# 5. Guidance Resources

# **The National Environmental Policy Act of 1969**, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "National Environmental Policy Act of 1969."

**Purpose**

**Sec. 2 [42 USC § 4321].**

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

## TITLE I

## CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

**Sec. 101 [42 USC § 4331].**

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may –

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

**Sec. 102 [42 USC § 4332].**

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall –

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on –

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the

comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

**Sec. 103 [42 USC § 4333].**

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

**Sec. 104 [42 USC § 4334].**

Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

**Sec. 105 [42 USC § 4335].**

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

## TITLE II

## COUNCIL ON ENVIRONMENTAL QUALITY

**Sec. 201 [42 USC § 4341].**

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban an rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

**Sec. 202 [42 USC § 4342].**

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to

appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

**Sec. 203 [42 USC § 4343].**

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

**Sec. 204 [42 USC § 4344].**

It shall be the duty and function of the Council --

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;
2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;
3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;
4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;
5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
7. to report at least once each year to the President on the state and condition of the environment; and
8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

**Sec. 205 [42 USC § 4345].**

In exercising its powers, functions, and duties under this Act, the Council shall --

1. consult with the Citizens' Advisory Committee on Environmental

Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

**Sec. 206 [42 USC § 4346].**

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

**Sec. 207 [42 USC § 4346a].**

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

**Sec. 208 [42 USC § 4346b].**

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

**Sec. 209 [42 USC § 4347].**

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

**The Environmental Quality Improvement Act**, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

**42 USC § 4372.**

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions ;under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by –

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
2. assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;
3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;
5. assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
6. assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;
7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

**42 USC § 4373.** Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

**42 USC § 4374.** There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91-190:

(a) $2,126,000 for the fiscal year ending September 30, 1979.

(b) $3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.

(c) $44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) $480,000 for each of the fiscal years ending September 30, 1985 and 1986.

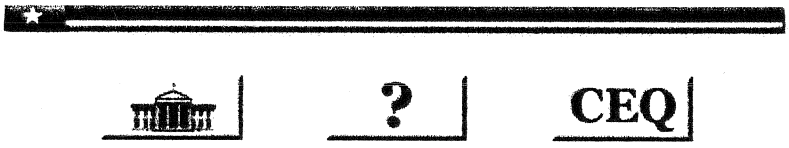
**42 USC § 4375.**

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance –

1. study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and
2. Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

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Council on Environmental Quality
Executive Office of the President

# REGULATIONS

For Implementing The Procedural Provisions Of The

# NATIONAL ENVIRONMENTAL POLICY ACT

Reprint
40 CFR Parts 1500-1508
(as of July 1, 1986)

CONTENTS

| | Page |
|---|---|
| Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act . . | 1 |
| The National Environmental Policy Act of 1969, as Amended . . . . . | 35 |
| The Environmental Quality Improvement Act of 1970 . | 40 |
| The Clean Air Act § 309 . . . . . | 42 |
| Executive Order 11514, as Amended by Executive Order 11991 . . . . . | 43 |

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# TABLE OF CONTENTS


## PART 1500—PURPOSE, POLICY, AND MANDATE

Sec.
1500.1 Purpose.
1500.2 Policy.
1500.3 Mandate.
1500.4 Reducing paperwork.
1500.5 Reducing delay.
1500.6 Agency authority.

## PART 1501—NEPA AND AGENCY PLANNING

1501.1 Purpose.
1501.2 Apply NEPA early in the process.
1501.3 When to prepare an environmental assessment.
1501.4 Whether to prepare an environmental impact statement.
1501.5 Lead agencies.
1501.6 Cooperating agencies.
1501.7 Scoping.
1501.8 Time limits.

## PART 1502—ENVIRONMENTAL IMPACT STATEMENT

1502.1 Purpose.
1502.2 Implementation.
1502.3 Statutory requirements for statements.
1502.4 Major Federal actions requiring the preparation of environmental impact statements.
1502.5 Timing.
1502.6 Interdisciplinary preparation.
1502.7 Page limits.
1502.8 Writing.
1502.9 Draft, final, and supplemental statements.
1502.10 Recommended format.
1502.11 Cover sheet.
1502.12 Summary.
1502.13 Purpose and need.
1502.14 Alternatives including the proposed action.
1502.15 Affected environment.
1502.16 Environmental consequences.
1502.17 List of preparers.
1502.18 Appendix.
1502.19 Circulation of the environmental impact statement.
1502.20 Tiering.
1502.21 Incorporation by reference.
1502.22 Incomplete or unavailable information.
1502.23 Cost-benefit analysis.
1502.24 Methodology and scientific accuracy.
1502.25 Environmental review and consultation requirements.

## PART 1503—COMMENTING

1503.1 Inviting comments.
1503.2 Duty to comment.
1503.3 Specificity of comments.
1503.4 Response to comments.

## PART 1504—PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

1504.1 Purpose.
1504.2 Criteria for referral.
1504.3 Procedure for referrals and response.

## PART 1505—NEPA AND AGENCY DECISIONMAKING

1505.1 Agency decisionmaking procedures.
1505.2 Record of decision in cases requiring environmental impact statements.
1505.3 Implementing the decision.

## PART 1506—OTHER REQUIREMENTS OF NEPA

1506.1 Limitations on actions during NEPA process.
1506.2 Elimination of duplication with State and local procedures.
1506.3 Adoption.
1506.4 Combining documents.
1506.5 Agency responsibility.
1506.6 Public involvement.
1506.7 Further guidance.
1506.8 Proposals for legislation.
1506.9 Filing requirements.
1506.10 Timing of agency action.
1506.11 Emergencies.
1506.12 Effective date.

## PART 1507—AGENCY COMPLIANCE

1507.1 Compliance.
1507.2 Agency capability to comply.
1507.3 Agency procedures.

## PART 1508—TERMINOLOGY AND INDEX

1508.1 Terminology.
1508.2 Act.

Sec.
1508.3 Affecting.
1508.4 Categorical exclusion.
1508.5 Cooperating agency.
1508.6 Council.
1508.7 Cumulative impact.
1508.8 Effects.
1508.9 Environmental assessment.
1508.10 Environmental document.
1508.11 Environmental impact statement.
1508.12 Federal agency.
1508.13 Finding of no significant impact.
1508.14 Human environment.
1508.15 Jurisdiction by law.
1508.16 Lead agency.
1508.17 Legislation.
1508.18 Major Federal action.
1508.19 Matter.
1508.20 Mitigation.
1508.21 NEPA process.
1508.22 Notice of intent.
1508.23 Proposal.
1508.24 Referring agency.
1508.25 Scope.
1508.26 Special expertise.
1508.27 Significantly.
1508.28 Tiering.
Index.

## PART 1500—PURPOSE, POLICY, AND MANDATE

Sec.
1500.1 Purpose.
1500.2 Policy.
1500.3 Mandate.
1500.4 Reducing paperwork.
1500.5 Reducing delay.
1500.6 Agency authority.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and E.O. 11514, Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55990, Nov. 28, 1978, unless otherwise noted.

### § 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

### § 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

### § 1500.3 Mandate.

Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions

of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

**§ 1500.4 Reducing paperwork.**

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (§ 1502.2(c)), by means such as setting appropriate page limits (§§ 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (§ 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (§ 1502.2(b)).

(d) Writing environmental impact statements in plain language (§ 1502.8).

(e) Following a clear format for environmental impact statements (§ 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.7).

(h) Summarizing the environmental impact statement (§ 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and 1502.20).

(j) Incorporating by reference (§ 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(l) Requiring comments to be as specific as possible (§ 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§ 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (§ 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(o) Combining environmental documents with other documents (§ 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (§ 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant

effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§ 1508.13).

[43 FR 55990, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

### § 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (§ 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (§ 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (§ 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (§ 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (§§ 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (§ 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (§ 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(i) Combining environmental documents with other documents (§ 1506.4).

(j) Using accelerated procedures for proposals for legislation (§ 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (§ 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

### § 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

## PART 1501—NEPA AND AGENCY PLANNING

Sec.

1501.1 Purpose.
1501.2 Apply NEPA early in the process.
1501.3 When to prepare an environmental assessment.
1501.4 Whether to prepare an environmental impact statement.
1501.5 Lead agencies.
1501.6 Cooperating agencies.
1501.7 Scoping.
1501.8 Time limits.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55992, Nov. 29, 1978, unless otherwise noted.

### § 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

**§ 1501.2 Apply NEPA early in the process.**

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by § 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

**§ 1501.3 When to prepare an environmental assessment.**

(a) Agencies shall prepare an environmental assessment (§ 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in § 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

**§ 1501.4 Whether to prepare an environmental impact statement.**

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§ 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available

to the affected public as specified in § 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(ii) The nature of the proposed action is one without precedent.

**§ 1501.5 Lead agencies.**

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§ 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

**§ 1501.6 Cooperating agencies.**

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may re-

quest the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in § 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b) (3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

**§ 1501.7 Scoping.**

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§ 1508.22) in the FEDERAL REGISTER except as provided in § 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under § 1507.3(c). An agency may give notice in accordance with § 1506.6.

(2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in § 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§ 1502.7).

(2) Set time limits (§ 1501.8).

(3) Adopt procedures under § 1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

### § 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by § 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: *Provided,* That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process, which may include:

(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

## PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Sec.

1502.1 Purpose.
1502.2 Implementation.
1502.3 Statutory requirements for statements.
1502.4 Major Federal actions requiring the preparation of environmental impact statements.
1502.5 Timing.
1502.6 Interdisciplinary preparation.
1502.7 Page limits.
1502.8 Writing.
1502.9 Draft, final, and supplemental statements.
1502.10 Recommended format.
1502.11 Cover sheet.
1502.12 Summary.
1502.13 Purpose and need.
1502.14 Alternatives including the proposed action.
1502.15 Affected environment.
1502.16 Environmental consequences.
1502.17 List of preparers.
1502.18 Appendix.
1502.19 Circulation of the environmental impact statement.
1502.20 Tiering.
1502.21 Incorporation by reference.
1502.22 Incomplete or unavailable information.

Sec.
1502.23 Cost-benefit analysis.
1502.24 Methodology and scientific accuracy.
1502.25 Environmental review and consultation requirements.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

**§ 1502.1 Purpose.**

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

**§ 1502.2 Implementation.**

To achieve the purposes set forth in § 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (§ 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

**§ 1502.3 Statutory requirements for statements.**

As required by sec. 102(2)(C) of NEPA environmental impact statements (§ 1508.11) are to be included in every recommendation or report.

On proposals (§ 1508.23).

For legislation and (§ 1508.17).

Other major Federal actions (§ 1508.18).

Significantly (§ 1508.27).

Affecting (§§ 1508.3, 1508.8).

The quality of the human environment (§ 1508.14).

**§ 1502.4 Major Federal actions requiring the preparation of environmental impact statements.**

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§ 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall

be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (§ 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (§ 1501.7), tiering (§ 1502.20), and other methods listed in §§ 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

### § 1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (§ 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (§§ 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

### § 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1501.7).

### § 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of § 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

§ 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

**§ 1502.9 Draft, final, and supplemental statements.**

Except for proposals for legislation as provided in § 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

**§ 1502.10 Recommended format.**

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for action.

(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C) (i), (ii), (iv), and (v) of the Act).

(h) List of preparers.

(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.

(j) Index.

(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in §§ 1502.11 through 1502.18, in any appropriate format.

### § 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA under § 1506.10).

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

### § 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

### § 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

### § 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

### § 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

### § 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate

the discussions of those elements required by sections 102(2)(C) (i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

(a) Direct effects and their significance (§ 1508.8).

(b) Indirect effects and their significance (§ 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(f)).

[43 FR 55994, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

### § 1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§ 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

### § 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§ 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

### § 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in § 1502.18(d) and unchanged statements as provided in § 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person,

organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

**§ 1502.20 Tiering.**

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

**§ 1502.21 Incorporation by reference.**

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

**§ 1502.22 Incomplete or unavailable information.**

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement: (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the FEDERAL REGISTER on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the re-

quirements of either the original or amended regulation.

[51 FR 15625, Apr. 25, 1986]

### § 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

### § 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

### § 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

## PART 1503—COMMENTING

Sec.
1503.1 Inviting comments.
1503.2 Duty to comment.
1503.3 Specificity of comments.
1503.4 Response to comments.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55997, Nov. 29, 1978, unless otherwise noted.

### § 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing

State and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under § 1506.10.

**§ 1503.2 Duty to comment.**

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in § 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

**§ 1503.3 Specificity of comments.**

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

**§ 1503.4 Response to comments.**

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§ 1502.19). The entire document with

a new cover sheet shall be filed as the final statement (§ 1506.9).

## PART 1504—PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec.
1504.1 Purpose.
1504.2 Criteria for referral.
1504.3 Procedure for referrals and response.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55998, Nov. 29, 1978, unless otherwise noted.

### § 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

### § 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

### § 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the

referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response.

(f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f) (2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

[43 FR 55998, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

## PART 1505—NEPA AND AGENCY DECISIONMAKING

Sec.

1505.1 Agency decisionmaking procedures.
1505.2 Record of decision in cases requiring environmental impact statements.
1505.3 Implementing the decision.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C.

7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55999, Nov. 29, 1978, unless otherwise noted.

### § 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (§ 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

### § 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6 (c) and (d), and part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

### § 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

## PART 1506—OTHER REQUIREMENTS OF NEPA

Sec.
1506.1 Limitations on actions during NEPA process.
1506.2 Elimination of duplication with State and local procedures.
1506.3 Adoption.
1506.4 Combining documents.
1506.5 Agency responsibility.
1506.6 Public involvement.
1506.7 Further guidance.
1506.8 Proposals for legislation.
1506.9 Filing requirements.
1506.10 Timing of agency action.
1506.11 Emergencies.
1506.12 Effective date.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 56000, Nov. 29, 1978, unless otherwise noted.

### § 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in § 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (*e.g.* long leadtime equipment and purchase options) made by nongovernmental entities seeking loan guarantees from the Administration.

### § 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In

such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

**§ 1506.3 Adoption.**

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under Part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

**§ 1506.4 Combining documents.**

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

**§ 1506.5 Agency responsibility.**

(a) *Information.* If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (§ 1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) *Environmental assessments.* If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) *Environmental impact statements.* Except as provided in §§ 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under § 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the out-

come of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

**§ 1506.6 Public involvement.**

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the FEDERAL REGISTER and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the *102 Monitor*. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

### § 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

### § 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (§ 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; *Provided,* That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by §§ 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

### § 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, D.C. 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and § 1506.10.

### § 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the FEDERAL REGISTER each week of the environmental impact statements filed

during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under § 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see § 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

[43 FR 56000, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

### § 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

### § 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under sec. 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these

regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the FEDERAL REGISTER of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

## PART 1507—AGENCY COMPLIANCE

Sec.
1507.1 Compliance.
1507.2 Agency capability to comply.
1507.3 Agency procedures.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 56002, Nov. 29, 1978, unless otherwise noted.

### § 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by § 1507.3 to the requirements of other applicable laws.

### § 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

### § 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the FEDERAL REGISTER, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the FEDERAL REGISTER for comment. Agencies with similar programs should consult with each other

and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by §§ 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (§ 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in § 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by § 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

## PART 1508—TERMINOLOGY AND INDEX

Sec.


1508.1 Terminology.
1508.2 Act.
1508.3 Affecting.
1508.4 Categorical exclusion.
1508.5 Cooperating agency.
1508.6 Council.
1508.7 Cumulative impact.
1508.8 Effects.
1508.9 Environmental assessment.
1508.10 Environmental document.
1508.11 Environmental impact statement.
1508.12 Federal agency.
1508.13 Finding of no significant impact.
1508.14 Human environment.
1508.15 Jurisdiction by law.
1508.16 Lead agency.
1508.17 Legislation.
1508.18 Major Federal action.
1508.19 Matter.
1508.20 Mitigation.
1508.21 NEPA process.
1508.22 Notice of intent.
1508.23 Proposal.
1508.24 Referring agency.
1508.25 Scope.
1508.26 Special expertise.
1508.27 Significantly.
1508.28 Tiering.


AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

§ 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

§ 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

§ 1508.3 Affecting.

"Affecting" means will or may have an effect on.

§ 1508.4 Categorical exclusion.

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

§ 1508.5 Cooperating agency.

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in § 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

§ 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

§ 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

§ 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

§ 1508.9 Environmental assessment.

"Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining

whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

**§ 1508.10 Environmental document.**

"Environmental document" includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent).

**§ 1508.11 Environmental impact statement.**

"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

**§ 1508.12 Federal agency.**

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

**§ 1508.13 Finding of no significant impact.**

"Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

**§ 1508.14 Human environment.**

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (§ 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

**§ 1508.15 Jurisdiction by law.**

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

**§ 1508.16 Lead agency.**

"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

**§ 1508.17 Legislation.**

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

**§ 1508.18 Major Federal action.**

"Major Federal action" includes actions with effects that may be major and which are potentially subject to

Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

**§ 1508.19 Matter.**

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

**§ 1508.20 Mitigation.**

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

**§ 1508.21 NEPA process.**

"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

**§ 1508.22 Notice of intent.**

"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

§ 1508.23 **Proposal.**

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (§ 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

§ 1508.24 **Referring agency.**

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

§ 1508.25 **Scope.**

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include: (1) No action alternative.

(2) Other reasonable courses of actions.

(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

§ 1508.26 **Special expertise.**

"Special expertise" means statutory responsibility, agency mission, or related program experience.

§ 1508.27 **Significantly.**

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) *Context.* This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity.* This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency

believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

[43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

**§ 1508.28 Tiering.**

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

Act ..... 1508.2.
Action ..... 1508.18, 1508.25.
Action-forcing ..... 1500.1, 1502.1.
Adoption ..... 1500.4(n), 1500.5(h), 1506.3.
Affected Environment ..... 1502.10(f), 1502.15.
Affecting ..... 1502.3, 1508.3.
Agency Authority ..... 1500.6.
Agency Capability ..... 1501.2(a), 1507.2.
Agency Compliance ..... 1507.1.
Agency Procedures ..... 1505.1, 1507.3.
Agency Responsibility ..... 1506.5.
Alternatives ..... 1501.2(c), 1502.2, 1502.10(e), 1502.14, 1505.1(e), 1505.2, 1507.2(d), 1508.25(b).
Appendices ..... 1502.10(k), 1502.18, 1502.24.
Applicant ..... 1501.2(d)(1), 1501.4(b), 1501.8(a), 1502.19(b), 1503.1(a)(3), 1504.3(e), 1506.1(d), 1506.5(a), 1506.5(b).
Apply NEPA Early in the Process. ..... 1501.2.
Categorical Exclusion ..... 1500.4(p), 1500.5(k), 1501.4(a), 1507.3(b), 1508.4.
Circulating of Environmental Impact Statement. ..... 1502.19, 1506.3.
Classified Information ..... 1507.3(c).
Clean Air Act ..... 1504.1, 1508.19(a).
Combining Documents ..... 1500.4(o), 1500.5(i), 1506.4.
Commenting ..... 1502.19, 1503.1, 1503.2, 1503.3, 1503.4, 1506.6(f).
Consultation Requirement ..... 1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25.
Context ..... 1508.27(a).
Cooperating Agency ..... 1500.5(b), 1501.1(b), 1501.5(c), 1501.5(f), 1501.6, 1503.1(a)(1), 1503.2, 1503.3, 1506.3(c), 1506.5(a), 1508.5.
Cost-Benefit ..... 1502.23.
Council on Environmental Quality. ..... 1500.3, 1501.5(e), 1501.5(f), 1501.6(c), 1502.9(c)(4), 1504.1, 1504.2, 1504.3, 1506.6(f), 1506.9, 1506.10(e), 1506.11, 1507.3, 1508.6, 1508.24.
Cover Sheet ..... 1502.10(a), 1502.11.
Cumulative Impact ..... 1508.7, 1508.25(a), 1508.25(c).
Decisionmaking ..... 1505.1, 1506.1.
Decision points ..... 1505.1(b).
Dependent ..... 1508.25(a).
Draft Environmental Impact Statement. ..... 1502.9(a).
Early Application of NEPA ..... 1501.2.
Economic Effects ..... 1508.8.
Effective Date ..... 1506.12.
Effects ..... 1502.16, 1508.8.
Emergencies ..... 1506.11.
Endangered Species Act ..... 1502.25, 1508.27(b)(9).
Energy ..... 1502.16(e).
Environmental Assessment ..... 1501.3, 1501.4(b), 1501.4(c), 1501.7(b)(3), 1506.2(b)(4), 1506.5(b), 1508.4, 1508.9, 1508.10, 1508.13.
Environmental Consequences. ..... 1502.10(g), 1502.16.





Environmental Consultation Requirements. ..... 1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25, 1503.3(c).
Environmental Documents ..... 1508.10.
Environmental Impact Statement. ..... 1500.4, 1501.4(c), 1501.7, 1501.3, 1502.1, 1502.2, 1502.3, 1502.4, 1502.5, 1502.6, 1502.7, 1502.8, 1502.9, 1502.10, 1502.11, 1502.12, 1502.13, 1502.14, 1502.15, 1502.16, 1502.17, 1502.18, 1502.19, 1502.20, 1502.21, 1502.22, 1502.23, 1502.24, 1502.25, 1506.2(b)(4), 1506.3, 1506.8, 1508.11.
Environmental Protection Agency. ..... 1502.11(f), 1504.1, 1504.3, 1506.7(c), 1506.9, 1506.10, 1508.19(a).
Environmental Review Requirements. ..... 1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25 1503.3(c).
Expediter ..... 1501.8(b)(2).
Federal Agency ..... 1508.12.
Filing ..... 1506.9.
Final Environmental Impact Statement. ..... 1502.9(b), 1503.1, 1503.4(b).
Finding of No Significant Impact. ..... 1500.3, 1500.4(q), 1500.5(1), 1501.4(e), 1508.13.
Fish and Wildlife Coordination Act. ..... 1502.25.
Format for Environmental Impact Statement. ..... 1502.10.
Freedom of Information Act ..... 1506.6(f).
Further Guidance ..... 1506.7.
Generic ..... 1502.4(c)(2).
General Services Administration. ..... 1506.8(b)(5).
Geographic ..... 1502.4(c)(1).
Graphics ..... 1502.8.
Handbook ..... 1506.7(a).
Housing and Community Development Act. ..... 1506.12, 1508.12.
Human Environment ..... 1502.3, 1502.22, 1508.14.
Impacts ..... 1508.8, 1508.25(c).
Implementing the Decision ..... 1505.3.
Incomplete or Unavailable Information. ..... 1502.22.
Incorporation by Reference ..... 1500.4(j), 1502.21.
Index ..... 1502.10(j).
Indian Tribes ..... 1501.2(d)(2) 1501.7(a)(1), 1502.15(c), 1503.1(a)(2)(ii), 1506.6(b)(3)(ii), 1508.5, 1508.12.
Intensity ..... 1508.27(b).
Interdisciplinary Preparation ..... 1502.6, 1502.17.
Interim Actions ..... 1506.1.
Joint Lead Agency ..... 1501.5(b), 1506.2.
Judicial Review ..... 1500.3.
Jurisdication by Law ..... 1508.15.
Lead Agency ..... 1500.5(c), 1501.1(c), 1501.5, 1501.6, 1501.7, 1501.8, 1504.3, 1506.2(b)(4), 1506.8(a), 1506.10(e), 1508.16.
Legislation ..... 1500.5(j), 1502.3, 1506.8, 1508.17, 1508.18(a).
Limitation on Action During NEPA Process. ..... 1506.1.
List of Preparers ..... 1502.10(h), 1502.17.

| | |
|---|---|
| Local or State | 1500.4(n), 1500.5(h), 1501.2(d)(2), 1501.5(b), 1501.5(d), 1501.7(a)(1), 1501.8(c), 1502.16(c), 1503.1(a)(2), 1506.2(b), 1506.6(b)(3), 1508.5, 1508.12, 1508.18. |
| Major Federal Action | 1502.3, 1508.18. |
| Mandate | 1500.3. |
| Matter | 1504.1, 1504.2, 1504.3, 1508.19. |
| Methodology | 1502.24. |
| Mitigation | 1502.14(h), 1502.16(h), 1503.3(d), 1505.2(c), 1505.3, 1508.20. |
| Monitoring | 1505.2(c), 1505.3. |
| National Historic Preservation Act. | 1502.25. |
| National Register of Historical Places. | 1508.27(b)(8). |
| Natural or Depletable Resource Requirements. | 1502.16(f). |
| Need for Action | 1502.10(d), 1502.13. |
| NEPA Process | 1508.21. |
| Non-Federal Sponsor | 1501.2(d). |
| Notice of Intent | 1501.7, 1507.3(e), 1508.22. |
| OMB Circular A-95 | 1503.1(a)(2)(iii), 1505.2, 1506.6(b)(3)(i). |
| 102 Monitor | 1506.6(b)(2), 1506.7(c). |
| Ongoing Activities | 1506.12. |
| Page Limits | 1500.4(a), 1501.7(b), 1502.7. |
| Planning | 1500.5(a), 1501.2(b), 1502.4(a), 1508.18. |
| Policy | 1500.2, 1502.4(b), 1508.18(a). |
| Program Environmental Impact Statement. | 1500.4(i), 1502.4, 1502.20, 1508.18. |
| Programs | 1502.4, 1508.18(b). |
| Projects | 1508.18. |
| Proposal | 1502.4, 1502.5, 1506.8, 1508.23. |
| Proposed Action | 1502.10(e), 1502.14, 1506.2(c). |
| Public Health and Welfare | 1504.1. |
| Public Involvement | 1501.4(e), 1503.1(a)(3), 1506.6. |
| Purpose | 1500.1, 1501.1, 1502.1, 1504.1. |
| Purpose of Action | 1502.10(d), 1502.13. |





| | |
|---|---|
| Record of Decision | 1505.2, 1506.1. |
| Referrals | 1504.1, 1504.2, 1504.3, 1506.3(d). |
| Referring Agency | 1504.1, 1504.2, 1504.3. |
| Response to Comments | 1503.4. |
| Rural Electrification Administration. | 1506.1(d). |
| Scientific Accuracy | 1502.24. |
| Scope | 1502.4(a), 1502.9(a), 1508.25. |
| Scoping | 1500.4(b), 1501.1(d), 1501.4(d), 1501.7, 1502.9(a), 1506.8(a). |
| Significantly | 1502.3, 1508.27. |
| Similar | 1508.25. |
| Small Business Associations | 1506.6(b)(3)(vi). |
| Social Effects | 1508.8. |
| Special Expertise | 1508.26. |
| Specificity of Comments | 1500.4(1), 1503.3. |
| State and Areawide Clearinghouses | 1501.4(e)(2), 1503.1(a)(2)(iii), 1506.6(b)(3)(i). |
| State and Local | 1500.4(n), 1500.5(h), 1501.2(d)(2), 1501.5(b), 1501.5(d), 1501.7(a)(1), 1501.8(c), 1502.16(c), 1503.1(a)(2), 1506.2(b), 1506.6(b)(3), 1508.5, 1508.12, 1508.18. |
| State and Local Fiscal Assistance Act. | 1508.18(a). |
| Summary | 1500.4(h), 1502.10(b), 1502.12. |
| Supplements to Environmental Impact Statements. | 1502.9(c). |
| Table of Contents | 1502.10(c). |
| Technological Development | 1502.4(c)(3). |
| Terminology | 1508.1. |
| Tiering | 1500.4(i), 1502.4(d), 1502.20, 1508.28. |
| Time Limits | 1500.5(e), 1501.1(e), 1501.7(b)(2), 1501.8. |
| Timing | 1502.4, 1502.5, 1506.10. |
| Treaties | 1508.17. |
| When to Prepare an Environmental Impact Statement. | 1501.3. |
| Wild and Scenic Rivers Act | 1506.8(b)(ii). |
| Wilderness Act | 1506.8(b)(ii). |
| Writing | 1502. |

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**COUNCIL ON ENVIRONMENTAL QUALITY**
Executive Office of the President

Memorandum to Agencies:

# Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations

SUMMARY: The Council on Environmental quality, as part of its oversight of implementation of the National Environmental Policy Act, held meetings in the ten Federal regions with Federal, State, and local officials to discuss administration of the implementing regulations. The forty most asked questions were compiled in a memorandum to agencies for the information of relevant officials. In order to efficiently respond to public inquiries this memorandum is reprinted in this issue of the Federal Register.

Ref: 40 CFR Parts 1500-1508 (1987).

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# TABLE OF CONTENTS


1. Range of Alternatives ..... 1
2. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency.... 1
3. No-Action Alternative ..... 1
4. Agency's Preferred Alternative ..... 2
5. Proposed Action v. Preferred Alternative ..... 3
6. Environmentally Preferable Alternative ..... 3
7. Difference Between Sections of EIS on Alternatives and Environmental Consequences ..... 4
8. Early Application of NEPA ..... 4
9. Applicant who Needs Other Permits ..... 5
10. Limitations on Action During 30-Day Review Period for Final EIS ..... 6
11. Limitations on Actions by an Applicant During EIS Process ..... 6
12. Effective Date and Enforceability of the Regulations ..... 7
13. Use of Scoping Before Notice of Intent to Prepare EIS ..... 7
14. Rights and Responsibilities of Lead and Cooperating Agencies ..... 8
15. Commenting Responsibilities of EPA ..... 9
16. Third Party Contracts ..... 10
17. Disclosure Statement to Avoid Conflict of Interest ..... 10
18. Uncertainties About Indirect Effects of a Proposal ..... 11
19. Mitigation Measures ..... 11
20. Worst Case Analysis [Withdrawn] ..... 12
21. Combining Environmental and Planning Documents ..... 12
22. State and Federal Agencies as Joint Lead Agencies ..... 12
23. Conflicts of Federal Proposal With Land Use Plans, Policies or Controls .... 13
24. Environmental Impact Statements on Policies, Plans or Programs ..... 14
25. Appendices and Incorporation by Reference ..... 15

26. Index and Keyword Index in EISs ..... 15
27. List of Preparers ..... 16
28. Advance or Xerox Copies of EIS ..... 16
29. Responses to Comments ..... 17
30. Adoption of EISs ..... 18
31. Application of Regulations to Independent Regulatory Agencies ..... 19
32. Supplements to Old EISs ..... 20
33. Referrals ..... 20
34. Records of Decision ..... 20
35. Time Required for the NEPA Process ..... 21
36. Environmental Assessments (EA) ..... 22
37. Findings of No Significant Impact (FONSI) ..... 22
38. Public Availability of EAs v. FONSIs ..... 23
39. Mitigation Measures Imposed in EAs and FONSIs ..... 23
40. Propriety of Issuing EA When Mitigation Reduces Impacts ..... 23
**ENDNOTES** ..... 25

**1a. Range of Alternatives. What is meant by "range of alternatives" as referred to in Sec. 1505.1(e)?[1]**

A. The phrase "range of alternatives" refers to the alternatives discussed in environmental documents. It includes all reasonable alternatives, which must be rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them. Section 1502.14. A decisionmaker must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents. Moreover, a decisionmaker must, in fact, consider all the alternatives discussed in an EIS. Section 1505.1(e).

**1b. How many alternatives have to be discussed when there is an infinite number of possible alternatives?**

A. For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. For example, a proposal to designate wilderness areas within a National Forest could be said to involve an infinite number of alternatives from 0 to 100 percent of the forest. When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the Forest to wilderness. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.

**2a. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency. If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?**

A. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

**2b. Must the EIS analyze alternatives outside the jurisdiction or capability of the agency or beyond what Congress has authorized?**

A. An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 1506.2(d). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. Section 1500.1(a).

**3. No-Action Alternative. What does the "no action" alternative include? If an agency is under a court order or legislative command to act, must the EIS address the "no action" alternative?**

A. Section 1502.14(d) requires the alternatives analysis in the EIS to "include the alternative of no action." There are two distinct interpretations of "no action" that must be considered,

depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases "no action" is "no change" from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the "no action" alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.

The second interpretation of "no action" is illustrated in instances involving federal decisions on proposals for projects. "No action" in such cases would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.

Where a choice of "no action" by the agency would result in predictable actions by others, this consequence of the "no action" alternative should be included in the analysis. For example, if denial of permission to build a railroad to a facility would lead to construction of a road and increased truck traffic, the EIS should analyze this consequence of the "no action" alternative.

In light of the above, it is difficult to think of a situation where it would not be appropriate to address a "no action" alternative. Accordingly, the regulations require the analysis of the no action alternative even if the agency is under a court order or legislative command to act. This analysis provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives. It is also an example of a reasonable alternative outside the jurisdiction of the agency which must be analyzed. Section 1502.14(c). See Question 2 above. Inclusion of such an analysis in the EIS is necessary to inform the Congress, the public, and the President as intended by NEPA. Section 1500.1(a).

**4a. Agency's Preferred Alternative. What is the "agency's preferred alternative"?**

A. The "agency's preferred alternative" is the alternative which the agency believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors. The concept of the "agency's preferred alternative" is different from the "environmentally preferable alternative," although in some cases one alternative may be both. See Question 6 below. It is identified so that agencies and the public can understand the lead agency's orientation.

**4b. Does the "preferred alternative" have to be identified in the Draft EIS and the Final EIS or just in the Final EIS?**

A. Section 1502.14(e) requires the section of the EIS on alternatives to "identify the agency's preferred alternative if one or more exists, in the draft statement, and identify such alternative in the final statement . . ." This means that if the agency has a preferred alternative at the Draft EIS stage, that alternative must be labeled or identified as such in the Draft EIS. If the responsible federal official in fact has no preferred alternative at the Draft EIS stage, a preferred alternative need not be identified there. By the time the Final EIS is filed, Section 1502.14(e) presumes the existence of a preferred alternative and requires its

identification in the Final EIS "unless another law prohibits the expression of such a preference."

**4c. Who recommends or determines the "preferred alternative?"**

A. The lead agency's official with line responsibility for preparing the EIS and assuring its adequacy is responsible for identifying the agency's preferred alternative(s). The NEPA regulations do not dictate which official in an agency shall be responsible for preparation of EISs, but agencies can identify this official in their implementing procedures, pursuant to Section 1507.3.

Even though the agency's preferred alternative is identified by the EIS preparer in the EIS, the statement must be objectively prepared and not slanted to support the choice of the agency's preferred alternative over the other reasonable and feasible alternatives.

**5a. Proposed Action v. Preferred Alternative. Is the "proposed action" the same thing as the "preferred alternative"?**

A. The "proposed action" may be, but is not necessarily, the agency's "preferred alternative." The proposed action may be a proposal in its initial form before undergoing analysis in the EIS process. If the proposed action is [46 FR 18028] internally generated, such as preparing a land management plan, the proposed action might end up as the agency's preferred alternative. On the other hand the proposed action may be granting an application to a non-federal entity for a permit. The agency may or may not have a "preferred alternative" at the Draft EIS stage (see Question 4 above). In that case the agency may decide at the Final EIS stage, on the basis of the Draft EIS and the public and agency comments, that an alternative other than the proposed action is the agency's "preferred alternative."

**5b. Is the analysis of the "proposed action" in an EIS to be treated differently from the analysis of alternatives?**

A. The degree of analysis devoted to each alternative in the EIS is to be substantially similar to that devoted to the "proposed action." Section 1502.14 is titled "Alternatives including the proposed action" to reflect such comparable treatment. Section 1502.14(b) specifically requires "substantial treatment" in the EIS of each alternative including the proposed action. This regulation does not dictate an amount of information to be provided, but rather, prescribes a level of treatment, which may in turn require varying amounts of information, to enable a reviewer to evaluate and compare alternatives.

**6a. Environmentally Preferable Alternative. What is the meaning of the term "environmentally preferable alternative" as used in the regulations with reference to Records of Decision? How is the term "environment" used in the phrase?**

A. Section 1505.2(b) requires that, in cases where an EIS has been prepared, the Record of Decision (ROD) must identify all alternatives that were considered, ". . . specifying the alternative or alternatives which were considered to be environmentally preferable." The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.

The Council recognizes that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS. Through the identification of the environmentally preferable alternative, the decisionmaker is clearly faced with a choice between that alternative and others, and must consider whether the decision accords with the Congressionally declared policies of the Act.

**6b. Who recommends or determines what is environmentally preferable?**

A. The agency EIS staff is encouraged to make recommendations of the environmentally preferable alternative(s) during EIS preparation. In any event the lead agency official responsible for the EIS is encouraged to identify the environmentally preferable alternative(s) in the EIS. In all cases, commentors from other agencies and the public are also encouraged to address this question. The agency must identify the environmentally preferable alternative in the ROD.

**7. Difference Between Sections of EIS on Alternatives and Environmental Consequences. What is the difference between the sections in the EIS on "alternatives" and "environmental consequences"? How do you avoid duplicating the discussion of alternatives in preparing these two sections?**

A. The "alternatives" section is the heart of the EIS. This section rigorously explores and objectively evaluates all reasonable alternatives including the proposed action. Section 1502.14. It should include relevant comparisons on environmental and other grounds. The "environmental consequences" section of the EIS discusses the specific environmental impacts or effects of each of the alternatives including the proposed action. Section 1502.16. In order to avoid duplication between these two sections, most of the "alternatives" section should be devoted to describing and comparing the alternatives. Discussion of the environmental impacts of these alternatives should be limited to a concise descriptive summary of such impacts in a comparative form, including charts or tables, thus sharply defining the issues and providing a clear basis for choice among options. Section 1502.14. The "environmental consequences" section should be devoted largely to a scientific analysis of the direct and indirect environmental effects of the proposed action and of each of the alternatives. It forms the analytic basis for the concise comparison in the "alternatives" section.

**8. Early Application of NEPA. Section 1501.2(d) of the NEPA regulations requires agencies to provide for the early application of NEPA to cases where actions are planned by private applicants or non-Federal entities and are, at some stage, subject to federal approval of permits, loans, loan guarantees, insurance or other actions. What must and can agencies do to apply NEPA early in these cases?**

A. Section 1501.2(d) requires federal agencies to take steps toward ensuring that private parties and state and local entities initiate environmental studies as soon as federal involvement in their proposals can be foreseen. This section is intended to ensure that environmental factors are considered at an early stage in the planning process and to avoid the situation where the applicant for a federal permit or approval has completed planning and eliminated all alternatives to the proposed action by the time the EIS process commences or before the EIS process has been completed.

Through early consultation, business applicants and approving agencies may gain better appreciation of each other's needs and foster a decisionmaking process which avoids later unexpected confrontations.

Federal agencies are required by Section 1507.3(b) to develop procedures to carry out Section 1501.2(d). The procedures should include an "outreach program", such as a means for prospective applicants to conduct pre-application consultations with the lead and cooperating agencies. Applicants need to find out, in advance of project planning, what environmental studies or other information will be required, and what mitigation requirements are likely, in connection with the later federal NEPA process. Agencies should designate staff to advise potential applicants of the agency's NEPA information requirements and should publicize their pre-application procedures and information requirements in newsletters or other media used by potential applicants.

Complementing Section 1501.2(d), Section 1506.5(a) requires agencies to assist applicants by outlining the types of information required in those cases where the agency requires the applicant to submit environmental data for possible use by the agency in preparing an EIS.

Section 1506.5(b) allows agencies to authorize preparation of environmental assessments by applicants. Thus, the procedures should also include a means for anticipating and utilizing applicants' environmental studies or "early corporate environmental assessments" to fulfill some of the federal agency's NEPA obligations. However, in such cases the agency must still evaluate independently the environmental issues [46 FR 18029] and take responsibility for the environmental assessment.

These provisions are intended to encourage and enable private and other non-federal entities to build environmental considerations into their own planning processes in a way that facilitates the application of NEPA and avoids delay.

**9. Applicant Who Needs Other Permits. To what extent must an agency inquire into whether an applicant for a federal permit, funding or other approval of a proposal will also need approval from another agency for the same proposal or some other related aspect of it?**

A. Agencies must integrate the NEPA process into other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Specifically, the agency must "provide for cases where actions are planned by . . . applicants," so that designated staff are available to advise potential applicants of studies or other information that will foreseeably be required for the later federal action; the agency shall consult with the applicant if the agency foresees its own involvement in the proposal; and it shall insure that the NEPA process commences at the earliest possible time. Section 1501.2(d). (See Question 8.)

The regulations emphasize agency cooperation early in the NEPA process. Section 1501.6. Section 1501.7 on "scoping" also provides that all affected Federal agencies are to be invited to participate in scoping the environmental issues and to identify the various environmental review and consultation requirements that may apply to the proposed action. Further, Section 1502.25(b) requires that the draft EIS list all the federal permits, licenses and other entitlements that are needed to implement the proposal.

These provisions create an affirmative obligation on federal agencies to inquire early, and to the maximum degree possible, to ascertain whether an applicant is or will be seeking other federal assistance or approval, or whether the applicant is waiting until a proposal has been substantially developed before requesting federal aid or approval.

Thus, a federal agency receiving a request for approval or assistance should determine whether the applicant has filed separate requests for federal approval or assistance with other federal agencies. Other federal agencies that are likely to become involved should then be contacted, and the NEPA process coordinated, to insure an early and comprehensive analysis of the direct and indirect effects of the proposal and any related actions. The agency should inform the applicant that action on its application may be delayed unless it submits all other federal applications (where feasible to do so), so that all the relevant agencies can work together on the scoping process and preparation of the EIS.

**10a. Limitations on Action During 30-Day Review Period for Final EIS. What actions by agencies and/or applicants are allowed during EIS preparation and during the 30-day review period after publication of a final EIS?**

A. No federal decision on the proposed action shall be made or recorded until at least 30 days after the publication by EPA of notice that the particular EIS has been filed with EPA. Sections 1505.2 and 1506.10. Section 1505.2 requires this decision to be stated in a public Record of Decision.

Until the agency issues its Record of Decision, no action by an agency or an applicant concerning the proposal shall be taken which would have an adverse environmental impact or limit the choice of reasonable alternatives. Section 1506.1(a). But this does not preclude preliminary planning or design work which is needed to support an application for permits or assistance. Section 1506.1(d).

When the impact statement in question is a program EIS, no major action concerning the program may be taken which may significantly affect the quality of the human environment, unless the particular action is justified independently of the program, is accompanied by its own adequate environmental impact statement and will not prejudice the ultimate decision on the program. Section 1506.1(c).

**10b. Do these limitations on action (described in Question 10a) apply to state or local agencies that have statutorily delegated responsibility for preparation of environmental documents required by NEPA, for example, under the HUD Block Grant program?**

A. Yes, these limitations do apply, without any variation from their application to federal agencies.

**11. Limitations on Actions by an Applicant During EIS Process. What actions must a lead agency take during the NEPA process when it becomes aware that a non-federal applicant is about to take an action within the agency's jurisdiction that would either have an adverse environmental impact or limit the choice of reasonable alternatives (e.g., prematurely commit money or other resources towards the completion of the proposal)?**

A. The federal agency must notify the applicant that the agency will take strong affirmative steps to insure that the objectives and procedures of NEPA are fulfilled. Section 1506.1(b). These steps could include seeking injunctive measures under NEPA, or the use of sanctions available under either the agency's permitting authority or statutes setting forth the agency's statutory mission. For example, the agency might advise an applicant that if it takes such action the agency will not process its application.

**12a. Effective Date and Enforceability of the Regulations. What actions are subject to the Council's new regulations, and what actions are grandfathered under the old guidelines?**

A. The effective date of the Council's regulations was July 30, 1979 (except for certain HUD programs under the Housing and Community Development Act, 42 U.S.C. 5304(h), and certain state highway programs that qualify under Section 102(2)(D) of NEPA for which the regulations became effective on November 30, 1979). All the provisions of the regulations are binding as of that date, including those covering decisionmaking, public participation, referrals, limitations on actions, EIS supplements, etc. For example, a Record of Decision would be prepared even for decisions where the draft EIS was filed before July 30, 1979.

But in determining whether or not the new regulations apply to the preparation of a particular environmental document, the relevant factor is the date of filing of the draft of that document. Thus, the new regulations do not require the redrafting of an EIS or supplement if the draft EIS or supplement was filed before July 30, 1979. However, a supplement prepared after the effective date of the regulations for an EIS issued in final before the effective date of the regulations would be controlled by the regulations.

Even though agencies are not required to apply the regulations to an EIS or other document for which the draft was filed prior to July 30, 1979, the regulations encourage agencies to follow the regulations "to the fullest extent practicable," i.e., if it is feasible to do so, in preparing the final document. Section 1506.12(a).

**12b. Are projects authorized by Congress before the effective date of the Council's regulations grandfathered?**

A. No. The date of Congressional authorization for a project is not determinative of whether the Council's regulations or former Guidelines apply to the particular proposal. No incomplete projects or proposals of any kind are grandfathered in whole or in part. Only certain environmental documents, for which the draft was issued before the effective date of the regulations, are grandfathered and [46 FR 18030] subject to the Council's former Guidelines.

**12c. Can a violation of the regulations give rise to a cause of action?**

A. While a trivial violation of the regulations would not give rise to an independent cause of action, such a cause of action would arise from a substantial violation of the regulations. Section 1500.3.

**13. Use of Scoping Before Notice of Intent to Prepare EIS. Can the scoping process be used in connection with preparation of an environmental assessment, i.e., before both the decision to proceed with an EIS and publication of a notice of intent?**

A. Yes. Scoping can be a useful tool for discovering alternatives to a proposal, or significant impacts that may have been overlooked. In cases where an environmental assessment is being prepared to help an agency decide whether to prepare an EIS, useful information might result from early participation by other agencies and the public in a scoping process.

The regulations state that the scoping process is to be preceded by a Notice of Intent (NOI) to prepare an EIS. But that is only the minimum requirement. Scoping may be initiated

earlier, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively.

However, scoping that is done before the assessment, and in aid of its preparation, cannot substitute for the normal scoping process after publication of the NOI, unless the earlier public notice stated clearly that this possibility was under consideration, and the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered.

**14a. Rights and Responsibilities of Lead and Cooperating Agencies. What are the respective rights and responsibilities of lead and cooperating agencies? What letters and memoranda must be prepared?**

A. After a lead agency has been designated (Sec. 1501.5), that agency has the responsibility to solicit cooperation from other federal agencies that have jurisdiction by law or special expertise on any environmental issue that should be addressed in the EIS being prepared. Where appropriate, the lead agency should seek the cooperation of state or local agencies of similar qualifications. When the proposal may affect an Indian reservation, the agency should consult with the Indian tribe. Section 1508.5. The request for cooperation should come at the earliest possible time in the NEPA process.

After discussions with the candidate cooperating agencies, the lead agency and the cooperating agencies are to determine by letter or by memorandum which agencies will undertake cooperating responsibilities. To the extent possible at this stage, responsibilities for specific issues should be assigned. The allocation of responsibilities will be completed during scoping. Section 1501.7(a)(4).

Cooperating agencies must assume responsibility for the development of information and the preparation of environmental analyses at the request of the lead agency. Section 1501.6(b)(3). Cooperating agencies are now required by Section 1501.6 to devote staff resources that were normally primarily used to critique or comment on the Draft EIS after its preparation, much earlier in the NEPA process -- primarily at the scoping and Draft EIS preparation stages. If a cooperating agency determines that its resource limitations preclude any involvement, or the degree of involvement (amount of work) requested by the lead agency, it must so inform the lead agency in writing and submit a copy of this correspondence to the Council. Section 1501.6(c).

In other words, the potential cooperating agency must decide early if it is able to devote any of its resources to a particular proposal. For this reason the regulation states that an agency may reply to a request for cooperation that "other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement." (Emphasis added). The regulation refers to the "action," rather than to the EIS, to clarify that the agency is taking itself out of all phases of the federal action, not just draft EIS preparation. This means that the agency has determined that it cannot be involved in the later stages of EIS review and comment, as well as decisionmaking on the proposed action. For this reason, cooperating agencies with jurisdiction by law (those which have permitting or other approval authority) cannot opt out entirely of the duty to cooperate on the EIS. See also Question 15, relating specifically to the responsibility of EPA.

**14b. How are disputes resolved between lead and cooperating agencies concerning the scope and level of detail of analysis and the quality of data in impact statements?**

A. Such disputes are resolved by the agencies themselves. A lead agency, of course, has the ultimate responsibility for the content of an EIS. But it is supposed to use the environmental analysis and recommendations of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible, consistent with its own responsibilities as lead agency. Section 1501.6(a)(2).

If the lead agency leaves out a significant issue or ignores the advice and expertise of the cooperating agency, the EIS may be found later to be inadequate. Similarly, where cooperating agencies have their own decisions to make and they intend to adopt the environmental impact statement and base their decisions on it, one document should include all of the information necessary for the decisions by the cooperating agencies. Otherwise they may be forced to duplicate the EIS process by issuing a new, more complete EIS or Supplemental EIS, even though the original EIS could have sufficed if it had been properly done at the outset. Thus, both lead and cooperating agencies have a stake in producing a document of good quality. Cooperating agencies also have a duty to participate fully in the scoping process to ensure that the appropriate range of issues is determined early in the EIS process.

Because the EIS is not the Record of Decision, but instead constitutes the information and analysis on which to base a decision, disagreements about conclusions to be drawn from the EIS need not inhibit agencies from issuing a joint document, or adopting another agency's EIS, if the analysis is adequate. Thus, if each agency has its own "preferred alternative," both can be identified in the EIS. Similarly, a cooperating agency with jurisdiction by law may determine in its own ROD that alternative A is the environmentally preferable action, even though the lead agency has decided in its separate ROD that Alternative B is environmentally preferable.

**14c. What are the specific responsibilities of federal and state cooperating agencies to review draft EISs?**

A. Cooperating agencies (i.e., agencies with jurisdiction by law or special expertise) and agencies that are authorized to develop or enforce environmental standards, must comment on environmental impact statements within their jurisdiction, expertise or authority. Sections 1503.2, 1508.5. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should simply comment accordingly. Conversely, if the cooperating agency determines that a draft EIS is incomplete, inadequate or inaccurate, or it has other comments, it should promptly make such comments, conforming to the requirements of specificity in section 1503.3.

**14d. How is the lead agency to treat the comments of another agency with jurisdiction by law or special expertise which has failed or refused to cooperate or participate in scoping or EIS preparation?**

A. A lead agency has the responsibility to respond to all substantive comments raising significant issues regarding a draft EIS. Section 1503.4. However, cooperating agencies are generally under an obligation to raise issues or otherwise participate in the EIS process during scoping and EIS preparation if they reasonably can do so. In practical terms, if a cooperating agency fails to cooperate at the outset, such as during scoping, it will find that its comments at a later stage will not be as persuasive to the lead agency.

**15. Commenting Responsibilities of EPA. Are EPA's responsibilities to review and comment on the environmental effects of agency proposals under Section 309 of the Clean Air Act independent of its responsibility as a cooperating agency?**

A. Yes. EPA has an obligation under Section 309 of the Clean Air Act to review and comment in writing on the environmental impact of any matter relating to the authority of the Administrator contained in proposed legislation, federal construction projects, other federal actions requiring EISs, and new regulations. 42 U.S.C. Sec. 7609. This obligation is independent of its role as a cooperating agency under the NEPA regulations.

**16. Third Party Contracts. What is meant by the term "third party contracts" in connection with the preparation of an EIS? See Section 1506.5(c). When can "third party contracts" be used?**

A. As used by EPA and other agencies, the term "third party contract" refers to the preparation of EISs by contractors paid by the applicant. In the case of an EIS for a National Pollution Discharge Elimination System (NPDES) permit, the applicant, aware in the early planning stages of the proposed project of the need for an EIS, contracts directly with a consulting firm for its preparation. See 40 C.F.R. 6.604(g). The "third party" is EPA which, under Section 1506.5(c), must select the consulting firm, even though the applicant pays for the cost of preparing the EIS. The consulting firm is responsible to EPA for preparing an EIS that meets the requirements of the NEPA regulations and EPA's NEPA procedures. It is in the applicant's interest that the EIS comply with the law so that EPA can take prompt action on the NPDES permit application. The "third party contract" method under EPA's NEPA procedures is purely voluntary, though most applicants have found it helpful in expediting compliance with NEPA.

If a federal agency uses "third party contracting," the applicant may undertake the necessary paperwork for the solicitation of a field of candidates under the agency's direction, so long as the agency complies with Section 1506.5(c). Federal procurement requirements do not apply to the agency because it incurs no obligations or costs under the contract, nor does the agency procure anything under the contract.

**17a. Disclosure Statement to Avoid Conflict of Interest. If an EIS is prepared with the assistance of a consulting firm, the firm must execute a disclosure statement. What criteria must the firm follow in determining whether it has any "financial or other interest in the outcome of the project" which would cause a conflict of interest?**

A. Section 1506.5(c), which specifies that a consulting firm preparing an EIS must execute a disclosure statement, does not define "financial or other interest in the outcome of the project." The Council interprets this term broadly to cover any known benefits other than general enhancement of professional reputation. This includes any financial benefit such as a promise of future construction or design work on the project, as well as indirect benefits the consultant is aware of (e.g., if the project would aid proposals sponsored by the firm's other clients). For example, completion of a highway project may encourage construction of a shopping center or industrial park from which the consultant stands to benefit. If a consulting firm is aware that it has such an interest in the decision on the proposal, it should be disqualified from preparing the EIS, to preserve the objectivity and integrity of the NEPA process.

When a consulting firm has been involved in developing initial data and plans for the project, but does not have any financial or other interest in the outcome of the decision, it need not be disqualified from preparing the EIS. However, a disclosure statement in the draft EIS should clearly state the scope and extent of the firm's prior involvement to expose any potential conflicts of interest that may exist.

**17b. If the firm in fact has no promise of future work or other interest in the outcome of the proposal, may the firm later bid in competition with others for future work on the project if the proposed action is approved?**

A. Yes.

**18. Uncertainties About Indirect Effects of A Proposal. How should uncertainties about indirect effects of a proposal be addressed, for example, in cases of disposal of federal lands, when the identity or plans of future landowners is unknown?**

A. The EIS must identify all the indirect effects that are known, and make a good faith effort to explain the effects that are not known but are "reasonably foreseeable." Section 1508.8(b). In the example, if there is total uncertainty about the identity of future land owners or the nature of future land uses, then of course, the agency is not required to engage in speculation or contemplation about their future plans. But, in the ordinary course of business, people do make judgments based upon reasonably foreseeable occurrences. It will often be possible to consider the likely purchasers and the development trends in that area or similar areas in recent years; or the likelihood that the land will be used for an energy project, shopping center, subdivision, farm or factory. The agency has the responsibility to make an informed judgment, and to estimate future impacts on that basis, especially if trends are ascertainable or potential purchasers have made themselves known. The agency cannot ignore these uncertain, but probable, effects of its decisions.

**19a. Mitigation Measures. What is the scope of mitigation measures that must be discussed?**

A. The mitigation measures discussed in an EIS must cover the range of impacts of the proposal. The measures must include such things as design alternatives that would decrease pollution emissions, construction impacts, esthetic intrusion, as well as relocation assistance, possible land use controls that could be enacted, and other possible efforts. Mitigation measures must be considered even for impacts that by themselves would not be considered "significant." Once the proposal itself is considered as a whole to have significant effects, all of its specific effects on the environment (whether or not "significant") must be considered, and mitigation measures must be developed where it is feasible to do so. Sections 1502.14(f), 1502.16(h), 1508.14.

**19b. How should an EIS treat the subject of available mitigation measures that are (1) outside the jurisdiction of the lead or cooperating agencies, or (2) unlikely to be adopted or enforced by the responsible agency?**

A. All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies, and thus would not be committed as part of the RODs of these agencies. Sections 1502.16(h), 1505.2(c). This will serve to [46 FR 18032] alert agencies or officials who can implement these extra measures, and will encourage them to do so. Because the EIS is the most comprehensive environmental document, it is an ideal vehicle in which to lay out not only the full range of environmental impacts but also the full spectrum of appropriate mitigation.

However, to ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and the Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies. Sections 1502.16(h), 1505.2. If there is a

history of nonenforcement or opposition to such measures, the EIS and Record of Decision should acknowledge such opposition or nonenforcement. If the necessary mitigation measures will not be ready for a long period of time, this fact, of course, should also be recognized.

**20. Worst Case Analysis. [Withdrawn.][3]**

**21. Combining Environmental and Planning Documents. Where an EIS or an EA is combined with another project planning document (sometimes called "piggybacking"), to what degree may the EIS or EA refer to and rely upon information in the project document to satisfy NEPA's requirements?**

A. Section 1502.25 of the regulations requires that draft EISs be prepared concurrently and integrated with environmental analyses and related surveys and studies required by other federal statutes. In addition, Section 1506.4 allows any environmental document prepared in compliance with NEPA to be combined with any other agency document to reduce duplication and paperwork. However, these provisions were not intended to authorize the preparation of a short summary or outline EIS, attached to a detailed project report or land use plan containing the required environmental impact data. In such circumstances, the reader would have to refer constantly to the detailed report to understand the environmental impacts and alternatives which should have been found in the EIS itself.

The EIS must stand on its own as an analytical document which fully informs decisionmakers and the public of the environmental effects of the proposal and those of the reasonable alternatives. Section 1502.1. But, as long as the EIS is clearly identified and is self-supporting, it can be physically included in or attached to the project report or land use plan, and may use attached report material as technical backup.

Forest Service environmental impact statements for forest management plans are handled in this manner. The EIS identifies the agency's preferred alternative, which is developed in detail as the proposed management plan. The detailed proposed plan accompanies the EIS through the review process, and the documents are appropriately cross-referenced. The proposed plan is useful for EIS readers as an example, to show how one choice of management options translates into effects on natural resources. This procedure permits initiation of the 90-day public review of proposed forest plans, which is required by the National Forest Management Act.

All the alternatives are discussed in the EIS, which can be read as an independent document. The details of the management plan are not repeated in the EIS, and vice versa. This is a reasonable functional separation of the documents: the EIS contains information relevant to the choice among alternatives; the plan is a detailed description of proposed management activities suitable for use by the land managers. This procedure provides for concurrent compliance with the public review requirements of both NEPA and the National Forest Management Act.

Under some circumstances, a project report or management plan may be totally merged with the EIS, and the one document labeled as both "EIS" and "management plan" or "project report." This may be reasonable where the documents are short, or where the EIS format and the regulations for clear, analytical EISs also satisfy the requirements for a project report.

**22. State and Federal Agencies as Joint Lead Agencies. May state and federal agencies serve as joint lead agencies? If so, how do they resolve law, policy and resource conflicts under NEPA and the relevant state environmental policy act?**

**How do they resolve differences in perspective where, for example, national and local needs may differ?**

A. Under Section 1501.5(b), federal, state or local agencies, as long as they include at least one federal agency, may act as joint lead agencies to prepare an EIS. Section 1506.2 also strongly urges state and local agencies and the relevant federal agencies to cooperate fully with each other. This should cover joint research and studies, planning activities, public hearings, environmental assessments and the preparation of joint EISs under NEPA and the relevant "little NEPA" state laws, so that one document will satisfy both laws.

