



Highlights of [GAO-09-872](#), a report to congressional requesters

## Why GAO Did This Study

The Energy Policy Act of 2005 was enacted in part to expedite oil and gas development. Section 390 of the act authorized the Department of the Interior's Bureau of Land Management (BLM) to use categorical exclusions to streamline the environmental analysis required when approving certain oil and gas activities. Numerous questions have been raised about how and when BLM should use these section 390 categorical exclusions. GAO was asked to report on (1) the extent to which BLM has used section 390 categorical exclusions and the benefits, if any, associated with their use; (2) the extent to which BLM has complied with the act and agency guidance; and (3) key concerns, if any, associated with section 390 categorical exclusions. GAO analyzed documents from all 26 BLM field offices that have used this new tool, including a nongeneralizable random sample of 215 section 390 categorical exclusion decision documents.

## What GAO Recommends

Congress may want to consider amending the act to clarify section 390. In addition, GAO recommends that BLM take steps to improve the implementation of section 390 by clarifying agency guidance, standardizing decision documents, and ensuring compliance through more oversight. The Department of the Interior concurred with our recommendations and stated that it will take immediate steps to ensure that the use of section 390 categorical exclusions is consistent with the act and BLM guidance.

View [GAO-09-872](#) or [key components](#). For more information, contact Robin M. Nazzaro at (202) 512-3841 or [nazzaro@gao.gov](mailto:nazzaro@gao.gov).

# ENERGY POLICY ACT OF 2005

## Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development under Section 390 of the Act

### What GAO Found

GAO's analysis of BLM field office data shows that section 390 categorical exclusions were used to approve approximately 6,100 of 22,000 applications for drilling permits (about 28 percent) and about 800 other actions—mostly modifications to existing permits—from fiscal years 2006 to 2008. GAO is reporting about 1,150 more instances in which BLM approved section 390 categorical exclusions than had been reported by BLM headquarters, largely because many field offices erroneously used single decision documents to approve multiple oil and gas wells. While section 390 categorical exclusions increased the efficiency of certain operations, some BLM field offices benefited more than others. The differences in benefits stem from a variety of factors and circumstances, such as whether an office had recent and site-specific National Environmental Policy Act (NEPA) documentation.

BLM's use of section 390 categorical exclusions has frequently been out of compliance with both the law and BLM's guidance. First, GAO found several types of violations of the law, including approving more than one oil or gas well under a single decision document, approving projects inconsistent with the law's criteria, and drilling a new well after time frames had lapsed. Second, GAO found numerous examples—in 85 percent of the field offices sampled—where officials did not correctly follow guidance, most often by failing to adequately justify the use of a categorical exclusion. A lack of clear guidance and oversight contributed to the violations and noncompliance. While many of these are technical in nature, others are more significant and may have thwarted NEPA's twin aims of ensuring that BLM and the public are fully informed of the environmental consequences of BLM's actions.

A lack of clarity in section 390 and BLM's guidance has raised serious concerns about the use of section 390 categorical exclusions.

- First, fundamental questions about what section 390 categorical exclusions are and how they should be used have led to concerns that BLM may be using these categorical exclusions in too many—or too few—instances. For example, there is disagreement as to whether BLM must screen section 390 categorical exclusions for extraordinary circumstances which would preclude their use, whether their use is mandatory, and how the public can challenge their use and on what grounds.
- Second, specific concerns have arisen about key concepts underlying the law's description of certain section 390 categorical exclusions. For example, some have raised concerns that section 390 categorical exclusions allow BLM to exceed development levels—such as number of wells to be drilled—analyzed in supporting NEPA documents without conducting further analysis.
- Third, vague or nonexistent definitions of key terms in the law and BLM guidance that describe the conditions to be met when using a section 390 categorical exclusion—such as “individual surface disturbances” or “maintenance of a minor activity”—have led to varied interpretations among field offices and concerns about misuse and a lack of transparency.