

So, Ted, what's different about categorical exclusions?

>> T. Milesnick: Well, categorical exclusions, they were included in the old handbook, but there's several new ones that have come online and so we would like to share those with the viewers. Categorical exclusions are addressed in chapter 4 and basically there's four kind of categories I'm going to discuss. One of them is the new energy policy act, CXs, Department of Interior CXs, and BLM CXs. So for the energy policy act CXs which are outlined in appendix 2, these are for oil and gas development activities and they have a couple unique requirements. First off is that you don't have to use the extraordinary circumstances as you do with the other CXs that we have. You can just apply those without going through that list of 10 or 11 circumstances. And then the second thing that's different about the energy policy act CXs is there's no specific documentation required. You can just note in administrative record or case file that you're using them and why you're using them. For the Departmental CXs, which are identified in appendix 3 of the handbook, there's a couple new ones, one for hazardous fuels treatment and one for rehabilitation activities following wildfires. The hazardous fuels one I know many of you in BLM have been using over the last two or three years since it's been implemented. Just recently, though in response to litigation the Forest Service received on the hazardous fuels CX we have pulled that from use by BLM offices who fall under the jurisdiction of the 9th circuit court. So unfortunately those offices can't use that CX in the future. So offices that fall outside of the 9th circuit, which would be Wyoming, Utah, Colorado, New Mexico, you can still use that and I encourage you to do so. For those of you who can't use it, there's some other CXs that fall under the new BLM ones I'll talk about in just a minute. The

Departmental CXs, they do have a specific format requirement, and so that's documented in appendix 5 of the handbook, and so if you're using those, please use that format. For the BLM CXs, which are addressed in appendix 4 of the new handbook, there are several new ones for the rangeland management program, for the forestry program and also for the emergency stabilization actions. These CXs for BLM are organized by program area, but any program can use those as long as the CX applies to programs you're not restricted. And then as in the Departmental CXs you need to go through the list of extraordinary circumstances to determine if they apply and then also there's a documentation requirement for the BLM CXs. So for CXs that don't -- if a CX, I guess, doesn't have environmental impacts or negligible environmental impacts you don't need to document the CXs for that use but those do that have impacts you would need to document that CX use using the form. And then just one final point I would like to make on CXs is that for CXs you need to do a separate decision document that's separate from the CX documentation.

>> C. Humphrey: So, Ted, you said that some actions would require documentation and some wouldn't. What's an example of something that wouldn't require documentation?

>> T. Milesnick: I think that's a good question, Cathy. Things such as installing a sign or going out and doing surveys or maybe going out and doing assessment or analysis work, kind of associated with a NEPA document, those kinds of activities that have no or negligible environmental impacts wouldn't need documentation.

>> C. Humphrey: And then one of the questions we got from the field was regarding the program specific guide ounce CXs. We've gotten a lot of that out lately. Is that included in

the handbook?

>> T. Milesnick: Unfortunately, it's not. Those kind of program-specific directions came out following the finalization of the handbook. So it's not in there. Hopefully we'll be able to include that type of program-specific guidance in the web guide when it's out.

>> C. Humphrey: So just to go back, so the categorical exclusions are in chapter 4 and then -- I mean appendices 2-7, that includes the CX lists and other CX related information?

>> T. Milesnick: Right, the CX lists, the extraordinary circumstances and then the documentation format for those that require it.

Question:

We've got a fax from Palm Springs, and the question is: are there examples of appeal or protest language that can be attached to a CX and is it required? Ted?

>> T. Milesnick: I think -- to address the question, a couple points to make, we don't have any specific kind of program direction included in the handbook for kind of issuing the decision and the protest of appeal process. We envision that could be added to the web guide once it comes online. As far as whether or not that's required, I will say that the format that the Department directed that we use for the hazardous fuels CX and for rehabilitation CX, the format for that does have a place for protests and appeals. For the BLM CX and the format we're recommending for use on it, which is appendix 6, it doesn't have a required protest and appeal provision because we've separated out the decision

document from the CX, and so the decision document that you would issue for the action that's being taken, you would need to have the applicable protest, the appeal provision in that decision document, not the CX document.

>> R. Hardt: We didn't delve into the protest and appeal details because they're not NEPA requirements. These are things that might be dictated by regulation or program guidance but they don't come to us from NEPA. And so they weren't matters that we felt we should be providing guidance on here.

Question:

>> Participant: This is Greg Thane from Utah. Can you hear me there?

>> C. Humphrey: Yes, we can. Go ahead, Greg.

>> Participant: Ted is referring to a decision document following a CX. Would you talk about what you mean by document and distinguish that from decision record subsequent to an EA?

>> T. Milesnick: When we prepare a CX we need to make a determination that the CX is valid and applicable. So that would be a separate document that would be signed by the manager, and then there's a decision document on the action being taken. For example, if you were doing a rangeland treatment that falls within one of the new BLM CXs, when you're making the decision on that action itself, that would be separate from your CX determination. So that would be documented separately.

>> R. Hardt: But the decision itself wouldn't differ whether or not you're preparing a CX or an EA. It's going to follow the program specific guidance for that kind of decision.