The regulations also recognize that certain inconsistencies may exist between the proposed federal action and any approved state or local plan or law. The joint document should discuss the extent to which the federal agency would reconcile its proposed action with such plan or law. Section 1506.2(d). (See Question 23).

Because there may be differences in perspective as well as conflicts among [46 FR 18033] federal, state and local goals for resources management, the Council has advised participating agencies to adopt a flexible, cooperative approach. The joint EIS should reflect all of their interests and missions, clearly identified as such. The final document would then indicate how state and local interests have been accommodated, or would identify conflicts in goals (e.g., how a hydroelectric project, which might induce second home development, would require new land use controls). The EIS must contain a complete discussion of scope and purpose of the proposal, alternatives, and impacts so that the discussion is adequate to meet the needs of local, state and federal decisionmakers.

**23a. Conflicts of Federal Proposal With Land Use Plans, Policies or Controls. How should an agency handle potential conflicts between a proposal and the objectives of Federal, state or local land use plans, policies and controls for the area concerned? See Sec. 1502.16(c).**

A. The agency should first inquire of other agencies whether there are any potential conflicts. If there would be immediate conflicts, or if conflicts could arise in the future when the plans are finished (see Question 23(b) below), the EIS must acknowledge and describe the extent of those conflicts. If there are any possibilities of resolving the conflicts, these should be explained as well. The EIS should also evaluate the seriousness of the impact of the proposal on the land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area. Comments from officials of the affected area should be solicited early and should be carefully acknowledged and answered in the EIS.

**23b. What constitutes a "land use plan or policy" for purposes of this discussion?**

A. The term "land use plans," includes all types of formally adopted documents for land use planning, zoning and related regulatory requirements. Local general plans are included, even though they are subject to future change. Proposed plans should also be addressed if they have been formally proposed by the appropriate government body in a written form, and are being actively pursued by officials of the jurisdiction. Staged plans, which must go through phases of development such as the Water Resources Council's Level A, B and C planning process should also be included even though they are incomplete.

The term "policies" includes formally adopted statements of land use policy as embodied in laws or regulations. It also includes proposals for action such as the initiation of a planning process, or a formally adopted policy statement of the local, regional or state executive

branch, even if it has not yet been formally adopted by the local, regional or state legislative body.

**23c. What options are available for the decisionmaker when conflicts with such plans or policies are identified?**

A. After identifying any potential land use conflicts, the decisionmaker must weigh the significance of the conflicts, among all the other environmental and non-environmental factors that must be considered in reaching a rational and balanced decision. Unless precluded by other law from causing or contributing to any inconsistency with the land use plans, policies or controls, the decisionmaker retains the authority to go forward with the proposal, despite the potential conflict. In the Record of Decision, the decisionmaker must explain what the decision was, how it was made, and what mitigation measures are being imposed to lessen adverse environmental impacts of the proposal, among the other requirements of Section 1505.2. This provision would require the decisionmaker to explain any decision to override land use plans, policies or controls for the area.

**24a. Environmental Impact Statements on Policies, Plans or Programs. When are EISs required on policies, plans or programs?**

A. An EIS must be prepared if an agency proposes to implement a specific policy, to adopt a plan for a group of related actions, or to implement a specific statutory program or executive directive. Section 1508.18. In addition, the adoption of official policy in the form of rules, regulations and interpretations pursuant to the Administrative Procedure Act, treaties, conventions, or other formal documents establishing governmental or agency policy which will substantially alter agency programs, could require an EIS. Section 1508.18. In all cases, the policy, plan, or program must have the potential for significantly affecting the quality of the human environment in order to require an EIS. It should be noted that a proposal "may exist in fact as well as by agency declaration that one exists." Section 1508.23.

**24b. When is an area-wide or overview EIS appropriate?**

A. The preparation of an area-wide or overview EIS may be particularly useful when similar actions, viewed with other reasonably foreseeable or proposed agency actions, share common timing or geography. For example, when a variety of energy projects may be located in a single watershed, or when a series of new energy technologies may be developed through federal funding, the overview or area-wide EIS would serve as a valuable and necessary analysis of the affected environment and the potential cumulative impacts of the reasonably foreseeable actions under that program or within that geographical area.

**24c. What is the function of tiering in such cases?**

A. Tiering is a procedure which allows an agency to avoid duplication of paperwork through the incorporation by reference of the general discussions and relevant specific discussions from an environmental impact statement of broader scope into one of lesser scope or vice versa. In the example given in Question 24b, this would mean that an overview EIS would be prepared for all of the energy activities reasonably foreseeable in a particular geographic area or resulting from a particular development program. This impact statement would be followed by site-specific or project-specific EISs. The tiering process would make each EIS of greater use and meaning to the public as the plan or program develops, without duplication of the analysis prepared for the previous impact statement.

**25a. Appendices and Incorporation by Reference. When is it appropriate to use appendices instead of including information in the body of an EIS?**

A. The body of the EIS should be a succinct statement of all the information on environmental impacts and alternatives that the decisionmaker and the public need, in order to make the decision and to ascertain that every significant factor has been examined. The EIS must explain or summarize methodologies of research and modeling, and the results of research that may have been conducted to analyze impacts and alternatives.

Lengthy technical discussions of modeling methodology, baseline studies, or other work are best reserved for the appendix. In other words, if only technically trained individuals are likely to understand a particular discussion then it should go in the appendix, and a plain language summary of the analysis and conclusions of that technical discussion should go in the text of the EIS.

The final statement must also contain the agency's responses to comments on the draft EIS. These responses will be primarily in the form of changes in the document itself, but specific answers to each significant comment should also be included. These specific responses may be placed in an appendix. If the comments are especially voluminous, summaries of the comments and responses will suffice. (See Question 29 regarding the level of detail required for responses to comments.)

**25b. How does an appendix differ from incorporation by reference?**

A. First, if at all possible, the appendix accompanies the EIS, whereas the material which is incorporated by reference does not accompany the EIS. Thus the appendix should contain information that reviewers will be likely to want to examine. The appendix should include material that pertains to preparation of a particular EIS. Research papers directly relevant to the proposal, lists of affected species, discussion of the methodology of models used in the analysis of impacts, extremely detailed responses to comments, or other information, would be placed in the appendix.

The appendix must be complete and available at the time the EIS is filed. Five copies of the appendix must be sent to EPA with five copies of the EIS for filing. If the appendix is too bulky to be circulated, it instead must be placed in conveniently accessible locations or furnished directly to commentors upon request. If it is not circulated with the EIS, the Notice of Availability published by EPA must so state, giving a telephone number to enable potential commentors to locate or request copies of the appendix promptly.

Material that is not directly related to preparation of the EIS should be incorporated by reference. This would include other EISs, research papers in the general literature, technical background papers or other material that someone with technical training could use to evaluate the analysis of the proposal. These must be made available, either by citing the literature, furnishing copies to central locations, or sending copies directly to commentors upon request.

Care must be taken in all cases to ensure that material incorporated by reference, and the occasional appendix that does not accompany the EIS, are in fact available for the full minimum public comment period.

**26a. Index and Keyword Index in EISs. How detailed must an EIS index be?**

A. The EIS index should have a level of detail sufficient to focus on areas of the EIS of reasonable interest to any reader. It cannot be restricted to the most important topics. On the

other hand, it need not identify every conceivable term or phrase in the EIS. If an agency believes that the reader is reasonably likely to be interested in a topic, it should be included.

**26b. Is a keyword index required?**

A. No. A keyword index is a relatively short list of descriptive terms that identifies the key concepts or subject areas in a document. For example it could consist of 20 terms which describe the most significant aspects of an EIS that a future researcher would need: type of proposal, type of impacts, type of environment, geographical area, sampling or modeling methodologies used. This technique permits the compilation of EIS data banks, by facilitating quick and inexpensive access to stored materials. While a keyword index is not required by the regulations, it could be a useful addition for several reasons. First, it can be useful as a quick index for reviewers of the EIS, helping to focus on areas of interest. Second, if an agency keeps a listing of the keyword indexes of the EISs it produces, the EIS preparers themselves will have quick access to similar research data and methodologies to aid their future EIS work. Third, a keyword index will be needed to make an EIS available to future researchers using EIS data banks that are being developed. Preparation of such an index now when the document is produced will save a later effort when the data banks become operational.

**27a. List of Preparers. If a consultant is used in preparing an EIS, must the list of preparers identify members of the consulting firm as well as the agency NEPA staff who were primarily responsible?**

A. Section 1502.17 requires identification of the names and qualifications of persons who were primarily responsible for preparing the EIS or significant background papers, including basic components of the statement. This means that members of a consulting firm preparing material that is to become part of the EIS must be identified. The EIS should identify these individuals even though the consultant's contribution may have been modified by the agency.

**27b. Should agency staff involved in reviewing and editing the EIS also be included in the list of preparers?**

A. Agency personnel who wrote basic components of the EIS or significant background papers must, of course, be identified. The EIS should also list the technical editors who reviewed or edited the statements.

**27c. How much information should be included on each person listed?**

A. The list of preparers should normally not exceed two pages. Therefore, agencies must determine which individuals had primary responsibility and need not identify individuals with minor involvement. The list of preparers should include a very brief identification of the individuals involved, their qualifications (expertise, professional disciplines) and the specific portion of the EIS for which they are responsible. This may be done in tabular form to cut down on length. A line or two for each person's qualifications should be sufficient.

**28. Advance or Xerox Copies of EIS. May an agency file xerox copies of an EIS with EPA pending the completion of printing the document?**

A. Xerox copies of an EIS may be filed with EPA prior to printing only if the xerox copies are simultaneously made available to other agencies and the public. Section 1506.9 of the regulations, which governs EIS filing, specifically requires Federal agencies to file EISs

with EPA no earlier than the EIS is distributed to the public. However, this section does not prohibit xeroxing as a form of reproduction and distribution. When an agency chooses xeroxing as the reproduction method, the EIS must be clear and legible to permit ease of reading and ultimate microfiching of the EIS. Where color graphs are important to the EIS, they should be reproduced and circulated with the xeroxed copy.

**29a. Responses to Comments. What response must an agency provide to a comment on a draft EIS which states that the EIS's methodology is inadequate or inadequately explained? For example, what level of detail must an agency include in its response to a simple postcard comment making such an allegation?**

A. Appropriate responses to comments are described in Section 1503.4. Normally the responses should result in changes in the text of the EIS, not simply a separate answer at the back of the document. But, in addition, the agency must state what its response was, and if the agency decides that no substantive response to a comment is necessary, it must explain briefly why.

An agency is not under an obligation to issue a lengthy reiteration of its methodology for any portion of an EIS if the only comment addressing the methodology is a simple complaint that the EIS methodology is inadequate. But agencies must respond to comments, however brief, which are specific in their criticism of agency methodology. For example, if a commentor on an EIS said that an agency's air quality dispersion analysis or methodology was inadequate, and the agency had included a discussion of that analysis in the EIS, little if anything need be added in response to such a comment. However, if the commentor said that the dispersion analysis was inadequate because of its use of a certain computational technique, or that a dispersion analysis was inadequately explained because computational techniques were not included or referenced, then the agency would have to respond in a substantive and meaningful way to such a comment.

If a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Comments may be summarized if they are especially voluminous. The comments or summaries must be attached to the EIS regardless of whether the agency believes they merit individual discussion in the body of the final EIS.

**29b. How must an agency respond to a comment on a draft EIS that raises a new alternative not previously considered in the draft EIS?**

A. This question might arise in several possible situations. First, a commentor on a draft EIS may indicate that there is a possible alternative which, in the agency's view, is not a reasonable alternative. Section 1502.14(a). If that is the case, the agency must explain why the comment does not warrant further agency response, citing authorities or reasons that support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response. Section 1503.4(a). For example, a commentor on a draft EIS on a coal fired power plant may suggest the alternative of using synthetic fuel. The agency may reject the alternative with a brief discussion (with authorities) of the unavailability of synthetic fuel within the time frame necessary to meet the need and purpose of the proposed facility.

A second possibility is that an agency may receive a comment indicating that a particular alternative, while reasonable, should be modified somewhat, for example, to achieve certain mitigation benefits, or for other reasons. If the modification is reasonable, the agency should include a discussion of it in the final EIS. For example, a commentor on a draft EIS on a proposal for a pumped storage power facility might suggest that the

applicant's proposed alternative should be enhanced by the addition of certain reasonable mitigation measures, including the purchase and setaside of a wildlife preserve to substitute for the tract to be destroyed by the project. The modified alternative including the additional mitigation measures should be discussed by the agency in the final EIS.

A third slightly different possibility is that a comment on a draft EIS will raise an alternative which is a minor variation of one of the alternatives discussed in the draft EIS, but this variation was not given any consideration by the agency. In such a case, the agency should develop and evaluate the new alternative, if it is reasonable, in the final EIS. If it is qualitatively within the spectrum of alternatives that were discussed in the draft, a supplemental draft will not be needed. For example, a commentor on a draft EIS to designate a wilderness area within a National Forest might reasonably identify a specific tract of the forest, and urge that it be considered for designation. If the draft EIS considered designation of a range of alternative tracts which encompassed forest area of similar quality and quantity, no supplemental EIS would have to be prepared. The agency could fulfill its obligation by addressing that specific alternative in the final EIS.

As another example, an EIS on an urban housing project may analyze the alternatives of constructing 2,000, 4,000, or 6,000 units. A commentor on the draft EIS might urge the consideration of constructing 5,000 units utilizing a different configuration of buildings. This alternative is within the spectrum of alternatives already considered, and, therefore, could be addressed in the final EIS.

A fourth possibility is that a commentor points out an alternative which is not a variation of the proposal or of any alternative discussed in the draft impact statement, and is a reasonable alternative that warrants serious agency response. In such a case, the agency must issue a supplement to the draft EIS that discusses this new alternative. For example, a commentor on a draft EIS on a nuclear power plant might suggest that a reasonable alternative for meeting the projected need for power would be through peak load management and energy conservation programs. If the permitting agency has failed to consider that approach in the Draft EIS, and the approach cannot be dismissed by the agency as unreasonable, a supplement to the Draft EIS, which discusses that alternative, must be prepared. (If necessary, the same supplement should also discuss substantial changes in the proposed action or significant new circumstances or information, as required by Section 1502.9(c)(1) of the Council's regulations.)

If the new alternative was not raised by the commentor during scoping, but could have been, commentors may find that they are unpersuasive in their efforts to have their suggested alternative analyzed in detail by the agency. However, if the new alternative is discovered or developed later, and it could not reasonably have been raised during the scoping process, then the agency must address it in a supplemental draft EIS. The agency is, in any case, ultimately responsible for preparing an adequate EIS that considers all alternatives.

**30. Adoption of EISs. When a cooperating agency with jurisdiction by law intends to adopt a lead agency's EIS and it is not satisfied with the adequacy of the document, may the cooperating agency adopt only the part of the EIS with which it is satisfied? If so, would a cooperating agency with jurisdiction by law have to prepare a separate EIS or EIS supplement covering the areas of disagreement with the lead agency?**

A. Generally, a cooperating agency may adopt a lead agency's EIS without recirculating it if it concludes that its NEPA requirements and its comments and suggestions have been satisfied. Section 1506.3(a), (c). If necessary, a cooperating agency may adopt only a

portion of the lead agency's EIS and may reject that part of the EIS with which it disagrees, stating publicly why it did so. Section 1506.3(a).

A cooperating agency with jurisdiction by law (e.g., an agency with independent legal responsibilities with respect to the proposal) has an independent legal obligation to comply with NEPA. Therefore, if the cooperating agency determines that the EIS is wrong or inadequate, it must prepare a supplement to the EIS, replacing or adding any needed information, and must circulate the supplement as a draft for public and agency review and comment. A final supplemental EIS would be required before the agency could take action. The adopted portions of the lead agency EIS should be circulated with the supplement. Section 1506.3(b). A cooperating agency with jurisdiction by law will have to prepare its own Record of Decision for its action, in which it must explain how it reached its conclusions. Each agency should explain how and why its conclusions differ, if that is the case, from those of other agencies which issued their Records of Decision earlier.

An agency that did not cooperate in preparation of an EIS may also adopt an EIS or portion thereof. But this would arise only in rare instances, because an agency adopting an EIS for use in its own decision normally would have been a cooperating agency. If the proposed action for which the EIS was prepared is substantially the same as the proposed action of the adopting agency, the EIS may be adopted as long as it is recirculated as a final EIS and the agency announces what it is doing. This would be followed by the 30-day review period and issuance of a Record of Decision by the adopting agency. If the proposed action by the adopting agency is not substantially the same as that in [46 FR 18036] the EIS (i.e., if an EIS on one action is being adapted for use in a decision on another action), the EIS would be treated as a draft and circulated for the normal public comment period and other procedures. Section 1506.3(b).

**31a. Application of Regulations to Independent Regulatory Agencies. Do the Council's NEPA regulations apply to independent regulatory agencies like the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission?**

A. The statutory requirements of NEPA's Section 102 apply to "all agencies of the federal government." The NEPA regulations implement the procedural provisions of NEPA as set forth in NEPA's Section 102(2) for all agencies of the federal government. The NEPA regulations apply to independent regulatory agencies, however, they do not direct independent regulatory agencies or other agencies to make decisions in any particular way or in a way inconsistent with an agency's statutory charter. Sections 1500.3, 1500.6, 1507.1, and 1507.3.

**31b. Can an Executive Branch agency like the Department of the Interior adopt an EIS prepared by an independent regulatory agency such as FERC?**

A. If an independent regulatory agency such as FERC has prepared an EIS in connection with its approval of a proposed project, an Executive Branch agency (e.g., the Bureau of Land Management in the Department of the Interior) may, in accordance with Section 1506.3, adopt the EIS or a portion thereof for its use in considering the same proposal. In such a case the EIS must, to the satisfaction of the adopting agency, meet the standards for an adequate statement under the NEPA regulations (including scope and quality of analysis of alternatives) and must satisfy the adopting agency's comments and suggestions. If the independent regulatory agency fails to comply with the NEPA regulations, the cooperating or adopting agency may find that it is unable to adopt the EIS, thus forcing the preparation of a new EIS or EIS Supplement for the same action. The NEPA regulations were made

applicable to all federal agencies in order to avoid this result, and to achieve uniform application and efficiency of the NEPA process.

**32. Supplements to Old EISs. Under what circumstances do old EISs have to be supplemented before taking action on a proposal?**

A. As a rule of thumb, if the proposal has not yet been implemented, or if the EIS concerns an ongoing program, EISs that are more than 5 years old should be carefully reexamined to determine if the criteria in Section 1502.9 compel preparation of an EIS supplement.

If an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal. Section 1502.9(c).

**33a. Referrals. When must a referral of an interagency disagreement be made to the Council?**

A. The Council's referral procedure is a pre-decision referral process for interagency disagreements. Hence, Section 1504.3 requires that a referring agency must deliver its referral to the Council not later than 25 days after publication by EPA of notice that the final EIS is available (unless the lead agency grants an extension of time under Section 1504.3(b)).

**33b. May a referral be made after this issuance of a Record of Decision?**

A. No, except for cases where agencies provide an internal appeal procedure which permits simultaneous filing of the final EIS and the record of decision (ROD). Section 1506.10(b)(2). Otherwise, as stated above, the process is a pre-decision referral process. Referrals must be made within 25 days after the notice of availability of the final EIS, whereas the final decision (ROD) may not be made or filed until after 30 days from the notice of availability of the EIS. Sections 1504.3(b), 1506.10(b). If a lead agency has granted an extension of time for another agency to take action on a referral, the ROD may not be issued until the extension has expired.

**34a. Records of Decision. Must Records of Decision (RODs) be made public? How should they be made available?**

A. Under the regulations, agencies must prepare a "concise public record of decision," which contains the elements specified in Section 1505.2. This public record may be integrated into any other decision record prepared by the agency, or it may be separate if decision documents are not normally made public. The Record of Decision is intended by the Council to be an environmental document (even though it is not explicitly mentioned in the definition of "environmental document" in Section 1508.10). Therefore, it must be made available to the public through appropriate public notice as required by Section 1506.6(b). However, there is no specific requirement for publication of the ROD itself, either in the Federal Register or elsewhere.

**34b. May the summary section in the final Environmental Impact Statement substitute for or constitute an agency's Record of Decision?**

A. No. An environmental impact statement is supposed to inform the decisionmaker before the decision is made. Sections 1502.1, 1505.2. The Council's regulations provide for a 30-day period after notice is published that the final EIS has been filed with EPA before the agency may take final action. During that period, in addition to the agency's own internal final review, the public and other agencies can comment on the final EIS prior to the agency's final action on the proposal. In addition, the Council's regulations make clear that the requirements for the summary in an EIS are not the same as the requirements for a ROD. Sections 1502.12 and 1505.2.

**34c. What provisions should Records of Decision contain pertaining to mitigation and monitoring?**

A. Lead agencies "shall include appropriate conditions [including mitigation measures and monitoring and enforcement programs] in grants, permits or other approvals" and shall "condition funding of actions on mitigation." Section 1505.3. Any such measures that are adopted must be explained and committed in the ROD.

The reasonable alternative mitigation measures and monitoring programs should have been addressed in the draft and final EIS. The discussion of mitigation and monitoring in a Record of Decision must be more detailed than a general statement that mitigation is being required, but not so detailed as to duplicate discussion of mitigation in the EIS. The Record of Decision should contain a concise summary identification of the mitigation measures which the agency has committed itself to adopt.

The Record of Decision must also state whether all practicable mitigation measures have been adopted, and if not, why not. Section 1505.2(c). The Record of Decision must identify the mitigation measures and monitoring and enforcement programs that have been selected and plainly indicate that they are adopted as part of the agency's decision. If the proposed action is the issuance of a permit or other approval, the specific details of the mitigation measures shall then be included as appropriate conditions in whatever grants, permits, funding or other approvals are being made by the federal agency. Section 1505.3 (a), (b). If the proposal is to be carried out by the [46 FR 18037] federal agency itself, the Record of Decision should delineate the mitigation and monitoring measures in sufficient detail to constitute an enforceable commitment, or incorporate by reference the portions of the EIS that do so.

**34d. What is the enforceability of a Record of Decision?**

A. Pursuant to generally recognized principles of federal administrative law, agencies will be held accountable for preparing Records of Decision that conform to the decisions actually made and for carrying out the actions set forth in the Records of Decision. This is based on the principle that an agency must comply with its own decisions and regulations once they are adopted. Thus, the terms of a Record of Decision are enforceable by agencies and private parties. A Record of Decision can be used to compel compliance with or execution of the mitigation measures identified therein.

**35. Time Required for the NEPA Process. How long should the NEPA process take to complete?**

A. When an EIS is required, the process obviously will take longer than when an EA is the only document prepared. But the Council's NEPA regulations encourage streamlined review, adoption of deadlines, elimination of duplicative work, eliciting suggested alternatives and other comments early through scoping, cooperation among agencies, and consultation with applicants during project planning. The Council has advised agencies that

under the new NEPA regulations even large complex energy projects would require only about 12 months for the completion of the entire EIS process. For most major actions, this period is well within the planning time that is needed in any event, apart from NEPA.

The time required for the preparation of program EISs may be greater. The Council also recognizes that some projects will entail difficult long-term planning and/or the acquisition of certain data which of necessity will require more time for the preparation of the EIS. Indeed, some proposals should be given more time for the thoughtful preparation of an EIS and development of a decision which fulfills NEPA's substantive goals.

For cases in which only an environmental assessment will be prepared, the NEPA process should take no more than 3 months, and in many cases substantially less, as part of the normal analysis and approval process for the action.

**36a. Environmental Assessments (EA). How long and detailed must an environmental assessment (EA) be?**

A. The environmental assessment is a concise public document which has three defined functions. (1) It briefly provides sufficient evidence and analysis for determining whether to prepare an EIS; (2) it aids an agency's compliance with NEPA when no EIS is necessary, i.e., it helps to identify better alternatives and mitigation measures; and (3) it facilitates preparation of an EIS when one is necessary. Section 1508.9(a).

Since the EA is a concise document, it should not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. Section 1508.9(b).

While the regulations do not contain page limits for EA's, the Council has generally advised agencies to keep the length of EAs to not more than approximately 10-15 pages. Some agencies expressly provide page guidelines (e.g., 10-15 pages in the case of the Army Corps). To avoid undue length, the EA may incorporate by reference background data to support its concise discussion of the proposal and relevant issues.

**36b. Under what circumstances is a lengthy EA appropriate?**

A. Agencies should avoid preparing lengthy EAs except in unusual cases, where a proposal is so complex that a concise document cannot meet the goals of Section 1508.9 and where it is extremely difficult to determine whether the proposal could have significant environmental effects. In most cases, however, a lengthy EA indicates that an EIS is needed.

**37a. Findings of No Significant Impact (FONSI). What is the level of detail of information that must be included in a finding of no significant impact (FONSI)?**

A. The FONSI is a document in which the agency briefly explains the reasons why an action will not have a significant effect on the human environment and, therefore, why an EIS will not be prepared. Section 1508.13. The finding itself need not be detailed, but must succinctly state the reasons for deciding that the action will have no significant environmental effects, and, if relevant, must show which factors were weighted most heavily in the determination. In addition to this statement, the FONSI must include, summarize, or attach and incorporate by reference, the environmental assessment.

**37b. What are the criteria for deciding whether a FONSI should be made available for public review for 30 days before the agency's final determination whether to prepare an EIS?**

A. Public review is necessary, for example, (a) if the proposal is a borderline case, i.e., when there is a reasonable argument for preparation of an EIS; (b) if it is an unusual case, a new kind of action, or a precedent setting case such as a first intrusion of even a minor development into a pristine area; (c) when there is either scientific or public controversy over the proposal; or (d) when it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS. Sections 1501.4(e)(2), 1508.27. Agencies also must allow a period of public review of the FONSI if the proposed action would be located in a floodplain or wetland. E.O. 11988, Sec. 2(a)(4); E.O. 11990, Sec. 2(b).

**38. Public Availability of EAs v. FONSIs. Must (EAs) and FONSIs be made public? If so, how should this be done?**

A. Yes, they must be available to the public. Section 1506.6 requires agencies to involve the public in implementing their NEPA procedures, and this includes public involvement in the preparation of EAs and FONSIs. These are public "environmental documents" under Section 1506.6(b), and, therefore, agencies must give public notice of their availability. A combination of methods may be used to give notice, and the methods should be tailored to the needs of particular cases. Thus, a Federal Register notice of availability of the documents, coupled with notices in national publications and mailed to interested national groups might be appropriate for proposals that are national in scope. Local newspaper notices may be more appropriate for regional or site-specific proposals.

The objective, however, is to notify all interested or affected parties. If this is not being achieved, then the methods should be reevaluated and changed. Repeated failure to reach the interested or affected public would be interpreted as a violation of the regulations.

**39. Mitigation Measures Imposed in EAs and FONSIs. Can an EA and FONSI be used to impose enforceable mitigation measures, monitoring programs, or other requirements, even though there is no requirement in the regulations in such cases for a formal Record of Decision?**

A. Yes. In cases where an environmental assessment is the appropriate environmental document, there still may be mitigation measures or alternatives that would be desirable to consider and adopt even though the impacts of the proposal will not be "significant." In such cases, the EA should include a discussion of these measures or alternatives to "assist [46 FR 18038] agency planning and decisionmaking" and to "aid an agency's compliance with [NEPA] when no environmental impact statement is necessary." Section 1501.3(b), 1508.9(a)(2). The appropriate mitigation measures can be imposed as enforceable permit conditions, or adopted as part of the agency final decision in the same manner mitigation measures are adopted in the formal Record of Decision that is required in EIS cases.

**40. Propriety of Issuing EA When Mitigation Reduces Impacts. If an environmental assessment indicates that the environmental effects of a proposal are significant but that, with mitigation, those effects may be reduced to less than significant levels, may the agency make a finding of no significant impact rather than prepare an EIS? Is that a legitimate function of an EA and scoping?**

[N.B.: Courts have disagreed with CEQ's position in Question 40. The 1987-88 CEQ Annual Report stated that CEQ intended to issue additional guidance on this topic. Ed. note.]

A. Mitigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. As a general rule, the regulations contemplate that agencies should use a broad approach in defining significance and should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement. Sections 1508.8, 1508.27.

If a proposal appears to have adverse effects which would be significant, and certain mitigation measures are then developed during the scoping or EA stages, the existence of such possible mitigation does not obviate the need for an EIS. Therefore, if scoping or the EA identifies certain mitigation possibilities without altering the nature of the overall proposal itself, the agency should continue the EIS process and submit the proposal, and the potential mitigation, for public and agency review and comment. This is essential to ensure that the final decision is based on all the relevant factors and that the full NEPA process will result in enforceable mitigation measures through the Record of Decision.

In some instances, where the proposal itself so integrates mitigation from the beginning that it is impossible to define the proposal without including the mitigation, the agency may then rely on the mitigation measures in determining that the overall effects would not be significant (e.g., where an application for a permit for a small hydro dam is based on a binding commitment to build fish ladders, to permit adequate down stream flow, and to replace any lost wetlands, wildlife habitat and recreational potential). In those instances, agencies should make the FONSI and EA available for 30 days of public comment before taking action. Section 1501.4(e)(2).

Similarly, scoping may result in a redefinition of the entire project, as a result of mitigation proposals. In that case, the agency may alter its previous decision to do an EIS, as long as the agency or applicant resubmits the entire proposal and the EA and FONSI are available for 30 days of review and comment. One example of this would be where the size and location of a proposed industrial park are changed to avoid affecting a nearby wetland area.

## ENDNOTES

The first endnote appeared in the original Federal Register. The other endnotes are for information only.

1. References throughout the document are to the Council on Environmental Quality's Regulations For Implementing The Procedural Provisions of the National Environmental Policy Act. 40 CFR Parts 1500-1508.

2. [46 FR 18027] indicates that the subsequent text may be cited to 48 Fed. Reg. 18027 (1981). Ed Note.

3. Q20 Worst Case Analysis was withdrawn by final rule issued at 51 Fed. Reg. 15618 (Apr. 25. 1986); textual errors corrected 51 F.R. p. 16,846 (May 7, 1986). The preamble to this rule is published at ELR Admin. Mat. 35055.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

CHAIRMAN

December 9, 2002

MEMORANDUM

TO: Ann M. Veneman
Secretary of Agriculture

Gale A. Norton
Secretary of the Interior

FROM: James L. Connaughton
Chairman

SUBJECT: Guidance for Environmental Assessments of Forest Health Projects

The President's Healthy Forests Initiative for Wildfire Prevention and Stronger Communities (August 22, 2002) called for administrative improvements that ensure more timely decisions, greater efficiency, and better results in projects that reduce the risk of catastrophic wildfires and restore forest and rangeland health. Such improvements will help reduce threats to community safety and better protect wildlife and ecosystems, as well as improve water and air quality. To this end, the President directed CEQ to develop guidance to ensure consistent procedures under the National Environmental Policy Act (NEPA) for fuels reduction and fire-adapted ecosystem restoration projects, including development of a model Environmental Assessment (EA) for such projects. EAs provide valuable information for assessing the environmental impacts of projects. These projects will provide important data for monitoring performance as the agencies' work to reduce the threat of severe fires and promote healthy forests and rangeland under *A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment – 10 Year Comprehensive Strategy* and its *Implementation Plan*.

The following briefly describes core elements of the EA process and provides an outline for an EA document tailored to forest and rangeland health projects. Field staff, with guidance from senior advisors, will use the EA outline in the field over the next several months to complete EAs for different types of forest and rangeland health projects. Based on this experience, we will provide examples of completed EAs to be used as models and may develop more substantive protocols.

**Environmental Assessment (EA) Process for Forest Health Projects**

1. Your EA should be "a concise public document" of no more than 10-15 pages that:
   - Describes sufficient information and analyses for determining whether to prepare an environmental impact statement or a finding of no significant impact;
   - Helps you document NEPA compliance when no EIS is needed;
   - Facilitates your preparation of an EIS when one is necessary. 40 CFR 1508.9.

   Your EA must address the following four elements:
   - Statement of need for your proposed action;
   - Description of alternatives as required by NEPA section 102(2)(E);
   - Description of the environmental impacts of the proposed action and alternatives;
   - List of the agencies and persons you consulted. 40 CFR 1508.9.

3. Your EA should reference any supporting data, inventories and other documents on which you relied. You may, but are not required to, use the EA to document project compliance with other statutes.

4. You must involve interested agencies and the public in your preparation of the EA to the extent practicable. See 40 CFR 1501.4(b). The 10-Year Implementation Plan calls for a collaborative process to identify and prioritize projects. The EA process provides you flexibility in how you involve interested parties in the most efficient and effective manner to obtain input on the EA.

5. If you prepare a Finding of No Significant Impact (FONSI) you should attach the EA and incorporate it by reference. Note that your <u>draft</u> FONSI must be available for a 30 day public comment: 1) when your proposed action is without precedent, or 2) when your proposed action is similar to one that normally requires an EIS.

6. As the EA and FONSI are ready, you must provide reasonable public notice of their availability.

7. If you determine that an EIS is necessary, you must prepare and publish a Notice of Intent (NOI) that briefly describes: 1) the proposed action and alternatives identified; 2) your proposed scoping process, and 3) your agency contact for further information.

**Contents of a Model Forest Health Environmental Assessment**

Need for the Proposal

- ☐ Briefly describe the existing condition, the desired future condition, and how the forest health project will achieve the desired condition.
- ☐ Briefly describe information that substantiates the need for the project; incorporate by reference information that is reasonably available to the public.

Proposed Action and Alternatives

- ☐ List and briefly describe your proposed action and any alternatives that meet the project purposes. You have discretion as to the number of alternatives.
- ☐ When there is consensus about the proposed action based on input from interested parties, you can consider the proposed action and proceed without consideration of additional alternatives. Otherwise, you need to develop reasonable alternatives to meet project needs. (NEPA section 102(2)(E)).

Environmental Impacts of the Proposed Action and Alternatives

- ☐ Describe the environmental impacts of your proposed action and each alternative. Your alternatives must meet the purpose and need of the forest health project.
- ☐ Your description should provide enough information to support a determination to either prepare an environmental impact statement or find no significant impact.
- ☐ Concentrate on whether the action would "significantly" affect the quality of the human environment. You should use CEQ's definition of "significantly," 40 CFR 1508.27, as a general guide and, where applicable, cite to agency guidance, policies, monitoring and experience, including prior significance determinations documented in related or analogous NEPA decisions.
- ☐ Tailor the length of your discussion to the complexity of the impacts.
- ☐ You may discuss the impacts (direct, indirect and cumulative) of each alternative together in a comparative description or discuss each alternative separately.
- ☐ You may contrast the impacts of the proposed action and alternatives with the current condition and expected future condition in the absence of the project. This would constitute consideration of a no-action alternative.
- ☐ Incorporate by reference data, inventories, other information and analyses you relied on. The use of hyperlinks in web-based documents is encouraged. This information must be reasonably available to the public.
- ☐ You should be clear and concise about your conclusions.

Agencies and Persons Consulted.

- ☐ List the agencies and persons consulted.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

June 24, 2005

MEMORANDUM

FROM: JAMES L. CONNAUGHTON
CHAIRMAN

TO: HEADS OF FEDERAL AGENCIES

RE: GUIDANCE ON THE CONSIDERATION OF PAST ACTIONS IN CUMULATIVE EFFECTS ANALYSIS

I. Introduction

In this Memorandum, the Council on Environmental Quality (CEQ) provides guidance on the extent to which agencies of the Federal government are required to analyze the environmental effects of past actions when they describe the cumulative environmental effect of a proposed action in accordance with Section 102 of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332, and the CEQ Regulations for Implementing the Procedural Provisions of NEPA, 40 C.F.R. parts 1500-1508. CEQ's interpretation of NEPA is entitled to deference. *Andrus v. Sierra Club*, 442 U.S. 347, 358 (1979).

II. Guidance

The environmental analysis required under NEPA is forward-looking, in that it focuses on the potential impacts of the proposed action that an agency is considering. Thus, review of past actions is required to the extent that this review informs agency decisionmaking regarding the proposed action. This can occur in two ways:

First, the effects of past actions may warrant consideration in the analysis of the cumulative effects of a proposal for agency action. CEQ interprets NEPA and CEQ's NEPA regulations on cumulative effects as requiring analysis and a concise description of the identifiable present effects of past actions to the extent that they are relevant and useful in analyzing whether the reasonably foreseeable effects of the agency proposal for action and its alternatives may have a continuing, additive and significant relationship to those effects. In determining what information is necessary for a cumulative effects analysis, agencies should use scoping to focus on the extent to which information is "relevant to reasonably foreseeable significant adverse impacts," is "essential to a reasoned choice among alternatives," and can be obtained without exorbitant cost. 40 CFR 1502.22. Based on scoping, agencies have discretion to determine whether, and to what extent, information about the specific nature, design, or present effects of a past action is useful for the agency's analysis of the effects of a proposal for agency action and its reasonable alternatives.

Agencies are not required to list or analyze the effects of individual past actions unless such information is necessary to describe the cumulative effect of all past actions combined. Agencies retain substantial discretion as to the extent of such inquiry and the appropriate level of explanation. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 376-77 (1989). Generally, agencies can conduct an adequate cumulative effects analysis by focusing on the current aggregate effects of past actions without delving into the historical details of individual past actions.

Second, experience with and information about past direct and indirect effects of individual past actions may also be useful in illuminating or predicting the direct and indirect effects of a proposed action. However, these effects of past actions may have no cumulative relationship to the effects of the proposed action. Therefore, agencies should clearly distinguish analysis of direct and indirect effects based on information about past actions from a cumulative effects analysis of past actions.

III. Discussion

The CEQ regulations for the implementation of NEPA define cumulative effects consistent with the Supreme Court's reading of NEPA in *Kleppe v. Sierra Club*, 427 U.S. 390, 413-414 (1976). "Cumulative impact" is defined in CEQ's NEPA regulations as the "impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions . . ." 40 CFR 1508.7. CEQ interprets this regulation as referring only to the cumulative impact of the direct and indirect effects of the proposed action and its alternatives when added to the aggregate effects of past, present, and reasonably foreseeable future actions.

Agencies should be guided in their cumulative effects analysis by the scoping process, in which agencies identify the scope and "significant" issues to be addressed in an environmental impact statement. 40 CFR 1500.1(b), 1500.4(g), 1501.7, 1508.25. In the context of scoping, agencies typically decide the extent to which "it is reasonable to anticipate a cumulatively significant impact on the environment." 40 CFR 1508.27(b)(7). Agencies should ensure that their NEPA process produces environmental information that is useful to decisionmakers and the public by reducing the "accumulation of extraneous background data" and by "emphasiz[ing] real environmental issues and alternatives." 40 CFR 1500.2(b). Accordingly, the NEPA process requires agencies to identify "the significant environmental issues deserving study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement" at an early stage of agency planning. 40 CFR 15001.1(d). The Supreme Court has also emphasized that agencies may properly limit the scope of their cumulative effects analysis based on practical considerations. *Kleppe*, 427 U.S at 414. The CEQ regulations provide for explicit documentation of such practical considerations when there is incomplete or unavailable information that is relevant to reasonably foreseeable significant adverse impacts. 40 CFR 1502.22. The extent and form of the information needed to analyze appropriately the cumulative effects of a proposed action and alternatives under NEPA varies widely and must be determined by the federal agency proposing the action on a case-by-case basis.

The analysis of cumulative effects begins with consideration of the direct and indirect effects on the environment that are expected or likely to result from the alternative proposals for


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agency action. Agencies then look for present effects of past actions that are, in the judgment of the agency, relevant and useful because they have a significant cause-and-effect relationship with the direct and indirect effects of the proposal for agency action and its alternatives. CEQ regulations do not require the consideration of the individual effects of all past actions to determine the present effects of past actions. Once the agency has identified those present effects of past actions that warrant consideration, the agency assesses the extent that the effects of the proposal for agency action or its alternatives will add to, modify, or mitigate those effects. The final analysis documents an agency assessment of the cumulative effects of the actions considered (including past, present, and reasonably foreseeable future actions) on the affected environment.

With respect to past actions, during the scoping process and subsequent preparation of the analysis, the agency must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects. Cataloging past actions and specific information about the direct and indirect effects of their design and implementation could in some contexts be useful to predict the cumulative effects of the proposal. The CEQ regulations, however, do not require agencies to catalogue or exhaustively list and analyze all individual past actions. Simply because information about past actions may be available or obtained with reasonable effort does not mean that it is relevant and necessary to inform decisionmaking.

IV. Tools for NEPA Practitioners

a. Scoping:

It is not practical to analyze how the cumulative effects of an action interact with the universe; the analysis of environmental effects must focus on the aggregate effects of past, present and reasonably foreseeable future actions that are truly meaningful. Thus, analysts must narrow the focus of the cumulative effects analysis to effects of significance to the proposal for agency action and its alternatives, based on thorough scoping. A specific objective of scoping is to save time in the overall process by helping to ensure that draft statements adequately address the effects of the proposed action and alternatives that should be addressed. See Scoping Guidance (CEQ 1981) (http://ceq.eh.doe.gov/nepa/regs/guidance.html). Scoping provides the agency the opportunity to focus in on those cumulative effects that may be significant. The scope of the cumulative impact analysis is related to the magnitude of the environmental impacts of the proposed action. Proposed actions of limited scope typically do not require as comprehensive an assessment of cumulative impacts as proposed actions that have significant environmental impacts over a large area. Proposed actions that are typically finalized with a finding of no significant impact usually involve only a limited cumulative impact assessment to confirm that the effects of the proposed action do not reach a point of significant environmental impacts. Except in extraordinary circumstances, proposed actions that are categorically excluded from NEPA analysis do not involve cumulative impact analyses.

b. Incomplete and Unavailable Information:

The purpose of 40 CFR 1502.22 is to disclose the fact of incomplete or unavailable information, to acquire information if it is "relevant to reasonably foreseeable significant adverse impacts" and "essential to a reasoned choice among alternatives," and to advance decision-making


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even in the absence of all information regarding reasonably foreseeable effects. The focus of this provision is, first and foremost, on "significant adverse impacts." The agency must find that the incomplete information is relevant to a "reasonably foreseeable" and "significant" impact before the agency is required to comply with 40 CFR 1502.22. If the incomplete cumulative effects information meets that threshold, the agency must consider the "overall costs" of obtaining the information. 40 CFR 1502.22(a). The term "overall costs" encompasses financial costs and other costs such as costs in terms of time (delay), program and personnel commitments. The requirement to determine if the "overall costs" of obtaining information is exorbitant should not be interpreted as a requirement to weigh the cost of obtaining the information against the severity of the effects, or to perform a cost-benefit analysis. Rather, the agency must assess overall costs in light of agency environmental program needs.

c. Programmatic Evaluations

In geographic settings where several Federal actions are likely to have effects on the same environmental resources it may be advisable for the lead Federal agencies to cooperate to provide historical or other baseline information relating to the resources. This can be done either through a programmatic NEPA analysis or can be done separately, such as through a joint inventory or planning study. The results can then be incorporated by reference into NEPA documents prepared for specific Federal actions so long as the programmatic analysis or study is reasonably available to the interested public.

d. Environmental Management Systems:

Agencies are encouraged at their discretion to consider whether programmatic coordination of cumulative effects analysis can be assisted through implementation of environmental management systems (EMS). See Executive Order 13148, 65 Fed. Reg. 24,595 (April 21, 2000); Memorandum from the Chairman of CEQ and the Director of the Office of Management and Budget to heads of all Federal agencies (http://www.whitehouse.gov/ceq/memoranda01.html). Pursuant to Executive Order 13148, agencies that choose to use an EMS to improve their cumulative analysis may find that the EMS can be designed and implemented to more efficiently meet NEPA requirements, improve public participation in the NEPA process, and provide a framework for cumulative effects analysis and adaptive management. By managing information collection on an ongoing basis, an EMS can provide a more systematic approach to agencies' identification and management of environmental conditions and obligations. Agencies can use an EMS to confirm assumptions, track performance, and increase confidence in their assessment of cumulative environmental effects.

d. Direct and Indirect Effects:

In some cases, based on scoping, information about the effects of past actions that were similar to the proposed action may be useful in describing the possible effects of the proposed action. In these circumstances, agencies should consider using available information about the effects of individual past actions that help illuminate or predict the direct or indirect effects of the proposed action and its alternatives. Agencies should clearly distinguish their use of past experience in direct and indirect effects analysis from their cumulative effects analysis.


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# Department of the Interior
# Departmental Manual

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**Effective Date**: 5/27/04
**Series**: Environmental Quality Programs
**Part 516**: National Environmental Policy Act of 1969
**Chapter 1**: Protection and Enhancement of Environmental Quality

**Originating Office**: Office of Environmental Policy and Compliance

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## 516 DM 1

1.1 **Purpose**. This Chapter establishes the Department's policies for complying with Title I of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347) (NEPA); Section 2 of Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991; Executive Order 12114, Environmental Effects Abroad of Major Federal Actions; and the regulations of the Council on Environmental Quality (CEQ) implementing the procedural provisions of NEPA (40 CFR 1500-1508; identified in this Part 516 as the CEQ Regulations).

1.2 **Policy**. It is the policy of the Department:

A. To provide leadership in protecting and enhancing those aspects of the quality of the Nation's environment which relate to or may be affected by the Department's policies, goals, programs, plans, or functions in furtherance of national environmental policy;

B. To the fullest practicable extent, to encourage public involvement in the development of Departmental plans and programs through State, local, and tribal partnerships and cooperative agreements at the beginning of the NEPA process, and to provide timely information to the public to better assist in understanding such plans and programs affecting environmental quality in accordance with the CEQ Regulations;

C. To interpret and administer, to the fullest extent possible, the policies, regulations, and public laws of the United States administered by the Department in accordance with the requirements of Sections 101 and 102 of NEPA;

D. To consider and give important weight to environmental factors, along with other societal needs, in developing proposals and making decisions in order to achieve a proper balance between the development and utilization of natural, cultural, and human resources and the protection and enhancement of environmental quality (see Section 101 of NEPA and 1508.14);

E. To consult, coordinate, and cooperate with other Federal agencies and, particularly, State, local, Alaska Native Corporations, and Indian tribal governments in the development and implementation of the Department's plans and programs affecting environmental quality and, in

turn, to give consideration to those activities that succeed in best addressing State and local concerns;

F. To be innovative in natural resource protection and to use all practicable means, consistent with other essential considerations of national policy, to improve, coordinate, and direct its policies, plans, functions, programs, and resources in furtherance of national environmental goals;

G. To rigorously integrate systematic, interdisciplinary approaches into the design of all activities and to base decision making on adequate environmental data in order to identify reasonable alternatives to proposed actions that will avoid or minimize adverse environmental impacts;

H. Where necessary, to monitor, evaluate, and control activities to protect and enhance the quality of the environment and to base decision making on monitoring data and evaluation results; and

I. To cooperate with and assist the CEQ.

1.3 **General Responsibilities**. The following responsibilities reflect the Secretary's decision that the officials responsible for making program decisions are also responsible for taking the requirements of NEPA into account in those decisions and will be held accountable for that responsibility:

A. Assistant Secretary - Policy, Management and Budget (AS/PMB).

(1) Is the Department's focal point on NEPA matters and is responsible for overseeing the Department's implementation of NEPA.

(2) Serves as the Department's principal contact with the CEQ.

(3) Assigns to the Director, Office of Environmental Policy and Compliance (OEPC), the responsibilities outlined for that Office in this Part.

B. Solicitor. Is responsible for providing legal advice in the Department's compliance with NEPA.

C. Assistant Secretaries.

(1) Are responsible for compliance with NEPA, Executive Order 11514, as amended, Executive Order 12114, the CEQ Regulations, and this Part for bureaus and offices under their jurisdiction.

(2) Shall ensure that, to the fullest extent possible, the policies, regulations, and public laws of the United States administered under their jurisdiction are interpreted and administered in accordance with the requirements of NEPA.

D. Heads of Bureaus and Offices.

(1) Must comply with the provisions of NEPA, Executive Order 11514, as amended, Executive Order 12114, the CEQ Regulations, and this Part.

(2) Shall interpret and administer, to the fullest extent possible, the policies, regulations, and public laws of the United States administered under their jurisdiction in accordance with the requirements of NEPA.

(3) Shall continue to review their statutory authorities, administrative regulations, policies, programs, and procedures, including those related to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the intent, purpose, and provisions of NEPA and, in consultation with the Solicitor and the Office of Congressional and Legislative Affairs, shall take or recommend, as appropriate, corrective actions as may be necessary to bring these authorities and policies into conformance with the intent, purpose, and procedures of NEPA.

(4) Shall monitor, evaluate, and control on a continuing basis their activities as needed to protect and enhance the quality of the environment. Such activities will include both those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. They will develop programs and measures to protect and enhance environmental quality. They will assess progress in meeting the specific objectives of such activities as they affect the quality of the environment.

(5) Shall, in furtherance of public participation practices (see 1.2B, above), use consensus-based management and community-based NEPA training to the extent possible in all NEPA compliance activities. (Consensus-based management in the NEPA context is the inclusion of interested parties with an assurance for the participants that the results of their work will be given consideration by the decision maker in selecting a course of action. It is a logical outgrowth of public participation. Community-based training in the NEPA context is the training of local participants with Federal participants in the intricacies of the environmental planning and decision making effort as it relates to the local community(ies). It should de-mystify the process and inform participants how to become effectively involved.) Will ensure that the Department's collaborative efforts under this part comply with the Federal Advisory Committee Act (FACA), 5 U.S.C., Appendix. (To ensure FACA compliance, each bureau and office will verify whether FACA applies, and will ensure that the FACA requirements are followed anytime the Department utilizes (i.e., manages and controls) or establishes a group to be consulted or to provide recommendations to a Departmental official.)

(6) Shall use tiered and transferred analyses to help avoid needless repetition. They will require decision makers to produce NEPA documents that save resources and reduce the public's perception that NEPA documents merely accomplish compliance with a process and do not add to the general knowledge of environmental impacts to natural resources.

(7) Shall use adaptive management (see 516 DM 4.16) to fully comply with 40 CFR 1505.2 which requires a monitoring and enforcement program to be adopted, where applicable, for any mitigation activity.

E. Heads of Regional, Field, or Area Offices.

(1) Must comply with the provisions of NEPA, Executive Order 11514, as amended, Executive Order 12114, the CEQ Regulations, and this Part.

(2) Shall use information obtained in the NEPA process, including pertinent information provided by State and local agencies, Indian tribal governments, and interest groups, to identify reasonable alternatives to proposed actions that will avoid or minimize adverse impacts to the human environment while improving overall environmental results.

(3) Shall monitor, evaluate, and control their activities on a continuing basis to further protect and enhance the quality of the environment.

## 1.4 Consideration of Environmental Values.

A. In Departmental Management.

(1) In the management of the natural, cultural, and human resources under its jurisdiction, the Department must consider and balance a wide range of economic, environmental, and societal needs at the local, regional, national, and international levels, not all of which are quantifiable in comparable terms. In considering and balancing these objectives, Departmental plans, proposals, and decisions often require recognition of complements and resolution of conflicts among interrelated uses of these natural, cultural, and human resources within technological, budgetary, and legal constraints. Various Departmental conflict resolution mechanisms are available to assist this balancing effort.

(2) Departmental project reports, program proposals, issue papers, and other decision documents must carefully analyze the various objectives, resources, and constraints, and comprehensively and objectively evaluate the advantages and disadvantages of the proposed actions and their reasonable alternatives. Where appropriate, these documents will contain or reference supporting and underlying economic, environmental, technological, and other societal analyses in language that all participants can understand and use.

(3) The underlying environmental analyses will factually, objectively, and comprehensively analyze the environmental effects of proposed actions and their reasonable alternatives. They will systematically analyze the environmental impacts of alternatives, and particularly those alternatives and measures that would reduce, mitigate or prevent adverse environmental impacts or that would enhance environmental quality. However, such an environmental analysis is not, in and of itself, a program proposal or the decision document, is not a justification of a proposal, and will not support or deprecate the overall merits of a proposal or its various alternatives.

(4) Environmental analyses shall strive to provide baseline data where possible and shall provide monitoring and evaluation tools as necessary to ensure that an activity is implemented as contemplated by the NEPA analysis. Baseline data gathered for these analyses may include pertinent social, economic, and environmental data.

(5) If proposed actions are planned for the same geographic area or are otherwise closely related, environmental analysis should be integrated to ensure adequate consideration of resource use interactions, to reduce resource conflicts, to establish baseline data, to monitor and evaluate changes in such data, to adapt actions or groups of actions accordingly, and to comply with NEPA and the CEQ Regulations. Proposals shall not be segmented in order to reduce the levels of environmental impacts reported in NEPA documents.

(6) When proposed actions involve approval processes of other agencies, the Department shall use its lead role to identify opportunities to consolidate those processes.

B. In Internally Initiated Proposals. Officials responsible for development or conduct of planning and decision making systems within the Department shall incorporate environmental planning as an integral part of these systems in order to ensure that environmental values and impacts are fully considered, facilitate any necessary documentation of those considerations, and identify reasonable alternatives in the design and implementation of activities that minimize adverse environmental impacts. An interdisciplinary approach shall be initiated at the earliest possible time to provide for consultation among all participants for each planning or decision making endeavor. This interdisciplinary approach should, to the extent possible, have the capacity to consider innovative and creative solutions from all participants.

C. In Externally Initiated Proposals. Officials responsible for the development or conduct of loan, grant, contract, lease, license, permit, or other externally initiated activities shall require applicants, to the extent necessary and practicable, to provide environmental information, analyses, and reports as an integral part of their applications. As with internally initiated proposals, officials shall encourage applicants and other interested parties to consult with the Department and provide their comments, recommendations, and suggestions for improvement.

## 1.5 Consultation, Coordination, and Cooperation with Other Agencies and Organizations.

A. Departmental Plans and Programs.

(1) Officials responsible for planning or implementing Departmental plans and programs will develop and utilize procedures to consult, coordinate, and cooperate with relevant State, local, and Indian tribal governments; other bureaus and Federal agencies; and public and private organizations and individuals concerning the environmental effects of these plans and programs on their jurisdictions or interests. Such efforts should, to the extent allowed by law and in accordance with FACA, include consensus-based management whenever possible. This is a planning process that incorporates direct community involvement into bureau activities from initial scoping through implementation of the bureau or office decision and, in appropriate cases, monitoring and future adaptive management measures. All bureau NEPA and planning

procedures will be made available to the public.

(2) Bureaus and offices will use, to the maximum extent possible, existing notification, coordination, and review mechanisms established by the Office of Management and Budget and CEQ. However, use of these mechanisms must not be a substitute for early consultation, coordination, and cooperation with others, especially State, local, and Indian tribal governments.

(3) Bureaus and offices are encouraged to expand, develop, and use new forms of notification, coordination, and review, particularly by electronic means and the Internet. Bureaus are also encouraged to stay abreast of and use new technologies in environmental data gathering and problem solving.

B. Other Departmental Activities.

(1) Technical assistance, advice, data, and information useful in restoring, maintaining, and enhancing the quality of the environment will be made available to other Federal agencies; State, local, and Indian tribal governments; institutions; and other entities as appropriate.

(2) Information regarding existing or potential environmental problems and control methods developed as a part of research, development, demonstration, test, or evaluation activities will be made available to other Federal agencies; State, local, and Indian tribal governments; institutions; and other entities as appropriate.

(3) Recognizing the worldwide and long-range character of environmental problems and consistent with the foreign policy of the United States, appropriate support will be made available (in consultation with clearly defined interested parties including tribal governments, if applicable) to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment.

C. Plans and Programs of Other Agencies and Organizations.

(1) Officials responsible for protecting, conserving, developing, or managing resources under the Department's jurisdiction shall coordinate and cooperate with State, local, and Indian tribal governments; other bureaus and Federal agencies; and public and private organizations and individuals, and provide them with timely information concerning the environmental effects of these entities' plans and programs.

(2) Bureaus and offices are encouraged to participate early in the planning processes of other agencies and organizations in order to ensure full cooperation with, and understanding of, the Department's programs and interests in natural, cultural, and human resources.

(3) Bureaus and offices will use, to the fullest extent possible, existing

Departmental review mechanisms to avoid unnecessary duplication of effort and to avoid confusion by other organizations.

(4) Bureaus and offices will work closely with other Federal agencies to ensure that similar or related proposed actions in the same geographic area are fully evaluated to determine if agency analyses can be integrated so that one NEPA compliance document can be used by all for their individual permitting and licensing needs.

1.6 **Public Involvement.**

A. Bureaus and offices, in accordance with 301 DM 2 and this part, will develop and implement procedures to ensure the fullest practicable provision of timely public information and understanding of their plans and programs with environmental impacts including information on the environmental impacts of alternative courses of action. This is to include public involvement in the development of NEPA analyses and documents.

B. These procedures will include, wherever appropriate, provision for public meetings in order to obtain the views of interested parties, newsletters, and status reports of NEPA compliance activities. Public information shall include all necessary policies and procedures concerning plans and programs in a readily accessible, consistent format.

C. Bureaus and offices will also coordinate and collaborate with State and local agencies and Indian tribal governments in developing and using similar procedures for informing the public concerning their activities affecting the quality of the environment.

1.7 **Mandate.**

A. This Part provides Department-wide instructions for complying with NEPA, Executive Orders 11514, as amended by 11991 (Protection and Enhancement of Environmental Quality) and 12114 (Environmental Effects Abroad of Major Federal Actions), and the CEQ Regulations. The provisions of Part 516 are intended to establish guidelines to be followed by the Department and its bureaus, services and offices. Part 516 is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person. The provisions of Part 516 are not intended to direct or bind any person outside the Department.

B. The Department hereby adopts the CEQ Regulations implementing the procedural provisions of NEPA [Sec. 102(2)(C)] except where compliance would be inconsistent with other statutory requirements. In the case of any discrepancies among these procedures and the NEPA statute; Executive Orders 11514, 11991, and 12114; or the mandatory provisions of the CEQ Regulations, the laws, Executive Orders, and regulations shall govern.

C. Instructions supplementing the CEQ Regulations are provided in Chapters 2-7 of this Part. Citations in brackets refer to the CEQ Regulations.

D. Instructions specific to each bureau are found in Chapters 8 through 15. This portion of the manual may expand or contract depending on the number of bureaus existing at any particular time. In addition, bureaus may prepare handbooks or other technical guidance for their personnel on how to apply this Part to principal programs. In the case of any apparent discrepancies between these procedures and bureau handbooks or technical guidance, 516 DM 2-7 shall govern.

5/27/04 #3611
Replaces 3/18/80 #3506

# Department of the Interior
# Departmental Manual

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**Effective Date**: 5/27/04
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**Part 516**: National Environmental Policy Act of 1969
**Chapter 2**: Initiating the NEPA Process

**Originating Office**: Office of Environmental Policy and Compliance

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**516 DM 2**

2.1 **Purpose**. This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to initiating the NEPA process. The numbers in parentheses signify the appropriate citation in the CEQ Regulations.

2.2 **Apply NEPA Early** (40 CFR 1501.2).

