

Categorical Exclusion Administrative Record

Draft Date: November 30, 2009

CATEGORY 1- Administrative and Routine Office Activities:

- Normal personnel, fiscal, and administrative activities involving personnel (recruiting, hiring, detailing, processing, paying, supervising and records keeping).
- Preparation of administrative or personnel-related studies, reports, or investigations.
- Routine procurement of goods and services to support operations and infrastructure, including routine utility services and contracts.
- Normal administrative office functions (record keeping; inspecting, examining, and auditing papers, books, and records; processing correspondence; developing and approving budgets; setting fee payments; responding to request for information.
- Routine activities and operations conducted in an existing non-historic structure which are within the scope and compatibility of the present functional use of the building, will not result in a substantial increase in waste discharge to the environment, will not result in substantially different waste discharges from current or previous activities, and will not result in emissions that exceed established permit limits, if any. (Record of Environmental Consideration, REC, documentation required).
- Internal NIGC operations training.

The above-referenced actions are all usually carried out in an office setting. These actions involve the use of electronic devices like computers, telephones, copiers and faxes. The NIGC currently leases all the facilities it occupies and was not responsible for accounting for the environmental impacts associated with construction of its office facilities. The owners of the facilities that the NIGC leases have not indicated that the NIGC's occupancy of, and actions taken within, the facilities have caused an environmental impact. This category of actions is categorically excluded by numerous other agencies (e.g.; Federal Aviation Administration, Department of Energy, etc.). Furthermore, it is the opinion of Brad Mehaffy, the NIGC's NEPA Compliance Officer and Environment, Public Health and Safety (EPHS) Program Manager, that the actions listed above typically do not have a significant impact on the human environment. Mr. Mehaffy has a Masters Studies of Environmental Law from Vermont Law School and has over six years experience with NEPA compliance. Mr. Mehaffy has taken part in the decisions to take most, if not all, of the actions listed above and has confirmed that taking those actions do not have a significant effect on the human environment.

Should any of the above actions involve an "extraordinary circumstance," the action will be subject to either an EA or an EIS.

CATEGORY 2- Oversight of Indian Gaming Activities:

- Promulgation or publication of regulations, procedures, manuals, and guidance documents that will not individually or cumulatively result in a significant impact on the human environment, based on experience gained with substantively similar actions of the NIGC or other federal agency that have been environmentally evaluated.

- Support of compliance and enforcement functions by conducting compliance training for tribal gaming regulators and managers in classrooms, meeting rooms, gaming facilities, or via the internet.
- Preparing and issuing subpoenas, holding hearings, and taking depositions for informational gathering purposes, not associated with administrative enforcement actions. (NOTE: activities associated with administrative enforcement actions are not subject to NEPA review, and therefore need not be categorically excluded. (See Section 2.5 of this manual).)

The actions referenced above are all necessary to perform the NIGC's oversight of Indian gaming activities. These actions are normally conducted either within the gaming facilities themselves or within an office environment and normally do not result in an impact to the environment.

Since its inception, the NIGC has promulgated numerous regulations and published numerous guidance documents. The regulations and guidance documents created by the NIGC typically govern the activities that occur within the physical structure of existing Indian gaming facilities.

It is the opinion of Brad Mehaffy, the NIGC's NEPA Compliance Officer and EPHS Program Manager, that the actions listed above typically do not have a significant impact on the human environment. Mr. Mehaffy has a Masters Studies of Environmental Law from Vermont Law School and has over six years experience with NEPA compliance. In developing his opinion, Mr. Mehaffy relied not only on his own experience, but he also consulted with a senior environmental scientist at the Bureau of Indian Affairs with extensive knowledge of the evolution of Indian gaming and the environment surrounding many Indian gaming facilities. Furthermore, the actions of the NIGC are very similar to those of the Department of Energy (DOE). These similar actions were found to be categorically excluded in DOE's own regulations. (See Category A9, 10 C.F.R. 1021.410, Appendix A to Subpart D of Part 1021). Thus, based on the DOE record and experience and the similarity of the NIGC's actions, there is support for this category of actions being excluded from further NEPA review.