>> T. Milesnick: Right.

>> Participant: But you wouldn't call that a decision record, is that correct?

>> T. Milesnick: Well, decision records are typically associated with EAs. You would have to issue some type of a decision on the action that you're taking, whether or not you call it a decision record I think is probably not pertinent. It probably wouldn't matter what you called it.

>> M. Conry: I think it's good just to reiterate because there are so many questions relating to combining the FONSI and the decision record and do I have to do a decision on a CX? Do I have to do a decision on a DNA? All of these tools, whether it's a CX, a DNA, an EA or even an EIS they're the analytical or review tools for a proposal. They do not in any way constitute a decision to take action on behalf of the agency. Those analytical tools or processes are not appealable, they're not protestable, there's no administrative remedy for us just analyzing a particular action such as road construction or a timber sale. It's not until a decision maker actually crafts a decision to implement that proposed action or another alternative that something is put into play and something is appealable or protestable depending on the program-specific regulations. That was something we really tried to draw a bright line with our NEPA Handbook on, is that those findings and determinations that are separate from the decision making document -- or decision record need to be kept separate.

>> C. Humphrey: Does that answer your question, Greg?

>> Participant: I get questions from the field regarding whether or not they need to prepare a decision or just issue a permit. As part of

that permit issuance indicate what NEPA compliance was for that particular permit. So what I'm asking is, is there a separate document that you call a decision that's separate from just issuing a permit once you've determined the CX is appropriate?

>> R. Hardt: I think -- you would prepare the same decision regardless of whether or not you analyzed the action with an EA or a CX. So depending on the program, you would write it the same way. You'd follow the program guidance about how you issue that decision. The NEPA --

>> Participant: I understand that, but when we do an EA, we do a separate decision record and then we do a permit.

>> R. Hardt: Then you write a decision are a you duty CX.

>> Participant: I'm asking after the CX does there have to be a separate item called the decision or do you write a permit.

>> R. Hardt: Then you write a decision exactly as you would after you wrote an EA.

>> C. Humphrey: We need to move on and get -- we have some more questions coming up, but if you guys want to talk offline about this, then, Greg, I'm sure you have Richard's phone number or we could get on a conference call or something to discuss this more.

Question:

>> C. Humphrey: We have a call from Roseburg. I think it's Rob. Are you there?

>> Participant: This is Ralph Thomas from Roseburg, America, again I thought I heard

earlier in the discussion on CXs that you could possibly use some of the CXs for the different programs, say if the field CX sun available to use we can possibly use maybe the grazing CX because the VEG treatments are allowed under the grazing CX. Can anyone elaborate on this?

>> T. Milesnick: Yes, I could address that, Ralph. That's true. The new BLM CX that came out with our new chapter 11 and is listed as one of our BLM CXs for vegetative treatments, if you're doing a fuels treatment or a project or other treatment for that matter that met the requirements in the description of that CX, then you can go ahead and use that. So that opens up some other opportunities for us, even though we've lost the use of the hazardous fuels CX in the 9th circuit. We can go ahead and use that rangeland management CX.

>> M. Conry: In the handbook we talk about those subject headings for the BLM categorical exclusions or more for organizational purposes than anything. So if you're working on a particular project that may be wildlife related but there's a CX, I don't know, related to road maintenance or transportation, and it applies, I would say go ahead and use that CX. Don't feel limited by the subject heading that the categorical exclusion falls under. The true essential is, is the categorical exclusion a fit with what you're trying to do on the ground, and then, of course, look at the extraordinary circumstances.

Question:

>> Participant: This is Greg Thane again. I was saying it's a little bit risky in one respect and that is that the protest and appeals provisions are specific to programs,

and if you start using CXs for one program to another, keep in mind that your protest and appeal opportunity should be written for the program under what the CX is stated.

>> R. Hardt: That's a very good caution. That is again why we separated you on you do your review or analysis from how you make a decision. So your decision document is going to document what are the protest and appeal opportunities, and that's really quite separate from which CX you might apply or the CX review itself.

>> T. Milesnick: Right. And those decision requirements are typically laid out very specifically for each program area that we have.

>> Participant: I don't see how you can be found to be consistent if you're citing a CX based on CEQ in one program and citing your decision under another authority.

>> T. Milesnick: I was going to say that the CX isn't tied to a particular program. It's tied to an action that's described and it's organized by a program area, but the CX is separate from the decision that you're taking on the action. You're making a determination that that CX is applicable and appropriate and the extraordinary circumstances don't apply. Therefore, that you don't need to do additional NEPA analysis on it. That determination is separate from the decision on the action which you would have to follow the program guidance, then, on, when you're issuing that decision. I know it's a complicated concept and that's why we tried to separate the CX determination from the decision on the action.

>> C. Humphrey: So probably some of the advice would be to go back to the handbook and read what it says there and see if that helps out.

>> T. Milesnick: Yeah. I would be glad to talk offline, Greg, on kind of the issuing of decisions because I note we had a couple questions on that. I would be more than happy to kind of at least give you my input and thoughts on it.