A. Bureaus shall initiate early consultation and coordination with other bureaus and any Federal agency having jurisdiction by law or special expertise with respect to any environmental issue that should be addressed, and with appropriate Federal, State, local and Indian tribal governments authorized to develop and enforce environmental standards or to manage and protect natural resources.

B. Bureaus shall also initiate the consultation process with interested parties and organizations at the time an application is received, or when the bureau initiates action on an agency plan or project requiring NEPA analyses and documentation.

C. Bureaus shall revise or amend program regulations, requirements, and directives to ensure that private or non-Federal applicants are informed of any environmental information required to be included in their applications and of any consultation with other Federal agencies, or State, local, or Indian tribal governments required prior to making the application. A discussion and a list of these regulations, requirements, and directives are found in 516 DM 6.4 and 6.5. The specific regulations, requirements, and directives for each bureau are found in separate chapters of this Part beginning with Chapter 8.

D. It is imperative that bureaus enlist the participation of all interested parties as early as possible and provide any necessary community-based training in order to reduce costs, prevent delays, and to promote efficiency in the NEPA process. It is the intent of these procedures to achieve early consensus on the scope of NEPA compliance and the methodologies for collecting needed baseline data. Consensus-based management [as described in 516 DM 1.5A(1)] should be used, as appropriate, to facilitate this process including the consideration of any publicly developed alternatives. However, the use of consensus-based management may be restricted or ended based on applicable statutory, regulatory, or policy requirements. Further, it is the intent

of these procedures to facilitate environmental analyses that avoid the late introduction of issues and alternatives that should have been identified initially during scoping.

E. Bureaus shall engage in a rigorous interdisciplinary approach at the earliest possible time to ensure adequate identification and consideration of the wide variety of environmental factors and considerations inherent in NEPA compliance activities.

F. NEPA applies to Department and bureau decision making and focuses on major Federal actions significantly affecting the quality of the human environment.

2.3 **Whether to prepare an Environmental Impact Statement (EIS)** (40 CFR 1501.4).

A. Categorical Exclusions (CX) (40 CFR 1508.4).

(1) Categorical exclusions are defined as a group of actions that would have no significant individual or cumulative effect on the quality of the human environment and, for which in the absence of extraordinary circumstances, neither an environmental assessment nor an environmental impact statement is required.

(2) Based on (1) above, the categories of actions listed in Appendix 1 to this Chapter are categorically excluded, Department-wide, from the preparation of environmental assessments or environmental impact statements. A list of CX specific to bureau programs will be found in the bureau chapters beginning with Chapter 8. Note that 1508.18(a) excludes bringing judicial or administrative civil or criminal enforcement actions.

(3) The CEQ Regulations at 40 CFR 1508.4 require agency procedures to provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect thus requiring additional analysis and action. The extraordinary circumstances to be considered when using categorical exclusions are listed in Appendix 2 of this Chapter. Any action that is normally categorically excluded must be subjected to sufficient environmental review to determine whether it meets any of the extraordinary circumstances, in which case, further analysis and environmental documents must be prepared for the action. Bureaus are reminded and encouraged to work within existing administrative frameworks, including any existing programmatic agreements, when deciding how to apply any of the Appendix 2 extraordinary circumstances.

B. Environmental Assessment (EA) (40 CFR 1508.9). See 516 DM 3. Decisions/actions which would normally require the preparation of an EA will be identified in each bureau chapter beginning with Chapter 8.

C. Finding of No Significant Impact (FONSI) (40 CFR 1508.13). A FONSI will be prepared as a separate covering document based upon a review of an EA. Accordingly, the words include(d) in Section 1508.13 will be interpreted as attach(ed) in reference to the EA.

D. Notice of Intent (NOI) (40 CFR 1508.22.). An NOI will be prepared as soon as practicable after a decision to prepare an EIS and shall be published in the Federal Register, with

a copy to the OEPC and made available to the affected public in accordance with Section 1506.6. Publication of an NOI may be delayed if there is proposed to be more than three (3) months between the decision to prepare an EIS and the time preparation is actually initiated. The notice, at a minimum, identifies key personnel, sets forth a schedule, and invites early comment. Scoping requests generally announce a schedule for scoping meetings where the agencies and the public can participate in the formal scoping process. These notices are also usually published in the Federal Register and may contain the text of a draft scoping document that outlines the actions, alternatives, and environmental issues and impacts identified at that time. The draft scoping document may also be made available upon request to a contact usually named in the notice.

E. Environmental Impact Statement (40 CFR 1508.11). See 516 DM 4. Decisions/actions which would normally require the preparation of an EIS will be identified in each bureau chapter beginning with Chapter 8.

F. Existing environmental analyses should be used in analyzing impacts of a proposed action to the extent possible and appropriate. CEQ Regulations encourage agencies to make the best use of existing NEPA documents and to avoid redundancy and unneeded paperwork through supplementing, incorporating by reference, or adopting previous environmental analyses. Use of existing documents carries with it a presumption that the bureaus will determine, in a deliberative manner and through agency procedures, that existing environmental analyses still adequately cover current actions.

2.4 **Lead Agencies** (40 CFR 1501.5).

A. The AS/PMB shall designate lead bureaus within the Department when bureaus under more than one Assistant Secretary are involved and cannot reach agreement on lead bureau status. The AS/PMB shall represent the Department in consultations with CEQ or other Federal agencies in the resolution of lead agency determinations.

B. Bureaus will inform the OEPC of any agreements to assume lead agency status. OEPC will assist in the coordination and documentation of any AS/PMB designations made in 2.4A.

C. To eliminate duplication with State and local procedures, a non-Federal agency (including Indian tribal governments) may be designated as a joint lead agency when it has a duty to comply with State or local requirements that are comparable to the NEPA requirements.

D. 40 CFR 1501.5 describes the selection of lead agencies, the settlement of lead agency disputes, and the use of joint lead agencies. While the joint lead relationship is not precluded among several Federal agencies, the Department recommends that it be applied sparingly and that one Federal agency be selected as the lead with the remaining Federal, State, Indian tribal governments, and local agencies assuming the role of cooperating agency. In this manner, the other Federal, State, and local agencies can work to ensure that the ensuing NEPA document will meet their needs for adoption and application to their related decision. If joint

lead is dictated by other law, regulation, policy, or practice, then one Federal agency shall be identified as the agency responsible for filing the EIS.

E. Lead agency designations may be required by law in certain circumstances.

2.5 **Cooperating Agencies** (40 CFR 1501.6).

A. The OEPC will assist Bureaus in determining cooperating agencies and coordinate requests from non-Interior agencies.

B. Bureaus will inform the OEPC of any agreements to assume cooperating agency status or any declinations pursuant to Section 1501.6(c).

C. Upon the request of the lead agency, any Federal agency with jurisdiction by law shall, and any Federal agency with special expertise may, be a cooperating agency. Any non-Federal agency (State, tribal, or local) may be a cooperating agency by agreement when it has jurisdiction by law (40 CFR 1508.15) or special expertise (40 CFR 1508.26) and meets the requirements of 40 CFR 1501.6. Bureaus will consult with the Solicitor's Office in cases where such non-Federal agencies are also applicants before the Department to determine relative lead/cooperating agency responsibilities. (CEQ guidance to agencies dated July 28, 1999, and January 30, 2002, urges agencies to more actively solicit participation of Federal, State, tribal, and local governments as cooperating agencies.)

D. Bureaus and potential cooperating agencies are advised to express in a letter and, if necessary, a memorandum of understanding their respective roles, assignment of issues, schedules, and staff commitments so that the NEPA process remains on track and within the time schedule.

2.6 **Scoping** (40 CFR 1501.7).

A. The invitation requirement in Section 1501.7(a)(1) may be satisfied by including such an invitation in the NOI.

B. Scoping is a process which continues throughout the planning and early stages of preparation of an EIS. Bureaus are encouraged through scoping to engage State, local and tribal governments and the public in the early identification of concerns, potential impacts, and possible alternative actions. Scoping requires interdisciplinary considerations. Scoping is an opportunity to bring agencies and applicants together to lay the groundwork for setting time limits, expediting reviews where possible, integrating other environmental reviews, and identifying any major obstacles that could delay the process.

C. Scoping should encourage the responsible official to integrate analyses required by other environmental laws. Scoping should also be used to integrate other planning activities for separate projects that may have similar or cumulative impacts. Integrated analysis facilitates the resolution of resource conflicts and minimizes redundancy.

D. Through scoping meetings, newsletters, or other communication methods, it should be made clear that the lead agency is ultimately responsible for the scope of an EIS and that suggestions obtained during scoping (see B and C above) are considered to be advisory.

2.7 **Time Limits** (40 CFR 1501.8).

A. Time limits are an important consideration and, when used diligently, can contribute greatly to a more efficient NEPA process. Bureaus are encouraged to set time limits of their own and to respond favorably to applicant requests for time limits and set them consistent with the requirements of 40 CFR 1501.8. Bureaus should work with cooperating agencies and agencies with which they must consult in setting time limits and encourage their commitment in meeting the time frames established.

B. When time limits are established, they should reflect the availability of personnel and funds. Efficiency of the NEPA process is dependent on the management capabilities of the lead bureau, which is encouraged to assemble a sufficiently well qualified staff commensurate with the type of project to be analyzed to ensure timely completion of NEPA documents.

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**APPENDIX 1**

## Departmental Categorical Exclusions

The following actions are CXs pursuant to 516 DM 2.3A(2). However, environmental documents will be prepared for individual actions within these CX if any of the extraordinary circumstances listed in 516 DM 2, Appendix 2, apply.

1.1 Personnel actions and investigations and personnel services contracts.

1.2 Internal organizational changes and facility and office reductions and closings.

1.3 Routine financial transactions including such things as salaries and expenses, procurement contracts (in accordance with applicable procedures and Executive Orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

1.4 Departmental legal activities including, but not limited to, such things as arrests, investigations, patents, claims, and legal opinions. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA in accordance with 40 CFR 1508.18(a).

1.5 Reserved.

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

1.7 Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (e.g., limited size and magnitude or short-term effects).

1.8 Management, formulation, allocation, transfer, and reprogramming of the Department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.)

1.9 Legislative proposals of an administrative or technical nature (including such things as changes in authorizations for appropriations and minor boundary changes and land title transactions) or having primarily economic, social, individual, or institutional effects; and comments and reports on referrals of legislative proposals.

1.10 Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

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

1.12 Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities: Shall be limited to areas (1) in wildland-urban interface and (2) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface; Shall be identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan;" Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans; Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction. (Refer to the Environmental Statement Memoranda Series for additional, required guidance.)

1.13 Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities: Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans; Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and Shall be completed within three years following a wildland fire. (Refer to the Environmental Statement Memoranda Series for additional, required guidance.)

## APPENDIX 2

# Categorical Exclusions: Extraordinary Circumstances

Extraordinary circumstances exist for individual actions within CXs which may:

2.1 Have significant impacts on public health or safety.

2.2 Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

2.3 Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].

2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

2.6 Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

2.7 Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.

2.8 Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.

2.9 Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

2.10 Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).

2.11 Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).

2.12 Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).

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# Department of the Interior
# Departmental Manual

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**Part 516**: National Environmental Policy Act of 1969
**Chapter 3**: Environmental Assessments

**Originating Office**: Office of Environmental Policy and Compliance

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**516 DM 3**

3.1 **Purpose**. This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to Environmental Assessment (EA).

3.2 **When to Prepare** (40 CFR 1501.3).

A. An EA will be prepared for all actions, except those covered by a categorical exclusion, those covered sufficiently by an earlier environmental document, or those actions for which a decision has already been made to prepare an EIS. The purpose of an EA is to allow the responsible official to determine whether to prepare an EIS or a FONSI.

B. In addition, an EA may be prepared on any action at any time in order to assist in planning and decision making, to aid an agency's compliance with NEPA when no EIS is necessary, or to facilitate EIS preparation.

3.3 **Public Involvement.**

A. The public must be provided notice of the availability of EAs (40 CFR 1506.6).

B. Where appropriate, bureaus and offices, when conducting the EA process, shall provide the opportunity for public participation and shall consider the public comments on the pending plan or program.

C. The scoping process may be applied to an EA (40 CFR 1501.7).

3.4 **Content.**

A. At a minimum, an EA will include brief discussions of the proposal, the need for the proposal, alternatives [as required by Section 102(2)(E) of NEPA], the environmental impacts of the proposed action and such alternatives, and a listing of agencies and persons consulted [1508.9(b)].

B. In addition, an EA may describe a broader range of alternatives and proposed mitigation measures to facilitate planning and decision making.

C. The level of detail and depth of impact analysis should normally be limited to the minimum needed to determine whether there would be significant environmental effects.

D. An EA will contain objective analyses that support its environmental impact conclusions. It will not conclude whether an EIS will be prepared. This conclusion will be made upon review of the EA by the responsible bureau official and documented in either a NOI or a FONSI.

E. Previous NEPA analyses should be used in a tiered analysis or transferred and used in a subsequent analysis to enhance the content of an EA whenever possible.

3.5 **Format.**

A. An EA may be prepared in any format useful to facilitate planning, decision making, and appropriate public participation.

B. An EA may be combined with any other planning or decision making document; however, that portion which analyzes the environmental impacts of the proposal and alternatives will be clearly and separately identified and not spread throughout or interwoven into other sections of the document.

3.6 **Adoption.**

A. An EA prepared for a proposal before the Department by another agency, entity, or person, including an applicant, may be adopted if, upon independent evaluation by the responsible official, it is found to comply with this Chapter and relevant provisions of the CEQ Regulations.

B. When appropriate and efficient, a responsible official may augment such an EA when it is essentially, but not entirely, in compliance, in order to make it so.

C. If such an EA is adopted or augmented, responsible officials must prepare their own NOI or FONSI that acknowledges the origin of the EA and takes full responsibility for its scope and content.

D. Adoption or augmentation of an EA shall receive the same public participation that the EA would have received if it had originated with the adopting or augmenting bureau or office.

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# Department of the Interior
# Departmental Manual

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**Chapter 4**: Environmental Impact Statements

**Originating Office**: Office of Environmental Policy and Compliance

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**516 DM 4**

4.1 **Purpose**. This Chapter provides supplementary instructions for implementing those portions of the CEQ regulations pertaining to EIS.

4.2 **Statutory Requirements** (40 CFR 1502.3). NEPA requires that an EIS be prepared by the responsible Federal official. This official is normally the lowest-level official who has overall responsibility for formulating, reviewing, or proposing an action or, alternatively, has been delegated the authority or responsibility to develop, approve, or adopt a proposal or action. Preparation at this level will ensure that the NEPA process will be incorporated into the planning process and that the EIS will accompany the proposal through existing review processes.

4.3 **Timing** (40 CFR 1502.5).

A. For such actions as broad programmatic decisions, rulemakings, or resource management plans, an EIS should be commenced whenever a proposed action has been defined. These types of actions can be inherently vague and difficult to analyze until the proposed action is defined. At that point, concurrent drafting of the proposal and its accompanying EIS should be commenced.

B. The feasibility analysis (go/no-go) stage, at which time an EIS is to be prepared for proposed projects undertaken by DOI, is to be interpreted as the stage prior to the first point of major commitment to the proposal. For example, this would normally be at the authorization stage for proposals requiring Congressional authorization; the location or corridor stage for transportation, transmission, and communication projects; and the leasing stage for offshore mineral resources proposals [40 CFR 1502.5(a)].

C. For situations involving applications to DOI or the bureaus, an EIS need not be commenced until an application is essentially complete; i.e., any required environmental information is submitted and any required advance funding is paid by the applicant [40 CFR 1502.5(b)]. Officials shall also inform applicants of any responsibility they will bear for funding environmental analyses associated with their proposals.

4.4 **Page Limits** (40 CFR 1502.7). Bureaus will ensure that the length of EISs is no greater than necessary to comply with NEPA, the CEQ regulations, and this Chapter.

4.5 **Supplemental Statements** (40 CFR 1502.9).

A. Supplements are required if an agency makes substantial changes in the proposed action relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

B. A bureau and/or the appropriate program Assistant Secretary will consult with the OEPC and the Office of the Solicitor prior to proposing to CEQ to prepare a supplemental statement using alternative arrangements such as issuing a final supplement without preparing an intervening draft.

C. If, after a decision has been made based on a final EIS, a described proposal is further defined or modified and if its changed effects are not significant and still within the scope of the earlier EIS, an EA, and a FONSI may be prepared for subsequent decisions rather than a supplement.

4.6 **Format** (40 CFR 1502.10).

A. Proposed departures from the standard format described in the CEQ regulations and this Chapter must be approved by the OEPC.

B. The section listing the preparers of the EIS will also include other sources of information, including a bibliography or list of cited references, when appropriate.

C. The section listing the distribution of the EIS will also fully describe the consultation and public involvement processes used in planning the proposal and in preparing the EIS, if this information is not discussed elsewhere in the document. The section will also describe the level to which the public contributed usable data for the document.

D. If CEQ's standard format is not used or if the EIS is combined with another planning or decision making document, the section which analyzes and compares the environmental consequences of the proposal and its alternatives will be clearly and separately identified and not interwoven into other portions of or spread throughout the document.

4.7 **Cover Sheet** (40 CFR 1502.11). The cover sheet will also indicate whether the EIS is intended to serve any other environmental review or consultation requirements pursuant to Section 1502.25. The cover sheet will also identify cooperating agencies, the location of the action, and whether the analysis is programmatic in nature.

4.8 **Summary** (40 CFR 1502.12). The emphasis in the summary should be on those considerations, controversies, and issues that significantly affect the quality of the human environment.

4.9 **Purpose and Need** (40 CFR 1502.13). This section shall present the purpose of and need for the agency action. The purpose and need shall be described in sufficient detail to aid in the development of an appropriate range of alternatives. Care should be taken to ensure an objective presentation and not a justification.

4.10 **Alternatives Including the Proposed Action** (40 CFR 1502.14).

A. The following terms are commonly used in NEPA compliance activities and are described below for clarification.

(1) Range of Alternatives - This term means all reasonable alternatives that will be rigorously explored and objectively evaluated as well as other alternatives that are eliminated from detailed study after providing reasons for their elimination.

(2) Reasonable Alternatives - This term means alternatives that are technically and economically practical or feasible and that meet the purpose and need of the proposed action.

(3) Proposed Action - This term means the agency activity to be undertaken. It also means a non-Federal entity's planned activity which falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal approvals, funding, or regulatory instruments. The proposed action is generally the earliest known description of the action to be taken. The proposed action is not necessarily, but may become, during the NEPA process, a preferred alternative or an environmentally preferred alternative. The proposed action must be fully and clearly described in order to proceed with NEPA analysis.

(4) Preferred Alternative - This term means the alternative which the agency believes would fulfill its statutory mission and responsibilities, while giving consideration to economic, environmental, technical, and other factors. It may or may not be the same as the agency's or the non-Federal entity's proposed action.

(5) Environmentally Preferred Alternative - This term means the alternative that will best promote the national environmental policy as expressed in NEPA's Section 101 and can be characterized as causing the least damage to the biological and physical environment and best protect, preserve, and enhance the nation's historic, cultural, and natural resources.

(6) No Action Alternative - This term has two interpretations. First "no action" means "no change" from a current management direction or level of management intensity. Second "no action" means "no project" in cases where a new project is proposed for construction. Regardless of the interpretation, the "no action" alternative is required to be analyzed in an EIS.

B. As a general rule, the following guidance will apply:

(1) For internally initiated proposals, i.e., for those cases where the Department conducts or controls the planning process, both the draft and final EIS shall identify the bureau's proposed action.

(2) For externally initiated proposals, i.e., for those cases where the Department is reacting to an application or similar request,

(a) the draft and final EIS shall identify the applicant's proposed action, and

(b) the draft EIS should also identify the bureau's preferred alternative, if one or more exists, and the final EIS should identify the bureau's preferred alternative unless another law prohibits the expression of a preference.

(3) Proposed departures from this guidance must be approved by the OEPC and the Office of the Solicitor.

C. Certain mitigation measures can be clearly integral to the proposed action and its alternatives and should be incorporated into and analyzed as a part of the proposal and appropriate alternatives. When this is done, these measures are no longer considered independently with other mitigation. Where appropriate, major mitigation measures may be identified and analyzed as separate alternatives where the environmental consequences are distinct and significant enough to warrant separate evaluation.

D. In practicing consensus-based management during the development of an EIS, bureaus should give full consideration to any reasonable alternative(s) put forth by participating interested parties. While there can be no guarantee that a community's proposed alternative will be taken as the agency proposed action, bureaus must be able to show that a community's work is reflected in the evaluation of the proposed action and the final decision. To be considered, the community's alternative must be fully consistent with NEPA, the CEQ Regulations, this Departmental Manual part, all applicable Departmental and bureau written policies and guidance.

4.11 **Appendix** (40 CFR 1502.18). If an EIS is intended to serve other environmental review or consultation requirements pursuant to Section 1502.25, any more detailed information needed to comply with these requirements may be included as an appendix.

4.12 **Tiering** (40 CFR 1502.20).

A. Tiering is a tool to prevent repetitive discussions and to focus on issues currently before the decision maker. In this process, earlier documents from which later documents are tiered, must be reliable and kept current. Tiered documents must make a finding that conditions described in earlier documents are still in effect or must revise any analyses that are out of date.

B. In some cases, transferring or combining information from previous NEPA documents can be done to reduce repetitive discussions and duplication of effort (see 4.20, below).

C. Bureaus must maintain access to such things as: sources of similar information, examples of tiered and transferred analyses, a set of procedural steps to make the most of tiered

and transferred analyses, knowledge of when to use previous material, and how to used tiered and transferred analyses without sacrificing references to original sources.

4.13 **Incorporation by Reference** (40 CFR 1502.21). Citations of specific topics will include the pertinent page numbers. All literature references will be listed in the bibliography.

4.14 **Incomplete or Unavailable Information** (40 CFR 1502.22). The references to overall costs in this section are not limited to market costs, but include other costs to society such as social costs due to delay.

4.15 **Methodology and Scientific Accuracy** (40 CFR 1502.24). Conclusions about environmental effects will be preceded by an analysis that supports that conclusion unless explicit reference by footnote is made to other supporting documentation that is readily available to the public. Bureaus will also follow Departmental procedures for information quality as required under Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001.

4.16 **Adaptive Management**. Adaptive management is a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes, and, if not, facilitating management changes that will best ensure that outcomes are met or to re-evaluate the outcomes. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain and is the preferred method of management in these cases. Bureaus are encouraged to build adaptive management practice into their proposed actions and NEPA compliance activities and train personnel in this important environmental concept.

4.17 **Environmental Review and Consultation Requirements** (40 CFR 1502.25).

A. A list of related environmental review and consultation requirements is available from the OEPC (ESM94-14).

B. If the EIS is intended to serve as the vehicle to fully or partially comply with any of these requirements, the associated analyses, studies, or surveys will be identified as such and discussed in the text of the EIS and the cover sheet will so indicate. Any supporting analyses or reports will be referenced or included as an appendix and shall be sent to reviewing agencies as appropriate in accordance with applicable regulations or procedures.

C. The draft EIS should list all Federal permits, licenses, or approvals that must be obtained to implement the proposal. To the fullest extent possible, the environmental analyses for these related permits, licenses, and approvals shall be integrated and performed concurrently. Although all approvals do not need to be in place to complete the NEPA analysis, they do need to be in place before implementing the proposed action. Bureaus shall ensure that they have a process in place to make integrated analyses a standard part of their NEPA compliance efforts.

4.18 **Inviting Comments** (40 CFR 1503.1).

A. Comments from State agencies will be requested through procedures established by the Governor pursuant to Executive Order 12372, and may be requested from local agencies through these procedures to the extent that they include the affected local jurisdictions.

B. When the proposed action may affect the environment of Indian trust or restricted land or other Indian trust resources, trust assets, or tribal health and safety, comments will be requested from the Indian tribal government unless the Indian tribal government has designated an alternate review process.

C. The comments of other Departmental bureaus and offices must also be requested. In order to do this, the preparing bureau must furnish copies of the environmental document to the other bureaus in quantities sufficient to allow simultaneous review. Bureaus may be removed from this circulation following consultation with, and concurrence of, a bureau.

4.19 **Response to Comments** (40 CFR 1503.4).

A. Preparation of a final EIS need not be delayed in those cases where a Federal agency, external to DOI and from which comments are required to be obtained [40 CFR 1503.1(a)(1)], does not comment within the prescribed time period.

B. Informal attempts will be made to determine the status of any late comments and a reasonable attempt should be made to include the comments and a response in the final EIS. As noted in 516 DM 2.2D, the late introduction of new issues and alternatives is to be avoided and they will be considered only to the extent practicable.

C. For those EISs requiring the approval of the AS/PMB pursuant to 516 DM 6.3, bureaus will consult with the OEPC when they propose to prepare an abbreviated final EIS [40 CFR 1503.4(c)].

4.20 **Elimination of Duplication with State and Local Procedures** (40 CFR 1506.2). Bureaus will incorporate in their appropriate program regulations provisions for the preparation of an EIS by a State agency to the extent authorized in Section 102(2)(D) of NEPA. Eligible programs are listed in Appendix 1 to this Chapter.

4.21 **Combining Documents** (40 CFR 1506.4). See 516 DM 4.6D.

4.22 **Departmental Responsibility** (40 CFR 1506.5).

A. Bureaus are responsible for preparation of their environmental documents and independent evaluation of environmental documents prepared by others for a bureau.

B. A contractor may be used to prepare any environmental document in accordance with the standards of 40 CFR 1506.5(c).

4.23 **Public Involvement** (40 CFR 1506.6). See 516 DM 1.2, 1.3, 1.6, and 301 DM 2.

4.24 **Further Guidance** (40 CFR 1506.7). The OEPC may provide further guidance concerning NEPA pursuant to its organizational responsibilities (112 DM 4) and through supplemental directives (381 DM 4.5B). Current guidance is located in the Environmental Memoranda Series periodically updated by OEPC and available on the OEPC website at http://www.doi.gov/oepc.

4.25 **Proposals for Legislation** (40 CFR 1506.8). The Office of Congressional and Legislative Affairs, in consultation with the OEPC, shall:

A. Identify in the annual submittal to OMB of the Department's proposed legislative program any requirements for, and the status of, any environmental documents.

B. When required, ensure that a legislative EIS is included as a part of the formal transmittal of a legislative proposal to the Congress.

4.26 **Time Periods** (40 CFR 1506.10).

A. The minimum review period for a draft EIS will be forty-five (45) days from the date of publication by the Environmental Protection Agency (EPA) of the notice of availability.

B. For those ElSs requiring the approval of the AS/PMB pursuant to 516 DM 6.3, the OEPC will be responsible for consulting with the EPA and/or CEQ about any proposed reductions in time periods or any extensions of time periods proposed by the bureaus.

4.27 **Emergencies** (40 CFR 1506.11). See subpart 5.8.

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## APPENDIX 1

### Programs of Grants to States and/or Tribes in Which Agencies Having Statewide Jurisdiction May Prepare EISs

1.1 **Fish and Wildlife Service**.

A. Anadromous Fish Conservation (11.405).

B. Fish Restoration (15.605).

C. Wildlife Restoration (15.611).

D. Endangered Species Conservation (15.615).

1.2 **National Park Service**.

A. Historic Preservation Grants-in-Aid (15.904).

B. Outdoor Recreation-Acquisition Development and Planning (15.916).

1.3 **Office of Surface Mining**.

A. Regulation of Surface Coal Mining and Surface Effects of Underground Coal Mining (15.250).

B. Abandoned Mine Land Reclamation Program (15.252).

1.4 **Office of Insular Affairs**.

A. Economic and Political Development of the Territories and the Trust Territory of the Pacific Islands (15.875).

Note: Citations in parentheses refer to the Catalog of Federal Domestic Assistance. Citations are current as of 2003. The catalog may be viewed at: http://cfda.gov/.

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Replaces 9/26/84 #3509

# Department of the Interior
# Departmental Manual

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**Effective Date**: 5/27/04
**Series**: Environmental Quality Programs
**Part 516**: National Environmental Policy Act of 1969
**Chapter 5**: Relationship to Decision Making

**Originating Office**: Office of Environmental Policy and Compliance

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**516 DM 5**

5.1 **Purpose**. This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to decision making.

5.2 **Predecision Referrals to CEQ** (40 CFR 1504.3).

A. Upon receipt of advice that another Federal agency intends to refer a Departmental matter to CEQ, the lead bureau will immediately meet with that Federal agency to attempt to resolve the issues raised and expeditiously notify its Assistant Secretary, the Solicitor, and the OEPC.

B. Upon any referral of a Departmental matter to CEQ by another Federal agency, the OEPC will be responsible for coordinating the Department's role with CEQ. The lead bureau will be responsible for developing and presenting the Department's position at CEQ including preparation of briefing papers and visual aids.

5.3 **Decision Making Procedures** (40 CFR 1505.1).

A. Procedures for decisions by the Secretary/Deputy Secretary are specified in 301 DM 1. Assistant Secretaries should follow a similar process when an environmental document accompanies a proposal for their decision.

B. Bureaus will incorporate in their decision making procedures and NEPA handbooks provisions for consideration of environmental factors and relevant environmental documents. The major decision points for principal programs likely to have significant environmental effects will be identified in the bureau chapters on "Managing the NEPA Process" beginning with Chapter 8 of this Part.

C. Relevant environmental documents, including supplements, will be included as part of the record in formal rulemaking or adjudicatory proceedings.

D. Relevant environmental documents, comments, and responses will accompany proposals through existing review processes so that Departmental officials use them in making decisions.

E. The decision maker will consider the environmental impacts of the alternatives described in any relevant environmental document and the range of these alternatives must encompass the alternatives considered by the decision maker.

F. To the extent practicable, the decision maker will consider other substantive and legal obligations beyond the immediate context of the proposed action.

5.4 **Record of Decision** (40 CFR 1505.2).

A. Any decision documents prepared pursuant to 301 DM 1 for proposals involving an EIS shall incorporate all appropriate provisions of Section 1505.2(b) and (c).

B. If a decision document incorporating these provisions is made available to the public following a decision, it will serve the purpose of a record of decision.

5.5 **Implementing the Decision** (40 CFR 1505.3). The terms "monitoring" and "conditions" will be interpreted as being related to factors affecting the quality of the natural and human environment.

5.6 **Limitations on Actions** (40 CFR 1506.1). A bureau will immediately notify its Assistant Secretary, the Solicitor, and the OEPC of any situations described in Section 1506.1(b).

5.7 **Timing of Actions** (40 CFR 1506.10). For those EISs requiring the approval of the AS/PMB pursuant to 516 DM 6.3, the responsible official will consult with the OEPC before making any request for reducing the time period before a decision or action.

5.8 **Emergencies** (40 CFR 1506.11). In the event of an emergency situation, a bureau will immediately take any necessary action to prevent or reduce risks to public health or safety or important resources. If the agency action has significant environmental impacts, a bureau will immediately consult with its Assistant Secretary, the Solicitor, OEPC, and (together with OEPC) CEQ about compliance with NEPA. Upon learning of the emergency situation, the OEPC will immediately notify CEQ. During follow-up activities OEPC and the bureau will jointly be responsible for consulting with CEQ. Paragraph 1506.11 applies only to the emergency and not to any related recovery actions after the emergency has passed. If the agency action does not have significant environmental impacts, a bureau will consult with OPEC to consider any appropriate action.

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# Department of the Interior
# Departmental Manual

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**Effective Date**: 5/27/04
**Series**: Environmental Quality Programs
**Part 516**: National Environmental Policy Act of 1969
**Chapter 6**: Managing the NEPA Process

**Originating Office**: Office of Environmental Policy and Compliance

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## 516 DM 6

6.1 **Purpose.** This Chapter provides supplementary instructions for implementing those provisions of the CEQ Regulations pertaining to procedures for implementing and managing the NEPA process.

6.2 **Organization for Environmental Quality.**

A. Office of Environmental Policy and Compliance (OEPC). The Director, OEPC, reporting to the Assistant Secretary - Policy, Management and Budget (AS/PMB), is responsible for providing advice and assistance to the Department on matters pertaining to environmental quality and for overseeing and coordinating the Department's compliance with NEPA. (See also 112 DM 4.)

B. Bureaus and Offices. Heads of bureaus and offices will designate organizational elements or individuals, as appropriate, at headquarters and regional levels to be responsible for overseeing matters pertaining to the environmental effects of the bureau's plans and programs. The individuals assigned these responsibilities should have management experience or potential, understand the bureau's planning and decision making processes, and be well trained in environmental matters, including the Department's policies and procedures so that their advice has significance in the bureau's planning and decisions. These organizational elements will be identified in Chapters 8-15, which contain all bureau NEPA requirements.

6.3 **Approval of EISs.**

A. A program Assistant Secretary is authorized to approve an EIS in those cases where the responsibility for the decision for which the EIS has been prepared rests with the Assistant Secretary or below. The Assistant Secretary may further assign the authority to approve the EIS if he or she chooses. The AS/PMB will make certain that each program Assistant Secretary has adequate safeguards to ensure that the EISs comply with NEPA, the CEQ Regulations, and the Departmental Manual.

B. The AS/PMB is authorized to approve an EIS in those cases where the decision for which the EIS has been prepared will occur at a level in the Department above an individual program Assistant Secretary.

6.4 **List of Specific Compliance Responsibilities.**

A. Bureaus and offices shall:

(1) Prepare NEPA handbooks providing guidance on how to implement NEPA in principal program areas.

(2) Prepare program regulations or directives for applicants.

(3) Propose and apply categorical exclusions.

(4) Prepare and approve EAs.

(5) Decide whether to prepare an EIS.

(6) Prepare and publish NOIs and FONSIs.

(7) Prepare and, when assigned, approve EISs.

B. Assistant Secretaries shall:

(1) Approve bureau and offices handbooks.

(2) Approve regulations or directives for applicants.

(3) Approve proposed categorical exclusions.

(4) Approve EISs pursuant to 516 DM 6.3.

C. The AS/PMB shall:

(1) Concur with regulations or directives for applicants.

(2) Concur with proposed categorical exclusions.

(3) Approve EISs pursuant to 516 DM 6.3.

6.5 **Bureau Requirements.**

A. Requirements specific to bureaus appear as separate chapters beginning with Chapter 8 of this Part and include the following:

(1) Identification of officials and organizational elements responsible for NEPA compliance.

(2) List of program regulations or directives which provide information to applicants.

(3) Identification of major decision points in principal programs for which an EIS is normally prepared.

(4) List of projects or groups of projects for which an EA is normally prepared.

(5) List of categorical exclusions.

B. Bureau requirements are found in the following chapters for the current bureaus:

(1) U.S. Fish and Wildlife Service (Chapter 8; formerly Appendix 1).

(2) U.S. Geological Survey (Chapter 9; formerly Appendix 2).

(3) Bureau of Indian Affairs (Chapter 10; formerly Appendix 4).

(4) Bureau of Land Management (Chapter 11; formerly Appendix 5).

(5) National Park Service (Chapter 12; formerly Appendix 7).

(6) Office of Surface Mining (Chapter 13; formerly Appendix 8).

(7) Bureau of Reclamation (Chapter 14; formerly Appendix 9).

(8) Minerals Management Service (Chapter 15; formerly Appendix 10).

C. The Office of the Secretary and other Departmental offices do not have separate chapters but must comply with this Part and will consult with the OEPC about compliance activities.

6.6 **Information about the NEPA Process**. The OEPC will periodically publish a Departmental list of bureau contacts where information about the NEPA process and the status of EISs may be obtained. This list will be available on OEPC's website at http://www.doi.gov/oepc.

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# Department of the Interior
# Departmental Manual

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**Effective Date**: 5/27/04
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**Part 516**: National Environmental Policy Act of 1969
**Chapter 7**: Review of Environmental Impact Statements and Project Proposals Prepared by Other Federal Agencies

**Originating Office**: Office of Environmental Policy and Compliance

## 516 DM 7

### 7.1 Purpose.

A. These procedures implement the policy and directives of the National Environmental Policy Act of 1969 (PL 91-190, 83 Stat. 852, January 1, 1970, NEPA); Section 2(f) of Executive Order No. 11514 (March 5, 1970); the CEQ Regulations (43 FR 55990, November 28, 1978; CEQ); Bulletin No. 72-6 of the Office of Management and Budget (September 14, 1971); and provide guidance to bureaus and offices of the Department in the review of EISs prepared by and for other Federal agencies.

B. In accordance with 112 DM 4.2F, these procedures further govern the Department's environmental review of non-Interior proposals such as regulations, applications, plans, reports, and other environmental documents which affect the interests of the Department. Such proposals are prepared, circulated, and reviewed under a wide variety of statutes and regulations. These procedures ensure that the Department responds to these review requests with coordinated comments and recommendations under Interior's various authorities.

7.2 **Policy**. The Department considers it a priority to provide competent and timely review comments on EISs and other environmental or project review documents prepared by other Federal agencies for their major actions which significantly affect the quality of the human environment. All such documents are hereinafter referred to as "environmental review documents." The term "environmental review document" as used in this chapter is separate from and broader than the term "environmental document" found in 40 CFR 1508.10 of the CEQ Regulations. These reviews are predicated on the Department's jurisdiction by law or special expertise with respect to the environmental impact involved and shall provide constructive comments to other Federal agencies to assist them in meeting their environmental responsibilities.

### 7.3 Responsibilities.

A. The Assistant Secretary - Policy, Management and Budget (AS/PMB): Shall be the Department's contact point for the receipt of requests for reviews of environmental review

documents prepared by or for other Federal agencies. This authority shall be carried out through the Director, Office of Environmental Policy and Compliance (OEPC).

B. The Director, Office of Environmental Policy and Compliance.

(1) Shall determine whether such review requests are to be answered by a Secretarial Officer, the Director, OEPC, or by a Regional Environmental Officer, and determine which bureaus and/or offices shall perform such reviews;

(2) Shall prepare, or where appropriate, shall designate a lead bureau responsible for preparing the Department's review comments. The lead bureau may be a bureau, Secretarial office, other Departmental office, or task force and shall be that organizational entity with the most significant jurisdiction or environmental expertise in regard to the requested review;

(3) Shall establish review schedules and target dates for responding to review requests and monitor their compliance;

(4) Shall review, sign, and transmit the Department's review comments to the requesting agency;

(5) Shall consult with the requesting agency on the Department's review comments on an "as needed" basis to ensure resolution of the Department's concerns; and

(6) Shall consult with the Office of Congressional and Legislative Affairs and the Solicitor when environmental reviews pertain to legislative or legal matters, respectively.

C. The Office of Congressional and Legislative Affairs: Shall ensure that requests for reviews of environmental review documents prepared by other Federal agencies that accompany or pertain to legislative proposals are immediately referred to the AS/PMB.

D. Regional Environmental Officers: When designated by the Director, OEPC, shall review, sign, and transmit the Department's review comments to the requesting agency.

E. Assistant Secretaries and Heads of Bureaus and Offices:

(1) Shall designate officials and organizational elements responsible for the coordination and conduct of environmental reviews and report this information to the Director, OEPC;

(2) Shall provide the Director, OEPC, with appropriate information and material concerning their delegated jurisdiction and special expertise in order to assist in assigning review responsibilities;

(3) Shall conduct reviews based upon their areas of jurisdiction or special expertise and provide comments to the designated lead bureau or office assigned responsibilities for preparing Departmental comments;

(4) When designated lead bureau by the Director, OEPC, shall prepare and forward the Department's review comments as instructed;

(5) Shall ensure that review schedules for discharging assigned responsibilities are met and promptly inform other concerned offices if established target dates cannot be met and when they will be met;

(6) Shall provide a single, unified bureau response to the lead bureau, as directed;

(7) Shall ensure that the policies of 516 DM 7.2 regarding competency and timeliness are carried out; and

(8) Shall provide the necessary authority to those designated in 7.3E(1) above to carry out all the requirements of 516 DM 7.

7.4 **Types of Reviews.**

A. Descriptions of Proposed Actions:

(1) Federal agencies and applicants for Federal assistance may circulate descriptions of proposed actions for the purpose of soliciting information concerning environmental impacts in order to determine whether to prepare EISs. Such descriptions of proposed actions are not substitutes for EISs.

(2) Requests for reviews of descriptions of proposed actions are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

B. Environmental Assessments:

(1) EAs are not substitutes for EISs. These assessments or reports may be prepared by Federal agencies, their consultants, or applicants for Federal assistance. They are prepared either to provide information in order to make a finding that there are no significant impacts or that an EIS should be prepared. If they are separately circulated, it is generally for the purpose of soliciting additional information concerning environmental impacts.

(2) Requests for reviews of EAs are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. If a bureau requests and OEPC agrees, a control number may be assigned with appropriate instructions. Review comments are for the purpose of providing informal

technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

C. Findings of No Significant Impact:

(1) Findings of No Significant Impact are prepared by Federal agencies to document that there is no need to prepare an EIS. A FONSI is a statement for the record by the proponent Federal agency that it has reviewed the environmental impact of its proposed action (in an EA), that it determines that the action will not significantly affect the quality of the human environment, and that an EIS is not required. Public notice of the availability of such findings shall be announced; however, FONSIs are not normally circulated.

(2) Findings of No Significant Impact are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues.

D. Notices of Intent and Scoping Requests:

(1) Notices of intent and scoping requests mark the beginning of the formal review process. Notices of intent are published in the Federal Register and announce that an agency plans to prepare an environmental review document under NEPA. Often the NOI and notice of scoping meetings and/or requests are combined into one Federal Register notice.

(2) Reviews of notices of intent and scoping requests are processed through the OEPC with instructions to bureaus to comment directly to the requesting agency. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

E. Preliminary, Proposed, or Working Draft Environmental Impact Statements:

(1) Preliminary, proposed, or working draft EISs are sometimes prepared and circulated by Federal agencies and applicants for Federal assistance for consultative purposes.

(2) Requests for reviews of these types of draft EISs are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

F. Draft Environmental Impact Statements:

(1) Draft EISs are prepared by Federal agencies under the provisions of Section 102(2)(C) of NEPA and provisions of the CEQ Regulations. They are filed with the EPA and officially circulated to other Federal, State, and local agencies [see 40 CFR 1503.1(a)] for review

based upon their jurisdiction by law or special expertise with respect to the agency mission, related program experience, or environmental impact of the proposed action or alternatives to the action [see 7.5A(1)].

(2) All requests from other Federal agencies for review of draft EISs shall be made through the Director, OEPC. Review comments shall be handled in accordance with the provisions of this chapter and guidance memoranda may be issued and updated by the OEPC.

G. Final Environmental Impact Statements:

(1) Final EISs are prepared by Federal agencies following receipt and consideration of review comments. They are filed with the EPA and are circulated to the public for an administrative waiting period of thirty days and sometimes for comment.

(2) The Director, OEPC, shall review final EISs to determine whether they reflect adequate consideration of the Department's comments. Bureaus and offices shall not comment independently on final EISs, but shall inform the Director, OEPC, of their views. Any review comments shall be handled in accordance with the instructions of the OEPC.

H. License and Permit Applications:

(1) The Department receives draft and final environmental review documents associated with applications for other Federal licenses and permits. This activity largely involves the regulatory program of the Corps of Engineers and the hydroelectric and natural gas pipeline licensing programs of the Federal Energy Regulatory Commission.

(2) Environmental review of applications is generally handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

(3) While review of NEPA compliance documents associated with Corps of Engineers permit applications is managed in accordance with this Chapter, review of Corps of Engineers permit applications is managed in accordance with 503 DM 1. Reviewers are referred to that Manual Part and to 7.5C(3) below for the processing of concurrent reviews.

I. Project Plans and Reports without Associated Environmental Review Documents:

(1) The Department receives draft and final project plans and reports under various authorities which do not have environmental review documents circulated with them. This may be because NEPA compliance has been completed, will be completed on a slightly different schedule, NEPA does not apply, or other reasons.

(2) Environmental review of these documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to

efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

J. Federal Regulations:

(1) The Department circulates and controls the review of advance notices of proposed rulemaking, proposed rulemaking, and final rulemaking which are environmental in nature, may impact the quality of the human environment, and may impact the Department's natural resources and programs.

(2) Environmental review of these documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

K. Documents Prepared Pursuant to Other Environmental Statutes:

(1) The Department receives draft and final project plans prepared pursuant to other environmental statutes [e.g., National Historic Preservation Act (NHPA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Resource Conservation and Recovery Act (RCRA), and the Oil Pollution Act (OPA)], which may not have environmental review documents circulated with them.

(2) Environmental review of these documents is handled consistently with the policies and provisions of this part, and in accordance with further guidance from the Director, OEPC. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

L. Section 4(f) Documents:

(1) Under Section 4(f) of the Department of Transportation Act, the Secretary of Transportation may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if there is no prudent and feasible alternative to using that land and the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

(2) Environmental review of Section 4(f) documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

## 7.5 Content of Comments on Environmental Review Documents.

A. Departmental Comments:

(1) Departmental comments on environmental review documents prepared by other Federal agencies shall be based upon the Department's jurisdiction by law or special expertise with respect to the agency mission, related program experience, or environmental impact of the proposed action or alternatives to the action. The adequacy of the document in regard to applicable statutes is the responsibility of the agency that prepared the document and any comments on its adequacy shall be limited to the Department's jurisdiction or environmental expertise.

(2) Reviews shall be conducted in sufficient detail to ensure that both potentially beneficial and adverse environmental effects of the proposed action and alternatives, including cumulative and secondary effects, are adequately identified. Wherever possible, and within the Department's competence and resources, other agencies will be advised on ways to avoid or minimize adverse impacts of the proposed action and alternatives, and on alternatives to the proposed action that may have been overlooked or inadequately treated.

(3) Review comments should not capsulate or restate the environmental review document , but should provide clear, concise, substantive, fully justified, and complete comments on the stated or unstated environmental impacts of the proposed action and, if appropriate, on alternatives to the action. Comments, either positive or negative, shall be objective and constructive.

(4) Departmental review comments shall be organized as follows:

(a) Control Number. The Departmental review control number shall be typed in the upper left hand corner below the Departmental seal on the letterhead page of the comments.

(b) Introduction. The introductory paragraph shall reference the other Federal agency's review request, including the date, the type of review requested, the subject of the review; and, where appropriate, the geographic location of the subject and the other agency's control number.

(c) General Comments, if any. This section will include those comments of a general nature and those which occur throughout the review which ought to be consolidated in order to avoid needless repetition.

(d) Detailed Comments. The format of this section shall follow the organization of the other agency's environmental review document. These comments shall not comment on the proposed actions of other Federal agencies, but shall constructively and objectively comment on the statement's adequacy in describing the environmental impacts of the action, the alternatives, and the impacts of the alternatives. Comments shall specify any corrections, additions, or other changes required to make the statement adequate.

(e) Summary Comments, if any. In general, the Department will not take a position on the proposed action of another Federal agency, but will limit its comments to those above. However, in those cases where the Department has jurisdiction by statute, Executive Order, memorandum of agreement, or other authority, the Department may comment on the proposed action. These comments shall be provided in this section and may take the form of support for, concurrence with, concern over, or objection to the proposed action and/or the alternatives.

B. Bureau and Office Comments: Bureau and office reviews of EISs prepared by other Federal agencies are considered informal inputs to the Department's comments and their content will generally conform to paragraph 7.5A of this chapter with the substitution of the bureau's or office's delegated jurisdiction or special environmental expertise for that of the Department.

C. Relationship to Other Concurrent Reviews:

(1) Where the Department, because of other authority or agreement, is concurrently requested to review a proposal as well as its EIS, the Department's comments on the proposal shall be separately identified and placed in front of the comments on the EIS. A summary of the Department's position, if any, on the proposal and its environmental impact shall be separately identified and follow the review comments on the EIS.

(2) Where another Federal agency elects to combine other related reviews into the review of the EIS by including additional or more specific information into the statement, the introduction to the Department's review comments will acknowledge the additional review request and the review comments will be incorporated into appropriate parts of the combined statement review. A summary of the Department's position, if any, on the environmental impacts of the proposal and any alternatives shall be separately identified and follow the detailed review comments on the combined statement.

(3) In some cases, the concurrent review is not an integral part of the environmental compliance review but is being processed within the same general time period as the environmental review. If there is also an environmental review being processed by the OEPC, there is potential for two sets of conflicting comments to reach the requesting agency. Bureaus must recognize that this possibility exists and must check with the Regional Environmental Officer to determine the status of any environmental review prior to forwarding the concurrent review comments to the requesting agency. Any conflicts must be resolved before the separate comments may be filed. One review may be held up pending completion of the concurrent review and consideration of filing a single comment letter. A time extension may be necessary and must be obtained if a review is to be held up pending completion of a concurrent review.

(4) The Department's intervention in another agency's adjudicatory process is also a concurrent review. Such reviews are governed by 452 DM 2 which must be consulted in applicable cases. The most common cases involve the Department's review of hydroelectric and natural gas applications of the Federal Energy Regulatory Commission. In these cases, it is

recommended that bureaus consult frequently with the appropriate attorney of record in the Office of the Solicitor.

## 7.6 **Availability of Review Comments.**

A. Prior to the public availability of another Federal agency's final EIS, the Department shall not independently release to the public its comments on that agency's draft EIS. In accordance with Section 1506.6(f) of the CEQ Regulations, the agency that prepared the statement is responsible for making the comments available to the public, and requests for copies of the Department's comments shall be referred to that agency. Exceptions to this procedure shall be made by the OEPC and the Office of the Solicitor.

B. The availability of various internal Departmental memoranda, such as the review comments of bureaus, offices, task forces, and individuals, which are used as inputs to the Department's review comments is governed by the Freedom of Information Act (5 U.S.C. Section 552) and the Departmental procedures established by 43 CFR 2. Upon receipt of such requests and in addition to following the procedures above in 7.6A, the responsible bureau or office shall notify and consult their bureau Freedom of Information Act Officer and the OEPC to coordinate any responses.

## 7.7 **Procedures for Processing Environmental Reviews.**

A. General Procedures:

(1) All requests for reviews of environmental review documents prepared by or for other Federal agencies shall be received and controlled by the Director, OEPC.

(2) If a bureau or office, whether at headquarters or field level, receives an environmental review document for review directly from outside of the Department, it should ascertain whether the document is a preliminary, proposed, or working draft circulated for technical assistance or input in order to prepare a draft document or whether the document is in fact a draft environmental review document being circulated for official review.

(a) If the document is a preliminary, proposed, or working draft, the bureau or office should handle independently and provide whatever technical assistance possible, within the limits of their resources, to the requesting agency. The response should clearly indicate the type of assistance being provided and state that it does not represent the Department's review of the document. Each bureau or office should provide the Regional Environmental Officer and the Director, OEPC, copies of any comments involving significant or controversial issues.

(b) If the document is a draft or final environmental review document circulated for official review, the bureau or office should inform the requesting agency of the Department's procedures in subparagraph (1) above and promptly refer the request and the document to the Director, OEPC, for processing.

(3) All bureaus and offices processing and reviewing environmental review documents of other Federal agencies will do so within the time limits specified by the Director, OEPC. From thirty (30) to forty-five (45) days are normally available for responding to other Federal agency review requests. Whenever possible the Director, OEPC, shall seek a forty-five (45) day review period. Further extensions shall be handled in accordance with paragraph 7.7B(3) of this chapter.

(4) The Department's review comments on other Federal agencies' environmental review documents shall reflect the full and balanced interests of the Department in the protection and enhancement of the environment. Lead bureaus shall be responsible for resolving any intra-Departmental differences in bureau or office review comments submitted to them. The OEPC is available for guidance and assistance in this regard. In cases where agreement cannot be reached, the matter shall be referred through channels to the AS/PMB with attempts to resolve the disagreement at each intervening management level. The OEPC will assist in facilitating this process.

B. Processing Environmental Reviews:

(1) The OEPC shall secure and distribute sufficient copies of environmental review documents for Departmental review. Bureaus and offices should keep the OEPC informed as to their needs for review copies, which shall be kept to a minimum, and shall develop internal procedures to efficiently and expeditiously distribute environmental review documents to reviewing offices.

(2) Reviewing bureaus and offices which cannot meet the review schedule shall so inform the lead bureau and shall provide the date that the review will be delivered. The lead bureau shall inform the OEPC in cases of headquarters-level response, or the Regional Environmental Officer in cases of field-level response, if it cannot meet the schedule, why it cannot, and when it will. The OEPC or the Regional Environmental Officer shall be responsible for informing the other Federal agency of any changes in the review schedule.

(3) Reviewing offices shall route their review comments through channels to the lead bureau, with a copy to the OEPC. When, in cases, of headquarters-level response, review comments cannot reach the lead bureau within the established review schedule, reviewing bureaus and offices shall send a copy marked "Advance Copy" directly to the lead bureau. Review comments shall also be sent to the lead bureau by electronic means to facilitate meeting the requesting agency's deadline.

(4) In cases of headquarters-level response:

(a) The lead bureau shall route the completed comments through channels to the OEPC in both paper copy and electronic word processor format. Copies shall be prepared and attached for all bureaus and offices from whom review comments were requested, for the OEPC, and for the Regional Environmental Officer when the review pertains to a project within a regional jurisdiction. In addition, original copies of all review comments received or

documentation that none were provided shall accompany the Department's comments through the clearance process and shall be retained by the OEPC.

(b) The OEPC shall review, secure any necessary additional surnames, surname, and either sign the Department's comments or transmit the Department's comments to another appropriate Secretarial Officer for signature. Upon signature, the OEPC shall transmit the comments to the requesting agency.

(5) In cases of field-level response:

(a) The lead bureau shall provide the completed comments to the appropriate Regional Environmental Officer in both paper-copy and electronic word processor format. In addition, original copies of all review comments received or documentation that none were provided shall be attached to the paper copy.

(b) The Regional Environmental Officer shall review, sign, and transmit the Department's comments to the agency requesting the review. In addition they shall reproduce and send the Department's comments to the regional bureau reviewers. The entire completed package including the bureau review comments shall be sent to the OEPC for recording and filing.

(c) If the Regional Environmental Officer determines that the review involves policy matters of Secretarial significance, they shall not sign and transmit the comments as provided in subparagraph (b) above, but shall forward the review to the OEPC in headquarters for final disposition.

C. Referrals of Environmentally Unsatisfactory Proposals to the Council on Environmental Quality

(1) Referral to CEQ is a formal process provided for in the CEQ Regulations (40 CFR 1504). It is used sparingly and only when all other administrative processes have been exhausted in attempting to resolve issues between the project proponent and one or more other Federal agencies. These issues must meet certain criteria (40 CFR 1504.2), and practice has shown that these issues generally involve resource concerns of national importance to the Department.

(2) A bureau or office intending to recommend referral of a proposal to CEQ must, at the earliest possible time, advise the proponent Federal agency that it considers the proposal to be a possible candidate for referral. If not expressed at an earlier time, this advice must be outlined in the Department's comments on the draft EIS.

(3) CEQ referral is a high level activity that must be conducted in an extremely short time frame. A referring bureau or office has 25 days after EPA has published a notice of availability of the final EIS in the Federal Register in which to file the referral unless an extension is granted per 40 CFR 1504.3(b). The referral documents must be signed by the Secretary of the Interior.

(4) Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website at http://www.doi.gov/oepc and consult with the OEPC for the most current review guidance.

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Replaces 3/15/72 #3512

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP 28 2006

TAKE PRIDE IN AMERICA

**PEP – ENVIRONMENTAL STATEMENT MEMORANDUM NO. ESM 06-2**

To: Heads of Bureaus and Offices

From: Willie R. Taylor, Director
Office of Environmental Policy and Compliance

Subject: Standard Checklist for Use in Preparing National Environmental Policy Act (NEPA) Documents and for Complying with NEPA, Council on Environmental Quality, and Departmental Procedures

The requirements in this Environmental Statement Memorandum (ESM) are being issued under the authority provided to the Office of Environmental Policy and Compliance (OEPC) by 381 Departmental Manual (DM) 4.5B, to convey instructions and guidance through its Environmental Memoranda Series, and by 516 DM 6.2, which authorizes OEPC to provide advice and assistance to the Department on matters pertaining to environmental quality and for overseeing and coordinating the Department's compliance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations, and 516 DM 4.22, which authorizes OEPC to provide further guidance concerning NEPA.

1. Purpose and Scope

The purpose of this memorandum is to transmit guidance to be used by Bureaus and Offices to ensure uniform compliance with the policies and procedural requirements of NEPA, the CEQ Regulations implementing NEPA, and the Departmental Manual at Part 516 DM, Chapters 1-15.

2. NEPA Compliance Checklist

This guidance, in the form of a standard checklist (Attachment), is to be used by Bureaus and Offices while engaging in NEPA compliance to make certain that a series of commonly accepted steps and necessary questions are addressed during completion of the process. The checklist is intended to focus the efforts of decision makers and NEPA practitioners on the broad and common requirements of the NEPA process embodied in the statute, regulations, and the Department's policies and practices for managing its environmental responsibilities.

Attachment

Attachment

# DECISION MAKING AND NEPA COMPLIANCE CHECKLIST

Answering the following series of questions and addressing the bulleted items will aid DOI's Bureaus and Offices in preparing NEPA documents.

## 1. NEPA Application Considerations

Does the decision involve a "major federal action" that may have a "significant" impact on the quality of the human environment? (40 CFR § 1502.3)

A "major federal action" includes actions "with effects that may be major and which are potentially subject to Federal control and responsibility." (40 CFR § 1508.18) It includes: new and continuing activities; project and programs entirely or partly financed, assisted, conducted, regulated, or approved by a federal agency; new or revised agency rules, plans, policies, or procedures; and legislative proposals. (40 CFR § 1508.18(a)) Does the action meet any of these criteria?

"Major federal actions" generally fall into one of the following categories:

- Adoption of official policies and rules/regulations,
- Adoption of formal plans (e.g., a land use plan),
- Adoption of programs, and
- Approval of specific projects (e.g., projects implementing a land use plan). (40 CFR § 1508.18(b))

Does the action fall into one of these categories?

A "major federal action" does NOT include: Funding assistance solely in the form of general revenue sharing funds, (e.g., funds distributed under the State and Local Fiscal Assistance Act of 1972, 31 USC 1221 et. seq.) with no federal agency control over the use of the funds. Another example is Payments in Lieu of Taxes (or PILT) which are Federal payments to local governments that help offset losses in property taxes due to nontaxable Federal lands within their boundaries (31 USC 6901, et. seq.)(40 CFR § 1508.18(a)) Is the action one of these types?

## 2. Circumstances When There is a Major Federal Action, but NEPA Does Not Apply

Does the decision or action qualify as a major federal action that has been specifically exempted by Congress from the usual compliance with NEPA requirements? (Consult with your Solicitor)

Is the decision or action mandated by statute in such a way that there is no discretion as to whether NEPA applies and it can be reasoned that NEPA does not apply? (Consult with your Solicitor)

**3. Initial Development/Internal Scoping**

Is there a proposal for a Federal action? Has the bureau formulated a concise "proposal" and conducted internal scoping to define potential effects and alternatives? Can the potential effects (impacts) of the proposal, and all feasible alternatives to it, be meaningfully evaluated? If not, review the proposal to determine the appropriate level of NEPA documentation or develop a better definition of the proposed action.