CATEGORY 3- Management Contract and Agreement Review Activities:

- Approve or disapprove management contracts and collateral agreements that meet the following criteria: (1) involve no physical construction, other than interior renovations and minor exterior work on or in structures that are not listed or eligible for listing on the National Register of Historic Places; and (2) are not associated with plans to considerably increase patronage (REC documentation required).
- Conduct background investigations in connection with a management contract amendment.

The review of management contracts and the conducting of background investigations are usually done within an office setting and do not cause any environmental impacts. (See also, reasoning for "Administrative Duties.") Similar to DHS categorical exclusion,

A4¹, the review of management contracts and conducting background investigations require the collection and analysis of information.

It is the opinion of Brad Mehaffy, the NIGC's NEPA Compliance Officer and EPHS Program Manager, that the actions listed above typically do not have a significant impact on the human environment. Mr. Mehaffy has a Masters Studies of Environmental Law from Vermont Law School and has over six years experience with NEPA compliance.

¹ A4 Information gathering, data analysis and processing, information dissemination, review, interpretation, and development of documents.
(http://www.dhs.gov/xlibrary/assets/nepa/Mgmt_NEPA_AdminRecdetailedCATEXsupport.pdf).



June 28, 2007

To: The Administrative Record

From: Brad Mehaffy, NEPA Compliance Officer

RE: Categorical Exclusion (CATEX) Administrative Record

During the month of June, 2007, I, Brad Mehaffy, had a telephone conversation with a senior Environmental Scientist with the Bureau of Indian Affairs (BIA). The discussion was in regard to how the National Indian Gaming Commission's activities identified in "Category 2- Oversight of Indian Gaming Activities" have impacted the environment during his tenure at the BIA. It was his opinion that those activities, specifically promulgation of regulations and publication of guidance documents do not normally have a significant impact on the environment and do meet the criteria to categorically excluded under the National Environmental Policy Act (NEPA).

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TITLE 10--ENERGY

CHAPTER X--DEPARTMENT OF ENERGY (GENERAL PROVISIONS)

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- A13. Procedural Orders, Notices, and guidelines
- A14. Approval of technical exchange arrangements
- A15. Umbrella agreements for cooperation in energy research and development

A1 Routine actions necessary to support the normal conduct of agency business, such as administrative, financial, and personnel actions.

A2 Contract interpretations, amendments, and modifications that are clarifying or administrative in nature.

A3 Adjustments, exceptions, exemptions, appeals, and stays, modifications, or rescissions of orders issued by the Office of Hearings and Appeals.

A4 Interpretations and rulings with respect to existing regulations, or modifications or rescissions of such interpretations and rulings.

A5 Rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.

A6 Rulemakings that are strictly procedural, such as rulemaking (under 48 CFR part 9) establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services, and rulemaking (under 10 CFR part 600) establishing application and review procedures for, and

administration, audit, and closeout of, grants and cooperative agreements.

A7 Transfer, lease, disposition, or acquisition of interests in personal property (e.g., equipment and materials) or real property (e.g., permanent structures and land), if property use is to remain unchanged; i.e., the type and magnitude of impacts would remain essentially the same.

A8 Award of contracts for technical support services, management and operation of a government-owned facility, and personal services.

A9 Information gathering (including, but not limited to, literature surveys, inventories, audits), data analysis (including computer modelling), document preparation (such as conceptual design or feasibility studies, analytical energy supply and demand studies), and dissemination (including, but not limited to, document mailings, publication, and distribution; and classroom training and informational programs), but not including site characterization or environmental monitoring. (Also see B3.1.)

A10 Reports or recommendations on legislation or rulemaking that is not proposed by DOE.

A11 Technical advice and planning assistance to international, national, state, and local organizations.

A12 Emergency preparedness planning activities, including the designation of onsite evacuation routes.

A13 Administrative, organizational, or procedural Orders, Notices, and guidelines.

