

# Subcommittee on Energy and Mineral Resources

Paul Gosar, Chairman  
Hearing Memorandum

June 4, 2018

**To:** Members of the Subcommittee on Energy and Mineral Resource

**From:** Majority Committee Staff Ashley Nichols (x5-9297)  
Subcommittee on Energy and Mineral Resources

**Hearing:** Legislative hearing on a **Discussion Draft of H.R. \_\_\_\_ (Rep. Steve Pearce)**, To clarify the categorical exclusions authorized by the Energy Policy Act of 2005 and authorize additional categorical exclusions to streamline the oil and gas permitting process.  
**June 6, 2018 at 2:00 PM; 1324 Longworth House Office Building**

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## Summary of the Bill

This discussion draft clarifies the categorical exclusions authorized by the Energy Policy Act of 2005 and authorizes additional categorical exclusions to streamline the oil and gas permitting process.

## Invited Witnesses (in alphabetical order)

Mr. John Baza  
Director, Utah Division of Oil, Gas and Mining  
Salt Lake City, UT

The Honorable Susana Martinez  
Governor  
State of New Mexico

Ms. Katharine MacGregor  
Deputy Assistant Secretary for Land and Minerals Management  
Department of the Interior  
Washington, D.C.

The Honorable Ken McQueen  
Secretary  
Energy, Minerals and Natural Resources Department  
State of New Mexico

Dennis Willis  
Price, UT

## Background

The Council on Environmental Quality (CEQ) defines a categorical exclusion as "a category of actions which do not individually or cumulatively have a significant effect on the human environment...and for which, therefore, neither an environmental assessment nor an environmental impact statement is required."<sup>1</sup>

Section 390 of the Energy Policy Act of 2005 authorized five categorical exclusions under the National Environmental Policy Act of 1969 (NEPA)<sup>2</sup> for the exploration and development of oil and gas.<sup>3</sup> Specifically, these categorical exclusions are as follows:

- (1) Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.
- (2) Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well.
- (3) Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.
- (4) Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.
- (5) Maintenance of a minor activity, other than any construction or major renovation or a building or facility.

Under the previous Administration, the Department of the Interior often chose not to grant categorical exclusions when processing applications for permit to drill or granting right of ways, even when the proposed drilling operations or pipeline placement would qualify for such designations under the Energy Policy Act of 2005. Congress enacted these categorical exclusions to streamline the permitting process for certain activities that would have an insignificant impact on the environment, or had already undergone rigorous environmental analysis under NEPA.

While Congress intended to streamline the permitting process by excluding certain permit applications from NEPA analysis, the previous Administration's decision not to utilize these categorical exclusions has exacerbated delays in the permitting process by requiring extensive NEPA analysis on each and every permit application submitted to the Bureau of Land Management (BLM).

This legislation would clarify the language in the Energy Policy Act of 2005 to ensure the Secretary of the Interior utilizes the authorized categorical exclusions in processing permit applications when applicable. If a proposed activity included in an application for permit to drill

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<sup>1</sup> 40 CFR § 1508.4

<sup>2</sup> 42 U.S.C. 4321

<sup>3</sup> 42 U.S.C. 15942

or right-of-way application qualifies for a categorical exclusion, BLM shall not conduct further analysis under NEPA before approving the application.

This legislation would also modify the existing categorical exclusions and authorize additional categorical exclusions to further streamline the permitting process for oil and gas activities. This bill will authorize categorical exclusions for activities that modify or expand existing operations in a limited manner, activities that take place where drilling has already occurred, as well as new activities that were anticipated in previous analyses under NEPA or will result in minimal surface disturbance.

### **Major Provisions of the Bill**

- Revises Section 390 of the Energy Policy Act of 2005 to clarify that certain proposed oil and gas activities shall be categorically excluded from further analysis under NEPA.
- Authorizes the following categorical exclusions:
  1. Reinstatement of an oil and gas lease;
  2. If the new surface disturbance is contiguous with the footprint of the original authorization and does not exceed 20 acres or the acreage evaluated in previously prepared NEPA documents:
    - a. Drilling oil or gas wells at a well pad site at which drilling previously occurred;
    - b. Expansion of an existing oil or gas well pad to accommodate additional wells; and
    - c. Expansion or modification of an existing oil or gas well pad site, road, pipelines, facilities, or utilities submitted in a Sundry Notice;
  3. Drilling of an oil and gas well at new well pad sites, provided that the new surface disturbance does not exceed 20 acres or the acreage evaluated in previously prepared NEPA documents, whichever is greater;
  4. Construction or realignment of a road, pipeline, or utilities within an existing right-of-way or within a right-of-way corridor established in a Land Use Plan;
  5. When conducted from non-Federal surface into Federally owned minerals, provided that the operator submits to the Secretary concerned certification of a surface use agreement with the non-Federal landowner:
    - a. Drilling oil or gas wells at a well pad site at which drilling has previously occurred;
    - b. Expansion of an existing oil or gas well pad site to accommodate additional wells; and