Has the bureau or office developed a "purpose and need" statement?

Is the proposal a major Federal action having the potential to significantly affect the quality of the human or natural environment? If so, is an EIS planned? If not, why not?
Has NEPA compliance already been completed for this action in a previous document?

**4. Categorical Exclusions**

Does a Departmental, bureau, or office categorical exclusion exist that applies to the proposed action? If so, document this. See 516 DM 2, Appendix 2 which lists the 12 extraordinary circumstances.

Do any extraordinary circumstances exist as defined in the Departmental Manual (DM) that would disallow the option to categorically exclude the action from further NEPA analysis? If so, document this.

Is the proposed action one for which, in the absence of extraordinary circumstances or controversy, neither an EA nor an EIS would be required?

Does your bureau have any other specific guidance directing use of categorical exclusions that should be applied?

Bureaus and offices may not use another bureau's or office's categorical exclusion. Has this requirement been observed?

Has it been shown that a categorical exclusion applies, and that there are no extraordinary circumstances, and have these facts and the reasons for these facts been documented, thus demonstrating that the bureau or office's NEPA compliance requirements have been fulfilled? Have all procedural requirements for actions that are categorically excluded been fulfilled?

Is the action subject to the five categories of statutory categorical exclusions established by Section 390 of the Energy Policy Act of 2005 which involve oil and gas operations under the program jurisdiction of BLM? (516 DM, Chapter 11) Note that use of these categorical exclusions is not subject to extraordinary circumstances.

## 5. Deciding Between an EA or EIS

Several important distinctions exist between an EA and an EIS and include the following:

- External Scoping. Scoping is the process by which a bureau or office obtains public input for determining the scope of the issues to be addressed in an EIS and for identifying the significant issues related to the proposed action. (40 CFR § 1501.7) The regulations provide that a bureau or office must go through the scoping process for an EIS (40 CFR §§ 1501.4(d) and 1501.7) Scoping is optional for an EA.

- Public involvement. For an EA, a bureau or office is required to "make diligent efforts to involve the public." (40 CFR § 1506.6) Public involvement often includes notices of meetings, hearings, and the availability of the EA and/or FONSI. The regulations require a bureau or office to make a FONSI available for public review in certain limited circumstances, i.e., when the proposed action is, or is closely similar to, one which normally requires an EIS, and when the nature of the proposed action is one without precedent. (40 CFR § 1501.4(e)(2)) Although there is no requirement to circulate a draft EA for public review and comment, this is one way to satisfy the requirement for public involvement. For an EIS, a bureau or office is required to circulate a draft EIS for public review and comment for a minimum of 45 days. (40 CFR §§ 1502.19 and 1503.1)

- FONSI. The second step in the NEPA process when a bureau or office prepares an EA is to then decide whether to prepare an EIS or whether to prepare a FONSI. A FONSI is defined as a document that explains why the proposed action will not have a significant effect on the human environment and for which an EIS therefore will not be prepared. (40 CFR § 1508.13) The FONSI is a separate document from the EA itself.

- Mitigated FONSI. A consistent and well-understood definition of a mitigated FONSI does not exist. A mitigated FONSI is used to reduce a project's adverse environmental effects below the significance threshold. The Council on Environmental Quality (CEQ) supports the use of mitigated FONSIs to reduce project impacts below the significance threshold. Courts also support agency decisions not to prepare an EIS upon adoption of mitigation measures.[1]

Is the action one that normally requires the preparation of an EA under the individual bureau procedures in 516 DM, Chapters 8 -15?

Is the proposal one which normally requires an EIS under the individual bureau procedures in 516 DM, Chapters 8-15?

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[1] City of Auburn v. United States, 154 F.3d 1025, 1033 (9th Cir. 1998).

If the action cannot be categorically excluded and is not an action normally requiring the preparation of an EIS, is it a candidate action for evaluation using an EA?

Has the scoping process been used to evaluate whether an EA or EIS is needed? Did you have a public participation plan for scoping? If a public participation plan for scoping was not used, why not?

Has the bureau or office determined that the impacts of a proposed action will be significant based on the "context" and "intensity" factors identified in 40 CFR § 1508.27?

Would an EA provide sufficient analysis for determining whether to prepare an EIS? Can the analysis support a Finding of No Significant Impact (FONSI)?

Would an EA aid in the bureau's compliance with NEPA or planning processes when no EIS is necessary?

Would an EA facilitate the preparation of an EIS if one were necessary? Or would it be more efficient to go directly to an EIS if one is needed?

**6. <u>Developing the EA</u>**

Should a joint EA be developed to minimize duplication with state, tribal, or local procedures?

If the EA has been applicant-prepared, has the bureau made its own independent evaluation of the environmental issues and assumed responsibility for the scope and content of the EA?

Is the EA a concise document? (40 CFR § 1508.9) The Council on Environmental Quality (CEQ) has generally advised agencies to keep the length of EAs to no more than 10-15 pages. (CEQ; Forty Most Asked Questions; 36a.) Is the EA more than 15 pages? If it is more than 15 pages, can it be made more succinct and useful as a planning tool?

Does the EA include sufficient information, e.g., an explanation of the need for the proposed action, a discussion of the proposed action and an alternatives analysis if required under Section 102(2)(E) of NEPA, an impact assessment of the proposed action and alternatives, a list of agencies and persons consulted, and public participation disclosure?(40 CFR § 1508.9(b))

Has the impact analysis looked at such factors as the beneficial effects of the action, impacts on public health, the degree of controversy, cultural or historic resources, or threatened or endangered species? Has the EA considered reasonably foreseeable, direct and indirect impacts versus remote and/or speculative impacts?

Were cumulative impacts of the proposed action and alternatives analyzed and disclosed?

Was public review and comment allowed on the EA? Note that public comment is required for activities in floodplains and wetlands under EO 11514 § 2(b), Section 7, and other legal requirements such as §106.

Did the EA result in the preparation of a FONSI?

Does the FONSI, if one was prepared, explain the reasons why the action will not have a significant effect on the human or natural environment and thus will not result in the preparation of an EIS?

Do circumstances require the bureau to make the FONSI available for the public to review for 30 days before the bureau makes its final determination whether to prepare an EIS and before the action can begin? (Public review is necessary, for example, (a) if the proposal is a borderline case, i.e., when there is a reasonable argument for preparation of an EIS; (b) if it is an unusual case, a new kind of action, or a precedent setting case such as a first intrusion of even a minor development into a pristine area; (c) when there is either scientific or public controversy over the proposal; or (d) when it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS(CEQ; Forty Most Asked Questions;37b))

Is the proposal a borderline situation, i.e., is there a reasonable argument for preparing an EIS, rather than an EA? If so, why not prepare one?

**7. An EIS**

Does the decision based on the EA, or on other relevant information, indicate the need to prepare an EIS? If so, prepare one. Or did initial review identify significant effects, and would it be more efficient to proceed directly to an EIS?

**8. Cooperating Agencies (40 CFR §§ 1501.5 and 1501.6)**

Have you invited eligible Federal, state, tribal and local governmental entities to become cooperating agencies (required for an EIS, or you must explain in the EIS why an eligible entity was denied cooperating agency status).

As the lead agency, did you establish a formal cooperating agency/lead agency relationship with a Memorandum of Understanding, Memorandum of Agreement, or other document that formally delineates the commitments and expectations of the lead and cooperating agencies?

**9. Public Participation**

Has a Notice of Intent to Prepare an Environmental Impact Statement been published in the *Federal Register*?

Is there an alternative that is supported by the affected community and stakeholders? If so, is this the preferred alternative?

Is staff trained in public participation practices? Did staff complete the required DOI Public Participation training? If not, training should occur before any public meeting is held.

Has public scoping been planned? Initiated? Completed? If not, what kind of public involvement is anticipated or did occur?

**10. Tiered Analysis (40 CFR §§ 1502.20, 1508.28)**

Did you consider using tiering from a larger analysis or from an existing programmatic EIS?

**11. Incorporation by Reference**

Did you consider incorporating a comparable analysis from a previous document? Is the analysis over 10 years old? If so, is it still relevant? Document the relevance. If not, have you attempted to obtain relevant information that is available at reasonable cost?

Does the EIS make use of incorporation by reference whenever and wherever it will cut down on bulk without impeding agency and public review of the action? (40 CFR § 1502.21)

Has the incorporated material been cited in the EIS and its content briefly described? (40 CFR § 1502.21)

Is the material incorporated by reference reasonably available for inspection by potentially interested persons within the time allowed for comment? (40 CFR § 1502.21)

**12. Incomplete or Unavailable Information (40 CFR § 1502.22)**

If a bureau or office has evaluated reasonably foreseeable significant adverse effects on the human environment in an EIS and there is incomplete or unavailable information, has the bureau made it clear that the information is lacking?

**13. Adopting another Agency's NEPA Document (40 CFR §1506.3)**

Can another agency's NEPA document, whether an EA or an EIS, be adopted for the proposal under consideration? Does the analysis meet the standards of the CEQ regulations?

Have you independently reviewed and evaluated the analysis and assumed the responsibility for scope and content of the document?

**14. Format and Content**

The following format in the prescribed order is recommended. Have you included all of the following components? Does the EIS contain the elements from the list below in the prescribed order? (40 CFR § 1502.10) Please explain any deviation from this format and these elements.

Cover sheet (not to exceed one page)?
Summary?
Table of contents?
Purpose of and need for action?
Alternatives including proposed action?
Affected environment?
Environmental consequences?
List of preparers?
List of Agencies, Organizations, and persons to whom copies of the statement are sent?
Index?
Appendices (if any)?

Does the "Purpose and Need" statement clearly specify the underlying need for why the agency is initiating the proposed action and the reasons for the choice of alternatives including the proposed action? (40 CFR § 1502.13) Does the range of alternatives, to a large extent, meet the objectives of the purpose of and need for the plan? (40 CFR § 1502.14)

Have proposals which are related closely enough to be, in effect, a single course of action been analyzed in a single EIS? If not, why not?

Was scoping initiated early and was it an open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action? (40 CFR § 1501.7)

Are the alternatives and the proposed action clearly presented and capable of being compared as to their differing impacts? (40 CFR § 1502.14)

Do all alternatives sharply define the issues and show a clear basis for choice among them?

Do the decision maker and the public understand the options based on the comparison made among the alternatives?

Have all reasonable alternatives, including, where applicable, alternatives employing adaptive management strategies, been rigorously explored and objectively evaluated? (See 516 DM 4.10 A (2)). (40 CFR § 1502.14)

Were any alternatives, identified during the scoping process, eliminated from detailed study? If so, have the reasons been thoroughly explained? (40 CFR § 1502.14)

Were the alternatives chosen for detailed study awarded sufficient analysis to allow proper evaluation of their comparative merits, including a comparison of potential impacts and environmental consequences?

Did you include any reasonable alternatives that are not within the jurisdiction of the lead agency? If not, why not? These alternatives, too, should be included.

Did you include a "no action" alternative? (See 516 DM 4.10 A (6)). (40 CFR § 1502.14(d))

Does the EIS succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration? (40 CFR § 1502.15)

Does the environmental consequences section include the environmental impacts of the alternatives and the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented? (40 CFR § 1502.16) This section should not duplicate discussions in the comparison of alternatives section. (See 40 CFR § 1502.14)

Have you considered and included any needed mitigation? (40 CFR § 1502.14(f), 1508.20)

Is the draft more than 150 pages? (40 CFR § 1502.7) Why is this length necessary? Is it possible to use tiered or transferred analyses? Is it possible to incorporate by reference?

Did you allow at least 45 days for public comment? (40 CFR § 1506.10(c) and (d)) If not why not (must be a compelling reason)?

Did you make the Draft EIS available for public review and invite comments? (40 CFR §§ 1503.1–1503.3)

Did you respond to all substantive comments in your final document? How? Did you revise relevant analyses, introduce new data and findings, or provide the basis for refuting a comment? (40 CFR § 1503.4)

Based on the responses to comments, are the changes to the Final EIS confined to minor corrections? Do the changes warrant preparing an abbreviated Final EIS?

Have you integrated all mitigation measures for the selected action into the bureau's environmental management system (EMS) so that its implications and tracking for potentially years after the record of decision is signed can be easily facilitated?

Does the cover sheet include a list of the responsible agencies including the lead agency and any cooperating agencies? (40 CFR § 1502.11(a))

Does the cover sheet include the title of the proposed action that is the subject of the EIS—if appropriate the titles of related cooperating agency actions should be included—together with the State(s) and county(ies) (or other jurisdiction, if applicable) where the action is located? (40 CFR § 1502.11(b))

Does the cover sheet contain the name and complete contact information of the person who can supply additional information about the EIS? (40 CFR § 1502.11(c))

Does the cover sheet indicate the designation of the EIS as a Draft, Final, or Draft or Final supplement? Does the cover sheet include a one paragraph abstract of the EIS? (40 CFR §§ 1502.11(d), (e))

Does the Draft EIS identify the agency's preferred alternative or alternatives, if one or more exists? Does the Final EIS identify such alternative unless another law prohibits the expression of such a preference? (40 CFR § 1502.14(e)) Is there a reason why such an alternative may not have been identified in either the Draft or Final EIS?

Is the treatment of the environmental consequences scientific and analytical? (40 CFR § 1502.16) Does the analysis focus on significant issues and support the comparisons among the alternatives? Can readers make an informed comparison among the alternatives based on the scientific analysis of the environmental consequences associated with each alternative?

Have you properly acknowledged and/or referenced all sources of data and scientific findings used in the analysis?

Does the environmental consequences section clearly show the impacts likely to be associated with each of the impact producing factors that would occur from the adoption of any of the studied alternatives? Is there a clear demonstration of cause and effect?

Is there a clear discussion of any adverse environmental effects which could not be avoided if the proposal or any of the alternatives were implemented? (40 CFR § 1502.16)

Is there a clear discussion of the relationship between short-term uses of the human and natural environment and the maintenance of long-term productivity? (40 CFR § 1502.16)

Did you include a necessary discussion of any irreversible or irretrievable commitment of resources which would result if the proposal were implemented? (40 CFR § 1502.16)

Do all analyses of the environmental consequences include an even-handed treatment of all alternatives including the proposed action and the "no action" alternative although one or more of the alternatives may be unlikely (or less likely) to be selected?

Did you discuss the direct effects, the indirect effects, and the cumulative effects and their significance? (40 CFR §§ 1502.16, 1508.8)

Is there an analysis of the possible conflicts between the proposed action and any objectives of the Federal, regional, State, local or Indian Tribal land-use plans, policies, and controls for the area concerned? (40 CFR § 1502.16(c))

Is there a discussion of the energy requirements and conservation potential of the various alternatives and mitigation measures? (40 CFR § 1502.16(e))

Is there a discussion of natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures? (40 CFR § 1502.16(f))

Does the EIS discuss urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures? (40 CFR § 1502.16(g))

In the analysis, were any mitigation measures not already included in the proposed action or alternatives discussed? Did you include a means to mitigate adverse environmental impacts if not otherwise fully covered elsewhere? (40 CFR § 1502.16(h))

Have the mitigation measures beyond those required by applicable Federal, state, and local regulation been described in sufficient detail to allow assessment of their potential effectiveness to reducing any impacts?

Is the EIS a "full disclosure" document? Are all major points of view on the environmental impacts and the alternatives, including the proposed action discussed appropriately?

Is it written in plain language? (40 CFR § 1502.8) Were graphics used to ensure brevity and to enhance analytical adequacy? Were the graphics readily understandable to the general public?

Did preparation of the EIS use an interdisciplinary approach to insure the integrated use of natural and social sciences and the environmental design arts? (40 CFR § 1502.6)

Were the disciplines of the preparers appropriate to the scope and issues of the analysis? Was a multidisciplinary team used?

Does the Final EIS respond fully, objectively, and completely to the substantive comments submitted on the Draft EIS? How? Did you revise relevant analyses, introduce new data and findings, or provide the basis for refuting a comment? (40 CFR § 1503.4)

Are responsible alternatives to scientific inquiry, such as traditional knowledge, which are not discussed in the Draft EIS, acknowledged and properly, respectfully, and professionally addressed in the Final EIS?

Is your agency's response to the issues raised appropriate and clearly articulated? Did you make a substantial change to the proposed action that is relevant to the environmental concerns that would warrant preparing a supplement to the Draft or Final EIS?(40 CFR § 1502.9(c))

Are there significant new circumstances or information relevant to the environmental concerns and that bear on the proposed action or its impacts that would warrant such an action, i.e., a supplement to an EIS? Would the purposes of NEPA be served by preparing a supplement? (40 CFR § 1502.9(c))

Does your agency have procedures in place for introducing a supplement to an EIS into the formal administrative record? Are these procedures known by bureau NEPA practitioners?

If you have the need to supplement an EIS, are you aware that the supplement must be prepared, circulated, and filed with the Environmental Protection Agency in the same fashion (exclusive of scoping) as a Draft and Final EIS unless alternative procedures are approved by CEQ? (40 CFR § 1502.9 (c) (4))

**15. Documenting the Decision When the EA or EIS Has Been Completed**

The bureau or office decision is separate from the NEPA process and should not be included as part of the supporting NEPA document, whether categorical exclusion documentation, EA, or EIS. Has it been kept separate?

If the bureau or office has prepared an EA and a FONSI, it should prepare a Decision Record (DR). The DR briefly explains the decision that the bureau or office is making and the NEPA analysis upon which the decision is based. Has such a DR been prepared?

If a bureau or office has prepared an EIS, a concise public Record of Decision (ROD) is needed which briefly explains the decision that the bureau or office is making and the NEPA analyis upon which it is based. Does the ROD do this? (40 CFR § 1505.2)

**16. Effective Date of the Decision Based on an EA or an EIS**

In the case of an EIS, has a minimum of 90 days passed from the time that EPA has published the Notice of Availability of a Draft EIS in the *Federal Register* before a decision based on the EIS has been made? (40 CFR § 1506.10(b)(1))

In the case of an EIS, has a minimum of 30 days passed from the time that EPA has published the Notice of Availability of the Final EIS in the *Federal Register* before a decision based on the EIS has been made? (40 CFR § 1506.10(b) (2))

For an EA, a decision cannot be effective until 30 days after issuance of the Decision Record. Has sufficient time elapsed?

## 17. Miscellaneous

Emergencies. The CEQ regulations provide that when an emergency makes it necessary to take an action likely to have significant environmental effects without following the procedures in the regulations, the bureau or office should consult with CEQ about "alternative arrangements." (40 CFR § 1506.11) Alternative arrangements do not mean that the bureau or office can forgo any NEPA analysis. Alternative arrangements generally provide a process for the bureau or office to complete its NEPA analysis after it has taken the emergency action. Have you taken an emergency action where these conditions may apply? Have alternative arrangements been made?

When the emergency action will not have a significant environmental impact, bureau field managers must prepare a decision memorandum containing the elements of the attachment to ESM05-3 to fulfill the consultation requirement with OEPC contained in 516 DM 5.8. Does this situation exist? Has the template for use in preparing such a Decision Memorandum been employed?

## 18. References for Preparation of NEPA Documents

The National Environmental Policy Act of 1969, As Amended (42 U.S.C. 4321-4347)
Council on Environmental Quality Regulations For Implementing The Procedural Provisions Of The National Environmental Policy Act (40 C.F.R. Parts 1500-1508)

Council on Environmental Quality Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (46 Fed. Reg. 18026 (March 23, 1981))

Department of the Interior, Departmental Manual (Part 516 DM, Chapters 1-15)

Individual Bureau and Office NEPA Handbooks

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Notes:

1. This attachment may be revised as necessary without revising the entire ESM.
2. This attachment is dated September 28, 2006.

Federal Register

Tuesday,
August 14, 2007

# Part II

# Department of the Interior

## Bureau of Land Management

## Notice of Final Action To Adopt Revisions to the Bureau of Land Management's Procedures for Managing the NEPA Process, Chapter 11 of the Department of the Interior's Manual Part 516; Notice

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[516 DM 11; WO–210–1610 24 1A]**

### Notice of Final Action To Adopt Revisions to the Bureau of Land Management's Procedures for Managing the NEPA Process, Chapter 11 of the Department of the Interior's Manual Part 516

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of final action.

**SUMMARY:** The Bureau of Land Management (BLM) gives notice of revised policies and procedures for implementing the National Environmental Policy Act (NEPA), as amended, Executive Order (E.O.) 11514, as amended, E.O. 12114, and Council on Environmental Quality (CEQ) regulations implementing NEPA. These final implementing procedures are being issued as Chapter 11 of the Department of the Interior's Departmental Manual Part 516 (516 DM 11) and supersedes previous implementation guidance. These revisions update the procedures used to implement NEPA for actions taken in managing public lands. The BLM's NEPA compliance procedures can be found at the Department of the Interior (DOI) Electronic Library of Interior Policies (ELIPS) *http://elips.doi.gov.*

The following sections in 516 DM 11 (dated 5/27/04) are affected by this **Federal Register** notice: Purpose (11.1); NEPA Responsibilities (11.2); External Applicant's Guidance (11.3); General Requirements (11.4), Parts A–G; Plan Conformance (11.5); Existing Documentation (11.6), Parts A–E; Actions Requiring an Environmental Assessment (11.7), Parts A–E; and Actions Eligible for Categorical Exclusions (11.9), categories B–D and G–J. New sub-parts have been added to the Oil, Gas and Geothermal Energy (B), Forestry (C), and Rangeland Management (D) categories. Two new categories have been added: Recreation Management (H) and Emergency Stabilization (I). Transportation category sub-parts G(1), (2), and (3) have been expanded to include trails.

**DATES:** *Effective Date:* The revised 516 DM 11, including changes and additions to the categorical exclusions (CXs), is effective upon the date of publication of this notice in the **Federal Register**.

**ADDRESSES:** The BLM's revisions to 516 DM 11 can be accessed electronically via the Internet at *http://elips.doi.gov.* Hard copies are available by contacting Peg Sorensen, Division of Planning and Science Policy, at 202–452–0364.

**FOR FURTHER INFORMATION CONTACT:** Peg Sorensen, Division of Planning and Science Policy, at 202–452–0364.

**SUPPLEMENTARY INFORMATION:** Final revised NEPA procedures for the DOI were published in the **Federal Register** (69 FR 10866–10866, March 8, 2004), and (70 FR 32840–32844, June 6, 2005). The DOI bureau and office specific procedures are published as chapters in Part 516 of the Departmental Manual. The 516 DM 11 addresses the BLM policy and procedures to assure compliance with the spirit and intent of NEPA.

A notice of the proposed revisions to the BLM's "National Environmental Policy Act Revised Implementing Procedures" for 516 DM 11 was published in the **Federal Register** (71 FR 4159–4167, January 25, 2006), with additional information available at *http://www.blm.gov/planning/news.html.* A 30-day public comment period followed that publication. Consideration of the comments received resulted in the following modifications to the proposed revised implementing procedures.

*11.1. Purpose:* No Change.

*11.2. NEPA Responsibilities:* Edited title to emphasize that there are multiple responsibilities.

*Parts A–E:* Edited to improve readability.

*Parts B–E:* Clarified executive and delegated leadership responsibilities.

*Parts E & F:* Moved sub-part E(1) to a new part F.

**11.3.** *External Applicants' Guidance:* Edited title to clarify that this section only applies to external applicants who are proposing an action. Language was added from the NEPA to clarify text within the section.

*Part A. General,* sub-parts A(2)–(4): Edited to improve readability.

*Sub-part A(3):* Replaced the "State Director" with "the Responsible Official" to clarify that the authorized activity is not limited to State Directors.

*Part B. Regulations, preamble:* Edited to improve readability.

*11.4. General Requirements:*

*Part A–H:* Revised section titles to create parallel structure. Edited and reorganized all sections to clarify requirements and improve readability.

*Part A:* Added "integrating NEPA requirements with other environmental review and consultation requirements" (from the former part D) to reduce paperwork and delays.

*Part B:* Addressed the elimination of duplicate tribal, State, and local government procedures, and the use of common databases and joint planning processes, meetings, investigations, and NEPA analyses.

*Part C:* Addressed consultation and coordination requirements.

*Part D, sub-parts (1) & (2):* Addressed public involvement requirements. Eliminated the reference to "consensus-based decision-making" and replaced it with "consensus-based management" to be consistent with direction provided by the DOI. Inserted the DOI's definition of "consensus-based management" and expectations regarding the process.

*Part E:* Redefined "adaptive management" to match the DOI definition.

*Part F:* Clarified a training requirement for the BLM employees facilitating public and community involvement.

*Part G:* Clarified action limits during environmental review.

*11.5 Plan Conformance:* Edited to improve readability. Clarified what the Responsible Official's options are when a proposed action does not conform to an approved plan.

*11.6 Existing Documentation (Determination of NEPA Adequacy):* Edited the title to create a section header that conforms to a standardized format. This section was rewritten to clarify the BLM's policy regarding the use of existing documentation. Operational information on how to conduct a Determination of NEPA Adequacy (DNA) will be provided in the BLM NEPA Handbook (H–1790–1).

*11.7 Actions Requiring an Environmental Assessment (EA):*

*Part A:* Moved part A information to a new part D. Part A now defines the purpose and need for an EA.

*Part B:* Inserted a new requirement to consult 40 CFR 1508.9(b) which outlines "discussion" requirements in an EA.

*Part C:* Edited to clarify and enhance general understanding of when an EA is appropriate.

*Part D:* Directs the Responsible Official to consider an EA if there are uncertain impacts.

*Part E:* This new part directs the Responsible Official to prepare an Environmental Impact Statement (EIS) if it is determined that a CX or an EA is not appropriate. Removed unnecessary text "processed in accordance with 40 CFR 1502."

*11.8 Major Actions Requiring an Environmental Impact Statement (EIS):*

*Part A(1):* Refined the text to clarify criteria used to consider when determining whether to prepare an EIS level analysis or not. Removed the following statement: "or the impact

analysis of an action is likely to be highly controversial." This edit was made to clarify the criteria the BLM considers when determining whether an EIS level analysis is needed. Supplementary guidance on how to determine significance when considering whether to prepare an EIS, such as when effects should be considered "highly controversial," will be placed in the BLM NEPA Handbook (BLM H–1790–1).

*Part B:* Dropped the term "Wilderness" from the list of actions typically requiring an EIS. This edit reflects current program policy that there will no longer be proposals to designate Wilderness Areas under Section 603 of FLPMA. Supplementary guidance on how to implement policy regarding preparation of EISs will be placed in the BLM NEPA Handbook (BLM H–1790–1).

*Part C:* Removed unnecessary text "processed in accordance with 40 CFR 1501.4(e)(2)."

*11.9 Actions Eligible for a Categorical Exclusion:*

Preamble: Replaced "exceptions" with "extraordinary circumstances" to reflect a revision to 516 DM 2.3A(3) made by the DOI in June 2005. Added a statement identifying the DOI-wide CX in 516 DM 2, appendix 1, available for the BLM consideration. The BLM reviewed supporting data and conclusions of no significant effect for all proposed CXs based on comments received. Identified below are revisions to final CX language based on this review. Some additional information was added to the administrative file based on the review. In addition, the BLM reviewed the proposed CXs and this final action establishing the final CXs in light of CEQ's proposed guidance, "Establishing, Revising and Using Categorical Exclusions under the National Environmental Policy Act," (71 FR 54816–54820, September 19, 2006). The BLM believes that the establishment of the new CXs is consistent with CEQ's proposed guidance. Based on discussions, review, and to clarify the intent of the BLM, language has been added indicating the need for all proposed actions and activities to be, at a minimum, consistent with the DOI and the BLM regulations, manuals, handbooks, policies, and applicable Land Use Plans (LUP) regarding design features, Best Management Practices, Terms and Conditions, Conditions of Approval, and Stipulations.

*A. Fish and Wildlife:* Fixed a typographical error in sub-category (2) by replacing "value" with "valve."

*B. Oil, Gas, and Geothermal Energy:*

*Sub-category (6):* Removed text "including the establishment of terms and conditions," and edited language to more accurately describe the actions covered.

*Sub-category (7):* The BLM has decided not to finalize this proposed CX (CX B(7)) for the category of actions described as, "approving the drilling or subsequent operations of a geothermal well within a developed field for which a LUP and/or an environmental document, prepared pursuant to NEPA, analyzed such drilling as within the scope of a reasonably foreseeable future activity." When these actions are within the scope of the previous NEPA document and sufficiently analyzed therein, and that determination is documented, no further NEPA analysis is required. In consultation with CEQ, the BLM has decided that more focused NEPA documents should be prepared at the outset to support subsequent implementation of the geothermal field development plan or utilization plan, and that this practice, combined with a DNA, would provide a more appropriate method for streamlining the documentation of the evaluation of subsequent infill well proposals than a new CX.

*Sub-category (8):* The BLM has decided not to finalize this proposed CX. In consultation with CEQ, it was determined that the action of issuing a geothermal site license or operational permit (CX B(8)) is an administrative/ministerial function subsequent to the approval of a utilization plan. Approval of a utilization plan involves analysis of the environmental effects of constructing and operating the planned facility. The administrative action of issuing the site license and permit to operate does not result in additional environmental effects. Therefore, the BLM will eliminate this additional NEPA review, as unnecessary and redundant.

*C. Forestry:*

*Sub-category (6):* Modified the proposed language and format to eliminate confusion about the sample tree area limitation and restricted activities. Added Lakeview District, Klamath Falls Resource Area to the list of locations where this CX may be used. The Resource Area was mistakenly left out of the proposed limitation and is now included because the effects are comparable to the others previously listed in this section.

*Sub-categories (7)–(9):* Modified the proposed format and syntax. Text that defines and limits "temporary road" building activities was added to be consistent with the U.S. Forest Service (FS) standards and regulations. Text that defines and clarifies "a dying tree" was added for purposes of this category of actions.

*Sub-category (9):* Modified the example (a) by replacing southern pine beetle with mountain pine beetle to represent a type of beetle that occurs in western Oregon.

*D. Rangeland Management:*

The National Research Council published *Rangeland Health: New Methods to Classify, Inventory, and Monitor Rangelands* in 1994. The concepts identified in that publication were incorporated in the BLM's grazing regulations and the agency used the term "rangeland health" in much of their initial policy and guidance related to implementing those grazing regulations. Although the term "rangeland health" was first introduced in the grazing regulations, the "rangeland health standards" really apply to the condition of the land itself regardless of the uses that may influence the health of that land. As a result, the BLM has begun using the term "land health" to avoid the misperception that these concepts only apply to the grazing program. For this reason, the term "land health" is used in the description of this proposed CX, even though both terms are likely to be found within this document or in other background material supporting this document. Use of the term "land health" does not represent any substantive change in the original definition, concept or use of the term "rangeland health" and the reader should view these terms as interchangeable. The proposed rangeland management sub-categories (10) and (11) are finalized with the following changes:

*Sub-category (10):* Lettered the bullet statements, so the first bullet is criteria (a); moved text (bullets two & three) "shall be conducted consistent with the BLM and Departmental procedures and applicable land and resource management plans (RMP);" from here to the general CX introduction to reflect that text applies more generally and not only to this CX. Modified text of bullet four to exclude use of this CX for otherwise qualifying "vegetation management activities" in Wilderness Study Areas and text becomes new criteria (b). Modified bullet five to become criteria (c) and added text to indicate that the CX cannot be used for biological treatments. Finally, added text to define and limit the use of temporary roads as criteria (d) and (e).

*Sub-category (11):* Moved criteria (a) to (b) and modified the phrase "not meeting standards solely due to factors

other than existing livestock grazing" to "not meeting land health standards due to factors that do not include existing livestock grazing." Changed the text to clarify that the CX requires land health assessments be completed prior to considering the application of the CX. Dropped proposed criteria (b) and replaced it with criteria (a) that limits the leases/permits eligible for the CX to those where the lease/permit is consistent with the use specified in the previous lease/permit, there is no change in the type of livestock, the previously authorized active use is not exceeded, and grazing does not occur more than 14 days earlier or later than specified on the previous lease/permit.

*Sub-category (12):* Dropped the proposed CX based on further review of supporting data.

*E. Realty:*

The proposed revision of sub-category (16) was dropped upon further review.

*F. Solid Minerals:* No change was proposed or made.

*G. Transportation:*

*Sub-categories (1), (2), and (3):* The word "existing" which originally was used in (1) and (2) has been eliminated because it was potentially confusing, and the words "and trails" have been approved as proposed.

*Sub-category (1) and (2):* Replaced "Incorporating" for "Placing" in sub-category (1), and added "eligible" to modify the language to clarify that only roads and trails meeting criteria developed in a LUP are to be incorporated into the transportation plan, or be subject to the actions specified in sub-category (2).

*H. Recreation Management:*

*Sub-category (1):* The proposed revision of the previous Category "H. Other" to "Recreation Management and sub-category "H(5)" to "H(1)" was approved as revised. Increased the day and overnight use threshold to 14 consecutive nights to be consistent with the practice of Responsible Officials under provisions in Title 43 of the Code of Federal Regulations (CFR) that allow such officials to set allowable length of stay applicable to any casual visitor using public lands (See 43 CFR 8365.1–2 "Occupancy and Use," and 43 CFR 8365.1–6 "Supplementary Rules"). This change has also been made to provide consistency with the typical length of stay for any casual visitor using public lands (43 CFR 8364). Changed wording from "contiguous acres" to "staging area acres" to better define the limits on area of impact. Replaced "travel management areas or networks that are designated in an approved LUP" with "recreational travel along roads, trails, or in areas authorized in a LUP" because of confusion over what constitutes a travel management area or network. Text was added to include a limitation that this CX cannot be used for the establishment or issuance of Special Recreation Permits (SRP) for "Special Area" management (43 CFR 2932.5). The requirement for Special Area SRPs and the issuance of individual SRPs in "Special Areas" must be directed by specific land use planning decisions and commensurate NEPA analysis.

*I. Emergency Stabilization:* This new section was adopted as proposed with the addition of text to define and limit the use of temporary roads. The section included a requirement to treat temporary roads for rehabilitation.

*Sub-category (1)(e):* Moved text "shall be conducted consistent with the BLM and the Department procedures, applicable land and RMPs." to general CX introduction to reflect that text applies more generally and not only to this CX. Renumbered numbered criteria based on the removal of this text.

*J. Other:* The previous existing sub-part H was moved to sub-part J and adopted as proposed with one exception. An existing CX was mistakenly left out of the January 25, 2006, **Federal Register** notice. The following existing CX will be placed in sub-part J (12): "Rendering formal classification of lands as to their mineral character and waterpower and water storage values." There is no change to the language.

*Appendix 11.1:* The DNA Worksheet appendix was deleted. Supplemental guidance regarding the use of Existing Documentation remains in section 11.6.

**Comments on the Proposal**

The BLM received more than 72,000 "comments" during the 30-day comment period (January 25, 2006, to February 24, 2006). A "comment" is a single, whole submission that may take the form of a letter, postcard, email, or fax. These comments came from private citizens, elected officials, and groups and individuals representing businesses, private organizations, and state and federal agencies. All comments received were considered in preparing this final action notice.

Public comment on the proposed revisions addressed a wide range of topics. Many comments support one or more of the proposed revisions or favor broadening the scope of the revision, while many others oppose one or more of the proposed revisions or recommend more narrowly limiting the qualifying criteria for a particular CX. Some comments state that the 30-day comment period provided insufficient time to review and comment on the BLM's proposed revisions. The BLM received extensive and varied comments during the 30-day comment period. Based on this robust response, the BLM determined that it was unnecessary to extend the public comment period. Some general comments state that the BLM is using dated and inadequate scientific information to support management decisions. They recommend that the BLM adopt a specific process to systematically incorporate the best available science in all elements of the BLM public lands management. The BLM Science Strategy (September 2000) discusses the role of science in the BLM management of the public lands, and articulates a conceptual framework for integrating science into the BLM decision-making process. Relevant scientific information is brought to the decision-maker's attention by members of the interdisciplinary team of professionals, and through contract and in-house investigations, science sharing forums, and technical reports. In addition, the public, cooperators and partners bring scientific information forward during the environmental review process. Many comments addressed matters beyond the scope of the proposed revisions to the 516 DM 11. These included requests for the BLM to add policy statements to the 516 DM 11 pertaining to conformance with the Clean Air Act, preserving and honoring valid existing rights, and conducting cost-benefit analyses. Some comments addressed land management activities that were neither proposed nor analyzed. Some comments state that grazing is incompatible with good land stewardship. Other comments suggested that the proposed changes to 516 DM 11 "denied [the public] their constitutional rights" or would "cause unrestricted use" of public lands. Responses to most out-of-scope comments are not provided.

**Responses to Specific Comments on Sections 11.1–11.8**

*11.1 Purpose*

*Comment:* Some comments ask how to access 516 DM 11 and the DOI's Environmental Statement Memoranda (ESM).

Response: The BLM provided the Web site address to access procedures (516 DM 11) that are being replaced by this **Federal Register** notice in the Summary portion of 71 FR 4159–4167, January 25, 2006. The proposed changes to these procedures were published in full in the same **Federal Register** notice and were

posted on the DOI, ELIPS Web site in the Departmental Manual chapters at *http://elips.doi.gov*. The DOI's ESMs can be accessed through the DOI's Web site at *http://www.doi.gov/oepc* via the descriptions in the left-hand column.

*11.3 External Applicants' Guidance*

*Comment:* Some comments ask for information to guide applicants interested in the BLM program regulations.

*Response:* The purpose of this section is to provide guidance to external parties making applications to the BLM. The title has been changed to make this clear. A list of potentially relevant regulations is located in part B. Additional regulations, policies, directives, and guidelines that affect BLM programs may be provided when the applicant contacts a Responsible Official and describes their proposed action(s).

*Comment:* A concern was expressed about the absence of NEPA compliance in the "applicants" guidance" section.

*Response:* The text has been clarified to address NEPA requirements for private applicants and other non-federal entities as required by 40 CFR 1501.2(d).

*11.4 General Requirements*

*Comment:* Some comments state that local, state, and federal agencies should not be provided "cooperating agency status" because it blurs the lines of NEPA responsibility.

*Response:* The NEPA regulations specifically provide for and encourage the use of "cooperating agencies" (40 CFR 1501.6). The participation of other agencies in the BLM's NEPA processes in no way "blurs" the BLM's status as the agency responsible for the NEPA analysis and the associated decision-making affecting public lands.

*Comment:* Some comments ask the BLM to revise the language regarding consensus-based decision-making to clarify that only federal managers have decision-making authority.

*Response:* The new language in 516 DM 11.4 D(2) has been added to describe consensus-based management (as per ESM 03–7) and to clarify that the BLM has exclusive responsibility for decision-making.

*Comment:* Some comments recommend that more detailed guidance be placed in 516 DM 11 to promote consistency between the BLM offices undertaking public involvement.

*Response:* The recommended detailed guidance will be considered for placement in the BLM's NEPA Handbook (H–1790–1). The BLM's public involvement guidance in 516 DM 11 is consistent with policies and procedures specified in the NEPA, E.O.s 11514 and 12114, and CEQ regulations. Federal decision-makers have discretion as to how they enable public involvement because of the broad range and variety of potential proposed actions and public interests at stake.

*Comment:* Some comments state that the BLM should revise 516 DM 11 to require public notice about "decision documents" and Findings of No Significant Impacts (FONSIs) statements.

*Response:* The CEQ regulations implementing the NEPA have specific public notification requirements. The BLM will consider adding more specific guidance regarding public notice of a FONSI in the BLM NEPA Handbook (H–1790–1). Distinct from its obligations under the NEPA, the BLM is required under other statutes to provide public notification regarding management decisions. This notification is done in accordance with program specific regulations and guidance.

*Comment:* Some comments state that the public's involvement in the NEPA process should be more limited, while other comments state that the public should be given more involvement opportunities than they are currently provided.

*Response:* The CEQ regulations implementing the NEPA require agencies to involve the public in the environmental analysis process. The timing of public involvement for EISs is set by regulation; however, the timing and manner of the subject involvement for EAs and CXs is left to the discretion of the Responsible Official. The BLM is not changing existing public involvement procedures as a part of the process of revising this 516 DM 11.

*Comment:* Some comments suggested that the BLM revise 516 DM 11 to provide further guidance regarding facilitating public involvement during NEPA review processes.

*Response:* Because the range of activities the BLM undertakes is so broad and varied, and because public involvement can take many forms, specific guidance on facilitating such public involvement is more appropriate for inclusion in the BLM's NEPA Handbook (H–1790–1). The NEPA Handbook provides operational guidance on how to implement the BLM policy regarding public involvement.

*Comment:* Some comments state that the BLM should revise the language in section 11.4 to include reference to the Data Quality Act (Pub. L. 106–554).

*Response:* Specific reference to the Data Quality Act in 516 DM 11 was not added. The BLM managers are responsible for ensuring compliance with all applicable laws and regulations including the Data Quality Act.

*Comment:* Some comments ask the BLM to prevent excessive data collection during the NEPA analysis.

*Response:* The BLM uses best available data or collects new data appropriate to the level of the NEPA analysis needed to make an informed decision regarding the proposed action. The provisions described in 516 DM 11.4(A–C) are intended to aid in this effort, provided that the data and analysis compiled by other permitting agencies is complete, available and sufficient to meet the BLM's needs.

*Comment:* Some comments express concern that direction for limiting actions during the NEPA analysis process was too narrowly framed and did not adequately reflect regulatory requirements.

*Response:* In addition to noting these limits, the BLM revised section 11.4G to refer readers directly to the CEQ regulation regarding the limitation on action during the NEPA analysis as provided in 40 CFR 1506.1, and to provide guidance to aid in fulfilling the regulations.

*Comment:* Some comments point out that the **Federal Register** notice failed to use the DOI's most recently adopted definition of adaptive management (AM).

*Response:* The BLM revised the AM definition in 516 DM 11.4E to be consistent with the DOI definition found in 516 DM 4.16.

*Comment:* Some comments question the use of AM and request more information about when it should be used. There is concern that AM not be used as sole mitigation to justify a FONSI.

*Response:* The BLM does not use AM as a sole mitigation to justify a FONSI. Section 11.4E states that the Responsible Official is encouraged to build AM practices into proposed actions and NEPA compliance activities and train personnel in this important environmental concept. The DOI is developing additional guidance for bureaus on the use of an AM approach to management activities.

*Comment:* Some comments state that using AM violates the NEPA by (1) allowing the BLM to defer decisions regarding mitigation—and the impacts that might result if the mitigation fails—without addressing those decisions in a NEPA document; (2) removing significant agency decisions about mitigation, and the possible impacts, from public review and comment; (3) removing significant impacts that may be detected during the monitoring process from NEPA analysis; and (4)

relying heavily on monitoring and evaluation, which the BLM is often unable to support.

*Response:* (1) Adaptive Management is a planning tool; it does not relieve the BLM of the responsibility of meeting the requirements of the NEPA or other laws. The use of AM does not permit the BLM to defer "decisions on mitigation and impacts if mitigation fails." In fact, a more vigorous monitoring strategy will help determine if mitigation is working, and if not, it will help speed up the change in management action or mitigation strategy. Mitigation and impacts will still be addressed in the NEPA document as will the AM process itself. Adaptive Management will not be applied to all resource decisions made. (2) Stakeholder involvement is a critical aspect of AM. New DOI policy clearly links stakeholder involvement to implementation of AM from plan development through implementation. Agency decisions on mitigation and impacts will not be removed from public review and comment and it is hoped that there will be an increased level of public involvement. (3) "Significant impacts" that are detected during monitoring will not be removed from the NEPA analysis. Rather, any actions taken to address "significant impacts" that may arise will themselves be subject to appropriate NEPA review, including appropriate public involvement. It is hoped that a more vigorous stakeholder involvement process using AM will improve the BLM's ability to detect impacts earlier and make the necessary resource management changes in partnership with stakeholders. (4) The AM process will only be used when adequate monitoring and evaluation can be assured. Successful AM is dependent on good monitoring and evaluation. If the monitoring strategy goes unfulfilled, the BLM will need to fall back on a more prescriptive approach.

*11.5 Plan Conformance*

*Comment:* Some comments requested that 516 DM 11 direct the BLM offices to reject proposals unless and until their LUPs are updated to thoroughly address potential environmental consequences.

*Response:* Section 11.5 clarifies the requirement for conformance with LUPs, including when a proposal may be rejected.

*11.6 Existing Documentation (Determination of NEPA Adequacy)*

*Comment:* Some comments suggest that 516 DM 11 be revised to prescribe a minimum level of interdisciplinary review for completing a DNA.

*Response:* Section 11.6 has been revised to provide policy guidance on the use of existing documentation. Operational specifics on how to implement the policy, such as levels of interdisciplinary review, will be provided in the BLM NEPA Handbook (H–1790–1).

*Comment:* Some comments state that the BLM DNA Worksheet does not meet the requirements of NEPA compliance.

*Response:* In certain situations, the BLM undertakes a DNA process to review whether a proposed action has already been fully analyzed in a NEPA document. Where the proposed action has not already been analyzed or where it has been analyzed, but new circumstances or information has come to light, appropriate NEPA analysis and documentation will be prepared. Operational guidance on how to implement this policy will be provided in the BLM NEPA Handbook (H–1790–1). The DNA Worksheet in appendix 1 and implementation-specific guidance proposed in the January 25, 2006 **Federal Register** notice has been deleted from 516 DM 11.

*Comment:* Some comments state that using the DNA Worksheet process provides the potential to overlook environmental differences from widely separated projects and to underestimate the cumulative effects of nearby projects.

*Response:* In accordance with 40 CFR 1502.9(c), section 11.6D states that if existing NEPA documentation is inadequate to cover the proposed action, an appropriate level NEPA analysis document will be prepared. The BLM NEPA Handbook (H–1790–1) provides guidance regarding consideration of cumulative impacts when determining whether a DNA can be used.

*11.7 Actions Requiring an EA*

*Comment:* Some comments expressed confusion about the differences between actions typically requiring an EA and some of the same actions proposed in the existing and new CXs.

*Response:* The January 25, 2006, proposal included several editorial errors in this sub-part. Sub-part 11.7C(1) was revised for the sake of clarity.

*11.8 Major Actions Requiring an EIS*

*Comment:* Some comments requested clarification of the term "highly controversial" with regard to impacts in sub-part 11.8A(1). The concern centered on whether the term referred to matters of public/political controversy versus matters of scientific controversy.

*Response:* This sub-part has been revised to remove the term "highly controversial" as criteria for when an EIS is required. Guidance on how to determine significance, including when effects should be considered "highly controversial" is applied in accordance with CEQ regulations and requires agencies to consider the degree to which effects are likely to be controversial when determining whether to prepare an EIS. The BLM applies the "highly controversial" concept to disagreements about the nature of the effects. Additional clarification and examples will be provided in the BLM NEPA Handbook (H–1790–1).

*Comment:* Some comments express concern that the lists of actions that typically require an EA or an EIS were prescriptive, rather than discretionary, and did not allow for any flexibility.

*Response:* Although 516 DM 11.7C and 11.8A provide lists of actions generally requiring EAs or EISs respectively, 516 DM 11.7D, 11.7E and 11.8B specify the flexibility or discretion allowed regarding the actions on these lists, based on potential impact significance.

*11.9 Categorical Exclusions*

Responses to section 11.9 comments are divided into two blocks. Comments of a general nature that may or may not apply to more than one of the proposed CXs are summarized and responded to as "general comments." Comments specific to a proposed CX are summarized and responded to in order of category (e.g., B. Oil, Gas and Geothermal; C. Forestry; D. Rangeland Management; and so forth) as they occur in 516 DM 11.

**General Comments on Categorical Exclusions**

*Comment:* Some comments state that the CX revisions are illegal; could short circuit important safeguards; circumvent existing laws, E.O., and the BLM policies; violate the BLM's multiple use mission; and provide insufficient protection despite the application of "extraordinary circumstances" (516 DM 2.3(A) and appendix 2).

*Response:* The BLM disagrees. The CEQ regulations (40 CFR 1508.4 and 1507.3) authorize Federal agencies to establish and apply CXs. The BLM followed CEQ regulations in proposing additional CXs to reduce paperwork and delays (40 CFR 1500.4 and 1500.5) and enable the BLM to concentrate on environmental issues that are associated with proposed actions that require further analysis in an EA or an EIS. Each of the categories of actions in the new CXs were subjected to an administrative review. This review determined whether there is sufficient supporting

evidence, (based on past NEPA analyses) and a review of actions to support the finding that the activity would not cause individually or cumulatively significant environmental impacts (*http://www.blm.gov/planning/news.html*). When the CXs are used for particular proposed actions, those actions are reviewed to ensure that they do not involve "extraordinary circumstances" and are consistent with all applicable laws for protection of the environment. In addition, proposed actions or activities must be, at a minimum, consistent with the DOI and the BLM regulations, manuals, handbooks, policies, and applicable LUPs regarding design features, best management practices, terms and conditions, and conditions of approval, and stipulations. These reviews ensure proper application of the CXs and act as a "safeguard" (516 DM 2.3(A) and appendix 2). Finally, some of the information collected to prepare the CXs was made available for public review and comment available at *http://www.blm.gov/planning/news.html.* Additional information clarifying these reports is now available at the same Web site. The establishment and use of CXs 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).

*Comment:* Some comments indicate support for the CX revisions and some comments would like to expand the categories of activities excluded from further review under NEPA.

*Response:* The BLM will continue to compile and review evidence to determine if additional categories of actions should be excluded from additional NEPA review. The BLM may propose additional CXs in the future.

*Comment:* Some comments state that the BLM erroneously assumes that "the only function of an EA is to determine whether an EIS is needed." Therefore, "any EA that resulted in a FONSI need never have been prepared."

*Response:* The BLM disagrees. There are three tasks served by completing an EA as identified at 40 CFR 1508.9(a)(1)–(3). The BLM analyzed past environmental documents, including EAs and FONSIs and the underlying activities in establishing the CXs described in this final action. Categories of actions were considered eligible for CXs when the EAs, FONSIs, and subsequent review of these actions showed no individually or cumulatively significant impacts on the environment.

*Comment:* Some comments state an opinion that the BLM should ban the use of CXs.

*Response:* The BLM disagrees. The BLM establishes CXs in compliance with the CEQ regulations implementing the NEPA, particularly 40 CFR 1508.4 and 1507.3, which require agencies to develop procedures for establishing CXs for categories of actions that do not normally require either an EA or an EIS. The appropriate use of CXs also reduces paperwork and delays (40 CFR 1500.4 and 1500.5), and enables the BLM to concentrate on issues that are truly significant and merit review in an EA or EIS, rather than amassing needless detail for actions demonstrated not to have significant impacts (40 CFR 1500.1(b)).

*Comment:* Some comments, while recognizing that the "extraordinary circumstances" review is to occur before an action is determined to be eligible for use of a CX, express concern that the BLM "often 'defers' special status species and/or cultural resource inventories on the sites of proposed actions until after the NEPA process and documentation is complete." The comments go on to question the BLM practice of "add[ing] stipulations saying that before any actual ground disturbance occurs it will conduct the required inventories and avoid any identified resources."

*Response:* The BLM must comply with the NEPA, as well as all applicable environmental and resource protection laws, such as the National Historic Preservation Act, 16 U.S.C. 470 et seq., and the Endangered Species Act, 16 U.S.C. 1531 et seq. (ESA), before any action is taken. Other than the broad mandate of the Federal Land Policy and Management Act, 43 U.S.C. 1701 et seq., which directs the BLM to prepare and maintain an inventory of resource values, there are no required "inventories." Rather, the BLM has discretion as to when and how to gather information required to comply with these statutes; that is, sufficient information may come in different forms, including but not limited to inventories. In terms of applying the CXs, the NEPA requires that the BLM first determine whether any extraordinary circumstances exist that would preclude use of a CX. Several of the extraordinary circumstances that the BLM must consider directly address resources mentioned in the comments. For example, extraordinary circumstances prohibiting the use of a CX include instances where an individual action may "have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources" (516 DM 2 appendix 2(2.2)), "have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office" (516 DM 2, appendix 2(2.7)), or "limit access to and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites" (516 DM 2, appendix 2(2.11)). This means that the Responsible Official must have sufficient information regarding "cultural resources" to complete the "extraordinary circumstances" review before a CX can be used to comply with the NEPA.

*Comment:* Some comments state that the BLM lacks the staff and funding for appropriate monitoring of categorically excluded activities. Some comments express concern that by categorically excluding more activities, there will be insufficient data to analyze the impacts of these activities. Other comments ask the BLM to assure the public that impacts from the implementation of categorically excluded activities be monitored.

*Response:* An activity that is subject to a CX by definition is an activity that is within a category of actions that have previously been found not to have significant impacts, either individually or cumulatively. That being said, regardless of whether a proposed activity is reviewed under an EA, EIS or CX, the BLM monitors the effects of these activities to the extent its budget allows. The BLM's program management and associated staffing decisions regarding the monitoring of effects are subject to the appropriations process. (See, Anti-Deficiency Act, 31 U.S.C. 1341).

*Comment:* Some comments state that the BLM should increase public notification of CX decisions made.

*Response:* The CEQ regulations (40 CFR 1506.6) require public notice about the completion of NEPA analysis under certain circumstances. These regulations do not require public notification of the use of a CX. Some BLM offices currently support Web sites that list the decisions made in their management area, including the NEPA documents associated with those decisions (including applying a CX). For example, see the Utah State Office Environmental Notification Bulletin Board at *https://www.ut.blm.gov/enbb/index.php.*

*Comment:* Some comments state that the BLM should include the CXs from the Energy Policy Act of 2005 in the 516 DM 11 revisions.

*Response:* The CXs included in the Energy Policy Act of 2005 are statutory CXs; therefore, do not need to be listed in 516 DM 11.

*Comment:* Some comments ask the BLM to describe how cumulative impacts of the proposed CX activities would be evaluated. Some comments suggest that 516 DM 11 be revised to ensure that the cumulative impacts of projects covered by a CX are analyzed.

*Response:* An action can only be categorically excluded from further NEPA analysis when it has been shown that the action fits within a category of actions that has already been determined not to have a significant environmental effect on the human environment, individually or cumulatively (see 40 CFR 1508.4). For all of the categories of actions for which the CXs were proposed, the analysis of the NEPA documents prepared for such actions, as well as subsequent evaluations of the effects of the actions, showed that the actions did not cause significant effects. Further, when considering whether to use a CX, one of the "extraordinary circumstances" that must be evaluated is whether the proposed action may "have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects" (516 DM 2.3(A)3 and appendix 2 (2.6)). If it might, then an EA or an EIS must be completed for the action, and a CX cannot be applied.

*Comment:* Some comments ask the BLM to evaluate the cumulative impacts of the proposed CXs, the revisions to the Northwest Forest Plan's (NWFP) Survey and Management Program and Aquatic Conservation Strategy; the National Forest Management Act Planning regulations; and the National Forest Management Act notices, comment, and appeal regulations.

*Response:* The new or modified CXs are specific to a revision of the procedures described in the 516 DM 11 for implementing the NEPA within the BLM. The determination that establishing CXs does 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) (holding creation of CXs to be an establishment of agency procedure for which CEQ regulations do not require preparation of an EA or EIS). The CXs proposed in January 2006 and finalized here are part of the BLM's effort to update internal NEPA implementing procedures. A cumulative effects analysis of the establishment of these CXs, in relation to the NWFP, the National Forest Management Act Planning regulations, and the National Forest Management Act is not appropriate in this context. However, in developing the Forestry CXs, the BLM reviewed past actions and associated NEPA documents. These NEPA documents included analyses of cumulative effects, which in relevant instances, included actions taken by the Forest Service. The BLM's review of these past actions, the NEPA analyses specific to the actions, and anticipated effects, as well as the actions' actual effects, allowed the BLM to determine that the actions had no individual or cumulative significant impacts, and that development of a CX covering such actions was warranted. The final determination whether a specific proposed action will have a significant cumulative effect or not, is completed at the time the specific proposal is reviewed by considering the applicability of any extraordinary circumstances.

*Comment:* Some comments state that the BLM needs to ensure that implementation of all the CXs will not cumulatively result in jeopardy to listed endangered species.

*Response:* The Responsible Official must ensure that no BLM action will jeopardize a listed species under the ESA. Before a CX can be used, the Responsible Official must determine that no "extraordinary circumstances" apply. If "extraordinary circumstances" (516 DM 2.3(A)3 and appendix 2 (2.8)), which addresses endangered species, applies, a CX may not be used.

**Responses to Specific Comments on Section 11.9—Categorical Exclusions**

*B. Oil, Gas, and Geothermal Energy (Sub-parts B(6)–(8))*

*B(6)—Comments.*

*Comment:* Some comments state that the proposed CX 11.9B(6) should not be implemented because geophysical operations were excluded when Congress authorized additional energy development-related CXs under the Energy Policy Act of 2005.

*Response:* Section 390 of the Energy Policy Act of 2005 does not provide for a CX for the geophysical activities described in the proposed CXs. The Act does not preclude the appropriate exercise of authority to administratively establish CXs in accordance with the NEPA, the CEQ regulations, and the DOI and the BLM NEPA procedures.

*Comment:* Some comments state that the proposed CX 11.9B(6) is a policy change aimed specifically at benefiting the oil and gas industry and that as such, is a "scheme" to make energy exploration companies more money.

*Response:* No change to the CX was requested by these comments, no changes were made in response. The BLM proposed CX 11.9B(6) because CEQ implementing regulations (40 CFR 1509.4 and 1507.3) allow federal agencies to identify categories of actions, which normally do not require either an EA or an EIS. The development of this CX was based on generally accepted analytical procedures, which included completion of a census of available data on geophysical exploration. See *http://www.blm.gov/planning/news.html.* One benefit to all stakeholders of adopting new CXs for activities, which have been shown to have no individually or cumulatively significant effects, is additional federal resources can be redirected to analyzing and mitigating activities likely to have significant adverse environmental consequences.

*Comment:* Some comments suggest that the proposed CX 11.9B(6) would promote the segmentation of a major project into several categorically excluded small projects, which would prevent appropriate consideration of cumulative impacts.

*Response:* The BLM disagrees. Geophysical exploration activities are independent actions and not connected actions as defined in NEPA (40 CFR 1508.25 (a)(1)). Geophysical exploration activities are data collection activities used to gather information that may be used to inform future decision-making regarding oil, gas or geothermal development proposals by providing information on the location of energy resources. It is not a forgone conclusion that the energy resources identified through this data collection will actually be developed. Before a CX can be used, a proposed action must be reviewed to determine whether or not any of the "extraordinary circumstance" (516 DM 2.3(A)3 and appendix 2), applies. In particular, "extraordinary circumstance" 2.6 addresses the potential for significant cumulative impacts; if it does apply, the CX cannot be used.

*Comment:* Some comments state that federal court and administrative decisions have either remanded the BLM decisions to approve geophysical exploration or affirmed agency decisions, only after the BLM proposed additional mitigation measures.