A14 Approval of technical exchange arrangements for information, data, or personnel with other countries or international organizations, including, but not limited to, assistance in identifying and analyzing another country's energy resources, needs and options.

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A15 Approval of DOE participation in international ``umbrella'' agreements for cooperation in energy research and development activities that would not commit the U.S. to any specific projects or activities.

[57 FR 15144, Apr. 24, 1992, as amended at 61 FR 36239, July 9, 1996]

ADMINISTRATIVE RECORD FOR CATEGORICAL EXCLUSIONS (CATEX)

The development of the U.S. Department of Homeland Security (DHS or Department) categorical exclusions was a concerted effort on the part of many DHS legal and environmental professionals. Together, they represented twenty-four DHS components and two independent contractors procured to provide administrative support and expert recommendations to inform the government's efforts. The professionals on the panel (Panel) were environmental practitioners with numerous years of planning and compliance experience including the preparation of environmental documentation such as assessments, impact statements, findings of no significant impact, and records of decision. The Panel also included several legal practitioners with advanced education and experience advising Federal agency managers on environmental planning and compliance responsibilities. All of these professionals had significant experience in other DHS legacy and non-legacy agencies, thereby bringing a breadth and wealth of environmental experience and history about the Department as well as other agencies with whom we share similar environmental practices and interests. The agencies and contractors that were represented on the Panel include:

- Department of Homeland Security, Office of the Secretary
- Customs and Border Protection Agricultural Inspectors (formerly part of Animal & Plant Health Inspection Service) (USDA, MD)
- Coast Guard (DOT, DC)
- Chemical Biological Radiological & Nuclear Response and Civilian Bio-defense Research Programs (CDC, GA)
- Chemical Biological Radiological & Nuclear Countermeasures Programs (Energy, DC)
- National BW Defense Analysis Center (DOD, MD)
- Critical Infrastructure Assurance Office (Commerce, DC)
- Customs Service (Treasury, DC)
- Environmental Measurements Laboratory (DOE, NY)
- Federal Computer Incident Response Center (GSA, DC)
- Federal Emergency Management Agency (FEMA, DC)
- Federal Law Enforcement Training Center (FLETC) (Treasury, GA)
- Federal Protective Service (GSA, DC)
- Lawrence Livermore National Laboratory (DOE/UnivCA, CA)
- Immigration & Naturalization Service (DOJ, DC)
- National Communications System (DC)
- National Domestic Preparedness Office (DOJ, DC)
- National Infrastructure Simulation & Analysis Center (LLNL/UnivCA, CA)
- National Infrastructure Protection Center (FBI, DC)
- Nuclear Incident Response Team (DOE, DC)
- Domestic Emergency Support Team (DC)
- Plum Island Animal Disease Center (USDA, NY)
- Secret Service (Treasury, DC)
- Transportation Security Administration (DOT, DC)

A4 Interpretations and rulings with respect to existing regulations, or modifications or rescissions of such interpretations and rulings.

A5 Rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.

A6 Rulemakings that are strictly procedural, such as rulemaking (under 48 CFR Part 9) establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services, and rulemaking (under 10 CFR Part 600) establishing application and review procedures for, and administration, audit, and closeout of, grants and cooperative agreements.

A10 Reports or recommendations on legislation or rulemaking that is not proposed by DOE.

A13 Administrative, organizational, or procedural Orders, Notices, and guidelines.

A4 Information gathering, data analysis and processing, information dissemination, review, interpretation, and development of documents. If any of these activities result in proposals for further action, those proposals must be covered by an appropriate CATEX. Examples include but are not limited to:

- (a) Document mailings, publication and distribution, training and information programs, historical and cultural demonstrations, and public affairs actions**
- (b) Studies, reports, proposals, analyses, literature reviews; computer modeling; and non-intrusive intelligence gathering activities**

The actions contemplated by this categorical exclusion are a variety of administrative activities that have no inherent potential for significant environmental impacts. This categorical exclusion is supported by long standing categorical exclusions that were brought to the Department by its components which would have only been developed through a process consistent with NEPA regulatory requirements. Further, the Panel found that actions of a similar nature, scope, and intensity were performed throughout the Department without significant environmental impacts.

