



File Code: 1950
Route To: (2820)

Date: March 13, 2006

Subject: Energy Policy Act of 2005
Use of Section 390 Categorical Exclusions for Oil and Gas Activities

To: Regional Foresters

Section 390 of the Energy Policy Act of 2005 establishes categorical exclusions under NEPA that apply to five categories of oil and gas exploration and development activities conducted pursuant to the Mineral Leasing Act (30 U.S.C. et seq., as amended).

In Section 390, Congress replaced the standard procedural mechanism for compliance with NEPA. It prescribed that applicability of the Section 390 categorical exclusions is presumed, but subject to rebuttal. The Act uses the term “rebuttable presumption” to place the burden of proceeding on the party challenging the presumption that one or more of the statutory criteria for the exclusion has not been met. For example, the presumption could be rebutted in the case of Category 2 by showing that more than five years has elapsed since the previous drilling. The presumption cannot be rebutted by showing the presence of “extraordinary circumstances” or other factors extraneous to the terms of Section 390.

Initial Forest Service guidance on use of the Section 390 categorical exclusions was provided by letter on November 22, 2005, see enclosure 1. Supplemental guidance is now being provided in response to questions received from the field, see enclosure 2.

Both the initial and supplemental guidance is in effect until subsequent direction is provided.

For further information contact Tony Ferguson at (703) 605-4785.

/s/ Frederick Norbury (for)
JOEL D. HOLTROP
Deputy Chief for National Forest System

Enclosures