*Response:* The data analyzed and reviewed by the BLM validate the assertion that the impacts from geophysical operations would not be significant. Specific to the comment related to litigation, the data indicate that out of 244 projects reviewed, the NEPA analyses of eight geophysical exploration projects, supported by EAs, were challenged through administrative appeals or litigation. Only two of the eight were remanded to the BLM. In one

situation, the NEPA document was found inadequate where the BLM failed to consider reasonable alternatives (such as limiting use to existing roads) that had been suggested, and in the other, the BLM failed to provide a comment period that had been promised and that the court found to be appropriate under the circumstances of that case. Neither was due to a finding of significant impacts associated with geophysical exploration. Geophysical exploration (the impacts from those activities and how the BLM field personnel address the approval process) has changed over the last several years. There have been lessons learned from the results of this litigation, from personal observation by field staff associated with the projects, field data collection through monitoring, and systematic evaluation of information received from the proponents. Accumulation of professional knowledge resulted in design features that previously were not part of proponent geophysical proposals, yet are now considered routine. Proponents either with or without the BLM consultation now incorporate best management practices into proposals. Project design features are site specific to the local concerns and resource values. They represent a commonality of best management practices that are integral to the project being authorized. Field personnel that routinely permit these actions know the needs based on accumulated professional knowledge of resource concerns in the area at issue, and either assure these aspects appear in the proponent's proposal or include them as conditions of approval in the authorization. "Conditions of approval" or "terms and conditions" are terms of art that represent the practices and standards that are routinely applied to geophysical projects specific for that particular office. Their application does not require a new analysis each time a project is submitted, but results in a list of measures that the proponent must implement based on local conditions. In all cases, proposed actions or activities must be, at a minimum, consistent with the DOI and the BLM regulations, manuals, handbooks, policies, and applicable LUPs regarding design features, best management practices, terms and conditions, conditions of approval, and stipulations. Also associated with this improved professional knowledge base, of the BLM field experience, has been the steady improvement of geophysical techniques and best management practices by the geophysical industry. Low impact techniques have allowed for substantial reductions in the amount of actual surface disturbance and associated resource impacts. Physical impacts such as road construction are rare and the impacts to soil or vegetation resources are minimal or short-term.

*Comment:* Some comments state that geophysical exploration activities cause "disturbance" and related erosion impacts, such as landslides and slumps. Therefore, they recommend that the CX not be adopted.

*Response:* Available data supports adoption of the CX. The CX 11.9B(6) was established after careful review of 244 geophysical exploration projects previously approved by the BLM. The data examined for these projects included project-specific information on the location, the type of NEPA review performed, predicted environmental impacts of proposed actions, and actual environmental impacts after the action was completed. No projects were shown to have significant impacts, individually or cumulatively. According to the review of the NEPA analysis completed for these 244 geophysical exploration projects, including review of the effects of the completed projects themselves, predicted significant impacts, including erosion-related impacts as a result of geophysical exploration, did not occur. In addition, with respect to the resources mentioned in the comments, the BLM applies specific "Terms and Conditions"—as indicated in number seven of the BLM Form 3150–4 and requires suspension of operations when unnecessary disturbance to soils may occur. This term and condition is a part of all geophysical Notices of Intent (see the BLM Form 3150–4). In addition, if the required "extraordinary circumstances" review conducted for any proposed action indicated such impacts as "landslides" and "slumps" might be significant, the CX would not be used.

*Comment:* Some comments state that the use of the geophysical exploration CX would have negative impacts on non-commercial uses, such as scientific, educational, recreational, aesthetic, and spiritual purposes.

*Response:* See response above. The BLM reviewed 244 geophysical exploration projects. None of the projects reviewed during the establishment of this CX resulted in a significant impact, either individually or cumulatively. In addition, the BLM will review all future projects against the DOI's "extraordinary circumstances." If the review indicates that the action may have a direct relationship to other actions with individually insignificant, but cumulatively significant environmental effects (i.e., to non-commercial uses, such as scientific, educational, recreational, aesthetic and spiritual purposes), the CX cannot be used.

*Comment:* Some comments state that geophysical (e.g. seismic) exploration activities have potentially significant impacts to environmental and cultural resources.

*Response:* None of the 244 geophysical exploration projects reviewed during the establishment of this CX resulted in a significant impact, either individually or cumulatively. Further, the BLM believes the established permitting process ensures that if there are potential individually or cumulatively significant environmental effects, an EA or EIS, as appropriate, would be done. Included in the permitting process is the requirement to review the DOI list of "extraordinary circumstances" (516 DM 2.3A(3) & appendix 2) for every proposed action. "Cultural resources" are specifically provided for in this list. If the required "extraordinary circumstances" review indicated that significant impacts to environmental or cultural resources might occur, the CX would not be used.

Further, the use of the CX during the NEPA review process does not eliminate the need to comply with Section 106 of the National Historical Preservation Act (Pub. L. 89–665) or the Archeological Resources Protection Act (Pub. L. 96–95), or any other applicable resource protection law.

*Comment:* Some comments express concern that geophysical exploration activities can damage roadless areas by creating noticeable vehicle routes, which can attract traffic by "unauthorized" off-highway vehicle drivers.

*Response:* Historically, older geophysical exploration operations required the use of some type of road construction. These operations left travelways that would take time to completely reclaim. In the interim, these routes would remain visible and may have encouraged off-highway travel by some members of the public. Best management practices over time have reduced the visibility of noticeable vehicle tracks through project design features so that non-authorized use is discouraged. Further, the proposed CX was specifically limited to geophysical exploration projects that do not involve road construction. The BLM reviewed 244 geophysical exploration projects during the establishment of this CX. None of the projects resulted in a significant impact, either individually or cumulatively. As an additional limitation, the BLM has added a

requirement to this CX that when road construction is involved, the CX would not be used and additional NEPA review would be completed. Further, the proposed geophysical exploration activities can only proceed using this CX where none of the "extraordinary circumstances" apply (516 DM 2.3A(3) & appendix 2).

*Comment:* Some comments state that the proposed CX 11.9B(6) would "wrongly exclude" the covered actions from compliance with federal laws protecting wildlife, such as the ESA.

*Response:* The use of a CX does not eliminate the need to comply with Section 7 of the ESA or other federal laws. None of the 244 projects reviewed during the establishment of this CX resulted in a significant impact, either individually or cumulatively. Further, if the proposed geophysical exploration activity has the potential to significantly impact listed threatened or endangered species, or their critical habitat, "extraordinary circumstance" 2.8 (516 DM 2 appendix 2.8) applies, and an EA or EIS, as appropriate, is required.

*Comment:* Some comments state that weed invasion follows the network of seismic activities across the landscape, which can result in irreversible weed invasions that radically alter fire cycles and endanger wildlife habitat.

*Response:* None of the 244 projects reviewed during the establishment of this CX resulted in a significant impact, either individually or cumulatively. In addition, specific to the resource commented on, if the proposed geophysical exploration action may contribute to the introduction, continued existence, or spread of noxious weeds, "extraordinary circumstance" 2.12 (516 DM 2, appendix 2.12) would eliminate the decision-maker's ability to use CX 11.9B(6). An EA or EIS, as appropriate, would be required.

*Comment:* Some comments ask the BLM to revise the proposed geophysical exploration CX 11.9B(6) to prohibit seismic activity during migratory bird breeding season.

*Response:* None of the 244 projects reviewed during the establishment of this CX resulted in a significant impact, either individually or cumulatively. In addition, the DOI and the BLM use a NEPA review process that ensures that if any of the "extraordinary circumstances," as defined in 516 DM 2.3A(3) and appendix 2, apply, a CX cannot be used. "Extraordinary circumstance" 2.2 (516 DM 2 appendix 2) affords protection specifically for migratory birds. Therefore, if a project design feature intended to provide protection of migratory bird breeding activities in an area occupied by these birds were to be refused by the applicant, or if its efficacy has not been sufficiently assured, an EA or EIS, as appropriate, would be required. Proposed actions or activities must be, at a minimum, (as is stated in the preamble to this section) consistent with Laws (such as the Migratory Bird Treaty Act (Pub. L. 86–732), DOI and BLM regulations, manuals, handbooks, policies, and applicable LUPs regarding design features, best management practices, terms and conditions, conditions of approval, and stipulations.

*Comment:* Some comments ask the BLM to revise the proposed geophysical exploration CX 11.9B(6) to ensure that operations do not result in cumulative impacts.

*Response:* An activity that is subject to a CX by definition is an activity that has been found not to have significant impacts, individually or cumulatively. Geophysical exploration activities that would be authorized under the CX have been shown not to have significant impacts, either individually or cumulatively based upon the BLM administrative review of 244 geophysical exploration projects. The analysis report is available at the BLM Web site at *http://www.blm.gov/planning/news.html.* None of the NEPA documentation for the 244 geophysical exploration projects analyzed in the study during the establishment of the CX indicates the occurrence of significant impacts. The BLM also employs a NEPA review process that ensures, if any of the "extraordinary circumstances," as defined in 516 DM 2.3A(3) and appendix 2, apply, a CX cannot be used. One of these "extraordinary circumstances" that precludes the use of a CX addresses cumulative impacts.

*Comment:* Some comments state that establishment of terms and conditions for specific proposed actions depends on the soil, weather, ground cover, and type of machinery to be used in each case; therefore, the proposed CX would not adequately account for these site-specific issues.

*Response:* The BLM agrees that the design of each proposed action depends on soil, weather, ground cover, and type of machinery to be used; however, as proposed actions are designed and then reviewed against the CX list, such actions or activities must be, at a minimum, consistent with the DOI and the BLM regulations, manuals, handbooks, policies, and applicable LUPs regarding design features, best management practices, terms and conditions, conditions of approval, and stipulations. The geophysical exploration techniques, impacts resulting from the techniques, and the BLM's field personnel knowledge and experience in reducing impacts from this type of activity have improved over time. The lessons learned based on personal observation by field staff associated with the projects, field data collection through monitoring, and systematic evaluation of information received from the proponents has resulted in accumulation of professional knowledge that has led to development of design features that were not previously part of proponent geophysical proposals. Use of design features to minimize impacts to soil and ground cover are now routinely included based on local conditions. The BLM alerts proponents regarding resource values of concern in a given area, and proponents incorporate best management practices into the proposal so that impacts are now minimal. In addition, the BLM's review of 244 projects determined that there is no significant impact from this activity. Further, each proposed action is reviewed against the DOI's "extraordinary circumstances" as described in 516 DM 2.3A(3) and appendix 2. Any proposed geophysical exploration activity that does not satisfy these requirements must be analyzed through the EA or EIS process, as appropriate.

*B(7) & (8)—Comments.*

*Comment:* Several comments were received related to proposed CXs 11.9 B(7) for permitting infill wells within the [reasonable foreseeable development] RFD for an established geothermal field, and B(8) for the issuance of site licenses to operate geothermal facilities whose construction and operation were included in a utilization plan NEPA document. Comments addressed such concerns as the potential for geothermal activity to affect water-confining soil layers and potentially result in the loss of wetted playa areas; impacts on special-status species and endangered species and their habitats that may result from use of the proposed CXs; and currency of LUPs with respect to the ecological status of lands and waters under discussion. Some commenters sought to expand the use of these CXs beyond the State of Nevada; they felt that Nevada should not be granted special consideration over other states and asserted that projects in other states could meet the same criteria as used in Nevada. Commenters also asked why there was a need for further NEPA analysis, rather than a DNA, where the NEPA document for the field

development or the utilization plan included the activities proposed for Geothermal CX 11.9 B(7). In addition, comments expressed interest in clarification of what actions CX 11.9 B(8) was intended to cover, and what actions would be covered by methods of complying with the NEPA.

*Response:* Upon review of the BLM's NEPA compliance procedures, in general, and in consultation with CEQ, the BLM has decided not to finalize proposed CXs 11.9B(7) and 11.9B(8). As explained above in the description of modifications made from the January 2006 proposal, the BLM has determined first that, regarding B(7) (infill wells), a DNA combined with more focused development-stage NEPA documents should normally suffice for NEPA compliance, as some commenters suggested, and second, that a CX (or an EA) for B(8) is redundant and thus unnecessary because no new environmental impacts result from the administrative/ministerial action of issuing a site license where operation of the plant was already covered in the NEPA analysis and documentation prepared for the utilization plan. Both of these solutions are applicable nationwide. To the extent that comments express concern regarding particular resources, the method an agency uses to fulfill its NEPA obligations is distinct from the agency's continuing obligation to comply with other environmental protection statutes such as the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the Endangered Species Act, 16 U.S.C. 1531 *et seq.* (special status species are addressed as part of the BLM's conservation plans under Section 2 of the Endangered Species Act), and the Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.* (land use planning). The BLM LUPs are routinely evaluated to determine whether the LUP decisions and NEPA analysis are still valid. All actions, including those categories of actions considered here, must be consistent with an approved LUP. Regardless of the age of the LUP(s) affected, each proposed action would also be evaluated on its own merits, and updated information provided as necessary in the more site- and/or more project-specific NEPA analysis. In most cases, for instance, the initial development plans for the types of actions contemplated here would have already been analyzed in a project-level NEPA document in addition to the LUP.

**Responses to Specific Comments on Section 11.9—Categorical Exclusions**

*C. Forestry (Sub-Parts C(6)–(9))*

**Broad Concerns That Apply to the New Forestry CXs**

*Comment:* Some comments state that the proposed Forestry CX parameters are inadequate to protect elements of the environment, specifically predatory bird nesting sites, woodpecker habitat, soils compaction, weed dispersal, small mammal burrows, and surface water quality.

*Response:* The BLM analysis available at *http://www.blm.gov/planning/news.html* demonstrates this is not the case. Three of the four proposed Forestry CXs, 11.9C(7)–(9), are based on three U.S. Department of Agriculture Forest Service (FS) CXs, their supporting data, and an analysis by the BLM demonstrating that such proposed actions and their environmental effects are comparable when the action is taken by the BLM. The FS considered the potential for significant effects during the NEPA review process (68 FR 44598–44608, July 29, 2003). Based on assessments of local wildlife habitat conditions after the actions were taken, no significant cumulative effects were observed by the FS. A few of the projects reviewed resulted in minor soil disturbance and compaction, and a few others showed that small numbers of noxious weeds or invasive plants entered the area where the trees had been removed. The FS subject-matter specialists and Responsible Officials found that these impacts were within forest plan standards and were not significant in the NEPA context (40 CFR 1508.27). Based upon the comparison between the FS and the BLM lands, policies, and business practices as outlined in the BLM analysis, the BLM actions are not expected to result in significant introductions, continued existence, or spread of noxious weeds or non-native invasive species. In addition, when applying the CXs to the BLM lands, the BLM only considers use of the CXs when there are no "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2.12), which will cause individually or cumulatively significant impacts on the human environment.

The fourth proposed CX 11.9C(6), which addresses sample tree felling (STF) to gather net timber volume data, is based on a 100 percent census of STF surveys conducted in five BLM management districts in western Oregon from October 1, 2001, through September 30, 2005. These five Districts (Coos Bay, Eugene, Medford, Roseburg, and Salem) wrote EAs for the timber sales that were associated with the 59 STFs performed. The EAs addressed a range of environmental impacts for the five districts including the types mentioned in the comments. The STF business practices and skills of those conducting the action on lands similar to the original five Districts are the same. The BLM believes there are sufficient data to show that no individually or cumulatively significant environmental effects were predicted or occurred as a result of the 59 STF surveys, and therefore the BLM is confident that no individually or cumulatively significant environmental effects will occur due to future STF actions within the Districts identified. The Lakeview District Klamath Field Office was inadvertently left out of the area of coverage of the proposed CX, but has been added to the revised CX proposal. Actions in the Klamath Field Office are the same as those taken in the five Districts identified above and result in the same non-significant environmental effects. In addition, proposed actions in the Klamath Field Office will also be subject to the "extraordinary circumstances" test, and are expected to have no significant environmental effects.

*Comment:* Some comments state that the BLM does not disclose that "it is in the process of implementing several internal and administrative regulatory changes that, in addition to the proposed small timber harvest [CXs (11.9C(7)–(9)], will have a cumulative effect on the environment that has not been analyzed as required by law." The "internal and administrative regulatory changes" the comments refer to are the NWFP, the National Forest Management Act Planning regulations and the National Forest Management Act.

*Response:* The BLM disagrees with the comments, and believes that it is following CEQ guidelines by notifying the public on proposed changes to the 516 DM 11 (See 71 FR 4159–4167, January 25, 2006; see also *http://www.blm.gov/planning/news.html*). The new forestry CXs are specific to the DOI's 516 DM 11 for implementing NEPA within the BLM. A cumulative impacts evaluation in relation to the referenced "changes" is not appropriate, since there is no effect on the environment by this administrative change. The proposed CXs are part of the BLM's effort to update internal NEPA implementing procedures. The establishment of CXs, as internal agency procedures for implementing the NEPA, has been held not to require the preparation of an EA or an EIS, under the CEQ regulations, see *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). The final determination on whether a specific proposed forestry-related action will have a significant cumulative effect, is completed at the time the proposal is reviewed and evaluated using the "extraordinary circumstances" test, or if necessary, through an EA or EIS.

*Comment:* Some comments state that the forestry activities proposed for CX process review are "beyond the intended scope and purpose of the categorical exclusion clause" in NEPA; and by "exempting such activities, the BLM is essentially advocating that actions with significant environmental impacts escape close scrutiny under the requirements of NEPA."

*Response:* The BLM disagrees that using a categorical exclusion allows actions with significant environmental impacts to escape scrutiny. To avoid repetitive documentation of known non-significant effects, the CEQ regulations (40 CFR 1500.4(p), 1507.3 and 1508.4; also see CEQ's testimony before the House Committee on Resources Task Force on Updating the NEPA Lessons Learned Oversight Hearing on November 17, 2005), provide for defining "categories of activities" whose effects do not normally require review in an EA or an EIS. The process of defining these categories is an integral part of the NEPA regulatory framework. In this case, the BLM collected data on the NEPA analyses used for sample tree felling (CX 11.9C(6)). The BLM analyzed the NEPA review activities documented by the FS related to live tree harvests, salvage tree harvesting, and sanitation harvesting projects. The BLM and the FS data and analysis support a determination that (1) the proposed Forestry CX activities do not have significant effect(s) on the human environment, and (2) these CXs meet the intent of the CEQ regulations that govern the establishment of CXs. The BLM is establishing these categories of Forestry activities because the appropriate implementation of the NEPA requires concentrating agency analysis efforts on major federal actions and not expending scarce resources analyzing agency actions where experience has demonstrated the insignificance of predictable effects.

*Comment:* Some comments state that the new live tree harvest, salvage tree harvesting, and sanitation harvest CXs 11.9C(7)–(9) will, when combined with new opportunities for energy development, affect available open space and could be "devastating to the environment," specifically air and water quality, wildlife, and tourism.

*Response:* The BLM disagrees that the use of CXs 11.9C(7)–(9) will affect available open space, or be "devastating" to the environment and tourism. As discussed above, the BLM analyzed the FS information and determined the BLM forestry activities included in the CXs and their effects are comparable. The FS reviewed activities related to live tree harvests, salvage tree harvesting, and sanitation harvesting projects, and determined that the proposed CXs do not have significant effects on the human environment, including air and water quality and wildlife. Further, if there are "extraordinary circumstances" listed in 516 DM 2, appendix 2 that apply, the Responsible Official cannot use the new forestry CXs. The use of the CX does not eliminate the need to comply with other applicable resource protection laws. The BLM will determine whether a specific proposed Forestry-related action will have a significant cumulative effect on the environment, including wildlife and tourism values, at the time the proposal is reviewed using the extraordinary circumstances test. If the proposal does not pass the extraordinary circumstances review, an EA or an EIS will be completed.

*Comment:* Some comments state that tree harvesting is "never completely uncontroversial, and it often imposes significant impacts on the terrestrial and aquatic ecosystems of the area." The comments further state that a CX that enables tree harvesting for any reason provides insufficient opportunity for public review.

*Response:* Based on the BLM's reviews of the FS tree harvesting projects, the BLM determined that similar projects would have similar effects on the BLM land, and would have no significant effects on the terrestrial and aquatic ecosystems in the area of the projects. In the development of the three harvesting and salvaging CXs, the FS reviewed the effects of 154 tree harvesting projects across the country, with actions similar to those allowed in the three categories (See *http://www.fs.fed.us/emc/nepa/library/20030108_fr_notice.pdf*). Prior to implementation, none of the projects reviewed predicted significant effects on the human environment. After implementation, on-site reviews of environmental effects of these projects were conducted by interdisciplinary teams of resource specialists. The reviews by the BLM concluded that none of the projects had a significant effect on the human environment. In addition, the BLM applies the review of extraordinary circumstances to projects, including whether an action has highly controversial environmental effects or involves unresolved conflicts concerning alternative uses of available resources. If one or more of the extraordinary circumstances listed in 516 DM 2, appendix 2.3 apply, the Responsible Official cannot use the new forestry CXs. Applying a CX to a proposed action does not preclude public involvement with the proposal. Interested publics will be involved as appropriate throughout the decision-making process. The type and level of public involvement should be commensurate with the decision at hand. Forest management decisions, including those where a CX is applied, are protestable under 43 CFR 5003.3.

*Comment:* Some comments state that using the FS data to justify the proposed BLM live tree harvest, salvage tree harvesting, and sanitation harvesting activities CXs 11.9C(7)–(9) is inappropriate because the FS lands and projects in "different regions may not be comparable for a variety of reasons."

*Response:* The data is applicable to the BLM lands because forestry related projects and their predictable environmental impacts are substantially the same on the BLM and the FS administered public lands as demonstrated by the comparability analysis conducted by the BLM (*http://www.blm.gov/planning/handouts/CX_Report-Forestry-FS_CXs.pdf*). Laws governing forest management for the BLM and the FS are very similar. While the agencies have separate enabling legislation, both require that forest lands be managed according to sustained-yield and multiple-use principles. As part of land management, the agencies are further mandated to meet the requirements of environmental laws including the Clean Water Act, Clean Air Act, Endangered Species Act, and the National Historic Preservation Act when making decisions. Finally, the proposed actions designed and reviewed for application of a CX must be, at a minimum, consistent with DOI and BLM regulations, manuals, handbooks, policies, and applicable LUPs regarding design features, best management practices, terms and conditions, conditions of approval, and stipulations.

*Comment:* Some comments state that standing dead trees (snags) and dying trees "play an important ecosystem role" that is "highly valued" and "under represented." Some comments state that the BLM and the FS policies for conserving snags do not reflect an adequate appreciation of the current state of knowledge about their ecological value. Still other comments want the BLM to develop "snag

retention guidelines for each physiographic province * * *" They state that until this is done, the BLM should not allow any snag larger than 20 inches diameter at breast height (dbh) to be removed based on a report prepared for the DOI Final Draft Recovery Plan for the Northern Spotted Owl issued in1992.

*Response:* The BLM agrees that standing dead and down woody material is an important component of a healthy forest ecosystem. The BLM's LUPs in the Pacific Northwest are based on the *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl* (ROD) and *Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl* (S&G), April 1994. The Final Draft Recovery Plan for the Northern Spotted Owl (1992), referenced by the commenters, was considered when writing the Final Supplemental EIS and Record of Decision (ROD) (page 17). The S&G addressed physiographic provinces (Introduction page A–3) and both the retention and removal of snags (S&G, pages C–14, 15). The ROD and S&G do not set a diameter limit on snag retention. Since the BLM LUPs are based on the ROD and S&G, the BLM rejects setting an arbitrary limit of 20 inches dbh on snag retention.

*Comment:* Some comments express preference for a 100 or 250-acre upper size limit on the new forestry CXs 11.9C(7)–(9) while others ask that the upper limit be reduced to 10 acres for all potentially eligible harvest activities. Some comments state that establishing "a higher [acres] limit for salvage and insect/disease timber sales makes absolutely no sense" and that "allowing commercial projects to be included heightens [environmental] risk * * *."

*Response:* The BLM is finalizing the proposed CX language as written. The BLM analyzed the FS data, and determined that the FS size acres limits, which are based on their data, are appropriate for the CXs. Having the BLM and the FS using the same size limits for similar treatments will help maintain consistency between the agencies. The BLM would need to gather new data to support using a CX for larger treatment areas. The BLM's CXs 11.9C(7)–(9) are similar to three FS forestry CXs formally adopted in 2003 (68 FR 44598–44608, July 29, 2003). The FS instituted their forestry CXs (Forest Service Handbook (FSH) 1909.15, Ch. 31.2(12–14)) based on 154 completed FS projects that had sufficient NEPA analysis documentation. The FS data show that no individually or cumulatively significant effects resulted when the activities described in the three FS forestry CXs were used. Since no significant effects occurred at the current size limits, there is no logical reason to arbitrarily reduce the size limits. For additional information on the FS data collection and analysis process and the method used to determine reasonable project area limits, refer to 68 FR 44598–44608, July 29, 2003, and supporting documents and the BLM analysis at *http://www.blm.gov/planning/handouts/CX_Report-Forestry-FS_CXs.pdf.* The BLM also rejects the notion that allowing commercial use of the harvest material increases environmental risks. The effects on the ground of a project would be the same regardless of whether or not someone is likely to profit from the venture.

*Comment:* CXs 11.9C(7)–(9) provide for "temporary road construction." Some comments ask the BLM to define "temporary road" and other comments ask the BLM to clearly define what constitutes temporary road construction to "minimize impacts." Some comments state that limiting temporary road construction to "no more than 0.5 mile[s]" is too constraining, while others state that any road building causes significant environmental impacts.

*Response:* The BLM agrees that it needs a definition for temporary roads. For use of the specific forestry CXs 11.9C(7)–(9) the BLM has rewritten the CXs to define temporary roads based on the definitions in the FS regulations, which will meet the BLM needs and ensure compatibility between agencies for these specific CXs. The BLM rejects the notion that any road construction causes significant environmental impacts. The BLM reviewed the FS data where 35 of the 154 timber sales reviewed by the FS required temporary road construction. The FS found no significant effects in reviewing these projects. The average length of temporary road construction for the 35 sales was 0.5 mile. Based upon its analysis, the BLM determined that temporary road construction when the CX criteria are met will be non-significant. Therefore, it is appropriate to use the 0.5-mile maximum length limit for temporary road construction for these CXs, to maintain consistency between agencies.

*Comment:* Some comments state that the BLM should conduct an in-depth cost-benefit analysis of the proposed forestry CXs: 11.9C(6)–(9).

*Response:* A forestry cost-benefit analysis of each CX is not necessary because the BLM determined that the cumulative economic impact of the proposed changes to 516 DM 11, including adoption of CXs 11.9C(7)–(9) would 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 determination was reported in the 71 FR 4161, January 25, 2006. The expected economic result from instituting the new forestry CXs in 516 DM 11.9C is efficient reallocation of resources needed to complete NEPA review from actions, which do not have a significant effect to those, which may have a significant effect.

*Comment:* Some comments question the amount of money the BLM charges for permits and timber.

*Response:* This question is not relevant to the proposed revisions in 516 DM 11 regarding CXs for permits. Market values are a local issue, and values for resources are set by the BLM Districts based on local economies.

*Comment:* Some comments noted that three of the "proposed new CXs 11.9(7)–(9) mirror new CXs developed by the Forest Service." They "by reference" reiterate their concerns about these FS-based Forestry activities published in the 68 FR 1026, January 8, 2003, in their comments on the BLM proposal to adopt CXs 11.9(7)–(9).

*Response:* The concerns expressed in the comment are addressed in this notice of final action where relevant, and in the case of other concerns, the relevant FS responses to comments received and published in 68 FR 44598–44608, July 29, 2003, are by reference included in this notice of final action. The FS **Federal Register** notice may be obtained electronically at *http://www.fs.fed.us/emc/lth/notice.pdf.*

*C(6)—Comments.*

*Comment:* Some comments ask the BLM to provide a "sufficient explanation" for why the proposed Sample Tree Felling (STF) CX 11.9C(6) is limited to certain areas within Oregon. Some comments suggest that the STF CX 11.9C(6) be expanded to all of Oregon, other Western States, or BLM-wide.

*Response:* While the STF survey method has been used elsewhere, the BLM reviewed NEPA analysis specifically to consider the environmental effects of the STF timber volume survey method within the western Oregon lands managed under the Oregon and California Lands Act (Pub. L. 75–405, August 28, 1937, as

amended by Pub. L. 426, June 24, 1954). The BLM's Lakeview District, Klamath Falls Resource Area has been added to the BLM management units that are eligible to use CX 11.9C(6), since it is part of the Oregon and California Lands Act area where the NEPA analysis and implementation and effects data are available. Omission of the Klamath Falls Resource Area in CX 11.9C(6) was unintentional. Therefore, Lakeview District, Klamath Falls Resource Area is added to the CX as finalized for these areas. The Prineville District is not located within the Oregon and California Lands Act area reviewed, and has not been included in the CX.

*Comment:* Some comments state that the STF CX 11.9C(6) violates the agreement that the BLM made in a federal court (*Umpqua Watersheds, et al.*, v. *BLM,* No. 00–1750–BR, U.S.D.C. Or., Stipulation for Dismissal and Order, 13 January 2003). These comments point out that the new CX will eliminate a court settlement requiring the BLM to restrict STF to trees under 20″ dbh.

*Response:* The CX 11.9C(6) was proposed to address the terms of the agreement which states that: "Unless or until there is legislative, regulatory, or other authority adopting a NEPA procedure for sample tree felling or exempting such actions from NEPA procedures, sample tree felling for timber sale cruising will not occur prior to the BLM issuing any final decision document on any BLM District in western Oregon * * * of any trees over 80 years old * * * of any Douglas-fir trees 20.0 inches diameter at breast height (dbh) or greater." Thus, rather than constituting a violation of this agreement, this change in the NEPA procedures for STF was specifically provided for and anticipated in the stipulated order resulting from the settlement agreement. CEQ regulations at 40 CFR 1507.3 and 1508.4 give the BLM the authority for adopting a NEPA procedure to categorically exclude proposed actions, and based on the analysis referred to in previous responses and the analysis available at *http://www.blm.gov/planning/handouts/CX_Report-Sample_Tree_Falling.pdf,* the BLM determined that a CX was appropriate for STF. CEQ's testimony before the House Committee on Resources Task Force on Updating the NEPA Lessons Learned Oversight Hearing on November 17, 2005, reemphasized the responsibility of federal agencies to establish appropriate new CXs to promote efficient NEPA compliance.

*Comment:* Some comments state that the proposed STF activities in CX 11.9C(6) could have significant impacts on the environment. Other comments state that the STF CX 11.9C(6) analysis report (*http://www.doi.gov/oepc/cx_analysis.html* or *http://www.blm.gov/planning/news.html*) is flawed because none of the NEPA processing documents specifically identified STF as the proposed action category that could be tied to a finding of no individually or cumulatively significant impacts.

*Response:* Based on the comment received, the BLM revisited the 2001 through 2005 timber sale EA data used for the proposed STF CX, which came from five BLM Districts in western Oregon (Coos Bay, Eugene, Medford, Roseburg, and Salem) that have historically used STF extensively. In the timber sale EAs analyzed, four of the five Districts' data (Coos Bay, Eugene, Medford, and Salem) did not specifically address the impacts of STF. The Roseburg District EAs did specifically address cumulative effects of STF as the proposed action category in their 14 project EAs between October 1, 2001, and September 30, 2005. Based on the comments received, the BLM conducted a further review of six District-wide programmatic STF EAs (Coos Bay, Eugene, Medford, Roseburg, Salem, and Lakeview District—Klamath Falls Resource Area) completed prior to the 2003 Court Stipulation for Dismissal and Order (*Umpqua Watersheds, et al.*, v. *BLM,* No. 00–1750–BR, U.S.D.C. Or., Stipulation for Dismissal and Order, 13 January 2003). The six District-wide programmatic EAs were written specifically to analyze STF in the six western Oregon districts. Each programmatic EA analyzed STF effects, and none were found to be significant. Analysis from both data sets support the conclusion that performing STF activities will cause no individually or cumulatively significant impacts on the human environment when the STF activities are as described in CX 11.9C(6) and when no "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2) apply. In all cases where STF was implemented on the ground, the actual impacts of STF were the same as the predicted impacts, and caused no individual or cumulative significant impacts.

*Comment:* Some comments state that STF is a connected action not subject to categorical exclusion. They posit that a proposed STF action is "always connected to a commercial timber sale" so categorically excluding an STF is a "segmenting action" which could prevent appropriate consideration of cumulative impacts.

*Response:* The BLM position is that STF and timber sales are not connected actions under the NEPA. There are numerous administrative and information gathering activities that occur on forested BLM lands that may or may not be within proposed timber sale areas. Many of these activities, e.g., stand exams, prescription inventory plots, wildlife surveys, property line and boundary surveys, are typically performed through a basic data collection CX. These activities are separate actions that are carried out in different time periods to provide the BLM with information to expand the knowledge of resource values. Collecting inventory data through stand exams, conducting wildlife surveys, or felling sample trees to ascertain volumes is not directly connected to proposed actions, and does not make a resource use allocation decision. If a subsequent timber sale project is proposed, the BLM is mandated by regulation (40 CFR 1507 and 1508.4) and the DOI (516 DM 2) to determine the scope of the proposed timber sale, consider alternative actions, and assess the affected environment through an EA or EIS, as warranted, including potential cumulative impacts.

*Comment:* Some comments state that the proposed STF CX 11.9C(6) violates a NEPA requirement that actions not be taken to implement a decision before a decision is made (e.g., cutting down sample trees in units that are or could potentially be allocated in a LUP for a timber sale). They state that the BLM is committing resources prejudicing the ultimate decision.

*Response:* The BLM disagrees. Sampling the potential timber yield of an area to obtain basic resource inventory data is not equivalent to making a decision regarding resource use allocation. There are instances where for various reasons proposed timber units or sales have not been offered, even though sample trees were cut to gather information on stand harvest potential. Cutting individual sample trees at an average density of less than one tree per acre does not constitute an irrevocable commitment to sell the timber stand measured by this method.

*Comment:* Some comments state the BLM should use the NWFP standards for exempting thinning projects in stands less than 80 years old from Regional Ecosystem Office (REO) review. They state that this action would help prevent the BLM "abuse of discretion in thinning in young stands to restore old-growth conditions in Late Successional Reserves (LSR)." The comments suggest that the REO exemption criteria are based on credible science that will help to build public trust/support.

*Response:* No changes to the NWFP are proposed with this CX, and the BLM will continue to follow the standards of the NWFP when implementing the CX. The BLM will continue to follow the guidance contained in the REO Memorandum of April 20, 1995, "Criteria to Exempt Specific Silvicultural Activities in LSRs and MLSAs from REO Review." By following the NWFP standards and the REO guidance when using the CX, the BLM concludes that no additional constraints need be applied, no "abuse in discretion in thinning" will occur, and no significant impacts will result.

*Comment:* Some comments state that the number of trees to be sampled on average per acre is too small while others state the sample size is too large.

*Response:* The numbers of trees sampled is not a randomly chosen number that is easily or arbitrarily increased or decreased. The numbers of trees to be sampled are determined by a statistical equation (refer to the current the BLM Timber Cruising Handbook, H–5310–1) and reflect past and projected future BLM practices. The total number of sample trees required is less than one tree per acre on average as shown by the data and ongoing BLM forestry management activities.

*Comment:* Some comments state that using data from small tree STF to conclude that there are no impacts to old-growth STF is not logical. In addition, these data fail to reveal the real and cumulative environmental impacts of cutting old-growth STF. A related comment made is that if the tree is older it will be larger, and therefore, more likely to be included in the STF sample.

*Response:* Based on the comments received, the BLM conducted a further review, which included six pre-2001 District-wide programmatic EAs for STF in Coos Bay, Eugene, Medford, Roseburg, Salem, and Lakeview District, Klamath Falls Resource Area. These EAs analyzed the effects of STF on trees of all ages, including older stands with timber greater than 80 years of age. Even with a greater number of large trees sampled, the environmental impacts are not significant. Based on the additional review of the STF Programmatic EAs and the findings published in the 71 FR 4159–4167, January 25, 2006, the BLM concludes that when there are no "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2), the 11.9C(6) CX will not cause individually or cumulatively significant impacts, regardless of the age of the stand. The comment that a larger tree may be more likely to be included in the sample is not relevant to the use of a CX, since it does not change the conclusion that the sample size would average less than one tree per acre, and there would be no significant impacts from this level of action.

*Comment:* Some comments state the BLM should correct the date on the "CX Project—Sample Tree Felling" analysis report (dated January 3, 2005), when the actual date was January 3, 2006.

*Response:* The typographic error in the date of the analysis report has been corrected. The STF data analyzed were compiled in November 2005. The NEPA review process findings discussed in the analysis report came from STF projects performed between October 1, 2001, and September 30, 2005. The BLM subsequently examined pre-2001 programmatic EAs which resulted in the same finding—no individually or cumulatively significant effects occurred as a result of STF activities (see last comment and response).

*Comment:* Some comments state that the "CX Project—Sample Tree Felling" analysis report should have documented the high costs associated with preparation of EAs.

*Response:* The requested cost-benefit analysis is not required for this CX.

*Comment:* Some comments state that STF sampling should be limited to young timber stands.

*Response:* The BLM disagrees. The STF is used to obtain volume estimates based on generally accepted survey methods regardless of the age of the stand, which requires cutting representative trees, whether young or old. STF has been determined to be a more accurate method of determining tree volume in large trees because it is superior to other methods in detecting defect and measuring tree taper.

*Comment:* The number of data analysis "flaws" is a concern. For example, failure to consider impacts on old-growth and reserve land allocations, flawed data collection methods, and analyzing STF data for only young trees to justify STF in old-growth forests. The BLM's assumptions and conclusion that STF does not constitute a significant action as defined by NEPA, could be wrong.

*Response:* Based on the comments received, the BLM revisited the data used to prepare the "CX Report—Sample Tree Felling" posted at *http://www.doi.gov/oepc/cx_analysis.html* and *http://www.blm.gov/planning/news.html.* The BLM then conducted a further review of six pre-2001 District-wide programmatic EAs for STF (Coos Bay, Eugene, Medford, Roseburg, Salem, and Lakeview District, Klamath Falls Resource Area). These EAs included an analysis of the effects of STF on trees of all ages. The data analyzed by the BLM supports the conclusion that performing STF activities as described in the CX 11.9C(6), regardless of the timber age, and when there are no "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2), will cause no individually or cumulatively significant impacts on the human environment.

*Comment:* Some comments state that hundreds of old-growth trees will be removed if the STF CX 11.9C(6) is instituted.

*Response:* By its own terms, the STF CX 11.9C(6) limits felling, bucking, and scaling sample trees to an average of one tree per acre or fewer. The CX does not include yarding and removal (harvesting) of trees; therefore, generally, the trees felled will remain in situ.

*Comment:* Some comments state the BLM should clarify the language used in CX 11.9C(6). There was concern about: (a) Interpretation of the qualifier "approximately one [tree] per acre;" (b) the purpose of the reference to "use of ground-based equipment;" (c) whether "temporary" roads are considered roads in this context; and (d) what is meant by the timber yarding text. Some comments state that the CX language seems to "be a bit open-ended."

*Response:* The CX language for 11.9C(6) has been revised to clarify that the allowable action or activity is "less than one tree per acre on average" and the only tools permitted are "gas-powered chainsaws and handtools." Road and trail construction (of any type) and "timber yarding" are expressly prohibited. The modifications tighten the language.

*C(7)—Comments*

*Comment:* Some comments state that the 70-acre size threshold is excessively large for a "small" timber sale. They state that a 10-acre limit would be more appropriate based on "interim policy" issued in the 52 FR 30935, August 10, 1987, and reissued in the 53 FR 29505, August 5, 1988, and again revised in the 57 FR 43180, September 18, 1992.

*Response:* The BLM disagrees. The FS updated its "interim policies" to set the 70-acre limit based on a relatively recent analysis of relevant data (68 FR 44598—44608, July 29, 2003). The BLM reviewed the FS changes in acreages over the 15-year period from 1987 to 2003, which resulted in a different position from past interim policies, and concluded that the data supported a FS size limit change from 10 acres in 1987 to 70 acres in 2003. The BLM determined that the 70-acre limit is appropriate to meet the BLM's needs, based on its review and comparability

analysis of the FS data, which was found to have no individually or cumulatively significant environmental effects. Using a 70-acre limit for both the BLM and the FS will help maintain consistency between the agencies when applying CXs. The BLM concluded from this review that there would be no significant effect, individually or cumulatively, from the 70-acre size limit for these actions on public lands.

*Comment:* Some comments support the "even-aged regeneration" limitation, while others ask that it be stricken from the 70-acre live tree harvest CX 11.9C(7) language.

*Response:* The BLM is not changing the even-aged regeneration harvest limitation. Even-aged regeneration harvests involve a different scope of environmental effects, which exceed the supporting data for the live tree harvesting CX. Uneven-aged harvest systems (individual tree selection and group selection) maintain the canopy of a forest stand; and therefore, have relatively little effect on the structural and aesthetic properties of stands. Even-aged regeneration harvests, such as clearcutting, seed tree, and shelterwoods, were excluded from use in CX 11.9C(7). The limitation was derived from the FS data that showed the action described in the CX to have no individually or cumulatively significant environmental effects, and which the BLM review and analysis concluded would cause no significant effects on the BLM lands. In addition, the BLM will apply the "extraordinary circumstances" test to individual actions covered by the CXs.

*Comment:* Some comments ask the BLM to be more "inclusive of a greater range of possible live-tree cutting activities, whether to accomplish fuel reduction, forest health, wildlife, pre-commercial thinning, or commercial timber sale objectives."

*Response:* The CX 11.9C(7) language includes several examples of when it may be employed correctly; however, this is not an exhaustive list of potentially suitable applications. The live tree harvest CX focuses on small timber harvests of 70 acres or less regardless of the reasons for the harvest and specifically states the examples "may include" and "but are not limited to" those examples given in the CX. Therefore, the activities listed above could be covered by this CX if they meet all the CX qualifying criteria and none of the "extraordinary circumstances" as defined in 516 DM 2.3A(3) and appendix 2, apply.

*C(8)—Comments.*

*Comment:* Some comments ask the BLM to define "dying tree" because "most mature trees are in some state of decadence."

*Response:* In the context of proposed CX 11.9C(8), a dying tree is a standing tree that has been severely damaged by forces such as fire, wind, ice, insects, or disease, and that in the judgment of an experienced forest professional or someone technically trained for the work, is likely to die within a few years.

*Comment:* Some comments reference scientific findings that salvage tree harvesting will increase soil erosion and sedimentation through multiple mechanisms. Other comments ask the BLM to consider the scientific evidence that salvage tree harvesting is harmful to the environment and increases wildfire risk.

*Response:* The BLM reviewed the FS data and practices, and determined that none of the sampled FS projects resulted in individually or cumulatively significant environmental effects. This indicates that agency practices and guidelines are effective at mitigating environmental impacts, including soil erosion, sedimentation, and fire risk. The BLM's salvage tree harvesting practices, guidelines and project effects are similar to the FS (*http://www.blm.gov/planning/handouts/CX_Report-Forestry-FS_CXs.pdf*). Therefore, the BLM concludes that by implementing similar salvage tree harvesting practices and guidelines, the BLM's salvage tree harvesting projects that use CX 11.9C(8), will have no significant impacts on environmental conditions including soil erosion, sedimentation, or increased fire risk. If one or more of the extraordinary circumstances listed in 516 DM 2, appendix 2 apply, the Responsible Official cannot use the new forestry CXs.

*Comment:* Some comments posit that there is sufficient scientific evidence available that contradicts the "finding that no significant impacts" occur when the salvage tree harvesting CX 11.9C(8) criteria are used. They reference several scientific publications that support a conclusion that salvage tree harvesting is damaging to the human environment.

*Response:* The BLM concludes that salvage tree harvesting will not have significant effects on the environment based on the review of the FS data where none of the FS sampled projects showed significant environmental impacts. As some scientific publications point out, salvage activities can have negative environmental impacts, depending on the condition of the site, the harvesting system, time of the year, and other factors. However, both the FS and the BLM practices and guidelines have been developed with regard to soil and water protection on appropriate sites that will lead to no significant effects. This indicates that agency practices and guidelines are effective at mitigating environmental impacts, including soil erosion, sedimentation, and fire risk. When designing salvage projects, the BLM uses an extensive array of guidelines and procedures to prevent and mitigate negative environmental impacts during these activities. The BLM's salvage tree harvesting practices and guidelines are similar to the FS (*http://www.blm.gov/planning/handouts/CX_Report-Forestry-FS_CXs.pdf*). Therefore, the BLM concludes that by implementing salvage tree harvesting practices and guidelines similar to those implemented by the FS; the BLM's salvage tree harvesting projects that use CX 11.9C(8), will have no significant impacts on environmental conditions including soil erosion, sedimentation, or increased fire risk. The Responsible Official must consider the "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2) before deciding if a proposed action qualifies for using the CX. If one or more of the "extraordinary circumstances" listed in 516 DM 2 appendix 2 apply, the Responsible Official cannot use the new forestry CXs.

*Comment:* Some comments ask the BLM to provide the scientific information necessary to justify an implied assumption that salvage tree harvesting has less environmental impacts than other types of tree harvesting.

*Response:* Implied assumptions have not been used, nor has the BLM stated whether salvage tree harvesting has more or less environmental impacts than other types of tree harvesting. The purpose of the CX is not to compare the environmental effects of different types of tree harvesting, but to determine whether a CX for salvage tree harvesting is appropriate. The salvage tree harvesting CX 11.9C(8) is proposed based on the BLM's review of the FS conclusion that implementing the CX criteria will ensure that no individually or cumulatively significant impacts on the human environment will occur (68 FR 44598–44608, July 29, 2003). Where significant effects may occur, the FS concluded that their consideration of the FS "extraordinary circumstances" (FSH 1909.15, Ch. 30, Sec. 30.3, para. 2) would not allow the use of the CX. The BLM has completed a comparison and finds the FS CX to easily compare with the BLM CX; and therefore, will consider using this CX only when the CX qualifiers apply in full and when none of the DOI "extraordinary circumstances" apply (516 DM 2.3A(3)

and appendix 2). The harvest activity acreage limits were established by the FS based on review and analysis of the data used to establish the CXs (*http://www.fs.fed.us/emc/lth/1998_details.pdf*). The BLM concurs with the conclusions drawn by the FS, based on similar management practices and resulting environmental effects. The BLM concludes that with the acreage limitation and other criteria in place, the actions covered under the salvage tree harvesting CX will have no significant effect on the environment, individually or cumulatively.

*Comment:* Some comments state that salvage tree harvesting harms species protected by the ESA, that the CX fails to acknowledge that large snags provide valuable habitat and contribute little to fire hazard, or that salvage tree harvesting has significant impacts on woodpeckers.

*Response:* The BLM must ensure that any action authorized, funded, or carried out by its Responsible Officials is not likely to jeopardize the continued existence of any endangered, threatened, or proposed species (such as the woodpecker mentioned in the comment above), or result in the destruction or adverse modification of designated critical habitat. The BLM is required to comply with Section 7 of the Endangered Species Act, regardless of the type of NEPA document completed. The Responsible Official cannot use the salvage tree harvesting CX 11.9C(8) if any of the "extraordinary circumstances" in 516 DM 2.3A(3) and appendix 2 apply. Extraordinary circumstance 2.8 (516 DM 2 appendix 2) specifically prohibits the application of a CX review process if there is the potential to have a significant impact on listed species or their critical habitat.

*Comment:* Some comments ask the BLM not to salvage log and gave the following reasons: Some forested areas are designated as "Late Successional Reserves" or "Critical Habitat Units" where the management goals are incompatible with salvage tree harvesting; salvage tree harvesting eliminates important stand history data, structure, variability, and complexity; large, decay resistant snags and logs are important ecologically; and the large pulse of dead wood created by disturbance (such as fire and disease) is significant for an ecosystem's recovery over the long-term.

*Response:* Management goals in LSRs and salvage tree harvesting are compatible. For example, the 1994 NWFP and the six 1995 Western Oregon RMPs provide guidance for management of federal forest lands in western Oregon. The NWFP ROD identified specific conditions in which salvage tree harvesting could take place without negatively affecting the attainment of LSR goals (NWFP ROD, *Standards and Guidelines for Management of Habitat for Late Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl,* Guidelines for Salvage pp. C13–C16). Salvage activities can have negative environmental impacts, depending on the condition of the site, the harvesting system, time of the year, and many other factors. However, both the FS and the BLM practices and guidelines have been developed with regard to soil and water protection on appropriate sites that will lead to no significant effects. For example, in the area covered by the NWFP, the ROD identified specific conditions in which salvage tree harvesting could take place without negatively affecting Late Successional habitat goals. All actions must conform to the LUP management guidelines regardless of the level of NEPA analysis completed (43 CFR 1610.5–3).

*Comment:* Some comments state, "salvage tree harvesting is not compatible with contemporary ecosystem-based management."

*Response:* Salvage tree harvesting is one of many methods used to achieve a goal on the landscape, and is compatible with ecosystem-based management. The BLM uses ecosystem management to look at the big picture, beyond federal agency boundaries, and to work closely with other land managers, both public and private. When analyzing effects, the BLM addresses the long-term consequences of today's decisions, analyzing effects to various resources as interrelating parts of systems rather than as individual components to be managed separately. When implementing decisions, the BLM uses many tools. Salvage tree harvesting is one of the tools used to achieve on-the-ground goals.

*Comment:* Some comments state that there is an increased risk that a "commercial" salvage tree harvesting project will "escape" sufficient environmental analysis to prevent significant environmental impacts.

*Response:* The BLM disagrees. The FS data were reviewed for this activity, and demonstrate that no individually and cumulatively significant environmental impacts are likely to occur if the salvage tree harvesting CX criteria apply and if a determination is made that none of the "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2) apply. The BLM determined that establishing the CX is appropriate. The analytical findings did not differentiate between commercial and non-commercial activities. The effects on the ground of a project would be the same regardless of whether someone is likely to profit from the venture.

*Comment:* Some comments state that there are increased fire risks associated with salvage tree harvesting which will be overlooked in the CX review process.

*Response:* Based on the BLM review and analysis of the data, the BLM concludes that actions qualifying for the CX will not cause a significant increase in fire risk or fire hazard.

*Comment:* Some comments ask the BLM to consider the effects of salvage tree harvesting by preparing a "new programmatic EIS for young complex forests" because the FS and the BLM "have [not] fully disclosed and considered current scientific understandings about the role of fire in forest development."

*Response:* The role of fire in forest development is beyond the scope of the proposed action.

*C(9)—Comments.*

*Comment:* Some comments state that the phrase "and adjacent live uninfested/infected trees as determined necessary" should either be eliminated or quantified to show that a state licensed, responsible FS or BLM consultant, employee, or expert in the field, has validated and documented the need to harvest adjacent trees.

*Response:* Federal agency specialists are qualified to make determinations necessary in order to carry out their work in support of the federal government, and are not required to have state licenses. A forester or trained person determines if a tree adjacent to an infected tree should be removed to reduce the chance of spreading insects or disease to the rest of the timber stand. Typically trees are harvested that are expected to die within a year and have indicators such as: No new growth, lack of leaves during the growing season, yellowing needles, loss of needles or leaves in the tree crown, or are immediately adjacent to dead trees recently killed by root rot. Sanitation tree harvesting would not remove all defective trees as many are left for wildlife and other resource values.

*Comment:* Some comments state that the BLM overestimates the negative effects of insects and disease and fails to consider beneficial effects.

*Response:* The BLM agrees that there are both negative and positive effects from insect-infested and diseased trees. However, the BLM is not placing value judgments on the positive or negative effects, but is premising this CX on its judgment that a FS analysis effort correctly found that the effects of sanitation harvesting up to 250 acres

when specific criteria are met will have no significant effect, individually or cumulatively. The harvest activity acreage limits were determined by the FS based on review and analysis of the data used to establish the CXs (*http://www.fs.fed.us/emc/lth/1998_details.pdf*). The BLM concurs with the conclusions drawn by the FS and concludes that for BLM actions, due to similar management practices in similar ecosystems, the resulting environmental effects on public lands will be not significant, individually or cumulatively. Further, the BLM will review each proposed action against the DOI "extraordinary circumstances" (516 DM 2.3A(3)). If any apply, the CX cannot be used.

**Responses to Specific Comments on Section 11.9—Categorical Exclusions**

*D. Rangeland Management (sub-part (10)–(12))*

*D(10)—Comments.*

*Comment:* Some comments ask the BLM to explain the relationship between the proposed vegetation management CX 11.9D(10) and the "Draft Vegetation Treatments Using Herbicides on Bureau of Land Management Lands in 17 Western States Programmatic Environmental Impact Statement; Volumes 1 & 2" (DVPEIS). Some comments are concerned that the proposed vegetation management CX will "be abused" to meet a threefold annual increase in treated acres proposed in the DVPEIS.

*Response:* The November 2005 DVPEIS (*http://www.blm.gov/weeds/VegEIS/index.htm*) analyzed the potential effects of one of the BLM's vegetation management tools (application of herbicides). The CX 11.9D(10) is established because the BLM has reviewed the environmental effects of site-specific routine vegetation management activities and determined that those activities, absent extraordinary circumstances, do not have individual or cumulative significant effects and the activities can proceed without being analyzed in an EA or EIS. By its own terms, this CX does not allow its use with respect to any proposed chemical herbicide action.

*Comment:* Some comments state that the justification for the proposed vegetation management CX 11.9D(10) is inadequately substantiated. They point to the fact that the BLM has based its justification on data from post-fire restoration efforts and "no data specific to the myriad other vegetative manipulation projects."

*Response:* Though the purpose of treating hazardous fuels and applying post-fire emergency rehabilitation is different from "routine management of vegetation," the actions and resulting effects are judged to be the same by professionals in the BLM. Therefore, the BLM has determined that it is appropriate to establish this CX based on these on-the-ground similarities. Data on routine vegetation manipulation activities designed to reduce hazardous fuels and mitigate post-wildfire environmental impacts were collected in September 2002 and analyzed in June 2003 to determine whether two CXs proposed under the Healthy Forest Initiative (HFI) (68 FR 33813–33824, June 5, 2003), were appropriate on DOI and FS lands. These same types of routine vegetation manipulation activities, and their effects on the same lands and resources analyzed in that context, would be addressed by the CX under consideration here. In the HFI context, information on 30 variables for 2,558 projects representing a range of conditions across the United States was analyzed. These data included project-specific information on the location, size, vegetation type, NEPA review processes used, predicted environmental impacts of proposed treatments, treatments performed, actual environmental impacts after treatments, and whether the associated ROD was appealed. A total of 3,073 treatments, in various combinations, were applied to the 2,558 projects. The vegetation treatments for reducing hazardous fuels included burning, mechanical thinning, application of chemical herbicides and use of biological agents (such as grazing goats). Some projects had more than one treatment applied and multiple tactics such as seeding, planting, tree felling, and soil stabilizing erosion control devices were used. The existing HFI hazardous fuel reduction and emergency rehabilitation CXs do not provide for the application of chemical herbicides or biological agents. Therefore, for the purpose of the routine vegetation management CX considered here, the BLM has proposed the same activity limits. Further, the BLM clarified the final CX language to specifically identify a limitation that no biological agents may be considered under the CX.

*Comment:* Some comments state that implementing the new CX 11.9D(10) will not sufficiently address regional or seasonal environmental concerns.

*Response:* Regional and seasonal project design considerations take place prior to any environmental analyses based on the professional judgment and expertise of BLM specialists. The data set analyzed did not identify a need for regional or seasonal limitations. The vegetation types in the HFI data are representative of the range of vegetation structure and conditions across the United States (refer to the December 18, 2005, "CX Project—Vegetation Management analysis report at *http://www.doi.gov/oepc/cx_analysis.html* or *http://www.blm.gov/planning/news.html* for details). None of the treatments that took place under a CX or an EA/FONSI resulted in individual or cumulatively significant effects. Further, the proposed action is reviewed against the "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2), and if one applies, the CX cannot be used.

*Comment:* Some comments state that adoption and use of the new vegetation management CX 11.9D(10) will cause negative impacts on ecosystems by opening areas to invasive plants resulting from cross-country travel at the wrong place and time.

*Response:* According to analyzed data, significant impacts, including exacerbating the spread of invasive species and/or disruption of the soil surface as a result of cross-country travel, did not occur except for 12 of the 2,558 projects in the sample population. These 12 projects were evaluated through the EIS process because significant effects were anticipated prior to analysis. Similar projects proposed by the BLM would not be considered for a CX due to the likelihood that one or more of the extraordinary circumstances would apply. In addition, no unanticipated project-related treatment impacts were validated by personal observation by the field staff associated with the project, field data collection through a monitoring program, or systematic evaluation of information received. Higher level NEPA analysis was deemed necessary less than 0.5 percent of the time, and those 12 projects for which significant individual or cumulative impacts were anticipated were elevated to the appropriate level of NEPA review. Based on the factual evidence framed in the context of the NEPA, adoption of the proposed vegetation management CX is justified because 99.5 percent of the projects analyzed and completed did not have a significant effect, individually or cumulatively. Further, those projects that could possibly have significant effects would not pass the "extraordinary circumstances" test and an EA or EIS would be used instead of a CX.

*Comment:* Some comments state that the BLM should not allow projects in certain high value wildlife areas such as sage-grouse habitat and potential wilderness areas unless the proposed

vegetation management actions are analyzed by an EA or EIS.

*Response:* The Responsible Official must determine the level of NEPA review required. The potential effect of a proposed action on high value wildlife areas such as sage-grouse will be part of that determination, which will take place in addition to a review for "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2). The Vegetation Management CX, by its own terms, cannot be considered for use in designated Wilderness or Wilderness Study Areas.

*Comment:* Some comments state that allowing 4,500 acres of public lands to be treated by prescribed fire without an EA is irresponsible.

*Response:* The HFI data reviewed for the development of this CX revealed no unanticipated individually or cumulatively significant impacts from prescribed fire as long as the area treated remains at 4,500 acres or less and none of the "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2) apply.

*Comment:* Some comments suggested that road construction should only be carried out following a detailed analysis. Other road construction is discussed below.

*Response:* The vegetation management CX does not apply to vegetation management activities involving new permanent road construction. Projects involving new permanent road construction must be documented through an EA or an EIS.

*Comment:* The BLM should exclude prescribed fire from the proposed revision because prescribed fire causes significant environmental impacts and safety risks, and could be an excuse for building "temporary roads."

*Response:* The BLM's review of the projects considered in the establishment of the CX revealed that, in the absence of "extraordinary circumstances," no significant effects result from these treatment actions when the 11.9D(10) CX criteria are met. Prescribed fire is an important vegetation management tool that can be the least environmentally damaging vegetation treatment option. Use of prescribed fire was analyzed in the projects reviewed and the BLM concluded that the action, if carried out consistently with the specific criteria set, did not result in a significant effect. In addition, while temporary roads included in the projects reviewed did not cause a significant effect, in response to the comment's request for clarification, the BLM has added a definition of temporary road to be used with respect to when this CX is considered for use. As an additional measure of protection, and to be consistent with the HFI CX, the BLM added a limitation to the CX so that no new permanent road can be constructed.