The Panel also determined that the use of examples in this particular categorical exclusion would be helpful to future users in clarifying the types of activities envisioned by the categorical exclusion. In providing examples, the Panel did not intend to limit the categorical exclusion to those activities or to extend the categorical exclusion to actions including extraordinary circumstances that may result in the activity having significant environmental effects.

The Panel recognized that some of the activities contemplated by this categorical exclusion could result in proposals for further action. To ensure that these proposals would not promote activities with potential to significantly impact the quality of the human environment, the categorical exclusion is specifically limited so that if an activity results in a

proposal, this categorical exclusion would only apply if the proposal is for an action contemplated within another DHS categorical exclusion. This limitation is in place to ensure that there will be no potential for significant environmental impacts contemplated by the application of this categorical exclusion.

The Panel also noted that numerous other Federal agencies have categorical exclusions for similar activities that are sufficiently descriptive of the activity as to establish for the Panel that those activities were similar in nature, scope, and impact on the human environment as those performed by Department. In addition, the Panel recognized that all Federal agencies, with very few limitations, must meet the same requirements to protect the environment. The Panel determined from their experience in or on behalf of other Federal agencies that the characteristics of the activities in the Department were no different than those performed by other Federal agencies. They Panel also determined that those activities have negligible impacts on the human environment.

Accordingly, through a deliberative process, the Panel determined that the proposed categorical exclusion encompassed activities that inherently did not have individual or cumulative significant impact on the human environment.

LEGACY CATEGORICAL EXCLUSIONS AND COMPARABLE AGENCY CATEGORICAL EXCLUSIONS

FEMA

Reference: 44CFR10.8 (d) (2)

(iii) Studies that involve no commitment of resources other than manpower and associated funding;

USDA-ARS- APHIS

Reference: 7CFR1b.3 (a)

(3) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(6) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation

USCG

Reference: Figure 2-1 Coast Guard Categorical Exclusions

2. Real and Personal Property Related Actions i. Real property inspections for compliance with deed or easement restrictions.

5. Special Studies

a. Environmental site characterization studies and environmental monitoring including: siting, constructing, operating, and dismantling or closing of characterization and monitoring devices. Such activities include but are not limited to the following:

- Conducting geological, geophysical, geochemical, and engineering surveys and mapping, including the establishment of survey marks.

- Installing and operating field instruments, such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, and geophysical exploration tools.
- Drilling wells for sampling or monitoring of groundwater, well logging, and installation of water-level recording devices in wells.
- Conducting aquifer response testing.
- Installing and operating ambient air monitoring equipment.
- Sampling and characterizing water, soil, rock, or contaminants.
- Sampling and characterizing water effluents, air emissions, or solid waste streams.
- Sampling flora or fauna.
- Conducting archeological, historic, and cultural resource identification and evaluation studies in compliance with 36 CFR Part 800 and 43 CFR Part 7.
- Gathering data and information and conducting studies that involve no physical change to the environment. Examples include topographic surveys, bird counts, wetland mapping, and other inventories.

ENERGY

Reference: 10CFR1021

Subpart D Typical Classes of Actions

Appendix A to Subpart D of Part 1021--Categorical Exclusions Applicable to General Agency Actions

A9 Information gathering (including, but not limited to, literature surveys, inventories, audits), data analysis (including computer modeling), document preparation (such as conceptual design or feasibility studies, analytical energy supply and demand studies), and dissemination (including, but not limited to, document mailings, publication, and distribution; and classroom training and informational programs), but not including site characterization or environmental monitoring. (Also see B3.1.)

INTERIOR

Reference: Departmental Manual 516, Part 2, Appendix 1.

1.6 Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

1.11 Activities which are educational, informational, advisory, or consultative to other agencies, public and private entities, visitors, individuals, or the general public.

A5 Awarding of contracts for technical support services, ongoing management and operation of government facilities, and professional services that do not involve unresolved conflicts concerning alternative uses of available resources.