

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

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

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

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

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

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

Conclusion

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

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

Regulatory Certifications

Environmental Impact

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

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

Regulatory Impact

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

This action to add two categorical exclusions to the agencies' NEPA procedures will not have an annual effect of \$100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments. This action may interfere with an action taken or planned by another agency or raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

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

Federalism

The agencies have considered these categorical exclusions under the requirements of Executive Order 13132, Federalism, and have concluded that they conform with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agencies have determined that no further assessment of federalism implications is necessary.