- c. Expansion or modification of an existing oil or gas well pad site, road, pipeline, facilities or utilities submitted in a Sundry Notice;
  - 6. Drilling of oil or gas wells from non-Federal surface and non-Federal surface subsurface into Federal mineral estate;
  - 7. Construction of up to 1 mile of new road on Federal or non-Federal surface, not to exceed 2 miles in total; and
  - 8. Construction of up to 3 miles of individual pipelines or utilities, regardless of surface ownership.
- The categorical exclusions authorized by this legislation shall not apply to actions on Indian lands or resources managed in trust for the benefit of Indian tribes.

### **Administration Position**

Unknown at this time.

### **Cost**

CBO has not scored the legislation.

### **Effect on Current Law (Ramseyer)**

### **Showing Current Law as amended by discussion draft bill on clarifying categorical exclusions authorized by the Energy Policy Act of 2005 (Pearce)**

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

### **Section 390 of the Energy Policy Act of 2005 (42 U.S.C. 15942)**

#### **§15942. NEPA review**

##### **[(a) NEPA review**

Action by the Secretary of the Interior in managing the public lands, or the Secretary of Agriculture in managing National Forest System Lands, with respect to any of the activities described in subsection (b) shall be subject to a rebuttable presumption that the use of a categorical exclusion under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] (NEPA) would apply if the activity is conducted pursuant to the Mineral Leasing Act [30 U.S.C. 181 et seq.] for the purpose of exploration or development of oil or gas.

##### **(b) Activities described**

The activities referred to in subsection (a) are the following:

(1) Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.

- (2) Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well.
- (3) Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.
- (4) Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.
- (5) Maintenance of a minor activity, other than any construction or major renovation or a building or facility.]

(a) NEPA REVIEW.—Action by the Secretary of the Interior in managing the public lands, or the Secretary of Agriculture in managing National Forest System Lands, with respect to any of the activities described in subsection (c) shall be categorically excluded from any further analysis and documentation under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if the activity is conducted pursuant to the Mineral Leasing Act for the purpose of exploration or development of oil and gas.

(b) CATEGORICAL EXCLUSION.—Use of a categorical exclusion created in this section—

- (1) shall not require a finding of no extraordinary circumstances;
- (2) shall be effective for the full term of the authorized permit or approval; and
- (3) shall not apply to actions on Indian lands or resources managed in trust for the benefit of Indian tribes.

(c) ACTIVITIES DESCRIBED.—The activities referred to in subsection (a) are:

- (1) Reinstating a lease pursuant to section 31 of the Mineral Leasing Act (30 U.S.C. 188).
- (2) The following activities, provided that any new surface disturbance is contiguous with the footprint of the original authorization and does not exceed 20 acres or the acreage evaluated in previously prepared NEPA documents, whichever is greater:

- (A) Drilling oil or gas wells at a well pad site at which drilling has occurred previously.
- (B) Expansion of an existing oil or gas well pad site to accommodate additional wells.
- (C) Expansion or modification of an existing oil or gas well pad site, road pipeline, facilities, or utilities submitted in a Sundry Notice.

(3) Drilling of oil and gas wells at new well pad sites, provided that the new surface disturbance does not exceed 20 acres or the acreage evaluated in previously prepared NEPA documents, whichever is greater.

(4) Construction or realignment of a road, pipeline, or utilities within an existing right-of-way or within a right-of-way corridor established in a Land Use Plan.

(5) The following activities when conducted from non-Federal surface into Federally owned minerals, provided that the operator submits to the Secretary concerned certification of a surface use agreement with the non-Federal landowner:

(A) Drilling oil or gas wells at a well pad site at which drilling has occurred previously.

(B) Expansion of an existing oil or gas well pad site to accommodate additional wells.

(C) Expansion or modification of an existing oil or gas well pad site, road, pipeline, facilities or utilities submitted in a Sundry Notice.

(6) drilling of oil or gas wells from non-Federal surface and non-Federal subsurface into Federal mineral estate.

(7) Construction of up to 1 mile of new road on Federal or non-Federal surface, not to exceed 2 miles in total.

(8) Construction of up to 3 miles of individual pipelines or utilities, regardless of surface ownership.