrases, while worded differently, had the same intent.

Therefore, the categories have been reworded for consistency. Both final categories now utilize the phrase “does not involve changes in the authorized facilities or increases in the scope or intensity of authorized activities.”

In another editorial clarification, the conditions enumerated in the categorical exclusion proposed for paragraph 10 of section 31.2 were combined and incorporated into the final categorical exclusion in paragraph 15. In so doing, the phrase “authorization [that] expires at the end of its term” was replaced with “expired.” The words “for a new term” were added to replace “at the end of the term” for readability and clarity. The words “applicant or” were added before “holder” to recognize that in the case of an expired permit there would be an applicant but no holder.

These edits do not change the substance of the proposed categorical exclusions, but rather improve their clarity and readability.

Regulatory Certifications

Environmental Impact

These categorical exclusions add direction to guide field employees in the USDA Forest Service regarding procedural requirements for National Environmental Policy Act (NEPA) documentation for administration of special use authorizations. 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 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 has provided an opportunity for public review and has consulted with

the Council on Environmental Quality during the development of these categorical exclusions. Furthermore, 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

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

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

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered these final categorical exclusions under the requirements of Executive Order 13132, Federalism, and has concluded that the final categorical exclusions 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.

Moreover, these final 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 was not required.

No Takings Implications

These final 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 final categorical exclusions do not pose the risk of a taking of private property.

Civil Justice Reform

These final categorical exclusions have been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this policy as final, (1) all State and local laws and regulations that conflict with these final categorical exclusions or that would impede their full implementation will be preempted; (2) no retroactive effects would be given to this final policy; and (3) this final policy would not require administrative proceedings before parties may file suit in court challenging their provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of these final categorical exclusions on State, local, and tribal governments and the private sector. These final 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 final 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 final categorical exclusions do not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

These final 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.

Conclusion

Having considered the comments received, the Forest Service is adopting procedures that clarify direction regarding administrative changes to special use authorizations where there are no changes in the authorized facilities or increases in the scope or intensity of authorized activities by creating two new categories of actions that can be excluded from documentation in an EA or an EIS. This change is being implemented through amendment to FSH 1909.15, Environmental Policy and Procedures Handbook, Chapter 30, which is effective upon publication of this notice in the **Federal Register**.

Dated: June 29, 2004.

Tom L. Thompson,
Acting Chief.

Text of Final directive

Note: The Forest Service organizes its directive system by alphanumeric codes and subject headings. Only those sections of the Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures handbook, affected by this policy are included in this notice. This direction will be used by Forest Service employees charged with project planning and environmental analysis when appropriate. Selected headings and existing text are provided to assist the reader in placing the revised direction in context. Paper and electronic copies of these categorical exclusions and the entire chapter 30 of FSH 1909.15 are available as set out in the **ADDRESS** section at the beginning of this notice.

To provide context for understanding the new categorical exclusions that are established as paragraph 10 in section 31.12 and paragraph 15 in section 31.2, the introductory text of each section follows (in italics):

FSH 1909.15—Environmental Policy and Procedures Handbook

Chapter 30—Categorical Exclusion From Documentation

Chapter 31.12—Categories Established by the Chief

The following categories of routine administrative, maintenance, and other actions normally do not individually or cumulatively have a significant effect on the quality of the Human environment (sec. 05)

and, therefore, may be categorically excluded from documentation in an EIS or an EA unless scoping indicates extraordinary circumstances (sec. 30.3) exists:

10. Amendment to or replacement of an existing special use authorization that involves only administrative changes and does not involve changes in the authorized facilities or increases in the scope or intensity of authorized activities, or extensions to the term of authorization, when the applicant or holder is in full compliance with the terms and conditions of the special use authorization. Examples include but are not limited to:

a. Amending a special use authorization to reflect administrative changes, such as adjustment to the land use fees, inclusion of non-discretionary environmental standards or updating a special use authorization to bring it into conformance with current laws or regulations (for example, new monitoring required by water quality standards).

b. Issuance of a new special use authorization to reflect administrative changes, such as a change of ownership or control of previously authorized facilities or activities, or conversion of the existing special use authorization to a new type of special use authorization (for example, converting a permit to a lease or easement).

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: the names of interested and affected people, groups, and agencies contacted; the determination that no extraordinary circumstances exist; a copy of the decision memo (sec. 05); and a list of the people notified of the decision. Maintain a project or case file and prepare a decision memo for routine, proposed actions within any of the following categories:

15. Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are no changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.

[FR Doc. 04-15219 Filed 7-2-04; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting, Posting, and Deposting of Stockyards

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: We propose to post nine stockyards. We have received information that the stockyards meet the definition of a stockyard under the Packers and Stockyards Act and, therefore, need to be posted. Posted stockyards are subject to the provisions of the Packers and Stockyards Act. We have posted 11 stockyards. We determined that the stockyards meet the definition of a stockyard under the Packers and Stockyards Act and, therefore, needed to be posted. We are also deposing one stockyard. This facility can no longer be used as a stockyard and, therefore, is no longer required to be posted.

DATES: For the proposed posting of stockyards, we will consider comments that we receive by July 21, 2004.

For the deposed stockyard, the deposing is effective on July 6, 2004.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- E-mail: Send comments via electronic mail to comments.gipsa@usda.gov.
- Mail: Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604.
- Fax: Send comments by facsimile transmission to: (202) 690-2755.
- Hand Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181-229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Section 302 of the P&S Act (7 U.S.C. 202) defines the term “stockyard” as follows:

* * * any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.