*Comment:* Some comments want the BLM to define the term "contiguous" both spatially and temporally, "to prevent abuse and cumulative impacts to the area's flora and fauna."

*Response:* The term "contiguous" has been eliminated to avoid possible misinterpretation. Each proposed action must describe the project and the impacted area in its entirety. Projects cannot be segmented for purposes of using this CX. The impacted area of the proposed action cannot cumulatively exceed the spatial limits established in the CX 11.9D(10): 1,000 acres for qualifying vegetation management activities, except for prescribed fire, which can affect up to 4,500 acres. Based on the spatial *and* temporal parameters of the proposed action, the Responsible Official must determine if any of the "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2) apply. If there is the potential for individually or cumulatively significant impacts on the area's flora or fauna, CX 11.9D(10) cannot be used.

*Comment:* Some comments ask the BLM not to spray "untested chemicals" under the proposed revisions to CX 11.9D(10).

*Response:* The BLM has not proposed that the application of "untested chemicals" be subject to approval for any purpose based on use of a CX. The proposed routine Vegetation Management CX specifically excludes the application of herbicides or pesticides because the data are not available by which to analyze whether such an activity should be included in the category of actions described in the CX.

*D(11) & (12)—Comments.*

*Comment:* Several comments were received related to proposed CX 11.9D(12) for authorization of non-renewable grazing use. Comments included topics such as expanding the CX to cover actions to improve land health; questioning the adequacy of the data analyzed to support the proposed CX; and requesting that the BLM give "close scrutiny" to the issuance of non-renewable grazing permits as proposed in the CX.

*Response:* Upon review of the analysis supporting the proposed CX 11.9D(12), and comments received, the BLM has decided not to finalize the proposed CX.

*Comment:* Some comments suggest that the proposed grazing permit CXs directly contradict the BLM's rationale for amendments to grazing regulations proposed on December 8, 2003, (See final rule 71 FR 39402, July 12, 2006). Comments express concern that "[t]he combined effect of the proposed categorical exclusion[s 11.9D(11)&(12)] and the previously-proposed revisions to grazing regulations will be to eliminate all opportunities for up front public consultation regarding the terms and conditions of grazing permits. The only remaining opportunities for public involvement will be the provisions for after-the-fact protest and appeal under 43 CFR 4160, and even those opportunities will be eliminated with respect to temporary, non-renewable grazing permits."

*Response:* The grazing permit CX 11.9D(11) does not contradict the rationale for changing grazing regulations with respect to consultation, cooperation, and coordination with the interested public, nor does it result in the elimination of all opportunities for up front public consultation. As explained in the ROD and in the preamble to the final rule, the final rule is intended to achieve an appropriate balance between efficient management of public lands, and the need for public involvement (See 71 FR 39414; Preamble, id at 39439–39441). The same goals are behind the new grazing CX. Moreover, "interested publics" will continue to have opportunities to participate ("to the extent practical") in public lands grazing management. Those opportunities arise, during the development of LUPs and activity plans, during the development of reports that lead to a determination regarding status of land health, and following the issuance of proposed and final decisions (See 71 FR at 39432, 39470, and 39475). During the development or revision of a RMP, the BLM may decide what public lands will (or will not) be available for livestock grazing, change past LUP decisions, or develop guidance for making such decisions. In addition, the BLM may use the land use planning process to determine if any allotment management plans (AMPs) will be put in place. Either during or after the land use planning process, the BLM develops the terms and conditions of permits, leases, and AMPs, such as the authorized animal unit months (AUMs) and seasons of use. In this tier of decision-making, the BLM incorporates a variety of elements of rangeland management into a single document. For example, public scoping conducted during the revision of an RMP may prompt the BLM to coordinate the timing of land health assessments with

the duration of permits, leases, and AMPs within a Field Office so that data from recent land health assessments will be available at the time of renewal. The authorized officer (Responsible Official), using his or her knowledge and expertise, will identify the relevant factors, make findings, and integrate them into a single proposed decision. At that point, the interested public has an opportunity to protest, and thereby affect the decision before it is finalized. Public participation is a part of the BLM's land use planning process, and enables Responsible Officials to refine the details of their analysis before they finalize grazing decisions. However, a Responsible Official is in the best position to compile, and consider in the first instance, the factors that are relevant to a grazing allotment in a proposed decision. Thus, the final rule and the new grazing CX provide for public input, where most valuable, in deciding management direction for public lands. Comments with respect to temporary non-renewable grazing permits are moot in view of the BLM's decision to not finalize proposed CX 11.9D(12).

*Comment:* Some comments ask the BLM to expand the grazing permit CXs 11.9D(11) and (12) by "adding a 'resource health activities' component" addressing "water developments, fences, etc."

*Response:* The CX 11.9D(11) covers grazing permit activities where and when certain conditions are met, including achievement of land health standards, or documentation that the existing livestock grazing is not a causal factor if standards are not met. Expanding the CX to include "resource health activities" as described by the comment would exceed the scope of the administrative actions analyzed to support the CX 11.9D(11). An analysis of the effects of implementing these types of projects would need to occur before a CX could be developed for these activities. Proposed CX 11.9D(12) is not being finalized.

*Comment:* Some comments state that the fact that most grazing permit EAs have resulted in FONSIs is insufficient evidence to demonstrate that EAs are unnecessary or the impacts are not significant.

*Response:* The BLM disagrees. The BLM established the CX based upon a review of past environmental documents, including EAs and FONSIs. This review showed that in the overwhelming majority of cases, permit issuance did not result in significant impacts to the human environment, either individually or cumulatively. Based on comments received in response to the proposal of this CX (71 FR 4159–4167, January 25, 2006), as well as consultation with CEQ, the BLM collected and reviewed additional information regarding past actions and the effects of those actions. This additional review is intended to clarify the information previously presented in the Analysis Report on the issuance of grazing permits made available in conjunction with the January 25, 2006, proposal (see 71 FR 4159–4167, January 25, 2006, *http://www.blm.gov/planning/news.html*). The BLM determined a data refinement was needed that would facilitate gathering information on a random basis regarding permits issued during the period of 1999 through 2004. Taking this consideration into account, the BLM determined that the most valid and reliable method of review would be to conduct a stratified random sample of grazing permits issued, drawn from the BLM's national Rangeland Administration System (RAS) database. A Supplementary Analysis Report reflecting this refinement of information regarding NEPA compliance in the issuance of grazing permits, conducted based on information in the RAS database, in response to comments received, and in consultation with CEQ, is available at *http://www.blm.gov/planning/news.html*. Rather than the 12,724 records of grazing permits issued presented in the January 2006 Analysis Report, there are only 9,226 applicable records in the RAS database for the relevant time period, 1999 to 2004. These total figures are different due to the differing recordkeeping methods of the BLM Field Offices on the one hand, and the national RAS database on the other. Specifically, the BLM field offices, when queried for the review reported in January 2006, had returned total numbers representing all permits processed during the relevant time period. The RAS database includes only those permits processed and actually *issued*. Most importantly, the RAS database identifies by office and state each permit issued during that time-period. Thus, the RAS database provides an opportunity to conduct a state stratified random sample of the permits issued during the relevant time period. The BLM determined from review of the sampling of these 9,226 records that 80 percent of grazing permits issued were issued based on environmental assessments (EAs) resulting in Findings of No Significant Impact (FONSIs). The BLM determined, based on monitoring, personal observation, and/or the professional judgment of BLM rangeland specialists, that as predicted by these FONSIs, permitted grazing resulted in no significant effects, either individually or cumulatively. This methodology for supporting establishment of CXs is consistent with CEQ's proposed guidance for the establishment of CXs (See 71 FR 54816, September 19, 2006). For the remaining 20 percent of the sample of grazing permits issued, compliance with the NEPA was documented in a DNA, which is a BLM procedure for documenting whether adequate NEPA analysis has already taken place for a particular action. The DNAs documented that additional review was not required, as adequate analysis had been presented in previously completed EISs. The BLM then surveyed the field offices to review the EIS analysis to determine first, whether or not grazing permit issuance itself had been predicted in the EIS to result in significant effects and second, whether or not, in their professional judgment, significant effects had in fact occurred as a result of the permitted grazing. Ninety-four of the 458 permits in the sample, or approximately 20 percent of the sampled permits, had been issued under a DNA based on an EIS. The BLM found that of these ninety-four permits, for five, significant effects had been identified within the EIS, and for another one, significant effects had been documented (through the Land Health Assessment process) to have occurred. Therefore, on a weighted basis, because these numbers were based on a state-stratified random sample from the parent population in the RAS database, the BLM determined that no more than 3 percent of total permits issued would have resulted in significant impacts, either individually or cumulatively, on the quality of the human environment. For the remaining 17 percent of the total permits issued (which used a DNA based on an existing EIS), the field offices reported that the resulting effects were not significant. Based on this review, the BLM is confident in its projection, that only a small percentage (no more than 3 percent) of permits issued would result in significant effects on the environment. This small percentage would be screened out by "extraordinary circumstance" review. Therefore, based on the review of the data presented in January 2006, as well as review of the refined data, the BLM concludes that in the absence of "extraordinary circumstances," the issuance of a grazing permit does not have a significant effect on the environment, individually or cumulatively. Further, the BLM in the establishment of CX 11.9D(11), has

instituted a limitation for the use of this CX. This limitation is that the Responsible Official must determine (and document the finding) either that land health standards are met, or that any failure to meet standards is not the result of existing livestock grazing.

*Comment:* "The BLM has proposed to revise its NEPA manual to categorically exclude most term grazing permits (516 DM 11.9D(11)) and most temporary non-renewable grazing permits (516 DM 11.9D(12)) from analysis under NEPA. These proposed categorical exclusions are unlawful, unjustified, and ill-advised."

*Response:* The CEQ regulations implementing the NEPA authorize the creation and use of CXs. The CEQ encourages federal agencies to assess and act upon opportunities to increase the NEPA efficiency by creating and using appropriate CXs (40 CFR 1507.3(b)(2)(ii) and 1508.4: See also "NEPA Lessons Learned Oversight Hearing, CEQ" testimony before the House Committee on Resources Task Force on Updating the NEPA Lessons Learned, 2005). Based on comments received, the BLM took two actions: (1) The BLM dropped the proposed non-renewable grazing permit CX from further consideration under this manual revision; and (2) The BLM refined its analysis of existing NEPA documents associated with the issuance of grazing permits (see above response), which had been reviewed for the establishment of the 11.9D(11) and has further limited the situations in which the CX can be used.

*Comment:* Some comments state that the BLM is attempting to substitute the NEPA environmental assessment process with the rangeland health assessment process, and by extension, that the BLM is assuming there will be no significant environmental impacts if rangeland health assessment standards and guidelines are met.

*Response:* While land health assessments are part of the process of determining the applicability of the grazing permit CX 11.9D(11), the BLM is not substituting land health assessments for NEPA compliance. The CX was established based on an initial review of the NEPA documents, for the processing of grazing permits, reported by the BLM state offices in January 2006. As described above, a further refinement and review of data on grazing permit issuance, conducted in October through December 2006, revealed that, on the whole, issuance of grazing permits does not result in significant effects, individually or cumulatively, on the quality of the human environment. See discussion of this data refinement above and the BLM conclusion that in the absence of "extraordinary circumstances," the actions covered under CX 11.9D(11) do not have significant effects, individually or cumulatively. Rather, the land health assessment requirement is an additional limitation the BLM is incorporating into the CX 11.9D(11). This is in keeping with CEQ proposed guidance published at 71 FR 54816, September 19, 2006, which emphasizes that CXs must clearly describe a category of actions, and should include physical and/or environmental factors that would constrain its use. The purpose of a land health assessment is to determine the status or condition of the land or grazing allotment. The rangeland assessment process is not intended to serve as an analysis of impacts associated with a particular management action, although the condition of the land must be considered if the management action potentially involves issuing a grazing permit using the new grazing permit CX (43 CFR 4180). The land health assessment process comes into play as a limitation on use of the CX because application of the CX is limited to those permits where allotments are determined to be meeting land health standards, or if not meeting land health standards, this is due solely to factors other than existing livestock grazing. If existing livestock grazing management or level of use is determined to be a significant causal factor for failing to achieve standards, federal regulations mandate that the BLM take appropriate action to make significant progress toward achieving those standards (43 CFR 4180.2(c)). If the land health assessment finds that standards *are* being met, the Responsible Official may fulfill obligations under the NEPA by using the grazing permit CX, provided that, in accord with 40 CFR 1580.4, the Responsible Official determines and documents that none of the "extraordinary circumstances" (described in 516 DM 2.3A(3) and appendix 2) applies.

*Comment:* Some comments state that administratively allowing the names on a permit to change, but "the terms of the permit to continue unchanged" without further analysis is "inconsistent" under NEPA and negates an opportunity to look at ground conditions.

*Response:* The BLM deleted part (b) of CX 11.9D(11) to clarify the intent of the CX to require completion of a land health assessment before application of a CX could be considered. Therefore, administrative changes such as changes of names on grazing permits are subject to CX 11.9D(11) and its criteria involving the completion of land health assessments. "Ground conditions" are evaluated in the land health assessment process. Existing monitoring and inventory data and information gathered using the BLM approved techniques are used to evaluate conditions in relation to the standards developed by the BLM state directors in consultation with their respective Resource Advisory Councils as directed in 43 CFR 4180.2. Changing the name on a permit does not change on-the-ground management or the effects of implementing the other terms and conditions of the permit. The modification of CX 11.9D(11) will assure that land health assessment findings are considered when making an "administrative" change.

*Comment:* Some comments state that the federal courts have determined that grazing permits significantly affect the human environment.

*Response:* In 1974, a federal court stated that "[t]he court is * * * persuaded that the grazing permit program produces significant impacts on individual locales. And when the cumulative impact of the entire program is considered, it is difficult to understand how defendants-intervenors can claim either that the impact of the program is not significant or that the Federal action involved is not major." *NRDC* v *Morton*, 388 F. Supp. 829, 835 (D.D.C. 1974), *aff'd*, 527 F.2d 1386 (DC cir 1976), *cert. denied*, 427 U.S. 913 (1976). As a result of this ruling, the BLM agreed to (and did) analyze the effects of the BLM grazing program in over 140 local EISs covering approximately 160 million acres. The Interior Board of Land Appeals (IBLA) subsequently held in *National Wildlife Federation* v. *BLM*, 140 IBLA 85 (1997) that, in the Comb Wash allotment, the general analysis for the LUP did not provide adequate site-specific analysis of the effects of livestock grazing. Consequently, the BLM issued guidance in Washington Office Instruction Memorandum 99–039 Attachment 3 explaining that existing NEPA documentation should be reviewed to determine if adequate analysis had already been completed, and where existing documents were not adequate, adequate NEPA documents should be developed. The BLM Responsible Officials have instituted these directives. Based on comments received in response to the January 2006 proposal to establish new CXs, as explained above, the BLM refined its review and analysis of NEPA documents associated with all grazing permits issued in 1999 through 2004 (9,226 projects). See the data refinement discussion above. Approximately 80 percent of the 9,226 grazing permits

issued from 1999 through 2004 were based on EA/FONSIs. The remaining 20 percent of permits sampled used a DNA, which indicated an existing EIS represented sufficient analysis to support issuance of the grazing permit. In addition to the review of the NEPA documents, BLM specialists used monitoring, personal observation and/or professional judgment to evaluate the permitted grazing. This evaluation of the NEPA documents and any actual impacts not anticipated in the NEPA documents revealed that significant impacts were estimated to be (weighted, on the basis of a state-stratified random sample), at most, 3 percent of the permits issued between 1999 and 2004, with a high degree of certainty. The BLM believes the "extraordinary circumstances" review would preclude use of CX 11.9D(11) in similar circumstances. Establishment and appropriate use of the grazing permit CX 11.9D(11) is warranted based on the analysis described above and in the Supplementary Analysis Report. Establishment and appropriate use of the CX is also warranted in the context of the BLM administrative procedures such as the BLM Qualifications and Preference Handbook (H–4110–1), the state-specific standards and guidelines, and the specific terms and conditions identified within local LUPs. The extraordinary circumstances review provides additional protections to prevent the issuance of permits through a CX when significant individual or cumulative impacts are likely to occur.

*Comment:* Some comments state that the statistics presented in the "CX Project—Grazing Permit" analysis report posted at *http://www.doi.gov/oepc/cx_analysis.html* and *http://www.blm.gov/planning/news.html* are "extraordinarily misleading" because they fail to reveal the multiple instances in which the federal courts or DOI administrative law judges have found that the BLM violated NEPA by failing to prepare an EIS. The example cited was *Western Watersheds Project* v. *Bennett*, 392 F. Supp. 2d 1217 (D. Idaho 2005).

*Response:* These comments highlight a case in which the court found that the BLM had erred in preparing four EAs associated with four grazing permits for 28 grazing allotments in the Jarbidge Resource Area in Idaho. The BLM should instead have prepared a single NEPA document covering all four permits. It is speculative to suggest that this finding undermines the BLM's analysis of thousands of permits. Moreover, a careful reading of the court's opinion reveals that none of the grazing decisions at issue in that case would have been eligible for use of the new CX, because land health assessments had shown that land health standards were not being met in any of the allotments—generally because of grazing. Further, the BLM believes that existing NEPA compliance procedures would have rendered the proposed actions involved in the *Western Watersheds Project* v. *Bennett* case ineligible for the new grazing permit CX 11.9D(11) based upon review of the "extraordinary circumstances." Specifically, "extraordinary circumstance" 516 DM 2 appendix 2.8 would have applied. This extraordinary circumstance applies when a proposed action may have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.

*Comment:* The same comments state that "[I]t is likely that many of the EAs and FONSIs tabulated in [the "CX Project—Grazing Permit" Analysis Report] were not subject to challenge by environmental, conservation, or wildlife interests. Experience has shown that, when subject to administrative or judicial challenge, a high percentage of the BLM's FONSIs for grazing permits are found to be unlawful. If more had been challenged, it is likely that many more of the FONSIs would have been overturned and environmental impact statements (EISs) would have been required."

*Response:* These comments are speculative in nature. An administrative or judicial challenge to a particular EA and FONSI may result in a ruling that, for example, an agency failed to take a hard look in a particular instance. However, it is unreasonable to assume that EAs and FONSIs that were never protested or appealed were unlawful.

*Comment:* The same comments ask the BLM to "survey the EAs that have been prepared for grazing permits to determine the nature and scope of the information and analysis that they have contained and the public comment that they have engendered."

*Response:* The BLM reviewed data relating to the NEPA documents for grazing permits that were completed in 1999 through 2004. CX 11.9D(11) has been established based on the finding that the overwhelming majority of these NEPA documents (EAs prepared in accordance with CEQ regulations and agency guidance) resulted in FONSIs and subsequent BLM review of the actual effects of grazing confirmed this prediction. For those proposed permits for which a DNA reflected the prior completion of adequate NEPA, at most (weighted, based on a state-stratified random sample), only 3 percent were found to have resulted in a significant effect, either individually or cumulatively. The CX would not have been considered for use with those actions found to have significant effects, as one or more of the "extraordinary circumstances" would have applied. The BLM concluded, based on this evidence, that the issuance of grazing permits is an action that does not have a significant impact on the human environment, either individually or cumulatively. This is in accord with the CEQ proposed guidance on the establishment of CXs (See 71 FR 54,816, September 19, 2006). Use of this CX in light of an "extraordinary circumstances" review provides a further safeguard that significant impacts will be avoided. The BLM believes additional analysis of the type requested is not required.

*Comment:* Some comments state that the proposed revisions to the grazing permit process remove environmental safeguards by reducing the amount of information needed.

*Response:* In order to establish the grazing permit CX, the BLM reviewed NEPA analyses completed in the process of issuing 12,724 permits over a five-year period and then, as explained above, further refined this analysis by sampling 9,226 permits identified in the RAS database. These permits were processed regardless of whether or not land health assessments had been completed for the relevant allotments. The results of that review show that impacts to the human environment from the issuance of grazing permits are not significant, either individually or cumulatively. The CEQ regulations support the establishment of a CX in circumstances where the review of data shows that impacts of a particular action have not been significant, either individually or cumulatively. Not only does the required review of the "extraordinary circumstances" provide a safeguard when using the CX, but also the specific criterion that a land health assessment must have been completed, and result in a certain finding, provides an additional safeguard at the outset. This is in keeping with CEQ proposed guidance published at 71 FR 54816, September 19, 2006, which emphasizes that CXs must clearly describe a category of actions, and should include physical and/or environmental factors that would constrain its use. As part of the CX criteria, land health assessment and evaluation information and status are considered. The evaluations are based on existing inventory and monitoring information, data collected

using BLM-approved methods, and, if appropriate, information provided by other sources, such as other agencies, permittees, or the interested public. The grazing CX cannot be used unless the specific CX criteria are met and none of the "extraordinary circumstances" applies.

*Comment:* Some comments correctly assume that rangeland health "Land Health" assessments only look at a limited set of environmental concerns covered by the NEPA. These same comments express concern that impacts on certain resources covered by the NEPA (*e.g.*, archeological sites) are not specifically evaluated and use of CXs (11.9D(11)&(12)) will preclude appropriate consideration of resources not included in land health assessments.

*Response:* Use of the grazing CX 11.9D(11) requires review against the list of "extraordinary circumstances." Two of the "extraordinary circumstances," 516 DM Ch appendix 2.2 and 2.7, ensure that "cultural resources" will not be affected by the proposed action; therefore, impacts to cultural resources are not overlooked when a grazing permit is processed through CX 11.9D(11). In addition, use of the CX (or any CX) does not eliminate the need to comply with statutes such as Section 106 of the National Historical Preservation Act and the Archeological Resource Protection Act (1979).

*Comment:* Some comments question some of the key terms and concepts in the grazing permit CXs 11.9D(11)&(12): (1) "Assessed and evaluated," (2) "meeting land health standards," and (3) "not meeting standards solely due to factors other than existing livestock grazing" are arbitrary, and " [N]ot meeting standards solely due to factors other than existing livestock grazing" is an admission that "the land is in poor condition." The comments go on to say, "[I]f the land is already degraded, the approval of a lease, absent any NEPA review, will only further devastate the land and result in substantial environmental impacts."

*Response:* In keeping with CEQ proposed guidance published at 71 FR 54816, September 19, 2006, which emphasizes that CXs must clearly describe a category of actions, and should include physical and/or environmental factors that would constrain its use, the land health standards serve as a screen to ensure that the grazing CX is considered for use only where land health standards are being met or if not being met, the cause is not existing livestock grazing use. The concept of "meeting land health standards" is derived from grazing regulations in 43 CFR 4180.2. These regulations require action to change existing grazing if the Responsible Official finds that current livestock grazing is a significant cause for "failing to achieve the standards." The reference to "not meeting land health standards solely due to factors other than existing livestock grazing" follows from the same regulatory requirement, but is somewhat more restrictive than the language in the regulations, in that the CX may only be used when existing livestock grazing is not at all a contributing factor for failure to achieve standards. Assessments and evaluations are not arbitrary concepts; they are the means for determining whether standards are achieved and identifying the causal factors for "failure to achieve." If standards are not achieved because of another activity, then that activity needs to be addressed (BLM Rangeland Health Standards Manual 4180). For example, during the course of a land health assessment the BLM could determine that the amount of dead and down woody material in an area of forested lands is causing an unnatural build-up of fuels and that the resulting potential for a severe wildfire is an indication that the land is failing to meet one or more of the land health standards. In this example, the inter-disciplinary team determines that livestock grazing is not a contributing factor to the unnatural build-up of woody fuels that resulted in non-achievement of the standard. This is one example of a situation where changes in, or denial of a grazing permit/lease would not influence attainment of the land health standard(s).

*Comment:* Some comments state that the BLM's "land health standards are not sufficiently demanding" to prevent significant environmental impacts or to restore degraded lands. The "bar for compliance is pretty low and * * * most * * * [allotments] routinely pass * * * regardless of condition." Allotments can "meet land health standards" and still "have important and unresolved resource issues which are more likely to be ignored in a CX than an EA."

*Response:* Based on the data analyzed for establishment of the grazing CX 11.9D(11), as explained above, 80 percent of the NEPA documents prepared in support of issuing grazing permits predicted no significant effect on the quality of the human environment, and subsequent BLM review of the actual effects of grazing confirmed this prediction, regardless of whether the allotment for which the permit was issued had undergone a land health assessment. For the (at most 3 percent) grazing permits issued, that did or may have (projecting on the basis of the sample reviewed) result(ed) in significant effects, the BLM's NEPA review procedures that are in place to review proposed actions against the DOI's "extraordinary circumstances" would have rendered the actions that did result in a significant effect as ineligible for CX consideration. The BLM believes that for issuing grazing permits in the future, the review of the "extraordinary circumstances" will identify significant unresolved issues related to grazing use. When any of the "extraordinary circumstances" apply, a CX cannot be used even if land health standards are met. The BLM has placed a limitation on the use of the CX 11.9D(11), which only allows consideration of the grazing permit CX when an allotment is meeting land health standards or is not meeting land health standards for reasons other than livestock grazing. As explained above, the inclusion of this limitation is in accord with CEQ proposed guidance published at 71 FR 54816, September 19, 2006.

*Comment:* Some comments state that, " 'and health standards' evaluations are not conducted often enough and get outdated quickly when drought, fire, and other circumstances occur. This is particularly problematic when a [non-renewable permit] is to be issued."

*Response:* The grazing permit CX 11.9D(11) cannot be used if land health standards have not been assessed or evaluated, and the evaluation team is responsible for the adequacy of the information. As discussed above, the non-renewable grazing CX 11.9D(12) is not being finalized. No grazing permit can be issued under CX 11.9D(11) unless CX criteria are satisfied and none of the "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2) applies.

*Comment:* Some comments state that the new grazing permit CXs "would permit inappropriate grazing * * * to pollute streams and watersheds * * *."

*Response:* The CXs, EAs, FONSIs, and EISs do not "permit" grazing or any other activity on public lands, they document fulfillment of procedural requirements under the NEPA. When the proposed action consists of a permit, lease, or other grazing authorization, the NEPA compliance for these actions cannot end with a CX unless an authorized officer (Responsible Official) has completed a land health assessment for the relevant allotment, and has concluded that the 43 CFR 4180 standards for grazing administration are being achieved. Since all state and regional standards address water quality

and other ecological criteria, the BLM is confident that the use of CXs will not result in the pollution of streams and watersheds.

*Comment:* Some comments say that rangeland health "land health" assessments do not address the cumulative impacts of grazing on multiple allotments.

*Response:* The land health assessments are not meant to replace the NEPA analysis and do not directly address cumulative impacts. As explained above, in accordance with CEQ proposed guidance (71 FR 54816, September 19, 2006), which recommends that categorical exclusions should clearly define a category of actions, as well as any physical or environmental factors that would constrain its use, the BLM has incorporated this limitation as criteria for the use of the CX in relation to issuance of a grazing permit. The land health assessment would serve as a "screen" to determine if a CX might be considered for issuing a grazing permit. The land health assessment process identifies whether or not the land health standards are being achieved, and if they are not achieved, the causal factors are identified. Therefore, they do provide useful information about whether grazing is contributing to non-achievement of one or more of those standards. Cumulative impacts of grazing on multiple allotments are often analyzed at the LUP allocation level under an EIS or EA, but that analysis may also occur within a more program specific NEPA document. Individual grazing permits can be issued within the scope of such LUP NEPA analysis and/or appropriate program specific NEPA analysis. Issuance of the grazing permit would be based on the resource allocation of the LUP or other program-specific plan. Any additional mitigation measures or other restrictions in grazing use, prescribed in the NEPA analysis that addressed cumulative impacts associated with grazing, would be incorporated in the grazing permits issued within the scope of that NEPA analysis. As explained above, based on the data analyzed for establishment of the grazing CX 11.9D(11), 80 percent of the NEPA documents associated with issuing grazing permits resulted in a FONSI. That is, the evidence showed that the action of issuing grazing permits was predicted not to result in significant impact to the human environment, either individually or cumulatively and BLM specialists through monitoring, personal observation and/or professional judgment confirmed these predictions. As an added safeguard, when considering issuance of individual grazing permits, the Responsible Official must consider the DOI "extraordinary circumstances." If "extraordinary circumstance" 516 DM 2.3A(3) and appendix 2.6, regarding significant cumulative impacts applies, the grazing CX cannot be used, and an EA or EIS would be prepared.

*Comment:* Some comments viewed the revisions as enabling "unsustainable grazing permits."

*Response:* It is unclear what is meant by "unsustainable grazing permits." In the context of the Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.* (FLPMA), the BLM is required to administer public lands for multiple use and sustained yield. The BLM grazing permits are managed in accordance with FLPMA, the Taylor Grazing Act, 43 U.S.C. 315 *et seq.*, and the Public Rangelands Improvement Act, 43 U.S.C. 1901 *et seq.* An element of this management is a requirement to authorize grazing permits that do not preclude achievement of land health standards, consistent with these statutory mandates. The grazing CX 11.9D(11) is being established based on evidence that grazing decisions do not result in significant impacts to the environment, either individually or cumulatively. The BLM data show that the predictions represented by the EAs that resulted in FONSIs were confirmed by BLM professionals through monitoring, personal observation and/or professional judgment. The grazing CX 11.9D(11) can be used only for those permits being issued for livestock grazing on allotments where land health standards are achieved under existing grazing management, or where a Responsible Official finds that standards are not achieved due to factors that do not include existing livestock grazing. If standards are not met and current livestock management is one of several activities contributing to the non-achievement of the standards, a grazing permit cannot be issued using the new grazing permit CX, and an EA or EIS must be prepared unless the permit is withdrawn. Further, any use of a grazing CX would require review against the "extraordinary circumstances," and if one applies, a CX cannot be used, and an EA or EIS would be prepared.

*Comment:* Some comments state that the analysis methods were not sufficiently disclosed which means the data set and the data interpretation could be flawed.

*Response:* As stated in the analysis report, available at *http://www.blm.gov/planning/news.html*, the data analyzed included a review of 12,724 NEPA documents associated with grazing permits issued between October 1, 1999, and September 30, 2004. Based on this comment, as well as consultations with CEQ, the BLM further refined its analysis, reviewing data from the RAS database, the official source of grazing administration data for the BLM, instead of from individual state reports, as were used in the January 2006 analysis report. Use of the information in the RAS database provided the BLM with an appropriate set of data from which to draw a stratified random sample for analysis. See the refined analysis report at *http://www.blm.gov/planning/news.html*. This refinement of the data on grazing permits resulted in 9,226 records, rather than the 12,724 presented in the January 2006 Analysis Report. This review based on the information in the RAS database ensured that only records of permits actually issued, not just processed, were being reviewed and eliminated the possibility of inappropriate inclusion of those permits issued pursuant to specific congressional authorization, regardless of completion of the NEPA process (see Pub. L. 108–108, Section 325, 117 Stat. 1307–1308 (2003)). The BLM determined from review of these 9,226 records that 80 percent of grazing permits issued were issued based on EAs resulting in FONSIs. Further, the BLM determined, based on monitoring, personal observation, and/or professional judgment by BLM rangeland specialists, that, as predicted by these FONSIs, permitted grazing resulted in no significant effects, either individually or cumulatively. This methodology for supporting establishment of CXs is consistent with the CEQ's proposed guidance for the establishment of CXs (See 71 FR 54,816, September 19, 2006). For the remaining 20 percent of grazing permits issued, in the majority of cases, the DNA review documented that additional NEPA review was not necessary. The issuance of the permits had been adequately analyzed in an existing EIS prepared in the course of the land use planning process or specifically prepared to address grazing issues. The BLM concludes from this review that, in general, the issuance of grazing permits results in no significant impacts and establishment of a CX is warranted. The BLM believes that "extraordinary circumstances" review will capture those instances for which additional NEPA review will be necessary, such as the 3 percent (weighted, on the basis of a state-stratified random sample analysis) of permits issued in conjunction with a DNA prepared on the basis of an existing EIS, for which

significant impacts were either predicted to occur, or though not predicted, were observed (during the land health assessment process) to have occurred. In this regard, the results of the additional data calls conducted in October 2006, as reflected in the Supplemental Analysis Report, are consistent with the results originally presented in the Analysis Report published in January 2006, which showed that in only a few cases (0.2%) did issuance of grazing permits/leases require preparation of a new EIS because of specific resource reasons.

*Comment:* Some comments ask whether any land health assessments are based on "observations" alone (ocular estimates). Other comments express an opinion that "[o]cular monitoring to determine the range condition and trend makes management [of grazing permit decisions based on observations alone] arbitrary and capricious."

*Response:* The BLM does not use exclusively qualitative (*i.e.* "ocular" or "observational") methodology to determine trend. The BLM's Rangeland Health Standards Handbook (H–4180–1) provides guidance on using qualitative ("observational") and quantitative information to determine the status of land health. In addition, the BLM's Technical Reference, Interpreting Indicators of Rangeland Health, Version 4 (TR1734–6) describes land health assessment protocols, developed through an interagency process, which have received interdisciplinary review. TR 1734–6 identifies limitations for using the results derived from the qualitative ("ocular"/"observational") process. For example, TR 1734–6 states that the qualitative process described in the document is not suited to detecting land health condition trends. Qualitative methods are appropriate for certain purposes, but quantitative data are needed to detect and statistically validate trends. When an assessment is done, existing monitoring data are evaluated. This data can be the result of either quantitative or qualitative methods. Where these data do not address all of the standards, the BLM employs the processes described in TR 1734–6 to assess conditions. Within the limits described in this TR 1734–6, qualitative approaches, such as ocular or observational methods, are important tools for assessing conditions, but not trends.

*Comment:* Some comments ask that management alternatives that could improve land health conditions not be excluded from the new grazing permit CXs 11.9D(11)–(12). These comments recommend modifying the new grazing permit CXs to allow changes to the authorized grazing activities that might improve ground cover, soil stability, and other conditions to reduce conflicts with other resource uses.

*Response:* The BLM's purpose in establishing CX 11.9 D(11) is to expedite the permit issuance process where the environmental impacts have been shown not to be significant, either individually or cumulatively. In appropriate circumstances, it may be possible to apply the CX to modifications (*e.g.* reduced level of grazing) that might improve ground cover, soil stability, and other conditions to reduce conflicts with other resources so long as the terms of the CX are met and the overall effects of the livestock grazing permit do not result in an inability to meet land health standards. Further, a CX may only be used when none of the "extraordinary circumstances" applies. If any of the "extraordinary circumstances" applies, then the proposed action (including the actions listed in the comment) may require preparation of an EA or EIS. Because the proposed CX 11.9D(12) is not being finalized through this action, the potential applicability of proposed CX 11.9D(12) will not be addressed here.

*Comment:* Some comments state that the grazing permit CXs 11.9D(11)–(12) will "allow the BLM to issue a permit for any number or type of livestock, for any season, [for any given time period], with (or without) any terms and conditions, without performing any analysis pursuant to NEPA."

*Response:* The CEQ regulations provide that NEPA obligations can be fulfilled using categorical exclusions (43 CFR 1507.3 and 1508.4). The CX 11.9D(11) has been established based on review of analyses of NEPA documents completed in the process of issuing grazing permits. This review showed that in the vast majority of cases, this action of issuing a grazing permit resulted in a FONSI and that as described above, only a very small percentage (3 percent, weighted, as based on a state-stratified random sample) resulted in significant effects. The BLM believes that "extraordinary circumstances" review would have precluded use of the CX in the circumstances represented by this small percentage of instances. The BLM concluded based on its review of the resulting effects of the grazing permit issuance action that, in the absence of "extraordinary circumstances," there are no significant effects, individually or cumulatively. Use of this CX is specifically limited in two ways. First, the permitted use must be basically the same as that previously authorized (same kind of livestock, the active use is not exceeded, and the grazing season is not more than 14 days earlier or later than the use authorized on the previous permit/lease). Second, the land health standards must be met or if the standard(s) are not met, this can only be due to factors that do not include existing livestock grazing. If the permit action is ineligible under these criteria, then grazing permit CX 11.9D(11) cannot be used. As mentioned above, CX 11.9(D)(12) is not being finalized through this action.

*Comment:* Some comments identify "six resources categories" that are adversely affected by livestock grazing and its associated infrastructure (facilities), which they state are not addressed by land health standards. The six categories they identified are archeological sites, wilderness, scenery, recreational opportunities, wildlife other than listed and "sensitive" species, and natural surface water sources. They contended that, if the grazing permit CXs 11.9D(11)–(12) are adopted, analysis and consideration of the impacts on these resources would never occur on any allotment that meets minimal standards for land health.

*Response:* Water quality and wildlife habitat standards are addressed in all the sets of state or regional land health standards. Two of the six resources mentioned in the comment (archeology and wilderness) are specifically addressed in the "extraordinary circumstances" found in 516 DM 2, appendix 2.2. In addition, appendix 2.2 refers to recreation, wild and scenic rivers, national natural landmarks, sole or principle drinking water aquifers, wetlands, floodplains, migratory birds, and other ecologically significant or critical areas. "Infrastructure" that facilitates management of livestock grazing is not addressed in the CX. Such infrastructure (also known as "range improvements") would be addressed in AMPs and project proposals and would, in accordance with 43 CFR 4120.3–1(f), receive appropriate NEPA review separate from CX 11.9D(11).

*Comment:* Some comments state that rangeland health "land health" assessments fail to address many significant impacts of grazing.

*Response:* Land health assessments are not intended to analyze the impacts of grazing, but to determine the existing condition of the public land in comparison to the land health standard. If the Responsible Official determines that land health standards are not being achieved, a determination is made regarding the significant causal factor(s). If the Responsible Official finds that

current livestock grazing management or levels of use are significant causal factors for failure to achieve land health standards, they are directed by regulation (43 CFR 4180.2) to take appropriate action to make significant progress toward achieving the standard(s) not achieved. The issue of whether there are any significant impacts from the BLM-permitted grazing is addressed pursuant to compliance with the NEPA at the time permits are issued. Use of a CX, like the grazing CX 11.9D(11) is a method of complying with the NEPA (see 40 CFR 1500.4(p); 40 CFR 1500.5(k); 40 CFR 1507.3; and 40 CFR 1508.4). As explained above, the grazing CX 11.9D(11) has been established based on the results of a review of NEPA documents associated with the issuance of grazing permits over a five-year period and the subsequent BLM review of the actual effects of grazing confirmed this prediction. The review shows that this category of actions (issuing permits) has no significant impact on the human environment, either individually or cumulatively and would not normally warrant preparation of an EIS or EA. Land health assessments are not the only screen for determining whether the grazing CX 11.9D(11) may be used. The "extraordinary circumstances" also provide screening for application of the CX.

*Comment:* Some comments ask these questions: "What is the required time period and nature of the assessment?" "Is it a detailed FRH [Fundamentals of Rangeland Health] assessment or a cursory review by a BLM team?"

*Response:* An assessment consists of a review of existing monitoring and inventory data, and a review of the status of selected indicators using BLM TR 1734–6. The assessment may include a collection of new monitoring data when there is inadequate information to make a determination of status or causal factors for non-achievement. In 1998, the BLM directed State Offices to develop a strategy to complete an assessment of current conditions in relation to land health standards and to strive to assess about 10 percent of their land each year. Washington Office Instruction Memorandum No. 98–91 provided direction to assess high priority areas first. The Responsible Official usually determines the level of intensity of the assessment based on issues, availability and currency of existing inventory and monitoring data, and amount of information needed to make a determination of status and, if necessary, to determine causal factors where land health standards are not achieved. The land health assessment process is described in the BLM's Rangeland Health Standards Handbook (H–4180–1) available at the BLM's Web site *http://www.blm.gov/nhp/efoia/wo/fy01/im2001-079.html.*

*Comment:* Some comments ask the BLM to include a "requirement as to the [currency and] quality of the data involved" to ensure that the BLM is "employing the Best Available Science."

*Response:* CEQ regulations at 40 CFR 1502.22 and 1502.24 include requirements that an EIS include "credible scientific evidence" (1502.22), and that "agencies shall ensure the professional integrity, including scientific integrity of discussions and analyses in environmental impact statements." (1502.24). The BLM conducts its environmental reviews and analyses in accordance with guidance contained in programmatic handbooks and technical references to ensure the professional integrity of the information, discussions, and analyses. For example, the BLM's Rangeland Health Standards Handbook (H–4180–1) provides direction for collecting and evaluating information used in determining the status of land health. The BLM's Rangeland Health Standards Handbook (H–4180–1) contains a lengthy discussion of the availability and adequacy of existing data including factors such as the age, scale, and appropriateness of the data to be used. Professional judgment may be used to draw conclusions where quantitative data does not lead to definitive conclusions; but the reasoning behind the use of professional judgment should be documented. The interdisciplinary team evaluating the land health standards is also responsible for the adequacy of the available information. If the interdisciplinary team concludes that there is inadequate information available to evaluate the land in light of the standards, then they are directed to begin gathering the information needed. Various BLM technical references, such as TR 1730–1 "Measuring and Monitoring Plant Populations," TR 1730–2 "Biological Soil Crusts: Ecology and Management," and TR 1734–4 "Sampling Vegetation Attributes" provide descriptions of the approved techniques for collecting data. These technical references are available at the BLM's National Science and Technology Center at *http://www.blm.gov/nstc/library/techref.htm.* As new information becomes available, it may be considered for incorporation into public land management policies and technical references. When determining in what circumstances to use a CX or an environmental document, the Responsible Official has discretion to determine, consistent with BLM guidance, what data is sufficient to support a finding.

*Comment:* Some comments state, "* * * there is significant variation in land health standards and how they are applied between [f]ield [o]ffices. Only in an EA or EIS can the public be ensured that the BLM is using current and adequate science."

*Response:* Federal Regulations (43 CFR part 4180) and policy in the BLM's Rangeland Health Standards Handbook (H–4180–1) provide for variation in land health standards and how they are evaluated because of inherent variability among the ecosystems in the states where the BLM manages public land. For example, the Sonoran Desert is significantly different than the Snake River Plain. Responsible Officials have discretion to determine, consistent with BLM guidance, how to determine land health status and causal factors where standards are not achieved. Further information regarding the methodologies employed may be found at the BLM's National Science and Technology Center at *http://www.blm.gov/nstc/library/techref.htm.* The public has opportunities outside the NEPA process to review information used as the basis for grazing decisions, including scientific information. For example, the Grazing regulations at 43 CFR 4130.3–3(b) direct: "To the extent practical, during the preparation of monitoring reports that evaluate monitoring and other data that the Responsible Official uses as a basis for making decisions to increase or decrease grazing use, or otherwise to change the terms and conditions of a permit or lease, the Responsible Official will provide [the interested public] an opportunity to review and offer input."

*Comment*: Some comments pointed out "there is still a backlog of permits that have not received an original NEPA, as well as a growing number of permits that are being renewed without an updated NEPA."

*Response:* At present, Congress has authorized the BLM, under Appropriations legislation (Pub. L. 108–108, Section 325, 117 Stat. 1307–1308 (2003)), to issue grazing permits with the same terms and conditions as expiring permits for which NEPA review has not been completed. Section 325 provides: "the terms and conditions shall continue in effect under the renewed permit or lease until such time as the Secretary of the Interior * * * complete[s] processing of such permit or lease in compliance with all applicable laws and regulations, at which time such permit or lease may be canceled,

suspended or modified, in whole or in part, to meet the requirements of such applicable laws and regulations." The BLM refers to permits issued in accordance with this law as "backlog" permits until they are processed as required. Between the beginning of Fiscal Year 1999 and end of Fiscal Year 2005, almost 15,000 permits and leases had expired. The BLM has processed all of these, except for 2610, which are in "backlog" status. For purposes of this action, when the BLM is completing NEPA review and documentation, the Responsible Official will consider application of CX 11.9 D(11) for issuance of grazing permits when the specific CX criteria are met and none of the DOI "extraordinary circumstances" applies. Consideration of whether or not to use the CX will facilitate reduction of the "backlog."

*Comment:* Some comments state that the "BLM does not have the institutional resources to properly [collect current ecological site data, or] manage and employ a monitoring program that can correctly assess what is actually occurring."

*Response:* The "correctness" of the BLM's assessments is a matter that can be questioned on a case-by-case basis under 43 CFR 4130.3–3(b) ("To the extent practical, during the preparation of reports that evaluate monitoring and other data * * * the authorized officer will provide [the interested public] an opportunity to review and offer input.") Development and implementation of a monitoring program is an issue that is separate from the establishment of a CX. See responses above for responses to questions specifically regarding the establishment of CX 11.9D(11). That said, regardless of whether a proposed activity is reviewed under an EA, EIS or CX, the BLM monitors the effects of the activities to the extent its budget allows. Monitoring data is used in land health assessments when it is available, but is not required. The BLM's program management and associated staffing decisions regarding the monitoring of effects of actions taken are subject to the appropriations process.

*Comment:* Some comments state that the BLM did not begin site-specific NEPA for grazing management until the 1990s. They cite the IBLA decision in *Oregon Natural Resources Council* v. *BLM,* 129 IBLA 269 (1994) where extending a permit's termination date or changing the name of the permit holder constitutes an action requiring notice and opportunity to protest. The decision applies to whether or not an "interested public" or "affected interest" has the opportunity to protest and appeal a decision. The implied concern is that, by adopting the CXs 11.9D(11)–(12), the public will be unable to protest or appeal administrative decisions made by the BLM.

*Response:* The BLM was conducting site-specific NEPA analyses in the early 1970s to facilitate informed decisions on the development and implementation of grazing AMPs. Implementation of the proposed revisions to the NEPA management process will not affect "interested public" or "affected interests" right to protest and appeal BLM grazing decisions, including decisions made following the CX review process (43 CFR part 4160).

*Comment:* The same comments express concern that, if the new grazing permit CXs 11.9D(11)–(12) cover administrative actions, such as changing the termination date of the permit, site-specific environmental analyses will not be conducted for grazing allotments that have yet to be given the benefit of a site-specific review.

*Response:* The BLM deleted part (b) of CX 11.9D(11) to clarify the intent of the CX to require completion of a land health assessment before application of a CX to a specific allotment described in the permit could be considered. Therefore, the CX 11.9D(11) may only be used for administrative changes such as changes of names on grazing permits, if the specific criteria for use of the CX 11.9D(11) are met. Use of the CX in issuing such permits would be subject to the reviews included in the CX limitation involving the completion of land health assessments as well as the consideration of whether any "extraordinary circumstances" apply. The BLM has decided not to finalize CX 11.9D(12).

*Comment:* Some comments state that "administrative action" is inadequately defined, and therefore, could be construed "to include all BLM actions."

*Response:* This comment refers to proposed CX 11.9D(12), which the BLM has decided not to finalize.

*Comment:* Some comments state that the BLM is issuing grazing permits for less than market value.

*Response:* The comment has no bearing on the adoption of CXs.

*Comment:* Some comments state that the BLM should revise the CXs to be more specific relative to the stipulation relating to livestock being "solely" responsible for the failure to meet land health standards.

*Response:* The language for CX 11.9D(11) has been revised to clarify the limitation. It now reads, "Not meeting land health standards due to factors that do not include existing livestock grazing."

**Responses to Specific Comments on Section 11.9—Categorical Exclusions**

*G. Transportation (Sub-Parts G(1)–(4))*

*G(1)–(3)—Comments.*

*Comment:* Some comments state that the modified transportation CXs 11.9G(1)–(3) make no distinction among motorized, mechanized, and foot/horse trails, or between authorized and unauthorized roads and trails.

*Response:* The comments are correct. These CXs do not address the type of use authorized on a road or trail. Trail use is authorized through the land use planning process. These CXs address actions, which take place following this planning process, and are primarily concerned with identification within a transportation plan, routine maintenance or temporary closures. Further, the Responsible Official reviews each proposed action as to whether any of the "extraordinary circumstances" in 516 DM 2.3A(3) and appendix 2 apply. If any "extraordinary circumstance" applies, the revised transportation CXs 11.9G(1)–(3) may not be used.

*Comment:* Some comments state that the BLM fails to account for important differences between roads and trails.

*Response:* The BLM guidance (Washington Office Instruction Memorandum No. 2006–173) defines similar routine management and maintenance requirements for roads and trails. Engineering, design and signing requirements are consistent between roads and trails, and should be consistently addressed in the NEPA context. Trails, like roads, require maintenance (*e.g.*, erosion control, stabilization, and signs) and are periodically closed for safety or resource protection purposes. The major difference between roads and trails is their spatial footprint and degree of infrastructure design, which is less for trails than for roads. With respect to trail location and design, as with respect to roads, the BLM considers resource conditions in design and placement decisions. The BLM's State Trails and Travel Management Leads confirmed that, based upon their past observations and professional experience, implementation of past actions covered under the existing CX did not result in significant effects, individually or cumulatively. In addition, the BLM's Trails and Travel Management Leads agreed that based on their experiences, the environmental effects of these actions along trails as proposed and finalized in the establishment of CXs 11.G(1)–(3) will not result in a significant effect, individually or cumulatively. Further, regardless of

whether the transportation feature is a road or a trail, all proposed actions possible under the CXs would be reviewed against the DOI "extraordinary circumstances" (516 DM 2 and appendix 2). If any apply, the CXs could not be used; rather, an EA or EIS would be prepared.

*Comment:* Some comments ask that the BLM not add "trails" to the existing transportation CXs 11.9G(1)–(3).

*Response:* See response above. Further, it is appropriate to consider roads and trails together in transportation management and maintenance, which are the activities addressed by CXs 11.9G(1)–(3). Collectively roads and trails form the travel network in a management area. Both roads and trails require signs, markers, culverts, and other similar structures covered by CX 11.9G(2). Trails, like roads, occasionally need to be closed or barricaded, which is the subject of CX 11.9G(3). The addition of trails to CXs 11.9(G)(1)–(3) is consistent with the BLM's management practices and comprehensive planning for roads and trails-related activities. These management practices and planning considerations are guided by regulation (43 CFR 8342.2 "Designation Procedures"—including "identification of designated areas and trails"), BLM directives and guidelines (BLM Manual 9130 (June 7, 1985)), BLM Land Use Planning Handbook (H–1601–1), and current BLM Sign Manual 9130. Coverage of minor management activities by these three CXs will enable more timely day-to-day management responses, which directly benefit the environment and/or assist in visitor safety and result in no significant impact.

*Comment:* Some comments ask that the BLM clarify the meaning of the modifier "existing" in the transportation CXs 11.9(G)(1) and 11.9(G)(2).

*Response:* The term "existing" has been replaced by "eligible" to clarify that any roads and trails to be addressed by the CXs 11.9(G)(1) and (2) must meet certain requirements established in the land use and transportation planning processes. The requirement criteria for defining a road or trail as open are developed as part of the land use planning process to meet resource management objectives. The word "existing" was replaced with the word "eligible" to avoid confusion with the BLM's OHV designation of "Limited."

*Comment:* Some comments state that it is inappropriate to treat routine installation of signs, markers, culverts, ditches, waterbars, gates, or cattleguards as equally benign when analyzing potential environmental effects which the BLM has done in proposing the 11.9G(2) CX.

*Response:* Based upon field experience, implementing the category of actions, as defined in the CX, has not resulted in individually or cumulatively significant effects for or along roads. The BLM State Trail and Travel Management Leads have concluded based upon years of professional experience that the addition of "trails" to these categories will not result in individually or cumulatively significant environmental effects. The BLM did not propose changes to the overall category of activities covered by the existing CX 11.9G(2) for management actions for and along roads, rather it added to the ability of the BLM to implement the activities along the smaller linear trail features. The BLM is adding trails to the CX to more accurately reflect the similarities in the management actions and maintenance requirements under these categories for roads and trails and due to their similar non-significant environmental effect.

*Comment:* Some comments state that by including existing trails, the BLM could be permitting approval and signing of illegally created motorized trails or providing access or use rights to third parties, and the BLM will encourage additional use of unauthorized trails.

*Response:* The term "existing" has been replaced by "eligible" to clarify that all roads and trails that can be addressed by the CXs must meet certain requirements under the land use and transportation planning processes. Decisions regarding the designation of roads and trails, determinations of OHV open, closed or limited areas, or "formal" recognition of the roads and trails contained within any transportation system are determined through the appropriate land use planning or activity planning that is accompanied by a NEPA review process (see the BLM Land Use Planning Handbook H–1601–1, appendix C, Section D). These decisions are not determined through application of the CX.

**Responses to Specific Comments on Section 11.9—Categorical Exclusions**

*H. Recreation Management (Sub-Part H(1))*

*H(1)—Comments.*

*Comment:* Some comments state that the analysis used to justify the special recreation permit (Recreation Management ) CX 11.9H(1) is flawed because it "assumes that [the] BLM review process will ensure categorical exclusions will not be used where significant consequences may ensue, a rationale that the courts have rejected."

*Response:* The comment is not clear about which court has "rejected" the "rationale" that CXs "will not be used where significant consequences may ensue." The CEQ regulations (40 CFR 1508.4 and 1507.3) authorize federal agencies to establish and apply CXs and specify that CXs will not be applicable when there are extraordinary circumstances. The BLM followed CEQ regulations in proposing additional CXs to reduce paperwork and delays (40 CFR 1500.4 and 1500.5) and enable the BLM to concentrate on environmental issues that are associated with proposed actions that require further analysis in an EA or an EIS. Supporting documentation for the revised Recreation Management CX 11.9H(1) was reviewed to determine whether there is sufficient evidence based on past NEPA analyses and subsequent review of environmental effects to support the finding that the activity included in the proposed CX would not cause individually or cumulatively significant environmental impacts. The establishment of CXs 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). The BLM administrative review concluded that special recreation permits (SRP) that meet the criteria of the CX, will not result in individually or cumulatively significant effects. In addition, activities conducted through the CX review process must address the "extraordinary circumstances" (516 DM 2.3(A) and appendix 2) and be consistent with all applicable laws and requirements imposed for protection of the environment.

*Comment:* The same comments state, "although CEQ regulations require that CXs incorporate an 'extraordinary circumstances' exception, 40 CFR 1508.4, the presence of the exception is not an excuse for the authorization of otherwise improper or inadequately justified CXs. *See Heartwood, Inc.* v. *United States Forest Service*, 73 F. Supp. 2d 962, 976 (rejecting as "circular" the Forest Service's argument that exceptional circumstances exception adequately compensates for failure to consider cumulative effects of an action proposed for categorical exclusion)."

*Response:* See previous response relative to the court case cited. In addition, the facts in the *Heartwood* decision are distinguishable from those underlying the proposed actions here; therefore, they do not apply in this context. The BLM has established the

Recreation Management CX 11.9H(1), based on data gathered and reviewed using generally accepted analytic procedures. Furthermore, the BLM's analysis included a review of NEPA documents which themselves included analyses of cumulative effects and the subsequent BLM review of the actual effects. A statistically valid random sample of the BLM's total population of SRP records indicates that 84 percent of the BLM's SRPs have had no unanticipated individual or cumulatively significant impacts. Upon further review, the BLM clarified the CX language to include the limitation that the CX cannot be applied to commercial boating activities proposed along designated Wild and Scenic Rivers. This limitation was added in accordance with CEQ proposed guidance on the establishment and use of categorical exclusions (71 FR 54816, September 19, 2006), which encourages agencies to clearly define the category of actions covered, as well as any physical or environmental factors that would constrain its use. These constraints ensure that the SRPs likely to have significant effects would not be eligible for CX use. Therefore, the SRP activities that could be covered under the CX by meeting all CX criteria, would not result in a significant effect on the environment either individually or cumulatively. The BLM mandates that proposed actions or activities be, at a minimum, consistent with the DOI and the BLM regulations, manuals, handbooks, policies, and applicable LUPs regarding design features, best management practices, terms and conditions, conditions of approval, and stipulations. The BLM requires that all SRP permittees must agree to comply with the specific SRPs terms and conditions identified on the BLM Form 2930–1, which the BLM uses nationwide. Additional examples of standard stipulations, terms, conditions of approval and specific limitations to apply to SRPs can be found in the BLM's Recreation Permit Handbook (H–2930–1 appendix C). An example of one state-specific guidance is the Wyoming Statewide Recreation Permit Handbook (2932–WY–050–SRP–03–05). The BLM must review all proposed actions against the DOI list of "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2). If one or more of the "extraordinary circumstances" apply, the CX could not be used; rather, an EA or EIS would be prepared.

*Comment:* Some comments state that the analysis used to justify Recreation Management CX 11.9H(1) is "flawed" because it "fails to distinguish between significantly different categories of activities, such as motorized versus non-motorized recreation events." In other words, it exempts a "category of actions" without any analysis of the actions, which belong to that category.

*Response:* The BLM disagrees. The CEQ regulations (40 CFR 1508.4 and 1507.3) authorize Federal agencies to establish and apply CXs to categories of actions that do not have significant effects, either individually or cumulatively, on the quality of the human environment, and specify that CXs will not be applicable when there are extraordinary circumstances. The BLM examined, collectively SRP activities authorized in LUPs, and found that for this category of action, with the added limitation respecting commercial boating along Wild and Scenic Rivers, there were no significant impacts, individually or cumulatively. This category of actions, the authorizing of SRPs, includes permitting commercial recreation operations, competitive events and organized group activities, as stated on page 2 of the SRP analysis report available at *http://www.blm.gov/planning/news.html.* As such, the category includes all types of recreational activities engaged in by the public. The report lists, for instance, an organized group of bird watchers and an endurance horse racing event, but as stated in the report the recreational activities covered by SRPs are not limited to the examples given. The SRPs are also granted for mechanized and motorized recreational activities. The SRP data analyzed incorporated all types of recreational activities authorized under SRPs, including those issued for motorized recreational activities. For additional information regarding the definition of these activities, see 43 CFR 2932. Further, with respect to the grant of each SRP, the Responsible Official must require the standard terms and conditions found on Form 2930–1 and must address whether any "extraordinary circumstances" (516 DM 2 and appendix 2) apply. If any of the "extraordinary circumstances" apply, the CX cannot be used.

*Comment:* Some comments state that the analysis used to justify the SRP CX 11.9H(1) is "flawed" because using a history of EA process review data to justify the CX fails entirely to take into consideration the extent to which adverse environmental consequences are identified and avoided through the EA process and accompanying public involvement.

*Response:* The BLM disagrees. The CEQ regulations (40 CFR 1508.4 and 1507.3) authorize Federal agencies to establish and apply CXs. The BLM followed CEQ regulations in proposing additional CXs to reduce paperwork and delays (40 CFR 1500.4 and 1500.5) and enable the BLM to concentrate on environmental issues associated with proposed actions that require further analysis in an EA or EIS. The Recreation Management CX 11.9H(1) was subjected to administrative review to determine whether there is supporting evidence based on past NEPA analyses, as well as evaluation of environmental effects of the action as implemented, sufficient to support the conclusion that this category of action does not cause individually or cumulatively significant environmental impacts. The BLM found no significant effect for all cases except commercial boating activities along Wild and Scenic Rivers. Based upon further review, and in accordance with CEQ proposed guidance on the establishment and use of categorical exclusions (71 FR 54816, September 19, 2006), which encourages agencies to clearly define the category of actions covered, as well as any physical or environmental factors that would constrain its use, the final SRP CX includes a limitation on this type of SRP so that the CX cannot be used for consideration of commercial boating SRPs along Wild and Scenic Rivers. Further, the BLM must review proposed actions considered for use of a CX against the DOI "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2). If one or more of the "extraordinary circumstances" apply, the CX cannot be used. In authorizing an action, regardless of the type of NEPA compliance completed, the BLM may not violate any applicable Federal, State, local, and tribal laws and requirements imposed for protection of the environment. The establishment of CXs have 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). In addition, public involvement has been, and remains, critical to the BLM decision-making process. The public will continue to have opportunities for involvement during the development of LUPs and activity plans. Furthermore, in instances where there is a high public interest in an individual proposed SRP, the Responsible Official retains the discretion to involve the public throughout the decision-making process regardless of the kind of NEPA review conducted.

*Comment:* Some comments state that the "best outcome" would be to retain the SRP CX 11.9H(5) and modify and adopt the new CX 11.9H(1) by "adding

a ceiling or maximum number of people and/or vehicles that may participate in the recreational activity or event, in addition to any time an[d]/or acreage limits."

*Response:* The Recreation Program determined that the existing CX needed to be revised to clarify the language to ensure consistent application of its use Bureau-wide. The new language approved for the CX 11.9H(1) was developed following generally accepted analytical procedures. The proposed language did not include ceilings or maximum numbers of people and/or vehicles that may participate in activities addressed by the CX because, for the overwhelming number of SRPs issued and otherwise meeting the proposed criteria, the NEPA analyses conducted resulted in FONSIs regardless of the number of people or vehicles involved in the permitted activity and the subsequent BLM review of the actual effects confirmed there were no significant impacts. In addition, the BLM has added limits to the final CX language to clarify that it cannot be applied for the permitting of commercial boating along Wild and Scenic Rivers, the only type of SRP sampled that was found to have or potentially have significant environmental effects, rendering it unacceptable for CX consideration. Further, if needed, establishment of visitor use limitations or vehicle number limitations are determined during the land use planning process. Based on BLM data, when the new Recreation Management CX 11.9H(1) criteria are met, individual and cumulatively significant impacts will not occur. The staging area acre limitation was determined during the analytical process, based on the professional judgment of the BLM recreation specialists and their review of past SRP activities, to be an appropriate threshold to set to ensure that significant effects do not occur for future actions addressed by the CX.

*Comment:* Some comments ask the BLM to retain the existing CX "in lieu of this new H(1)CX," because they prefer the concluding phrase "similar minor events" which is an important and "reasonable" limitation.

*Response:* See response above. The new language is based on a completed NEPA review process that included data collected through a stratified random sample of all SRPs issued by the BLM from October 1, 2000, through September 30, 2005. The analysis of this sample supports the new Recreation Management CX 11.9H(1).

*Comment:* Some comments wanted the CX 11.9H(1) to apply "to the relatively low-impact examples provided" and not allow "other activities, with extremely serious adverse environmental consequences, such as motorized vehicle races and events and activities on Wild and Scenic Rivers."

*Response:* Upon further review, the BLM has added a limitation to the terms of the CX. The CX may not be used in the permitting of commercial boating activities on Wild and Scenic Rivers as this was the one type of SRP activity sampled that resulted in a significant effect. None of the other SRP activities sampled during the establishment of this CX resulted in environmentally significant effects, individually or cumulatively. As to the commenter's other concern, while the list of examples provided in the December 12, 2005, CX Project—Recreation analysis report (available at *http://www.doi.gov/oepc/cx_analysis.html* and *http://www.blm.gov/planning/news.html*) did not include motorized vehicle activity examples, it was not an exhaustive list. In fact, SRPs authorizing motorized activities were included in the sampled data, which reflected all types of SRPs authorized. Recreational activities of any type with "extremely serious adverse environmental consequences" as mentioned in the comment, would not be reviewed using a CX as one or more of the "extraordinary circumstance" would apply (516 DM 2.3A(3) and appendix 2). If any of the "extraordinary circumstances" apply, the CX will not be used, and an EA or EIS would be prepared.

*Comment:* Some comments ask if CX 11.9H(1) covers "organized and/or commercial events."

*Response:* Yes, CX 11.9H(1) covers all types of SRPs, including organized and/or commercial events, that meet the CX-specific criteria and where none of the "extraordinary circumstances" apply (516 DM 2.3A(3) and appendix 2).

*Comment:* Some comments state that CX 11.9H(1) "time and space limitations" are not enough to "negate the environmental impacts" and "concentrating [any] such activities to a confined space can further and substantially increase the impacts."

*Response:* The BLM disagrees. The "time and space" limitations set in establishment of the proposed CX were derived based on the administrative review described in the analysis report for the SRP CX found at *http://www.blm.gov/planning/news.html.* Upon further review, the BLM has decided to change the limitation for the Recreation Management CX 11.9H(1) length of overnight stay from 7 to 14 consecutive nights to provide consistency with the typical length of stay for any casual visitor using public lands (43 CFR 8364; 8365.1–2 "Occupancy and Use," and 8365.1–6 "Supplementary Rules"). Additional review of the data analyzed during the establishment of the CX confirmed that there was no difference in results of the NEPA review with respect to SRPs with overnights stays of up to 7 nights, as compared to stays of up to 14 nights. Significant environmental effects did not result from SRPs with lengths of stays of up to 14 nights. The acre limit was set during the establishment of the proposed CX based on the professional judgment of the BLM recreation planners and their review of SRP activities. This acreage was refined for the final CX based on the data reviewed. The BLM professional judgment, supported by the data analysis ensures that no significant impact will occur based on implementation of this limitation for this CX.

*Comment:* Some comments state that the analysis used to justify the CX is "flawed" because it "fails entirely to address the question of cumulative impacts on the environment."

*Response:* See above responses regarding establishment of the Recreation Management CX. None of the projects reviewed that meet the final CX language criteria, resulted in cumulatively significant environmental effects. Further, all proposed SRPs considered for application of the CX would be reviewed against the "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2), and extraordinary circumstance 2.6 specifically addresses cumulative impacts on the environment.

*Comment:* Some comments state that CX 11.9H(1) "should not be adopted as written" and that the CX should "exclude activities that utilize motorized equipment, which intrinsically have the potential to cause significant environmental impacts." Some comments ask the BLM to exclude "off-highway vehicles and motorized recreation" because they cause significant impacts, such as increased noise levels, air pollution from dust and fumes, and incidental off-road use.

*Response:* See above responses. The data analyzed during the establishment of the CX included "off-highway vehicle and motorized recreation" activities. The BLM concluded based on the data analyzed, that the SRPs covered under the CX did not result in significant environmental effects, individually or cumulatively. Further, CX 11.9H(1) can only be used to permit recreational activities that meet the CX criteria when none of the "extraordinary

circumstances" (516 DM 2.3A(3) and appendix 2) apply. If any "extraordinary circumstances" apply, the CX cannot be used.

*Comment:* Some comments state that not all types of recreation use/activity should be eligible for the Recreation Management CX 11.9H(1), even if the use/activity meets the area and number of consecutive nights criteria. For example, certain recreational uses, such as cattle drives, rodeos, and motorcross and motorcycle hill climbing events, may have significant effects. Federal court cases and the "IBLA have specifically found [these kinds of events] to have significant (and adverse) effects * * *."

*Response:* The BLM used analytical procedures to examine the NEPA process results used to issue 8,063 SRPs from October 1, 2000, through September 30, 2005. The BLM currently issues an estimated 3,500 SRPs annually, of which approximately 1,500 permits are re-issued each year. The permits granted include SRPs for the types of recreation actions identified by the comments. The BLM examined, collectively, SRP activities authorized in LUPs, and found that for this category of action, with the added limitation pertaining to commercial boating on Wild and Scenic Rivers, there are no significant environmental effects, either individually or cumulatively. This category of actions, the authorizing of SRPs, includes permitting commercial recreation operations (excepting boating along Wild and Scenic Rivers), competitive events and organized group activities, as stated on page 2 of the SRP analysis report available at *http://www.blm.gov/planning/news.html*. As such, the category includes all types of recreational activities engaged in by the public. The report lists, for instance, an organized group of bird watchers and an endurance horse racing event, but as stated in the report the recreational activities covered by SRPs are not limited to the examples given. These SRPs are also granted for mechanized and motorized recreational activities. The SRP data and activities analyzed included all types of recreational activities authorized under SRPs. For additional information regarding the definition of these activities, see 43 CFR 2932. Based on a statistically valid sample of SRPs issued, the BLM has determined that establishment of the new SRP CX is warranted; all types of recreation activities that meet the CX criteria are eligible for authorization under the new SRP CX. However, if any of the DOI "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2) apply, the CX cannot be used.

*Comment:* Some comments wanted to know if "the 3% of SRPs with significant impacts" involved motor vehicle events and whether the SRP data can be used to differentiate between significant impacts associated with different types of SRP activities.

*Response:* The BLM data reviewed revealed that the 3% of the SRPs with significant impacts were for SPR commercial boating activities along Wild and Scenic Rivers. Therefore, the BLM added a specific limitation to the CX so that it cannot be used for commercial boating along Wild and Scenic Rivers. None of the remaining SRPs activities sampled resulted in significant environmental effects, individually or cumulatively.

*Comment:* Some comments wanted the BLM to limit the number of motorized vehicles used, duration, speed, or type of event and/or to specifically address the different impacts from the volume of users, intensity of use, and equipment involved.

*Response:* None of the SRP activities that meet the final CX criteria resulted in significant environmental effects, individually or cumulatively. Therefore, the BLM did not add additional limitations to the CX as suggested in the comment.

*Comment:* Some comments asked the BLM to describe how the size of the "3 contiguous acres" and the seven consecutive day and overnight stay limits were derived.

*Response:* Data analyses revealed no statistical relationship between the size of the staging area, number of consecutive overnights permitted, and the incidence of significant individual or cumulative impacts. Therefore, the BLM selected the three contiguous acre area limit based upon a review of the SRPs issued. Of 548 informative responses to a questionnaire about the actual size of the staging area and number of nights involved in the SRPs issued, 90 percent of the SRPs with staging area information reported that the area involved was equal to or less than 3 acres. The 7-day stay limit was derived by analyzing the entire population of SRPs in the BLM's Recreation Management Information System and taking the average length of stay permitted. Based on comments received and the fact that the data revealed no relationship between length of overnight stay and significant impacts, the BLM has decided to change the Recreation Management CX 11.9H(1) length of overnight stay from 7 to 14 consecutive nights to provide consistency with the allowable length of stay for any casual visitor using public lands (43 CFR 8364, 8365.1–2 "Occupancy and Use," and 8365.1–6 "Supplementary Rules"). This is to ensure equality regarding "length of stay" limitations between permitted use activities and the casual use activities on public lands.

*Comment:* Some comments express a concern that the three contiguous acres language could be variously interpreted because it is not clear whether the activity area includes a linear route, such as a race. They suggested adding the words "staging area" to clarify the CX language.

*Response:* The BLM agrees. The word "contiguous" has been deleted and the term "staging area" has been added to the CX to clarify the intent of the limiting condition. See staging area definition below.

*Comment:* Some comments ask that the BLM define "staging area."

*Response:* A staging area is defined in this context as an area where use is concentrated, usually to enable access to a recreational activity that involves traveling across public lands along roads, trails or in areas authorized in a LUP. Examples include trailheads, gathering points, base or hunting camps, boat launching or parking areas, and the like. Other examples of staging areas include a congregation point (e.g., for parking) where a group activity begins and/or ends, a viewing area for an event, a training course or play area not involving existing roads or trails. The staging area acreage amount does not include the use of authorized roads, trails or access to adjacent areas open for recreational use in the LUP.

*Comment:* Some comments ask that the BLM define "travel management area" and "travel networks."

*Response:* "Travel management areas" and "networks" are defined in the BLM's Land Use Planning Handbook (H–1601–1 appendix C and Glossary page 8). "Travel Management Areas" are defined as polygons or delineated areas where a land use planning process has classified areas as open, closed, or limited to off-highway vehicle use or other modes of travel. The terms "travel management area" and "networks" were replaced in the final CX language with "recreational travel along roads, trails or in areas authorized in a LUP" to clarify the intent of the final CX.

*Comment:* Some comments ask for more information on how the BLM: (a) Differentiates organized/commercial groups relative to private/individual use in the travel management and transportation network planning context; (b) deals with permitted

dispersed recreational activities impacts; and (c) manages events with large staging areas on private lands supporting permitted recreational use of public lands.

*Response:* (a) The BLM differentiates SRP authorized activities from private/individual use (i.e. casual use) based on definitions found in 43 CFR 2930 and the BLM guidance in the BLM Recreation Permit Handbook (H–2930–1, pages 10–12). (b) The BLM does not differentiate between dispersed or non-dispersed recreational activity impacts when considering a proposed SRP action. The BLM considers whether the proposed activity meets the criteria set forth in the CX and if not, a different type of NEPA review would be conducted to determine the environmental effects of the proposed SRP. In addition, general dispersed recreational activity impacts would be analyzed during the land use planning process. (c) The BLM SRPs are use authorizations for activities on the BLM-administered public lands and related waters. The issuing of SRPs for events involving "staging areas" on private lands are coordinated by the BLM with stipulations requiring the permittee collaborate with appropriate private landowners and/or public agencies (law enforcement, highway, fish and game, etc., BLM Form 2930–1, Special Recreation Application and Permit). If significant impacts, as revealed in the course of "extraordinary circumstances" review, may occur from issuance of an SRP, this CX could not be used.

**Responses to Specific Comments on Section 11.9—Categorical Exclusions**

*I. Emergency Stabilization (sub-part I(1))*

*I(1)—Comments.*

*Comment:* Some comments state that the Emergency Stabilization CX is (1) too broad, (2) based on subjective criteria, and (3) includes far too many acres of land disturbance.

*Response:* (1) The new Emergency Stabilization CX builds on the existing DOI CX that addresses post-fire rehabilitation responses to wildfires (516 DM 2 appendix 1, section 1.13, Finalized at 68 FR 33814, June 5, 2003). Post-fire rehabilitation activities as defined in the DOI CX refer to response activities taken within 1 to 3 years following a wildfire. For the purposes of this BLM-specific CX, emergency stabilization response activities are the same on-the-ground treatments as the post-fire rehabilitation treatments but they must occur within one year of the natural land disturbance event. The events may include destabilizing natural events, such as wildfire, floods, strong weather, earthquakes, and landslips. The emergency stabilization response activities include management treatments, which are prescribed to minimize threats to life or property and to stabilize and prevent unacceptable degradation of natural and cultural resources as a result of a natural land disturbance event. The emergency stabilization responses under this CX are the same as the DOI CX post-fire rehabilitation activities and may include: Seeding to prevent erosion or the spread of noxious weeds; installation of structures, such as log erosion barriers or straw wattles; felling hazard trees along roads or in campgrounds; and similar treatments to prevent or minimize negative impacts caused by a natural land disturbance event. While the natural events responded to by activities covered under this CX may be different from a wildland fire, because the response actions taken under this CX are generally the same as those taken under the DOI CX for post-fire rehabilitation, the BLM has concluded that, similarly, they do not result in significant effects, individually or cumulatively. The BLM reached this conclusion on the basis both of conducting a review of the wildfire data, and based on the professional judgment of BLM specialists experienced with these types of events and response activities and their effects. Appropriate use of the Emergency Stabilization CX 11.9I(1) is warranted on the basis of this review and judgment, as well as because such use will be in accord with current administrative procedures such as the following: BLM Burned Area Emergency Stabilization and Rehabilitation Handbook (H–1742–1); specific standards and guidelines expressed in policy documents such as Instruction Memorandum 2006–162; and the specific terms and conditions identified within local LUPs. Further, the BLM must review all proposed emergency stabilization treatment against the DOI's "extraordinary circumstances" (516 DM 2.3A(3) and appendix 2). The CX cannot be used if any of the "extraordinary circumstances" apply.

(2) The category of actions covered by the new Emergency Stabilization CX, as well as its specific criteria, were derived from a review of approximately 300 post-fire emergency stabilization/rehabilitation projects analyzed during the establishment of the DOI post-fire rehabilitation CX 620 DM Ch 3.3E, June 5, 2003. Information on 30 variables was collected and analyzed. These data included project-specific information on the location, project size, vegetation type, emergency stabilization/rehabilitation treatments performed, the type of NEPA review performed, predicted environmental impacts of proposed treatments and the actual environmental impacts after treatments. The criteria applied were not subjectively derived. In the judgment of the BLM professionals experienced in implementing these activities, the activities and their effects for which the BLM Emergency Stabilization CX is proposed, are of the same nature as the activities and their effects analyzed as the basis for establishment of the DOI post-fire rehabilitation CX.

(3) The 4,200-acre limit was derived through analysis of the DOI CX data set, which represents a range of environments in which wildfire events routinely occur on public lands. This CX adopts the 4,200-acre limit to maintain consistency with the DOI CX limitation as the effects of the actions taken in response to wildfires. These response actions are the same as those taken in response to other natural land disturbance events. Based on review of the DOI CX data by professionals in the area of post-disturbance stabilization, the BLM concludes that this CX will not have individual or cumulative significant impacts when all conditions of the CX were met. Further, as an additional safeguard, the BLM must review all proposed actions against the DOI "extraordinary circumstances" (516 DM 2.3A(3)). If any of the "extraordinary circumstances" apply, the CX cannot be used.

*Comment:* Some comments state that post-emergency treatments "merit thorough analysis regarding potential significant impacts." Affected areas are "often extremely vulnerable to further environmental damage" and "the activities included do not necessarily work successfully to mitigate damages from natural events and often cause adverse impacts on their own."

*Response:* The DOI post-fire rehabilitation CX data review concluded that no significant individual or cumulative impacts are likely to occur as a result of the types of stabilizing response activities that are taken within 1 to 3 years of the natural disturbance event. The BLM's Emergency Stabilization CX includes an additional limitation that actions can only be taken within one year following the natural disturbance event. In addition, the Emergency Stabilization CX cannot be used if one or more of the DOI "extraordinary circumstance" (516 DM 2.3A(3) and appendix 2) applies.

*Comment:* Some comments ask that the BLM "consider alternatives [to repair or replacement of roads and

culverts] that would permit improvement of wildlife habitat or watershed condition."

*Response:* The CX 11.9I(1) may be used only for Emergency Stabilization treatments when the CX specific criteria are met in full. Further, each proposed action must be reviewed against the DOI "extraordinary circumstances," if any apply, the CX cannot be used. Emergency stabilization activities are those treatments that are prescribed to minimize threats to life or property and to stabilize and prevent unacceptable degradation of natural and cultural resources as a result of a natural land disturbance event. The emergency stabilization actions must be taken within one year following the disturbance event. The emergency stabilization activities may include: seeding to prevent erosion or the spread of noxious weeds; installation of structures, such as log erosion barriers or weed-free straw wattles and fish friendly culverts; felling hazardous trees along roads or in campgrounds; and similar treatments to prevent or minimize negative impacts caused by certain inevitable natural events. These activities are covered under CX 11.9I(1) because they are commonly accepted minimum impact responses to the effects of floods, weather events, earthquakes, and landslips in addition to wildfires. Improvements to natural resource conditions may be a derived or incidental benefit, but cannot be a driving purpose for the proposed action for use of this CX.

*Comment:* Some comments ask that the BLM clearly define what constitutes "temporary road" construction to "minimize * * * impacts," and to include language in each CX that provides a requirement that temporary roads be obliterated when a project is completed. Some comments suggested that road construction should only be carried out following a detailed analysis.

*Response:* The need for temporary roads is determined during the project proposal process. The Responsible Official is required to review the project proposal against the DOI's extraordinary circumstance (516 DM 2.3A(3) and appendix 2). Project proposals include descriptions of when vehicle and equipment access is necessary, how it will be done, and, if temporary roads are included, how they are to be reclaimed. Based on the DOI CX data analyzed for the proposed Emergency Stabilization CX (11.9I(1)), there are no individual or cumulatively significant environmental effects when temporary roads are part of activities identified in the CX. The BLM added a definition to the CX language to clarify what a temporary road is for use under this CX. Further, if one or more of the "extraordinary circumstances" apply the CX cannot be used.

*Comment:* Some comments recommend that culvert repair and replacement not be included in the list of exempted treatments and that the CX language be changed to limit treatments to "less invasive treatments" that can only be applied when the affected area is verifiably destabilized.

*Response:* Repair and replacement of existing culverts damaged or lost due to a natural disaster is necessary to prevent excessive soil erosion and damage to resources and property in unstable environments. According to the DOI CX data analyzed, no unanticipated individual or cumulatively significant impacts occur when culverts are repaired or replaced in accordance with the criteria established in the new Emergency Stabilization CX 11.9I(1). The activities and the effects of those activities covered under this Emergency Stabilization CX are the same as the DOI CX and will result in no individually or cumulatively significant impacts.

*Comment:* Some comments recommend that the Emergency Stabilization CX 11.9I(1) be expanded to include "minor herbicide applications."

*Response:* The data analyzed in the development of the Emergency Stabilization CX 11.9I(1) excluded the use of herbicides as a variable in the analysis. Therefore, the CX 11.9I(1) explicitly precludes its use with respect to the application of herbicides.

**Responses to Specific Comments on Section 11.9—Categorical Exclusions**

*J. Other (sub-part J(12))*

*J(12)—Comments.*

*Comment:* Some comments ask why the existing CX 11.9H(12) is being deleted.

*Response:* The proposed 516 DM 11 mistakenly left the existing 11.9H(12) out of the **Federal Register** (71 FR 4159–4167, January 25, 2006). This existing CX is added back into the text of this **Federal Register** notice with no changes to its language, however the citation number is changed to J(12) for continued inclusion in the "Other" Category. The language reads, "Rendering formal classification of lands as to their mineral character and waterpower and water storage values."

**Procedural Requirements**

The following list of procedural requirements has been assembled and addressed to contribute to this open review process. Today's publication is a notice of an internal Departmental action and not a rulemaking. However, we have addressed the various procedural requirements that are generally applicable to proposed and final rulemaking to show how they would affect this notice if it were a rulemaking.

*Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this action is the implementation of policy and procedures applicable only to the DOI and not a significant regulatory action. These policies and procedures would not impose a compliance burden on the general economy.

*Administrative Procedure Act*

This document is not subject to prior notice and opportunity to comment because it is a general statement of policy and procedure (5 U.S.C. 553(b)(A)). However, notice and opportunity to comment is required by the CEQ regulations (40 CFR 1507.3(a)).

*Regulatory Flexibility Act*

This document is not subject to notice and comment under the Administrative Procedure Act, and, therefore, is not subject to the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This document provides the DOI with policy and procedures under NEPA and does not compel any other party to conduct any action.

*Small Business Regulatory Enforcement Fairness Act*

These policies and procedures do not comprise a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The document will not have an annual effect on the economy of $100 million or more and is expected to have no significant economic impacts. Further, it will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions and will (Page 52596) impose no additional regulatory restraints in addition to those already in operation. Finally, the document does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this document will not significantly or uniquely affect small governments. A Small Government

Agency Plan is not required. The document does not require any additional management responsibilities. Further, this document will not produce a federal mandate of $100 million or greater in any year, that is, it is not a significant regulatory action under the Unfunded Mandates Reform Act. These policies and procedures are not expected to have significant economic impacts nor will they impose any unfunded mandates on other Federal, State, or local government agencies to carry out specific activities.

*Federalism*

In accordance with Executive Order 13132, this document does not have significant federalism effects; therefore, a federalism assessment is not required. The policies and procedures will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. No intrusion on state policy or administration is expected, roles or responsibilities of federal or state governments will not change, and fiscal capacity will not be substantially, directly affected. Therefore, the document does not have significant effects on or implications for federalism.

*Paperwork Reduction Act*

This document does not require information collection, as defined under the Paperwork Reduction Act. Therefore, this document does not constitute a new information collection system requiring Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

*National Environmental Policy Act*

The CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are 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. The determination that establishing NEPA procedures does 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).

*Essential Fish Habitat*

We have analyzed this document in accordance with Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and determined that issuance of this document will not affect the essential fish habitat of federally-managed species; therefore, an essential fish habitat consultation on this document is not required.

*Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175 of November 6, 2000, and 512 DM Ch 2, we have assessed this document's impact on tribal trust resources and have determined that it does not directly affect tribal resources since it describes the DOI's procedures for its compliance with NEPA.

*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Executive Order 13211 of May 18, 2001, requires a Statement of Energy Effects for significant energy actions. Significant energy actions are actions normally published in the **Federal Register** that lead to the promulgation of a final rule or regulation and may have any adverse effects on energy supply, distribution, or use. We have explained above that this document is an internal DM part, which only affects how the DOI conducts its business under the NEPA. Revising this manual part does not constitute rulemaking; therefore, it is not subject to Executive Order 13211.

*Actions to Expedite Energy-Related Projects*

Executive Order 13212 of May 18, 2001, requires agencies to expedite energy-related projects by streamlining internal processes while maintaining safety, public health, and environmental protections. Today's publication is in conformance with this requirement as it promotes existing process streamlining requirements and revises the text to emphasize this concept (see Chapter 4, subpart 4.16).

*Government Actions and Interference With Constitutionally Protected Property Rights*

In accordance with Executive Order 12630 (March 15, 1988), and Part 318 of the DM, the DOI has reviewed today's notice to determine whether it would interfere with constitutionally protected property rights. As internal instructions to bureaus on the implementation of the NEPA, this publication will not cause such interference.

**Authority:** The NEPA, the National Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); Executive Order 11514, March 5, 1970, as amended by Executive Order 11991, May 24, 1977; and CEQ regulations 40 CFR 1507.3.

**Willie R. Taylor,**

*Director, Office of Environmental Policy and Compliance.*

An electronic copy may be obtained from the Department of the Interior Web site *http://elips.doi.gov.*

**Department of the Interior**

**Departmental Manual**

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*Effective Date:* _____
*Series:* Environmental Quality.
*Part 516:* National Environmental Policy Act of 1969.
*Chapter 11:* Managing the NEPA Process—Bureau of Land Management.
*Originating Office:* Office of Environmental Policy and Compliance.

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**516 DM 11**

*11.1 Purpose*

This chapter provides supplementary requirements for implementing provisions of 516 DM Chapters 1 through 6 for the Department of the Interior's Bureau of Land Management (BLM). The BLM's National Environmental Policy Act (NEPA) Handbook (H–1790–1) provides additional guidance.

*11.2 NEPA Responsibilities*

A. The Director and Deputy Director(s) are responsible for the BLM NEPA compliance activities.

B. The Assistant Director, Renewable Resources and Planning, is responsible for national NEPA compliance leadership and coordination, program direction, policy, and protocols development, and implementation of the same at the line management level. The Division of Planning and Science Policy, within the Assistant Directorate, Renewable Resources and Planning, has the BLM lead for the NEPA compliance program direction and oversight.

C. The BLM Office Directors and other Assistant Directors are responsible for cooperating with the Assistant Director, Renewable Resources and Planning, to ensure that the BLM NEPA compliance procedures operate as prescribed within their areas of responsibility.

D. The BLM Center Directors are responsible for cooperating with the

Assistant Director, Renewable Resources and Planning, to ensure that the BLM NEPA compliance procedures operate as prescribed within their areas of responsibility.

E. The State Directors are responsible to the Director/Deputy Director(s) for overall direction, integration and implementation of the BLM NEPA compliance procedures in their states. This includes managing for the appropriate level of public notification and participation, and ensuring production of quality environmental review and decision documents. Deputy State Directors serve as focal points for NEPA compliance matters at the state level.

F. The District and Field Managers are responsible for NEPA compliance at the local level.

*11.3 External Applicants' Guidance*

A. General

(1) For all external proposals, applicants should make initial contact with the Responsible Official (District Manager, Field Manager, or State Director) responsible for the affected public lands as soon as possible after determining the BLM's involvement. This early contact is necessary to allow the BLM to consult early with appropriate state and local agencies and tribes and with interested private persons and organizations, and to commence its NEPA process at the earliest possible time.

(2) When a proposed action has the potential to affect public lands in more than one administrative unit, the applicant may initially contact any Responsible Official whose jurisdiction is involved. The BLM may then designate a lead office to coordinate between BLM jurisdictions.

(3) Potential applicants may secure from the Responsible Official a list of NEPA and other relevant regulations and requirements for environmental review related to each applicant's proposed action. The purpose of making these regulations and requirements known in advance is to assist the applicant in the development of an adequate and accurate description of the proposed action when the applicant submits their project application. The list provided to the applicant may not fully disclose all relevant regulations and requirements because additional requirements could be identified after review of the applicant's proposal document(s) and as a result of the "scoping" process.

(4) The applicant is encouraged to advise the BLM of their intentions early on in their planning process. Early communication is necessary so that the BLM can efficiently advise the applicant on the anticipated type of NEPA review required, information needed, and potential data gaps that may or may not need to be filled, so that the BLM can describe the relevant regulations and requirements likely to affect the proposed action(s), and to discuss scheduling expectations.

B. *Regulations:* The following list of potentially relevant regulations should be considered at a minimum. Many other regulations affect public lands—some of which are specific to the BLM, while others are applicable across a broad range of federal programs (e.g., Protection of Historic and Cultural Programs—36 Code of Federal Regulations (CFR) Part 800).

(1) Resource Management Planning—43 CFR 1610;

(2) Withdrawals—43 CFR 2300;

(3) Land Classification—43 CFR 2400;

(4) Disposition: Occupancy and Use—43 CFR 2500;

(5) Disposition: Grants—43 CFR 2600;

(6) Disposition: Sales—43 CFR 2700;

(7) Use: Rights-of-Way—43 CFR 2800;

(8) Use: Leases and Permits—43 CFR 2900;

(9) Oil and Gas Leasing—43 CFR 3100;

(10) Geothermal Resources Leasing—43 CFR 3200;

(11) Coal Management—43 CFR 3400;

(12) Leasing of Solid Minerals Other than Coal/Oil Shale—43 CFR 3500;

(13) Mineral Materials Disposal—43 CFR 3600;

(14) Mining Claims Under the General Mining Laws—43 CFR 3800;

(15) Grazing Administration—43 CFR 4100;

(16) Wild Free-Roaming Horse and Burro Management—43 CFR 4700;

(17) Forest Management—43 CFR 5000;

(18) Wildlife Management—43 CFR 6000;

(19) Recreation Management—43 CFR 8300; and

(20) Wilderness Management—43 CFR 6300.

*11.4 General Requirements*

The Council on Environmental Quality (CEQ) regulations state that federal agencies shall reduce paperwork and delay (40 CFR 1500.4 and 1500.5) to the fullest extent possible. The information used in any NEPA analysis must be of high quality. Accurate scientific analysis, agency expert comments, and public scrutiny are essential to implementing the NEPA (40 CFR 1500.1(b)). Environmental documents should be concise and written in plain language (40 CFR 1502.8), so they can be understood and should concentrate on the issues that are truly significant to the action in question rather than amassing needless detail (40 CFR 1500.1(b)).

A. *Reduce paperwork and delays:* The Responsible Official will avoid unnecessary duplication of effort and promote cooperation with other federal agencies that have permitting, funding, approving, or other consulting or coordinating requirements associated with the proposed action. The Responsible Official shall, as appropriate, integrate NEPA requirements with other environmental review and consultation requirements (40 CFR 1500.4(k)); tier to broader environmental review documents (40 CFR 1502.20); incorporate by reference relevant studies and analyses (40 CFR 1502.21); adopt other agency environmental analyses (40 CFR 1506.3); and supplement analyses with new information (40 CFR 1502.9).

B. *Eliminate duplicate tribal, state, and local governmental procedures (40 CFR 1506.2):* The Responsible Official will cooperate with other governmental entities to the fullest extent possible to reduce duplication between federal, state, local and tribal requirements in addition to, but not in conflict with, those in the NEPA. Cooperation may include the following: common databases; joint planning processes; joint science investigations; joint public meetings and hearings; and joint environmental assessment (EA) level and joint environmental impact statement (EIS) level analyses using joint lead or cooperating agency status.

C. *Consult and coordinate:* The Responsible Official will determine early in the process the appropriate type and level of consultation and coordination required with other federal agencies and with state, local and tribal governments. After the NEPA review is completed, coordination will often continue throughout project implementation, monitoring, and evaluation.

D. *Involve the public:* The public must be involved early and continuously, as appropriate, throughout the NEPA process. The Responsible Official shall ensure that:

(1) The type and level of public involvement shall be commensurate with the NEPA analysis needed to make the decision.

(2) When feasible, communities can be involved through consensus-based management activities. Consensus-based management includes direct community involvement in the BLM activities subject to NEPA analyses, from initial scoping to implementation and

monitoring of the impacts of the decision. Consensus-based management seeks to achieve agreement from diverse interests on the goals, purposes, and needs of the BLM plans and activities and the methods needed to achieve those ends. The BLM retains exclusive decision-making responsibility and shall exercise that responsibility in a timely manner.

E. *Implement Adaptive Management:* The Responsible Official is encouraged to build "Adaptive Management" practice in to their proposed actions and NEPA compliance activities and train personnel in this important environmental concept.

Adaptive Management in the DOI is a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes, and the facilitation of management changes to ensure that outcomes are met, or reevaluated as necessary. Such reevaluation may require new or supplemental NEPA compliance. Adaptive Management recognizes that knowledge about natural resource systems is sometimes uncertain and is the preferred method for addressing these cases. The preferred alternative should include sufficient flexibility to allow for adjustments in implementation in response to monitoring results.

F. *Train for public and community involvement:* The BLM employee(s) that facilitate(s) public and community involvement in the NEPA process should have training in public involvement, alternative dispute resolution, negotiation, meeting facilitation, collaboration, and/or partnering.

G. *Limitations on Actions during the NEPA process:* The following guidance may aid in fulfilling the requirements of 40 CFR 1506.1. During the preparation of a program or plan NEPA document, the Responsible Official may undertake any major Federal action within the scope and analyzed in the existing NEPA document supporting the current plan or program, so long as there is adequate NEPA documentation to support the individual action.

*11.5 Plan Conformance*

Where a BLM land use plan (LUP) exists, a proposed action must be in conformance with the plan. This means that the proposed action must be specifically provided for in the plan, or if not specifically mentioned, the proposal must be clearly consistent with the terms, conditions, and decisions of the plan or plan as amended. If it is determined that the proposed action does not conform to the plan, the Responsible Official may:

(A) Reject the proposal,

(B) Modify the proposal to conform to the land use plan, or

(C) Complete appropriate plan amendments and associated NEPA compliance requirements prior to proceeding with the proposed action.

*11.6 Existing Documentation (Determination of NEPA Adequacy)*

The Responsible Official may consider using existing NEPA analysis for a proposed action when the record documents show that the following conditions are met.

(A) The proposed action is adequately covered by (i.e., is within the scope of and analyzed in) relevant existing analyses, data, and records; and

(B) There are no new circumstances, new information, or unanticipated or unanalyzed environmental impacts that warrant new or supplemental analysis.

If the Responsible Official determines that existing NEPA documents adequately analyzed the effects of the proposed action, this determination, usually prepared in a Determination of NEPA Adequacy (DNA) worksheet to provide the administrative record support, serves as an interim step in the BLM's internal decision-making process. The DNA is intended to evaluate the coverage of existing documents and the significance of new information, but does not itself provide NEPA analysis. If the Responsible Official concludes that the proposed action(s) warrant additional review, information from the DNA worksheet may be used to facilitate the preparation of the appropriate level of NEPA analysis.

The BLM's NEPA Handbook and program specific regulations and guidance describe additional steps needed to make and document the agency's final determination regarding a proposed action.

*11.7 Actions Requiring an Environmental Assessment (EA)*

A. An EA is a concise public document that serves to:

(1) Provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a Finding of No Significant Impact (FONSI);

(2) Aid the BLM's compliance with NEPA when an EIS is not necessary; and

(3) Facilitate preparation of an EIS when one is necessary.

B. Unlike an EIS that requires much more, an EA must include the following four items identified in 40 CFR 1508.9(b):

(1) The need for the proposal.

(2) Alternatives as described in Section 102(2)(E) of NEPA.

(3) The environmental impacts of the proposed action and alternatives.

(4) A listing of agencies and persons consulted.

C. An EA is usually the appropriate NEPA document for:

(1) Land Use Plan Amendments;

(2) Land use plan implementation decisions, including but not limited to analysis for implementation plans such as watershed plans or coordinated resource activity plans, resource use permits (except for those that are categorically excludable), and site-specific project plans, such as construction of a trail.

D. An EA should be completed when the Responsible Official is uncertain of the potential for significant impacts and needs further analysis to make the determination.

E. If, for any of these actions, it is anticipated or determined that an EA is not appropriate because of potential significant impacts, an EIS will be prepared.

*11.8 Major Actions Requiring an EIS*

A. An EIS level analysis should be completed when an action meets either of the two following criteria.

(1) If the impacts of a proposed action are expected to be significant; or

(2) In circumstances where a proposed action is directly related to another action(s), and cumulatively the effects of the actions taken together would be significant, even if the effects of the actions taken separately would not be significant,

B. The following types of BLM actions will normally require the preparation of an EIS:

(1) Approval of Resource Management Plans.

(2) Proposals for Wild and Scenic Rivers and National Scenic and Historic Trails.

(3) Approval of regional coal lease sales in a coal production region.

(4) Decisions to issue a coal preference right lease.

(5) Approval of applications to the BLM for major actions in the following categories:

(a) Sites for steam-electric powerplants, petroleum refineries, synfuel plants, and industrial facilities; and

(b) Rights-of-way for major reservoirs, canals, pipelines, transmission lines, highways, and railroads.

(6) Approval of operations that would result in liberation of radioactive tracer materials or nuclear stimulation.

(7) Approval of any mining operations where the area to be mined, including

any area of disturbance, over the life of the mining plan, is 640 acres or larger in size.

C. If potentially significant impacts are not anticipated for these actions, an EA will be prepared.

*11.9 Actions Eligible for a Categorical Exclusion (CX)*

The Departmental Manual (516 DM 2.3A(3) and appendix 2) requires that before any action described in the following list of CXs is used, the list of "extraordinary circumstances" must be reviewed for applicability. If a CX does not pass the "extraordinary circumstances" test, the proposed action analysis defaults to either an EA or an EIS. When no "extraordinary circumstances" apply, the following activities do not require the preparation of an EA or EIS. In addition, see 516 DM 2, appendix 1 for a list of DOI-wide categorical exclusions. As proposed actions are designed and then reviewed against the CX list, proposed actions or activities must be, at a minimum, consistent with the DOI and the BLM regulations, manuals, handbooks, policies, and applicable land use plans regarding design features, best management practices, terms and conditions, conditions of approval, and stipulations.

A. Fish and Wildlife

(1) Modification of existing fences to provide improved wildlife ingress and egress.

(2) Minor modification of water developments to improve or facilitate wildlife use (e.g., modify enclosure fence, install flood valve, or reduce ramp access angle).

(3) Construction of perches, nesting platforms, islands, and similar structures for wildlife use.

(4) Temporary emergency feeding of wildlife during periods of extreme adverse weather conditions.

(5) Routine augmentations, such as fish stocking, providing no new species are introduced.

(6) Relocation of nuisance or depredating wildlife, providing the relocation does not introduce new species into the ecosystem.

(7) Installation of devices on existing facilities to protect animal life, such as raptor electrocution prevention devices.

B. Oil, Gas, and Geothermal Energy

(1) Issuance of future interest leases under the Mineral Leasing Act for Acquired Lands, where the subject lands are already in production.

(2) Approval of mineral lease adjustments and transfers, including assignments and subleases.

(3) Approval of unitization agreements, communitization agreements, drainage agreements, underground storage agreements, development contracts, or geothermal unit or participating area agreements.

(4) Approval of suspensions of operations, *force majeure* suspensions, and suspensions of operations and production.

(5) Approval of royalty determinations, such as royalty rate reductions.

(6) Approval of Notices of Intent to conduct geophysical exploration of oil, gas, or geothermal, pursuant to 43 CFR 3150 or 3250, when no temporary or new road construction is proposed.

C. Forestry

(1) Land cultivation and silvicultural activities (excluding herbicide application) in forest tree nurseries, seed orchards, and progeny test sites.

(2) Sale and removal of individual trees or small groups of trees which are dead, diseased, injured, or which constitute a safety hazard, and where access for the removal requires no more than maintenance to existing roads.

(3) Seeding or reforestation of timber sales or burn areas where no chaining is done, no pesticides are used, and there is no conversion of timber type or conversion of non-forest to forest land. Specific reforestation activities covered include: seeding and seedling plantings, shading, tubing (browse protection), paper mulching, bud caps, ravel protection, application of non-toxic big game repellant, spot scalping, rodent trapping, fertilization of seed trees, fence construction around out-planting sites, and collection of pollen, scions and cones.

(4) Pre-commercial thinning and brush control using small mechanical devices.

(5) Disposal of small amounts of miscellaneous vegetation products outside established harvest areas, such as Christmas trees, wildings, floral products (ferns, boughs, etc.), cones, seeds, and personal use firewood.

(6) Felling, bucking, and scaling sample trees to ensure accuracy of timber cruises. Such activities:

(a) Shall be limited to an average of one tree per acre or less,

(b) Shall be limited to gas-powered chainsaws or hand tools,

(c) Shall not involve any road or trail construction,

(d) Shall not include the use of ground based equipment or other manner of timber yarding, and

(e) Shall be limited to the Coos Bay, Eugene, Medford, Roseburg, and Salem Districts and Lakeview District—Klamath Falls Resource Area in Oregon.

(7) Harvesting live trees not to exceed 70 acres, requiring no more than 0.5 mile of temporary road construction. Such activities:

(a) Shall not include even-aged regeneration harvests or vegetation type conversions.

(b) May include incidental removal of trees for landings, skid trails, and road clearing.

(c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment by artificial or natural means, or vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

Examples include, but are not limited to:

(a) Removing individual trees for sawlogs, specialty products, or fuelwood.

(b) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

(8) Salvaging dead or dying trees not to exceed 250 acres, requiring no more than 0.5 mile of temporary road construction. Such activities:

(a) May include incidental removal of live or dead trees for landings, skid trails, and road clearing.

(b) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(c) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative

cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

(d) For this CX, a dying tree is defined as a standing tree that has been severely damaged by forces such as fire, wind, ice, insects, or disease, and that in the judgment of an experienced forest professional or someone technically trained for the work, is likely to die within a few years.

Examples include, but are not limited to:

(a) Harvesting a portion of a stand damaged by a wind or ice event.

(b) Harvesting fire damaged trees.

(9) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than 0.5 miles of temporary road construction. Such activities:

(a) May include removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease; and

(b) May include incidental removal of live or dead trees for landings, skid trails, and road clearing.

(c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

Examples include, but are not limited to:

(a) Felling and harvesting trees infested with mountain pine beetles and immediately adjacent uninfested trees to control expanding spot infestations; and

(b) Removing or destroying trees infested or infected with a new exotic insect or disease, such as emerald ash borer, Asian longhorned beetle, or sudden oak death pathogen.

D. Rangeland Management

(1) Approval of transfers of grazing preference.

(2) Placement and use of temporary (not to exceed one month) portable corrals and water troughs, providing no new road construction is needed.

(3) Temporary emergency feeding of livestock or wild horses and burros during periods of extreme adverse weather conditions.

(4) Removal of wild horses or burros from private lands at the request of the landowner.

(5) Processing (transporting, sorting, providing veterinary care, vaccinating, testing for communicable diseases, training, gelding, marketing, maintaining, feeding, and trimming of hooves of) excess wild horses and burros.

(6) Approval of the adoption of healthy, excess wild horses and burros.

(7) Actions required to ensure compliance with the terms of Private Maintenance and Care agreements.

(8) Issuance of title to adopted wild horses and burros.

(9) Destroying old, sick, and lame wild horses and burros as an act of mercy.

(10) Vegetation management activities, such as seeding, planting, invasive plant removal, installation of erosion control devices (e.g., mats/straw/chips), and mechanical treatments, such as crushing, piling, thinning, pruning, cutting, chipping, mulching, mowing, and prescribed fire when the activity is necessary for the management of vegetation on public lands. Such activities:

(a) Shall not exceed 4,500 acres per prescribed fire project and 1,000 acres for other vegetation management projects;

(b) Shall not be conducted in Wilderness areas or Wilderness Study Areas;

(c) Shall not include the use of herbicides, pesticides, biological treatments or the construction of new permanent roads or other new permanent infrastructure;

(d) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(e) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

(11) Issuance of livestock grazing permits/leases where

(a) The new grazing permit/lease is consistent with the use specified on the previous permit/lease, such that

(1) the same kind of livestock is grazed,

(2) the active use previously authorized is not exceeded, and

(3) grazing does not occur more than 14 days earlier or later than as specified on the previous permit/lease, and

(b) The grazing allotment(s) has been assessed and evaluated and the Responsible Official has documented in a determination that the allotment(s) is

(1) meeting land health standards, or

(2) not meeting land health standards due to factors that do not include existing livestock grazing.

E. Realty

(1) Withdrawal extensions or modifications, which only establish a new time period and entail no changes in segregative effect or use.

(2) Withdrawal revocations, terminations, extensions, or modifications; and classification terminations or modifications which do not result in lands being opened or closed to the general land laws or to the mining or mineral leasing laws.

(3) Withdrawal revocations, terminations, extensions, or modifications; classification terminations or modifications; or opening actions where the land would be opened only to discretionary land laws and where subsequent discretionary actions (prior to implementation) are in conformance with and are covered by a Resource Management Plan/EIS (or plan amendment and EA or EIS).

(4) Administrative conveyances from the Federal Aviation Administration (FAA) to the State of Alaska to accommodate airports on lands appropriated by the FAA prior to the enactment of the Alaska Statehood Act.

(5) Actions taken in conveying mineral interest where there are no known mineral values in the land under

Section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA).

(6) Resolution of class one color-of-title cases.

(7) Issuance of recordable disclaimers of interest under Section 315 of FLPMA.

(8) Corrections of patents and other conveyance documents under Section 316 of FLPMA and other applicable statutes.

(9) Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.

(10) Transfer or conversion of leases, permits, or rights-of-way from one agency to another (e.g., conversion of Forest Service permits to a BLM Title V Right-of-way).

(11) Conversion of existing right-of-way grants to Title V grants or existing leases to FLPMA Section 302(b) leases where no new facilities or other changes are needed.

(12) Grants of right-of-way wholly within the boundaries of other compatibly developed rights-of-way.

(13) Amendments to existing rights-of-way, such as the upgrading of existing facilities, which entail no additional disturbances outside the right-of-way boundary.

(14) Grants of rights-of-way for an overhead line (no pole or tower on BLM land) crossing over a corner of public land.

(15) Transfers of land or interest in land to or from other bureaus or federal agencies where current management will continue and future changes in management will be subject to the NEPA process.

(16) Acquisition of easements for an existing road or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.

(17) Grant of a short rights-of-way for utility service or terminal access roads to an individual residence, outbuilding, or water well.

(18) Temporary placement of a pipeline above ground.

(19) Issuance of short-term (3 years or less) rights-of-way or land use authorizations for such uses as storage sites, apiary sites, and construction sites where the proposal includes rehabilitation to restore the land to its natural or original condition.

(20) One-time issuance of short-term (3 years or less) rights-of-way or land use authorizations which authorize trespass action where no new use or construction is allowed, and where the proposal includes rehabilitation to restore the land to its natural or original condition.

F. Solid Minerals

(1) Issuance of future interest leases under the Mineral Leasing Act for Acquired Lands where the subject lands are already in production.

(2) Approval of mineral lease readjustments, renewals, and transfers including assignments and subleases.

(3) Approval of suspensions of operations, *force majeure* suspensions, and suspensions of operations and production.

(4) Approval of royalty determinations, such as royalty rate reductions and operations reporting procedures.

(5) Determination and designation of logical mining units.

(6) Findings of completeness furnished to the Office of Surface Mining Reclamation and Enforcement for Resource Recovery and Protection Plans.

(7) Approval of minor modifications to or minor variances from activities described in an approved exploration plan for leasable, salable, and locatable minerals (e.g., the approved plan identifies no new surface disturbance outside the areas already identified to be disturbed).

(8) Approval of minor modifications to or minor variances from activities described in an approved underground or surface mine plan for leasable minerals (e.g., change in mining sequence or timing).

(9) Digging of exploratory trenches for mineral materials, except in riparian areas.

(10) Disposal of mineral materials, such as sand, stone, gravel, pumice, pumicite, cinders, and clay, in amounts not exceeding 50,000 cubic yards or disturbing more than 5 acres, except in riparian areas.

G. Transportation

(1) Incorporation of eligible roads and trails in any transportation plan when no new construction or upgrading is needed.

(2) Installation of routine signs, markers, culverts, ditches, waterbars, gates, or cattleguards on/or adjacent to roads and trails identified in any land use or transportation plan, or eligible for incorporation in such plan.

(3) Temporary closure of roads and trails.

(4) Placement of recreational, special designation, or information signs, visitor registers, kiosks, and portable sanitation devices.

H. Recreation Management

(1) Issuance of Special Recreation Permits for day use or overnight use up to 14 consecutive nights; that impacts no more than 3 staging area acres; and/or for recreational travel along roads, trails, or in areas authorized in a land use plan. This CX cannot be used for commercial boating permits along Wild and Scenic Rivers. This CX cannot be used for the establishment or issuance of Special Recreation Permits for "Special Area" management (43 CFR 2932.5).

I. Emergency Stabilization

(1) Planned actions in response to wildfires, floods, weather events, earthquakes, or landslips that threaten public health or safety, property, and/or natural and cultural resources, and that are necessary to repair or improve lands unlikely to recover to a management-approved condition as a result of the event. Such activities shall be limited to: repair and installation of essential erosion control structures; replacement or repair of existing culverts, roads, trails, fences, and minor facilities; construction of protection fences; planting, seeding, and mulching; and removal of hazard trees, rocks, soil, and other mobile debris from, on, or along roads, trails, campgrounds, and watercourses. These activities:

(a) Shall be completed within one year following the event;

(b) Shall not include the use of herbicides or pesticides;

(c) Shall not include the construction of new roads or other new permanent infrastructure;

(d) Shall not exceed 4,200 acres; and

(e) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(f) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment by artificial or natural means, or vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

J. Other

(1) Maintaining land use plans in accordance with 43 CFR 1610.5–4.

(2) Acquisition of existing water developments (e.g., wells and springs) on public land.

(3) Conducting preliminary hazardous materials assessments and site investigations, site characterization studies and environmental monitoring. Included are siting, construction, installation and/or operation of small monitoring devices such as wells, particulate dust counters and automatic air or water samples.

(4) Use of small sites for temporary field work camps where the sites will be restored to their natural or original condition within the same work season.

(5) Reserved.

(6) A single trip in a one month period for data collection or observation sites.

(7) Construction of snow fences for safety purposes or to accumulate snow for small water facilities.

(8) Installation of minor devices to protect human life (e.g., grates across mines).

(9) Construction of small protective enclosures, including those to protect reservoirs and springs and those to protect small study areas.

(10) Removal of structures and materials of no historical value, such as abandoned automobiles, fences, and buildings, including those built in trespass and reclamation of the site when little or no surface disturbance is involved.

(11) Actions where the BLM has concurrence or co-approval with another DOI agency and the action is categorically excluded for that DOI agency.

(12) Rendering formal classification of lands as to their mineral character, waterpower, and water storage values.

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G.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
http://www.blm.gov

September 28, 2007

In Reply Refer To:
1610 (210) I

EMS TRANSMISSION 10/12/2007
Instruction Memorandum No. 2007-208
Expires: 09/30/2008

**To:** All Washington Office and Field Office Officials

**From:** Director, Bureau of Land Management

**Subject:** The Bureau of Land Management (BLM) Revised Chapter 11, Part 516 of the Department Manual

**Program Area:** All program areas.

**Purpose:** This Instruction Memorandum (IM) transmits the BLM's latest revised Chapter 11 of the Departmental Manual (516 DM) to the field, including Subpart 11.9, which lists the Categorical Exclusions (CX). The purpose is also to provide information and guidance on the revised Chapter 11, including eight new and four modified CXs now available for use with qualifying projects relative to public land resources.

**Policy/Action:** The Washington Office (WO) provides this guidance to ensure that Field Offices and employees are aware of and appropriately use the revised National Environmental Policy Act (NEPA) implementation procedures outlined in 516 DM, Chapter 11, including application of CXs. While interest may focus within the new and modified CXs, be aware that there are substantive changes to other implementation procedures as well. The complete text for the revised 516 DM 11 is in Attachment -1.

The revisions to the Part 516-DM, Ch. 11 were necessary to update the supplementary requirements for implementing provisions of 516 DM, Chapters 1-6 for the DOI, which BLM uses to comply with the NEPA as appropriate for various types of actions taken in managing public lands.

This Chapter 11 guidance should be used in conjunction with the revised NEPA Handbook, pending issuance as guidance in an IM. The Handbook provides practical examples and procedures for compliance with the NEPA. Where the Handbook guidance or processes could be clearer or you can offer an alternative process, please provide your comments, concerns, and issues to the Division of Planning and Science Policy (WO-210) so that these can be addressed.
As a part of the revised Chapter 11, new CXs are now available for use by the BLM in support of land management decisions. This IM with attachments will help determine appropriate uses, limitations, and cautions to follow when using the CXs. Again, the NEPA Handbook will provide excellent procedures and guidance and should be used when considering the use of a CX. Attachment – 2 provides guidance based on Chapter four of the pending, revised NEPA Handbook and should be used until replaced by the NEPA Handbook. The specific language of each (both existing and new) CX is contained in section 11.9 of Attachment-1.

As a reminder, the following guidance applies to the use of all CXs listed in 516 DM 11:

1) Use of these CXs does not remove requirements to complete necessary clearances such as those for cultural resources and threatened and endangered species.

2) Managers are reminded to not segment related actions to stay within the acreage limits contained in some of these CXs. The acre limitations referred to in the CXs should be interpreted as the footprint of all the treatments within a project boundary covered by a single decision.

3) In determining the appropriate CX to use, managers should select the CX that most closely fits the objectives of the project they are considering. When a proposed project meets one of the CX descriptions found in 516 DM 11.9, the next step is to screen the project against the Department of the Interior (DOI) extraordinary circumstances. If any of the extraordinary circumstances listed in 516 DM 2.3A(3) and Appendix 2 apply, more extensive NEPA documentation such as an environmental assessment is necessary and the CX may not be used.

4) The use of these new CXs should be documented using the Categorical Exclusion Documentation Format contained in Attachment – 2 of this IM and per program specific requirements.

5) Use of a CX does not reduce the obligation to issue a decision which would provide opportunities for interested parties or the public to protest and/or appeal the decision.

**Time frame:** This instruction memorandum is effective upon issuance.

**Budget Impact:** It is anticipated that these revised implementation procedures, for compliance with NEPA, will save the BLM significant amounts of money and time in completion of the Bureau's process to document NEPA compliance. When used appropriately, implementation of these new CXs will facilitate effective land management decisions.

**Background:** On August 14, 2007, the Federal Register published the "Notice of Final Action to Adopt Revisions to the Bureau of Land Management's Procedures for Managing the NEPA Process, Chapter 11 of the Department of the Interior's Manual Part 516." These revisions to the general NEPA guidance are to comply with new DOI guidance. In addition, the BLM finalized eight new and four modified CXs. The full text of the revised 516 DM 11 is in attachment one.

The BLM's Chapter 11 was revised after working with Council on Environmental Quality (CEQ) and the Office of Environmental Policy and Compliance (OEPC) to discuss and make changes based on internal review and public comment on proposed revisions published in the Federal Register in January 2006. Internal agency and department level feedback and public comment resulted in some modifications to the January 2006 proposed revisions. Some of the modifications to the revised implementing procedures made between the draft and final versions include:

- Revised language more clearly defines responsibilities of agency managers at various levels of the organization.
- Language edited in **External Applicants' Guidance** (section 11.3) to clarify roles and responsibilities of external applicants.
- Addressed public involvement requirements. Eliminated the reference to "consensus-based decision-making" and replaced it with "consensus-based management" to be consistent with direction provided by the DOI. Inserted the DOI's definition of "consensus-based management" and expectations regarding the process, and emphasis was placed on the BLM's sole responsibility for decision-making based on NEPA analysis. Additionally, the revised language

more clearly reflects the DOI's direction on implementing public participation and community-based training. **(11.4 General Requirements)**

- Clarified "adaptive management" by replacing the definition with the existing Departmental definition.
- Clarified limits on proposed actions during environmental review.
- Clarified what the Responsible Official's options are when a proposed action does not conform to an approved plan **(section 11.5, Plan Conformance)**.
- **Existing Documentation (Determination of NEPA Adequacy, Section 11.6)**: This section was rewritten to clarify BLM's policy regarding the use of existing documentation. Operational information on how to conduct a Determination of NEPA Adequacy will be provided in the BLM NEPA Handbook (H-1790-1).
- Simplified the entire section on Environmental Assessments (EA) to reduce confusion with CXs and other NEPA actions. Deleted guidance to be in the BLM NEPA Handbook. **(11.7 Actions Typically Requiring an EA)**
- The term "highly controversial" was clarified to refer to a dispute over the nature of the impacts. **(11.8 Major Actions Normally Requiring an EIS)**
- Refined the text to clarify the criteria BLM considers when determining whether an Environmental Impact Statement (EIS) level analysis is needed. Supplementary guidance on how to determine significance when considering whether to prepare an EIS, such as when effects should be considered "highly controversial," will be placed in the BLM NEPA Handbook (BLM H-1790-1).
- Dropped the term "Wilderness" from the list of proposals typically requiring an EIS. This edit reflects current program policy that there will no longer be Wilderness proposals absent new legislation. Supplementary guidance on how to implement policy regarding preparation of EISs will be placed in the BLM NEPA Handbook (BLM H-1790-1).

- **Actions Eligible for a Categorical Exclusion:**
- Replaced "exceptions" with "extraordinary circumstances" to reflect a revision to 516 DM, Ch. 2.3A(3) made by the DOI in June 2005. Added a statement identifying the DOI-wide categorical exclusions in 516 DM, Ch.2, Appendix 1, available for BLM consideration.
- The BLM has decided not to finalize proposed CXs 11.9B(7) and 11.9B(8), regarding geothermal activities.
- Finalized the four Forestry CXs (Section 11.9C (6)-(9)) with some edits to the text. This language was added to maintain consistency with Forest Service data analysis used by the BLM to establish the BLM CXs.
- Finalized the proposed Rangeland Management/Vegetation CX 11.9D(10) as proposed with a few modifications/clarifications to the text.
- Finalized the proposed Rangeland Management/Grazing Permit CX 11.9D(11) with modifications to the text and additional criteria or limits on when the CX can be applied.
- Dropped the proposed CX 11.9 D(12) to authorize temporary non-renewable grazing use based on further review of the supporting data.
- Dropped the proposed change to the existing Realty CX due to field input on the need for existing language.
- Finalized the Transportation CXs (Section 11.9G) with minor text modification by including the word "Trails"
- Finalized the Recreation Management CX (Section 11.9H) with modified language.
- Finalized the Emergency Stabilization CX (Section 11.9I) as proposed with the addition of text to define and limit the use of temporary roads. The section now includes a requirement to treat temporary roads to promote rehabilitation.
- The previous existing Sub-part H "Other" was moved to Sub-part J and adopted as proposed with one exception. An existing CX was mistakenly left out of the January 25, 2006 Federal Register notice. The following existing CX will be placed in Sub-part J (12): "Rendering formal

classification of lands as to their mineral character and waterpower and water storage values." There is no change to the language.

Another item to note, the BLM NEPA Handbook (H-1790-1) is currently under revision to reflect the new departmental guidance. Tiered from the Departmental Manual (Part 516-DM), it provides additional detailed guidance and procedures for implementing the NEPA. Replacing the 1988 BLM NEPA Handbook, the revised handbook is designed for managers, field office staff, and other personnel to use when implementing the NEPA.

**Manual/Handbook Sections Affected:** This guidance results from the revision of the Department of the Interior's NEPA manual, 516 DM 11, revising BLM's NEPA procedures and establishing new CXs. BLM's NEPA Handbook (H-1790-1) provides operational guidance on how to implement BLM policy regarding CXs and the revised H-1790-1 is being issued under separate IM.

**Coordination:** This IM has been coordinated with Assistant Directors for WO-170, WO-200, WO-300 and Solicitors. This proposal was closely coordinated within the Division of Planning and Science Policy (WO-210), the Division of Recreation and Visitor Services (WO-250), the Division of Rangeland Resources (WO-220), the Division of Forests and Woodlands (WO-270), Fire and Aviation Directorate (FA-600), and the National Science and Technology Center (NSTC).

**Contact:** If you have questions, or need additional information, please contact the appropriate individual listed below:

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3 Attachments
1 – Revised Chapter 11, Part 516 of the Departmental Manual (12 pp)
2 – Chapter four of NEPA Handbook, Categorical Exclusions ( 6 pp)
3 – Program specific guidance for use of CXs (3 pp)

**Department of the Interior**
**Departmental Manual**

**Effective Date:** August 14, 2007
**Series:** Environmental Quality
**Part 516:** National Environmental Policy Act of 1969
**Chapter 11:** Managing the NEPA Process--Bureau of Land Management
**Originating Office:** Office of Environmental Policy and Compliance

## 516 DM 11

### 11.1 Purpose

This chapter provides supplementary requirements for implementing provisions of 516 DM Chapters 1 through 6 for the Department of the Interior's Bureau of Land Management (BLM). The BLM's National Environmental Policy Act (NEPA) Handbook (H-1790-1) provides additional guidance.

### 11.2 NEPA Responsibilities

A. The Director and Deputy Director(s) are responsible for the BLM NEPA compliance activities.

B. The Assistant Director, Renewable Resources and Planning, is responsible for national NEPA compliance leadership and coordination, program direction, policy, and protocols development, and implementation of the same at the line management level. The Division of Planning and Science Policy, within the Assistant Directorate, Renewable Resources and Planning, has the BLM lead for the NEPA compliance program direction and oversight.

C. The BLM Office Directors and other Assistant Directors are responsible for cooperating with the Assistant Director, Renewable Resources and Planning, to ensure that the BLM NEPA compliance procedures operate as prescribed within their areas of responsibility.

D. The BLM Center Directors are responsible for cooperating with the Assistant Director, Renewable Resources and Planning, to ensure that the BLM NEPA compliance procedures operate as prescribed within their areas of responsibility.

E. The State Directors are responsible to the Director/Deputy Director(s) for overall direction, integration and implementation of the BLM NEPA compliance procedures in their states. This includes managing for the appropriate level of public notification and participation, and ensuring production of quality environmental review and decision documents. Deputy State Directors serve as focal points for NEPA compliance matters at the state level.

F. The District and Field Managers are responsible for NEPA compliance at the local level.

### 11.3 External Applicants' Guidance

A. General:

(1) For all external proposals, applicants should make initial contact with the Responsible Official (District Manager, Field Manager, or State Director) responsible for the affected public lands as soon as possible after determining the BLM's involvement. This early contact is necessary to allow the BLM to consult early with appropriate state and local agencies and tribes and with interested private persons and organizations, and to commence its NEPA process at the earliest possible time.

(2) When a proposed action has the potential to affect public lands in more than one administrative unit, the applicant may initially contact any Responsible Official whose jurisdiction is involved. The BLM may then designate a lead office to coordinate between BLM jurisdictions.

(3) Potential applicants may secure from the Responsible Official a list of NEPA and other relevant regulations and requirements for environmental review related to each applicant's proposed action. The purpose of making these regulations and requirements known in advance is to assist the applicant in the development of an adequate and accurate description of the proposed action when the applicant submits their project application. The list provided to the applicant may not fully disclose all relevant regulations and requirements because additional requirements could be identified after review of the applicant's proposal document(s) and as a result of the "scoping" process.

(4) The applicant is encouraged to advise the BLM of their intentions early on in their planning process. Early communication is necessary so that the BLM can efficiently advise the applicant on the anticipated type of NEPA review required, information needed, and potential data gaps that may or may not need to be filled, so that the BLM can describe the relevant regulations and requirements likely to affect the proposed action(s), and to discuss scheduling expectations.

B. Regulations: The following list of potentially relevant regulations should be considered at a minimum. Many other regulations affect public lands--some of which are specific to the BLM, while others are applicable across a broad range of federal programs (e.g., Protection of Historic and Cultural Programs--36 Code of Federal Regulations (CFR) Part 800).

(1) Resource Management Planning--43 CFR 1610;
(2) Withdrawals--43 CFR 2300;
(3) Land Classification--43 CFR 2400;
(4) Disposition: Occupancy and Use--43 CFR 2500;
(5) Disposition: Grants--43 CFR 2600;
(6) Disposition: Sales--43 CFR 2700;
(7) Use: Rights-of-Way--43 CFR 2800;
(8) Use: Leases and Permits--43 CFR 2900;
(9) Oil and Gas Leasing--43 CFR 3100;
(10) Geothermal Resources Leasing--43 CFR 3200;
(11) Coal Management--43 CFR 3400;
(12) Leasing of Solid Minerals Other than Coal/Oil Shale--43 CFR 3500;
(13) Mineral Materials Disposal--43 CFR 3600;
(14) Mining Claims Under the General Mining Laws--43 CFR 3800;
(15) Grazing Administration--43 CFR 4100;
(16) Wild Free-Roaming Horse and Burro Management--43 CFR 4700;
(17) Forest Management--43 CFR 5000;
(18) Wildlife Management--43 CFR 6000;
(19) Recreation Management--43 CFR 8300; and
(20) Wilderness Management--43 CFR 6300.

## 11.4 General Requirements

The Council on Environmental Quality (CEQ) regulations state that federal agencies shall reduce paperwork and delay (40 CFR 1500.4 and 1500.5) to the fullest extent possible. The information

used in any NEPA analysis must be of high quality. Accurate scientific analysis, agency expert comments, and public scrutiny are essential to implementing the NEPA (40 CFR 1500.1(b)). Environmental documents should be concise and written in plain language (40 CFR 1502.8), so they can be understood and should concentrate on the issues that are truly significant to the action in question rather than amassing needless detail (40 CFR 1500.1(b)).

A. Reduce paperwork and delays: The Responsible Official will avoid unnecessary duplication of effort and promote cooperation with other federal agencies that have permitting, funding, approving, or other consulting or coordinating requirements associated with the proposed action. The Responsible Official shall, as appropriate, integrate NEPA requirements with other environmental review and consultation requirements (40 CFR 1500.4(k)); tier to broader environmental review documents (40 CFR 1502.20); incorporate by reference relevant studies and analyses (40 CFR 1502.21); adopt other agency environmental analyses (40 CFR 1506.3); and supplement analyses with new information (40 CFR 1502.9).

B. Eliminate duplicate tribal, state, and local governmental procedures (40 CFR 1506.2): The Responsible Official will cooperate with other governmental entities to the fullest extent possible to reduce duplication between federal, state, local and tribal requirements in addition to, but not in conflict with, those in the NEPA. Cooperation may include the following: common databases; joint planning processes; joint science investigations; joint public meetings and hearings; and joint environmental assessment (EA) level and joint environmental impact statement (EIS) level analyses using joint lead or cooperating agency status.

C. Consult and coordinate: The Responsible Official will determine early in the process the appropriate type and level of consultation and coordination required with other federal agencies and with state, local and tribal governments. After the NEPA review is completed, coordination will often continue throughout project implementation, monitoring, and evaluation.

D. Involve the public: The public must be involved early and continuously, as appropriate, throughout the NEPA process. The Responsible Official shall ensure that:

(1) The type and level of public involvement shall be commensurate with the NEPA analysis needed to make the decision.

(2) When feasible, communities can be involved through consensus-based management activities. Consensus-based management includes direct community involvement in the BLM activities subject to NEPA analyses, from initial scoping to implementation and monitoring of the impacts of the decision. Consensus-based management seeks to achieve agreement from diverse interests on the goals, purposes, and needs of the BLM plans and activities and the methods needed to achieve those ends. The BLM retains exclusive decision-making responsibility and shall exercise that responsibility in a timely manner.

E. Implement Adaptive Management: The Responsible Official is encouraged to build "Adaptive Management" practice in to their proposed actions and NEPA compliance activities and train personnel in this important environmental concept.

Adaptive Management in the DOI is a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes, and the facilitation of management changes to ensure that outcomes are met, or reevaluated as necessary. Such reevaluation may require new or supplemental NEPA compliance. Adaptive Management recognizes that knowledge about natural resource systems is sometimes uncertain and is the preferred method for addressing these cases. The preferred alternative should include sufficient flexibility to allow for adjustments in implementation in response to monitoring results.

F. Train for public and community involvement: The BLM employee(s) that facilitate(s) public and community involvement in the NEPA process should have training in public involvement, alternative dispute resolution, negotiation, meeting facilitation, collaboration, and/or partnering.

G. Limitations on Actions during the NEPA process: The following guidance may aid in fulfilling the requirements of 40 CFR 1506.1. During the preparation of a program or plan NEPA document, the Responsible Official may undertake any major Federal action within the scope and analyzed in the existing NEPA document supporting the current plan or program, so long as there is adequate NEPA documentation to support the individual action.

### 11.5 Plan Conformance

Where a BLM land use plan (LUP) exists, a proposed action must be in conformance with the plan. This means that the proposed action must be specifically provided for in the plan, or if not specifically mentioned, the proposal must be clearly consistent with the terms, conditions, and decisions of the plan or plan as amended. If it is determined that the proposed action does not conform to the plan, the Responsible Official may:

(A) reject the proposal,

(B) modify the proposal to conform to the land use plan, or

(C) complete appropriate plan amendments and associated NEPA compliance requirements prior to proceeding with the proposed action.

### 11.6 Existing Documentation (Determination of NEPA Adequacy)

The Responsible Official may consider using existing NEPA analysis for a proposed action when the record documents show that the following conditions are met.

(A) The proposed action is adequately covered by (i.e., is within the scope of and analyzed in) relevant existing analyses, data, and records; and

(B) There are no new circumstances, new information, or unanticipated or unanalyzed environmental impacts that warrant new or supplemental analysis.

If the Responsible Official determines that existing NEPA documents adequately analyzed the effects of the proposed action, this determination, usually prepared in a Determination of NEPA Adequacy (DNA) worksheet to provide the administrative record support, serves as an interim step in the BLM's internal decision-making process. The DNA is intended to evaluate the coverage of existing documents and the significance of new information, but does not itself provide NEPA analysis. If the Responsible Official concludes that the proposed action(s) warrant additional review, information from the DNA worksheet may be used to facilitate the preparation of the appropriate level of NEPA analysis.

The BLM's NEPA Handbook and program specific regulations and guidance describe additional steps needed to make and document the agency's final determination regarding a proposed action.

### 11.7 Actions Requiring an Environmental Assessment (EA)

A. An EA is a concise public document that serves to:

(1) Provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a Finding of No Significant Impact (FONSI);

(2) Aid the BLM's compliance with NEPA when an EIS is not necessary; and

(3) Facilitate preparation of an EIS when one is necessary.

B. Unlike an EIS that requires much more, an EA must include the following four items identified in 40 CFR 1508.9(b):

(1) The need for the proposal.

(2) Alternatives as described in Section 102(2)(E) of NEPA.

(3) The environmental impacts of the proposed action and alternatives.

(4) A listing of agencies and persons consulted.

C. An EA is usually the appropriate NEPA document for:

(1) Land Use Plan Amendments;

(2) Land use plan implementation decisions, including but not limited to analysis for implementation plans such as watershed plans or coordinated resource activity plans, resource use permits (except for those that are categorically excludable), and site-specific project plans, such as construction of a trail.

D. An EA should be completed when the Responsible Official is uncertain of the potential for significant impacts and needs further analysis to make the determination.

E. If, for any of these actions, it is anticipated or determined that an EA is not appropriate because of potential significant impacts, an EIS will be prepared.

## 11.8 Major Actions Requiring an EIS

A. An EIS level analysis should be completed when an action meets either of the two following criteria.

(1) If the impacts of a proposed action are expected to be significant; or

(2) In circumstances where a proposed action is directly related to another action(s), and cumulatively the effects of the actions taken together would be significant, even if the effects of the actions taken separately would not be significant,

B. The following types of BLM actions will normally require the preparation of an EIS:

(1) Approval of Resource Management Plans.

(2) Proposals for Wild and Scenic Rivers and National Scenic and Historic Trails.

(3) Approval of regional coal lease sales in a coal production region.

(4) Decisions to issue a coal preference right lease.

(5) Approval of applications to the BLM for major actions in the following categories:

(a) Sites for steam-electric powerplants, petroleum refineries, synfuel plants, and industrial facilities; and

(b) Rights-of-way for major reservoirs, canals, pipelines, transmission lines, highways, and railroads.

(6) Approval of operations that would result in liberation of radioactive tracer materials or nuclear stimulation.

(7) Approval of any mining operations where the area to be mined, including any area of disturbance, over the life of the mining plan, is 640 acres or larger in size.

C. If potentially significant impacts are not anticipated for these actions, an EA will be prepared.

## 11.9 Actions Eligible for a Categorical Exclusion (CX)

The Departmental Manual (516 DM 2.3A(3) and appendix 2) requires that before any action described in the following list of CXs is used, the list of "extraordinary circumstances" must be reviewed for applicability. If a CX does not pass the "extraordinary circumstances" test, the proposed action analysis defaults to either an EA or an EIS. When no "extraordinary

circumstances" apply, the following activities do not require the preparation of an EA or EIS. In addition, see 516 DM 2, appendix 1 for a list of DOI-wide categorical exclusions. As proposed actions are designed and then reviewed against the CX list, proposed actions or activities must be, at a minimum, consistent with the DOI and the BLM regulations, manuals, handbooks, policies, and applicable land use plans regarding design features, best management practices, terms and conditions, conditions of approval, and stipulations.

A. Fish and Wildlife

(1) Modification of existing fences to provide improved wildlife ingress and egress.

(2) Minor modification of water developments to improve or facilitate wildlife use (e.g., modify enclosure fence, install flood valve, or reduce ramp access angle).

(3) Construction of perches, nesting platforms, islands, and similar structures for wildlife use.

(4) Temporary emergency feeding of wildlife during periods of extreme adverse weather conditions.

(5) Routine augmentations, such as fish stocking, providing no new species are introduced.

(6) Relocation of nuisance or depredating wildlife, providing the relocation does not introduce new species into the ecosystem.

(7) Installation of devices on existing facilities to protect animal life, such as raptor electrocution prevention devices.

B. Oil, Gas, and Geothermal Energy

(1) Issuance of future interest leases under the Mineral Leasing Act for Acquired Lands, where the subject lands are already in production.

(2) Approval of mineral lease adjustments and transfers, including assignments and subleases.

(3) Approval of unitization agreements, communitization agreements, drainage agreements, underground storage agreements, development contracts, or geothermal unit or participating area agreements.

(4) Approval of suspensions of operations, force majeure suspensions, and suspensions of operations and production.

(5) Approval of royalty determinations, such as royalty rate reductions.

(6) Approval of Notices of Intent to conduct geophysical exploration of oil, gas, or geothermal, pursuant to 43 CFR 3150 or 3250, when no temporary or new road construction is proposed.

C. Forestry

(1) Land cultivation and silvicultural activities (excluding herbicide application) in forest tree nurseries, seed orchards, and progeny test sites.

(2) Sale and removal of individual trees or small groups of trees which are dead, diseased, injured, or which constitute a safety hazard, and where access for the removal requires no more than maintenance to existing roads.

(3) Seeding or reforestation of timber sales or burn areas where no chaining is done, no pesticides are used, and there is no conversion of timber type or conversion of non-forest to forest land. Specific reforestation activities covered include: seeding and seedling plantings, shading, tubing (browse protection), paper mulching, bud caps, ravel protection, application of non-toxic big game repellant, spot scalping, rodent trapping, fertilization of seed trees, fence construction around out-planting sites, and collection of pollen, scions and cones.

(4) Pre-commercial thinning and brush control using small mechanical devices.

(5) Disposal of small amounts of miscellaneous vegetation products outside established harvest areas, such as Christmas trees, wildings, floral products (ferns, boughs, etc.), cones, seeds, and personal use firewood.

(6) Felling, bucking, and scaling sample trees to ensure accuracy of timber cruises. Such activities:

(a) Shall be limited to an average of one tree per acre or less,

(b) Shall be limited to gas-powered chainsaws or hand tools,

(c) Shall not involve any road or trail construction,

(d) Shall not include the use of ground based equipment or other manner of timber yarding, and

(e) Shall be limited to the Coos Bay, Eugene, Medford, Roseburg, and Salem Districts and Lakeview District, Klamath Falls Resource Area in Oregon.

(7) Harvesting live trees not to exceed 70 acres, requiring no more than 0.5 mile of temporary road construction. Such activities:

(a) Shall not include even-aged regeneration harvests or vegetation type conversions.

(b) May include incidental removal of trees for landings, skid trails, and road clearing.

(c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment by artificial or natural means, or vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

Examples include, but are not limited to:

(a) Removing individual trees for sawlogs, specialty products, or fuelwood.

(b) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

(8) Salvaging dead or dying trees not to exceed 250 acres, requiring no more than 0.5 mile of temporary road construction. Such activities:

(a) May include incidental removal of live or dead trees for landings, skid trails, and road clearing.

(b) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(c) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

(d) For this CX, a dying tree is defined as a standing tree that has been severely damaged by forces such as fire, wind, ice, insects, or disease, and that in the judgment of an experienced forest professional or someone technically trained for the work, is likely to die within a few years.

Examples include, but are not limited to:

(a) Harvesting a portion of a stand damaged by a wind or ice event.

(b) Harvesting fire damaged trees.

(9) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than 0.5 miles of temporary road construction. Such activities:

(a) May include removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease; and

(b) May include incidental removal of live or dead trees for landings, skid trails, and road clearing.

(c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

Examples include, but are not limited to:

(a) Felling and harvesting trees infested with mountain pine beetles and immediately adjacent uninfested trees to control expanding spot infestations; and

(b) Removing or destroying trees infested or infected with a new exotic insect or disease, such as emerald ash borer, Asian longhorned beetle, or sudden oak death pathogen.

D. Rangeland Management

(1) Approval of transfers of grazing preference.

(2) Placement and use of temporary (not to exceed one month) portable corrals and water troughs, providing no new road construction is needed.

(3) Temporary emergency feeding of livestock or wild horses and burros during periods of extreme adverse weather conditions.

(4) Removal of wild horses or burros from private lands at the request of the landowner.

(5) Processing (transporting, sorting, providing veterinary care, vaccinating, testing for communicable diseases, training, gelding, marketing, maintaining, feeding, and trimming of hooves of) excess wild horses and burros.

(6) Approval of the adoption of healthy, excess wild horses and burros.

(7) Actions required to ensure compliance with the terms of Private Maintenance and Care agreements.

(8) Issuance of title to adopted wild horses and burros.

(9) Destroying old, sick, and lame wild horses and burros as an act of mercy.

(10) Vegetation management activities, such as seeding, planting, invasive plant removal, installation of erosion control devices (e.g., mats/straw/chips), and mechanical treatments, such as crushing, piling, thinning, pruning, cutting, chipping, mulching, mowing, and prescribed fire when the activity is necessary for the management of vegetation on public lands. Such activities:

(a) Shall not exceed 4,500 acres per prescribed fire project and 1,000 acres for other vegetation management projects;

(b) Shall not be conducted in Wilderness areas or Wilderness Study Areas;

(c) Shall not include the use of herbicides, pesticides, biological treatments or the construction of new permanent roads or other new permanent infrastructure;

(d) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(e) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

(11) Issuance of livestock grazing permits/leases where

(a) The new grazing permit/lease is consistent with the use specified on the previous permit/lease, such that

(1) the same kind of livestock is grazed,

(2) the active use previously authorized is not exceeded, and

(3) grazing does not occur more than 14 days earlier or later than as specified on the previous permit/lease, and

(b) The grazing allotment(s) has been assessed and evaluated and the Responsible Official has documented in a determination that the allotment(s) is

(1) meeting land health standards, or

(2) not meeting land health standards due to factors that do not include existing livestock grazing.

E. Realty

(1) Withdrawal extensions or modifications, which only establish a new time period and entail no changes in segregative effect or use.

(2) Withdrawal revocations, terminations, extensions, or modifications; and classification terminations or modifications which do not result in lands being opened or closed to the general land laws or to the mining or mineral leasing laws.

(3) Withdrawal revocations, terminations, extensions, or modifications; classification terminations or modifications; or opening actions where the land would be opened only to discretionary land laws and where subsequent discretionary actions (prior to implementation) are in conformance with and are covered by a Resource Management Plan/EIS (or plan amendment and EA or EIS).

(4) Administrative conveyances from the Federal Aviation Administration (FAA) to the State of Alaska to accommodate airports on lands appropriated by the FAA prior to the enactment of the Alaska Statehood Act.

(5) Actions taken in conveying mineral interest where there are no known mineral values in the land under Section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA).

(6) Resolution of class one color-of-title cases.

(7) Issuance of recordable disclaimers of interest under Section 315 of FLPMA.

(8) Corrections of patents and other conveyance documents under Section 316 of FLPMA and other applicable statutes.

(9) Renewals and assignments of leases, permits, or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.

(10) Transfer or conversion of leases, permits, or rights-of-way from one agency to another (e.g., conversion of Forest Service permits to a BLM Title V Right-of-way).

(11) Conversion of existing right-of-way grants to Title V grants or existing leases to FLPMA Section 302(b) leases where no new facilities or other changes are needed.

(12) Grants of right-of-way wholly within the boundaries of other compatibly developed rights-of-way.

(13) Amendments to existing rights-of-way, such as the upgrading of existing facilities, which entail no additional disturbances outside the right-of-way boundary.

(14) Grants of rights-of-way for an overhead line (no pole or tower on BLM land) crossing over a corner of public land.

(15) Transfers of land or interest in land to or from other bureaus or federal agencies where current management will continue and future changes in management will be subject to the NEPA process.

(16) Acquisition of easements for an existing road or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.

(17) Grant of a short rights-of-way for utility service or terminal access roads to an individual residence, outbuilding, or water well.

(18) Temporary placement of a pipeline above ground.

(19) Issuance of short-term (3 years or less) rights-of-way or land use authorizations for such uses as storage sites, apiary sites, and construction sites where the proposal includes rehabilitation to restore the land to its natural or original condition.

(20) One-time issuance of short-term (3 years or less) rights-of-way or land use authorizations which authorize trespass action where no new use or construction is allowed, and where the proposal includes rehabilitation to restore the land to its natural or original condition.

F. Solid Minerals

(1) Issuance of future interest leases under the Mineral Leasing Act for Acquired Lands where the subject lands are already in production.

(2) Approval of mineral lease readjustments, renewals, and transfers including assignments and subleases.

(3) Approval of suspensions of operations, force majeure suspensions, and suspensions of operations and production.

(4) Approval of royalty determinations, such as royalty rate reductions and operations reporting procedures.

(5) Determination and designation of logical mining units.

(6) Findings of completeness furnished to the Office of Surface Mining Reclamation and Enforcement for Resource Recovery and Protection Plans.

(7) Approval of minor modifications to or minor variances from activities described in an approved exploration plan for leasable, salable, and locatable minerals (e.g., the approved plan identifies no new surface disturbance outside the areas already identified to be disturbed).

(8) Approval of minor modifications to or minor variances from activities described in an approved underground or surface mine plan for leasable minerals (e.g., change in mining sequence or timing).

(9) Digging of exploratory trenches for mineral materials, except in riparian areas.

(10) Disposal of mineral materials, such as sand, stone, gravel, pumice, pumicite, cinders, and clay, in amounts not exceeding 50,000 cubic yards or disturbing more than 5 acres, except in riparian areas.

G. Transportation

(1) Incorporation of eligible roads and trails in any transportation plan when no new construction or upgrading is needed.

(2) Installation of routine signs, markers, culverts, ditches, waterbars, gates, or cattleguards on/or adjacent to roads and trails identified in any land use or transportation plan, or eligible for incorporation in such plan.

(3) Temporary closure of roads and trails.

(4) Placement of recreational, special designation, or information signs, visitor registers, kiosks, and portable sanitation devices.

H. Recreation Management

(1) Issuance of Special Recreation Permits for day use or overnight use up to 14 consecutive nights; that impacts no more than 3 staging area acres; and/or for recreational travel along roads, trails, or in areas authorized in a land use plan. This CX cannot be used for commercial boating permits along Wild and Scenic Rivers. This CX cannot be used for the establishment or issuance of Special Recreation Permits for "Special Area" management (43 CFR 2932.5).

I. Emergency Stabilization

(1) Planned actions in response to wildfires, floods, weather events, earthquakes, or landslips that threaten public health or safety, property, and/or natural and cultural resources, and that are necessary to repair or improve lands unlikely to recover to a management-approved condition as a result of the event. Such activities shall be limited to: repair and installation of essential erosion control structures; replacement or repair of existing culverts, roads, trails, fences, and minor facilities; construction of protection fences; planting, seeding, and mulching; and removal of hazard trees, rocks, soil, and other mobile debris from, on, or along roads, trails, campgrounds, and watercourses. These activities:

(a) Shall be completed within one year following the event;

(b) Shall not include the use of herbicides or pesticides;

(c) Shall not include the construction of new roads or other new permanent infrastructure;

(d) Shall not exceed 4,200 acres; and

(e) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(f) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment by artificial or natural means, or vegetative cover on the roadway and areas

where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

J. Other

(1) Maintaining land use plans in accordance with 43 CFR 1610.5-4.

(2) Acquisition of existing water developments (e.g., wells and springs) on public land.

(3) Conducting preliminary hazardous materials assessments and site investigations, site characterization studies and environmental monitoring. Included are siting, construction, installation and/or operation of small monitoring devices such as wells, particulate dust counters and automatic air or water samples.

(4) Use of small sites for temporary field work camps where the sites will be restored to their natural or original condition within the same work season.

(5) Reserved.

(6) A single trip in a one month period for data collection or observation sites.

(7) Construction of snow fences for safety purposes or to accumulate snow for small water facilities.

(8) Installation of minor devices to protect human life (e.g., grates across mines).

(9) Construction of small protective enclosures, including those to protect reservoirs and springs and those to protect small study areas.

(10) Removal of structures and materials of no historical value, such as abandoned automobiles, fences, and buildings, including those built in trespass and reclamation of the site when little or no surface disturbance is involved.

(11) Actions where the BLM has concurrence or co-approval with another DOI agency and the action is categorically excluded for that DOI agency.

(12) Rendering formal classification of lands as to their mineral character, waterpower, and water storage values.

# Guidance regarding Categorical Exclusions

General
1.0 Categorical Exclusions Established by the Energy Policy Act – not present here
2.0 Categorical Exclusions Not Established by the Energy Policy Act

## GENERAL

Categorical exclusions (CXs) are categories of actions that Federal agencies have determined do not have a significant effect on the quality of the human environment (individually or cumulatively) and for which, therefore, neither an EA nor an EIS is required (40 CFR 1508.4). A CX is a form of NEPA compliance, without the analysis that occurs in an EA or an EIS. It is not an exemption from the NEPA.

When using CXs, other procedural requirements may still apply: for example, tribal consultation, and consultation under the National Historic Preservation Act and the Endangered Species Act.

> BLM decision-makers are encouraged to apply categorical exclusions, where appropriate, because they speed NEPA compliance.

While use of a CX is not subject to BLM administrative protest or appeals provisions, a decision on the action being taken may be subject to protest and appeal. Consult program-specific guidance and include applicable protest and appeal provisions with the documentation of the decision on the action. See the NEPA Handbook Web Guide for program-specific protest and appeal information.

If there is high public interest in an action that will be categorically excluded, you may elect to involve the public (for example, through notification or scoping). Public involvement may be valuable in determining whether extraordinary circumstances apply. There may be program-specific guidance for public notification of the decision. Even if there is no program-specific guidance, you may elect to provide public notification of a decision based on a CX, depending on the public interest in the action.

Though not required, you may elect to prepare an EA for proposed actions otherwise excluded when the decision-maker believes that an EA would be helpful in planning or decision-making (40 CFR 1501.3 and 516 DM 3.2 B). We recommend that you include in the NEPA document the rationale for completing an EA when a CX could be used.

Guidance for the use of CXs differs for some specific CXs as described below.

## 2.0 CATEGORICAL EXCLUSIONS NOT ESTABLISHED BY THE ENERGY POLICY ACT

This section outlines procedures for using Categorical Exclusions not established by the Energy Policy Act.

## 2.1 Identifying Potential Categorical Exclusions

Verify that the proposed action fits within one of the departmental CXs (516 DM 2, Appendix 1) or a BLM CX (**516 DM 11***)*. Both the Departmental and BLM lists of CXs need to be reviewed to determine if the proposed action falls into one of the listed categories, as the two lists are not the same.

Some proposed actions may fit within more than one CX. In determining the appropriate CX to use, select the CX that most closely matches the objectives of the proposed action and is the most specific.

Several CXs include acreage limitations (516 DM 2, Appendix 1 or 516 DM 11). Where multiple treatments are proposed, for instance, consider the total area treated, rather than adding together overlapping acreage of different treatments. *For example, the BLM CX for vegetation treatment includes an acreage limitation of 1000 acres for vegetation management projects other than prescribed fire. A proposed action of invasive plant removal on 600 acres, followed by mechanical cutting on 500 overlapping acres does not exceed the 1000-acre limitation. If the mechanical cutting were proposed on 500 acres that did not overlap with the 600 acres of invasive plant removal, the proposed action would exceed the 1000-acre limitation.*

## 2.2 Determining if an Extraordinary Circumstance Precludes Use of a Categorical Exclusion

Extraordinary circumstances preclude the use of a CX. Extraordinary circumstances are those circumstances for which the Department has determined that further environmental analysis is required for an action, and therefore an EA or EIS must be prepared. All categorically excluded actions must be subjected to sufficient review to determine if any of the extraordinary circumstances apply (516 DM 2, Appendix 2).

If any extraordinary circumstances apply, an EA or EIS must be prepared. While there is no requirement for an interdisciplinary process or public involvement when reviewing whether extraordinary circumstances apply, the decision-maker may choose to do so.

If any of the extraordinary circumstances apply to the proposed action, determine whether the proposal can be modified to alleviate or resolve the circumstances that are considered extraordinary. If this can be done, and if applicable, the proponent agrees to the change, then the proposed action may be modified and categorically excluded. If the proposed action cannot be modified or the proponent refuses to accept a proposed change, prepare an EA or EIS. If an extraordinary circumstance indicates there are significant effects, then an EIS must be prepared.

Some actions may require considerable review to determine whether any extraordinary circumstances apply. *For example, a significant impact on a threatened or endangered species is an extraordinary circumstance* (see 516 DM 2 Appendix 2). *It might be readily determined that an action would have some effect on a threatened or endangered species (which would not necessarily constitute an extraordinary circumstance). Determining whether that effect would be significant might require considerable review.* If there is uncertainty about whether one or more

of the extraordinary circumstances apply, we recommend that you prepare an EA to determine whether an EIS is required.

If none of the extraordinary circumstances apply to the proposed action (or modified action), then it may be categorically excluded.

## 2.3 Documentation Requirements

### 2.3.1 Documentation Requirements When Using Hazardous Fuels and Post-Fire Rehabilitation CXs

Categorical exclusions for hazardous fuels and post-fire rehabilitation (**516 DM 2, Appendix 1 - #1.12 and 1.13**) have specific documentation requirements. The OEPC requires you to prepare a specific memorandum documenting the use of these two categorical exclusions and documenting the decision to implement the proposed project. The documentation must follow the template provided below in Attachment 2.4.2 *Documentation Requirements for Hazardous Fuels Actions and Post-Fire Rehabilitation Actions*. You must include this document in the case or project file.

### 2.3.2 Documentation Requirements When Using Other Non-Energy Act CXs

You must document which categorical exclusion applies, except in the two cases below, in which documentation is optional:

- Actions that have no environmental effect (for example, personnel actions, routine financial transactions, or educational activities).
- Actions that have negligible environmental effect (such as nondestructive data collection, research and monitoring activities, installation of routine signs and markers). The NEPA Handbook Web Guide provides additional examples and discussion.

In those situations where categorical exclusion documentation is required, you must use the form provided below in Attachment 2.4.1 ***Categorical Exclusion Documentation Format for Actions Other Than Hazardous Fuels and Fire Rehabilitation Actions.*** This form must be included in the case or project file. This form does not constitute a decision document and you must issue a decision document that meets program specific guidance.

### 2.4.1 Categorical Exclusion Documentation Format for Actions Other Than Hazardous Fuels and Fire Rehabilitation Actions

**A. Backgound**

BLM Office: _____ Lease/Serial/Case File No.: _____

Proposed Action Title/Type: _____
Location of Proposed Action: _____
Description of Proposed Action: _____
_____
_____
_____
_____

**B. Land Use Plan Conformance**
Land Use Plan Name: _____ Date Approved/Amended:_____
The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s): _____
_____
_____
_____

_____ The proposed action is in conformance with the LUP, even though it is not specifically provided for, because it is clearly consistent with the following LUP decision(s) (objectives, terms, and conditions): _____
_____
_____
_____

**C: Compliance with NEPA:**
The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 2, Appendix 1, _____ [Insert appropriate CX number and text, or a paraphrase of the text] or 516 DM 11.5, _____ [Insert appropriate CX number and text, or a paraphrase of the text].

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and none of the extraordinary circumstances described in 516 DM2 apply.

I considered _____
_____ [Insert any pertinent design features incorporated into the project design, or relevant situations discussed during project design, and explain why there is no potential for significant impacts].

**D: Signature**

Authorizing Official: _____ Date: _____
(Signature)

Name: _____
Title: _____

**Contact Person**

For additional information concerning this CX review, contact [Insert contact name, title, office name, mailing address, and telephone number].

**Note:** A separate decision document must be prepared for the action covered by the CX.

### 2.4.2 Documentation Requirements for Hazardous Fuels Actions and Post-Fire Rehabilitation Actions

## Decision Memorandum on Action and for Application of:
## Departmental Categorical Exclusion 1.12 (or 1.13 or both)
## Project Name

**U.S. Department of the Interior**

**Bureau Name**

*Bureau Field Station (State Office, Regional Office, etc.)*

**County, State**

**Description of the Proposed Action and the Purpose and Need for the Action**

[*Provide a description of the proposed action and the purpose and need for the action. Provide any pertinent facts such as: applicable legal land description, statutory citations, and other agency involvements.*]

**Plan Conformance**

[*State that the Proposed Action is consistent with any land and resource management plans as required by appropriate Federal, State, or local statutes having a bearing on the decision.*] [*State that the Proposed Action was designed in conformance with all bureau standards and incorporates appropriate guidelines for specific required and desired conditions relevant to project activities.] [insert findings for other applicable laws.*]

**Compliance with the National Environmental Policy Act**

[*State that the Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 2, Appendix 1, 1.12 (or 1.13 or both).*] [*insert reasons.*]

[*State that the application of this categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects which may significantly affect the environment.] [Clearly state that none of the exceptions apply. If any apply, then the categorical exclusions cannot be utilized.] [State that these extraordinary circumstances are contained in 516 DM 2, Appendix 2.*]

I considered [*insert any pertinent situations that were brought up during the design of the activities and explain why there is no potential for significant effects*].

**Persons and Agencies Consulted**

[*Explain how the public was made aware of this proposed activity. Describe people and agencies consulted regarding the development of the action and steps taken based on this consultation.*]

**Decision and Rationale on Action**

I have decided to implement [*insert description of actions, including mitigation measures and reference any maps and drawings*]. These actions meet the need for action. In addition, I have reviewed the plan conformance statement and have determined that the proposed action is in conformance with the approved land use plan and that no further environmental analysis is required.

**Implementation Date**

This project will be implemented on or after [*insert implementation date and identify any conditions related to implementation*].

_____ _____

[*Insert deciding official's name*] Date

[*Insert deciding official's title*]

**Administrative Review or Appeal Opportunities**

[*State whether the decision is or is not subject to administrative appeal. If it is subject to appeal, provide the citation of the appeal rules and provide appeal information.*]

**Contact Person**

For additional information concerning this decision, contact [Insert contact name, title, office name, mailing address, and telephone number].

## Program Specific Guidance

A) Forest Management

Four new CXs relate to forest management. One CX relating to sample tree felling is only available for use in western Oregon. Guidance on its use will be provided by the Oregon/Washington State Director, and is not included in this Instruction Memorandum. The following guidance applies to the use the use of the Forest Management CXs:

1) In determining the appropriate CX to use, managers should select the CX that most closely fits the objectives of the project they are considering. While the hazardous fuels treatment and post-fire rehabilitation CXs outlined in IM 2003-221 may be used in forested environments, these CXs have specific requirements that must be followed. Specifically, the hazardous fuels treatment CX must not include sales of vegetative material that do not have hazardous fuels reduction as their primary purpose. Please see IM 2003-221 and IM 2003-221 Change 1 for additional information on the use of the hazardous fuels treatment and post-fire rehabilitation CXs.

2) The acre limitations referred to in each of these CXs should be interpreted as the footprint of all the harvest areas within a project boundary covered by a single decision. For example, if the decision is to harvest dead or dying trees from three separate cutting units, all of which total 200 acres, then the "salvage" CX may be used to support the decision (less than the 250 acre limit) if no extraordinary circumstances exist and no more than 0.5 miles of temporary road construction is required. Because slash disposal is considered to be a necessary component of timber harvesting (typically required by law), it is permissible under these CXs to include slash disposal within the harvest unit(s), and would not count as additional acres treated. The road prism for any temporary road constructed would also not count toward the acre limitations.

3) The appropriate administrative remedy under 43 CFR 5003 should be clearly stated within the CX regarding the effect of decision (5003.1), notice of forest management decisions (5003.2) and protests (5003.3).

**B.) Vegetation Treatment Projects**

The following guidance applies to the use of the new CX related to vegetation treatment projects:

1) For prescribed fire projects, the 4,500-acre limitation is calculated based on the total acres planned to be blackened on a project basis. The total acres to consider regarding the limitation, is computed by using the sum of individual treatment acres minus any overlap of multiple treatments over the life of the project. For example, a project has two prescribed fire treatments planned of 2,000 acres each in two different years. The treatments do not overlap on-the-ground. The total acres determining the consideration of CX use would equal 4,000 acres. This would be within the 4,500-acre limitation for the CX.

2) For other vegetation projects, the 1,000-acre limitation is calculated based on the planned total acres to be treated by project minus any overlap of multiple treatments.

3) Projects that have a mixture of fire and non-fire fuels treatment types must compare the total acres to be treated by the specific acre limit set forth in the CX for its specific type of treatment (fire or non-fire). Total the acres to be treated for fire fuels treatments, subtract overlap, and then total the non-fire fuels treatments minus the overlap. Compare the total for fire treatments to the 4,500-acre limit and the non-fire treatment to the 1,000-acre limit. This is the same as comparing the footprint of each treatment type to its specific CX acre limit. If both treatment type acres are within the CX acre limit, consider using the CX. If one or more of the total acres exceed the treatment type acre limit, CX can not be considered. For example, within a project area there is a proposed 2,500-acre mechanical thinning treatment to be followed by a prescribed fire treatment that proposes to blacken 3,500 acres. The use of the CX can not be used because the mechanically-treated acreage exceeds the 1,000-acre CX limitation.

## C.) Grazing Permits

The following guidance applies to the use of the new CX related to grazing permits:

Field Offices are encouraged to use the CX when it is appropriate but should be aware of various factors that may limit its use. There are specific criteria for the use of this CX; first, the use on the new grazing permit/lease must be consistent with the use on the previous grazing permit/lease. If the grazing use authorized by the permit is consistent with the previous permit, the grazing permit CX is just as appropriate for a new permittee that is receiving a permit as the result of a transfer, as it is for a permittee whose permit has expired and a new permit is being issued to that same permittee. The use of this CX is not appropriate if the new permit authorizes a different kind of livestock, an increase in the active grazing use, or any significant change in the season of use from the previously authorized permit/lease because these changes could potentially result in new or different impacts than those resulting from the previous permit/lease. In most cases a change in the season of use within 14 days of the season of use on the previous permit would not change the kind or level of impacts and use of the CX would be appropriate.

A further requirement is that a land health standards assessment must be completed and the involved allotment(s) must either be meeting the standards, or if the land health standards are not being met the use of the CX requires that livestock grazing is not a factor at all in not meeting those standards. In order to use the CX, grazing can not contribute in any way to the conditions that resulted in not meeting one of the land health standards.

## D.) Transportation

The following guidance applies to the use the new CX related to transportation:

1) Includes existing roads, primitive roads and trails as defined in the BLM's, Roads and Trails Terminology Report. (See BLM Technical Note 422).

2) The term "routine signs" includes signs located along existing roads, primitive roads and trails and includes regulatory, informational, portal, interpretive, educational and signing for law enforcement purposes.

3) Includes existing roads, primitive roads and trails as defined in the BLM's, Roads and Trails Terminology Report. (See BLM Technical Note 422). Complete reclamation of all temporary

routes may not be desired or necessary in all situations. When temporary routes are required for periodic use it may be more desirable to close the temporary route to use, assure proper hydrologic functioning of the road bed and re-vegetate according to the prescription approved in the authorization than it would be to re-contour soils and slopes to original conditions.

4) Includes a wide variety of devices, tools and instruments necessary to safely administer visitor use including traffic counters, trail monitors, porta-a-potties, and visitor use waste sanitation collection stations.

**E.) Recreation Management**

The following guidance applies to the use of the new CX related to recreation management:

1) This CX authorization does not authorize cross-country travel within closed or limited OHV use areas. Motor vehicle use (authorized by the SRP) must conform to the OHV area designations for the permitted area.

**F.) Emergency Stabilization**

The following guidance applies to the use of the new CX related to emergency stabilization:

1) The 4,200-acre limitation is to be calculated based on the total acres planned to be treated minus any treatment overlap by project. This is also defined as the "footprint" in the National Fire Plan Operations and Reporting System. For example, a 4,000-acre fire is aerially seeded one week, and the next week a chain is dragged over the same 4,000 acres to cover the seed. Hence, the footprint remains 4,000 acres, which is less than the 4,200-acre maximum described in the CX. The emergency stabilization CX can therefore be considered for use for this project. However, on a 10,000-acre fire, if 4,000 acres are to be drill seeded, and a different 4,000 acres are to be aerially seeded, the CX cannot be used. The 8,000-acre total exceeds the 4,200-acre maximum set forth in the CX limitation.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
January 22, 2008

In Reply Refer To:
1790 (210) P

EMS TRANSMISSION 01/28/2008
Instruction Memorandum No. 2008-055
Expires: 09/30/2009

To: All Washington Office and Field Office Officials

From: Assistant Director, Renewable Resources and Planning

Subject: Review of Proposed Department of the Interior (DOI) National Environmental Policy Act (NEPA) Regulations DD 02/25/2008

**Program Area:** The National Environmental Policy Act (NEPA)

**Purpose:** This instruction memorandum announces the opportunity for staff to review the proposed DOI NEPA regulations. The DOI through the Office of Environmental Policy and Compliance (OEPC) proposes to amend the DOI regulations by adding a new part to the regulations to codify its NEPA procedures, which are currently a manual section in the Departmental Manual (DM).

**Policy/Action:** These proposed regulations, as part of the Code of Federal Regulations (CFR), will supplement the Council on Environmental Quality (CEQ) regulations and, when final, must be used in conjunction with those regulations. The Bureau of Land Management (BLM), as a Bureau in the DOI, will be required to use these regulations when meeting their responsibilities under the NEPA. The proposed regulations can be found at the following Web site — http://a257.g.akamaitech .net/7/257/2422/01jan2008l800/edocket.access.gpo.gov/2008/pdf/E7-25484.pdf

The BLM is encouraged to review and provide comment on these proposed NEPA regulations. Please have your appropriate field-level office review the proposed regulations and provide comments to the State Planning and Environmental Coordinators (P&EC). State P&ECs will send a consolidated response back to Peg Sorensen, Senior Planning and Environmental Analyst, Washington Office (WO-210).

**Timeframe:** This request is effective immediately and comments are due back to WO-2 10 by close of business Monday, February 25, 2008.

**Budget Impact:** None.

**Background:** The DOI proposes to amend its regulations by adding a new part to codify its NEPA procedures currently in the DM. This proposed addition to current regulations contains DOI policies and procedures for compliance with the NEPA. By converting the DOI NEPA procedures from the DM to new DOI regulations, the DOI intends to promote greater transparency in the NEPA process for the public and enhance cooperative

conservation. This proposal will allow for better support of NEPA procedures and documentation in the current DOI decision-making processes.

The CEQ regulations at 40 CFR 1507.3 require Federal agencies to adopt procedures as necessary to supplement the CEQ's regulations implementing the NEPA and to consult with the CEQ during their development and prior to publication in the **Federal Register** (FR). The regulation further encourages agencies to publish agency explanatory guidance for the CEQ's regulations and agency procedures. The DOI's procedures implementing the NEPA as required by the CEQ have been contained in chapter 516 of the DM. The DOI revised these procedures and published the revisions in the **Federal Register** on March 8, 2004, (69 FR 10866) and June 6, 2005, (70 FR 32840). The DOI has now decided to publish the procedures as rules to be codified in the CFR. This proposed regulation meets the intent of 40 CFR 1507.3 by placing agency-implementing procedures in a regulatory framework. The DOI believes placing agency explanatory guidance such as Environmental Statement Memoranda into the DM will facilitate quicker agency responses to new ideas and information, procedural interpretations, training needs, and editorial changes.

**Manual/Handbook Sections Affected:** The NEPA Manual (1790) and Handbook (H-1790-I) will ultimately be affected by any changes resulting from the codification of NEPA Regulations.

**Coordination:** WO-600, WO-200, WO-100

**Contact:** If you have any questions regarding this request for comments or need to discuss providing comments please contact Peg Sorensen, Senior Planning and Environmental Analyst - NEPA, WO-210, Division of Planning and Science Policy at 202-452-0364.

Signed by:
Edwin L. Roberson
Assistant Director
Renewable Resources and Planning

Authenticated by:
Robert M. Williams
Division of IRM Governance,WO-560

Dated: November 16, 2007.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E7–25100 Filed 12–31–07; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### 43 CFR Part 46

**RIN 1090–AA95**

### Implementation of the National Environmental Policy Act (NEPA) of 1969

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Department of the Interior (Department) proposes to amend its regulations by adding a new part to codify its NEPA procedures currently in the Departmental Manual (DM). This proposed regulation contains Departmental policies and procedures for compliance with NEPA, Executive Order (E.O.) 11514, E.O. 13352 and the Council on Environmental Quality's (CEQ) regulations. By converting the Departmental NEPA procedures from the DM to new regulations that are consistent with NEPA and the CEQ regulations, the Department intends to promote greater transparency in the NEPA process for the public and enhance cooperative conservation.

**DATES:** Submit comments by March 3, 2008.

**ADDRESSES:** You may submit comments on the rulemaking by any of the following methods. Please use the regulation identification number (RIN) 1090–AA95 as an identifier in your message. See also "Public availability of comments" under Procedural Requirements below.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: doi_nepa@contentanalysisgroup.com* and use the RIN 1090–AA95 in the subject line.
- *Fax:* 801–397–2601. Identify with RIN 1090–AA95.
- Mail comments to the Department of the Interior, NEPA Proposed Rule, C/O Bear West, 1584 S 500 W Ste 201, Woods Cross, UT 84010. Please reference RIN 1090–AA95 in your comments and also include your name and return address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Vijai N. Rai, Team Leader, Natural Resources Management; Office of Environmental Policy and Compliance; 1849 C Street, NW., Washington, DC 20240. Telephone: 202–208–6661. *E-mail: vijai_rai@ios.doi.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background and Need for the Proposed Rule

CEQ regulations at 40 Code of Federal Regulations (CFR) 1507.3 require Federal agencies to adopt procedures as necessary to supplement CEQ's regulations implementing NEPA and to consult with CEQ during their development and prior to publication in the **Federal Register**. The regulation further encourages agencies to publish agency explanatory guidance for CEQ's regulations and agency procedures.

The Department's procedures implementing NEPA as required by CEQ have been contained in chapter 516 of the DM. We revised these procedures and published the revisions in the **Federal Register** on March 8, 2004 (69 FR 10866) and June 6, 2005 (70 FR 32840). We have now decided to publish the procedures as rules to be codified in the CFR.

This proposed regulation supplements the CEQ regulations and must be used in conjunction with those regulations. The bureaus of the Department are required to use this regulation when meeting their responsibilities under NEPA.

This proposed regulation meets the intent of 40 CFR 1507.3 by placing agency-implementing procedures in a regulatory framework. We believe placing agency explanatory guidance (as distinguished from agency implementing procedures) into the DM, Environmental Statement Memoranda (ESM), which are Departmental guidance documents, and bureaus' NEPA handbooks, will facilitate quicker agency responses to new ideas and information, procedural interpretations, training needs, and editorial changes.

### Reasons for an Improved Environmental Analysis Process

This proposed regulation is the culmination and natural progression of work begun in 2002 to improve our NEPA compliance process. Since the Department last updated its NEPA procedures, CEQ has issued guidance the Department wishes to incorporate in its regulations. The concepts described below are currently used, but there are no explicit provisions in the current procedures. This proposed regulation provides further guidance on NEPA by: (1) Integrating best practices elements described in the series of ESMs that were issued by the Department in 2003 and finalized in the DM in March 2004; and (2) addressing new NEPA-related policy issues. Specifically, they provide for, among others, greater public and stakeholders' participation in the NEPA process, collaborative NEPA planning, conflict avoidance, and use of adaptive management.

Finally, this proposal will allow for better integration of NEPA procedures and documentation into current Departmental decision-making processes, including collaborative and incremental decision-making.

In 2002, the Department undertook a review of its NEPA practices. This review was done at the practitioner level to obtain best practices in the field. In addition, the Department held four regional listening sessions open to the public, to assist in the identification of best NEPA practices that could be applied across the Department.

Following these public listening sessions, the Department promulgated best practices in two phases: first, through the issuance of five ESMs in 2003 (directives to bureaus on best practices); and second, through finalizing those NEPA best practices in the DM in March 2004. The five NEPA best practices that were first addressed in ESMs were:

*ESM 03–3, Procedures for Implementing Tiered and Combined Analyses (http://oepc.doi.gov/ESM/ESM03%2D3%2Epdf)*

Bureaus need to determine the sufficiency of existing environmental analyses. If an existing analyses is found to be sufficient, those documents should be cited in the Record of Decision (ROD) without doing additional and possibly duplicate analysis.

*ESM 03–4, Procedures for Implementing Public Participation and Community-Based Training (http://oepc.doi.gov/ESM/ESM03%2D4%2Epdf)*

Public participation is the involvement, as early as possible, in the NEPA process of persons and organizations having an interest in any Departmental activity, which must meet the requirements of NEPA. Public participation also includes the proactive efforts of Departmental personnel to locate and involve the public.

*ESM 03–5, Procedures for Implementing Integrated Analyses in National Environmental Policy Act (NEPA) Process (http://oepc.doi.gov/ESM/ESM03%2D5%2Epdf)*

The Department should integrate analyses using a single NEPA process to enable several agencies to satisfy multiple environmental requirements by

conducting concurrent rather than consecutive analyses.

*ESM 03–6, Procedures for Implementing Adaptive Management Practices (http://oepc.doi.gov/ESM/ESM03%2D6%2Epdf)*

Adaptive management is a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes, and, if not, facilitating management changes that will best ensure that outcomes are met or to re-evaluate the outcomes. Although not explicitly mentioned in the CEQ regulations, adaptive management can be considered as part of a proposed action. The CEQ determined that the adaptive management provisions in the DM, which are now included in this proposed regulation, are in conformity with NEPA and the CEQ regulations.

*ESM 03–7, Procedures for Implementing Consensus-Based Management in Agency Planning and Operations (http://oepc.doi.gov/ESM/ESM03%2D7%2Epdf)*

Under this proposed rule, when feasible and practicable, the community alternative should be designated as the bureau's preferred alternative in the NEPA process, so long as a consensus exists within the community for support of that alternative. This designation is also subject to statutory, regulatory, and policy constraints. As a practical consideration, "consensus" is ultimately determined by the Responsible Official.

Following the issuance of these ESMs, the Department undertook the process of incorporating these concepts into its DM. This process included a notice and comment period for the public. Following that public comment period, the Department finalized those procedures (516 DM—Proposed Revised Procedures, September 4, 2003, 68 FR 52595; Final, March 8, 2004, 69 FR 10866)

In 2005, the Department, through another public notice and comment process (516 DM 2.5—Proposed, March 18, 2005, 70 FR 13203; Final, June 6, 2005, 70 FR 32840) implemented a policy requiring that eligible Federal, State, Tribal, and local entities be invited to be cooperating agencies to assist in the preparation of any Environmental Impact Statement (EIS). Also in 2005, the Department began a Management Planning and NEPA Modernization Blueprint. This blueprint recommended Departmental functional requirements to be implemented in an automated Interior Land Management Planning System. Throughout this time frame, the Department has continually looked for ways to improve its NEPA compliance. For example, we've worked with the Department of Agriculture, U.S. Forest Service to make our procedures more consistent whenever possible.

At the 2005 White House Conference on Cooperative Conservation (http://cooperativeconservation.gov/conference805home.html), the Department heard many success stories that involved various levels of government working with the public and private sectors to protect and enhance the environment. Many of these examples addressed issues we had dealt with in our previous DM changes. During the Listening Sessions (http://cooperativeconservation.gov/sessions/index.html), held as a follow up to the Conference, we heard many of the same concerns regarding NEPA compliance as we had under our own review and reviews with the Forest Service.

Almost 30 years ago CEQ stated in its preamble to the final NEPA implementing regulations (43 FR 55978, November 29, 1978) that the EIS has "tended to become an end in itself, rather than a means to making better decisions." CEQ noted further: "One serious problem with the administration of NEPA has been the separation between an agency's NEPA process and its decision-making process. In too many cases bulky EISs have been prepared and transmitted but not used by the decision-maker." The innovation at that time was a new requirement for a ROD to show "how the EIS was used in arriving at the decision." At that time, CEQ broadened the focus from emphasis on a single document EIS to "emphasize the entire NEPA process, from early planning through assessment and EIS preparation through decisions and provisions for follow-up." Today, after receiving comments on a draft EIS, agencies prepare a final EIS and document their decision in a ROD, tying the analysis from the EIS to the final agency decision.

Almost 20 years later a CEQ report, "The National Environmental Policy Act—A Study of Its Effectiveness After Twenty-five Years" (January 1997; *http://ceq.eh.doe.gov/nepa/nepa25fn.pdf*) stated that "frequently NEPA takes too long and costs too much, agencies make decisions before hearing from the public, documents are too long and technical for many people to use" and according to Federal agency NEPA liaisons, "the EIS process is still frequently viewed as merely a compliance requirement rather than as a tool to effect better decision-making. Because of this, millions of dollars, years of time, and tons of paper have been spent on documents that have little effect on decision-making." The report points out that "some citizens' groups and concerned individuals view the NEPA process as largely a one-way communications track that does not use their input effectively" and "when they are invited to a formal scoping meeting to discuss a well-developed project about which they have heard little, they may feel they have been invited too late in the process." Finally, the report states "some citizens complain that their time and effort spent providing good ideas is not reflected in changes to proposals."

As a part of its continuing efforts to streamline NEPA, CEQ established a NEPA Task Force in 2002 to review current NEPA implementation practices and procedures to determine opportunities to improve and modernize the NEPA process. The Task Force prepared a report in 2003 entitled "Modernizing NEPA Implementation," (*http://ceq.eh.doe.gov/ntf/report/index.html*) where a number of recommendations were made to improve and modernize the NEPA process. CEQ continues to issue guidance based on the Modernizing NEPA Implementation Report. The Department continues to be an active participant in this effort.

A 2005 National Environmental Conflict Resolution Advisory Committee (NECRAC) Report chartered by the U.S. Institute for Environmental Conflict Resolution (*http://www.ecr.gov/necrac/reports.htm*) of the Morris K. Udall Foundation reflected further on the state of the NEPA process 27 years after CEQ published its regulations and recommended furthering the evolution of making procedural requirements under section 102 of NEPA less an end in themselves and more a means to fulfill the policies set out in section 101. The report calls for improvements in the "traditional model for NEPA implementation" where "agencies announce their plans, share their analyses of potential impacts of a range of options, solicit public comment, make decisions, deal with the fallout, if any, and move on to the next project." This model results in agency decisions "based on a collection of views and interests" but "generally not a collective decision." The report goes on to state that while not a failure, the traditional model for NEPA "does not take full advantage of the many strengths of section 101."

The NECRAC recognized that "Americans expect to be able to work things out and make things better over time. It is not inevitable, and it is clearly

not desirable, that society's ability to constructively address and resolve conflicts should languish or fail to adapt to changing times. The current state of environmental and natural resource decision-making is dominated by the traditional model, which too often fails to capture the breadth and quality of the values and purposes of NEPA." The NECRAC called for Federal decision-making that "enables interested parties" to "engage more effectively in the decision-making process" where "interested parties are no longer merely commenters on a Federal proposal, but act as partners in defining Federal plans, programs, and projects."

The 2005 NECRAC Report notes many examples of the Federal government placing an increased emphasis on "cooperating agencies" (CEQ Memorandum for Heads of Federal Agencies: Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of NEPA, July 28, 1999, *http://ceq.eh.doe.gov/nepa/regs/ceqcoop.pdf;* and CEQ Memorandum for Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, January 30, 2002, *http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html*), "cooperative conservation" (E.O. 13352 on Facilitation of Cooperative Conservation, August 26, 2004), environmental conflict resolution (CEQ & OMB Memorandum on Environmental Conflict Resolution, November 28, 2005, *http://ceq.eh.doe.gov/nepa/regs/OMB_CEQ_Joint_Statement.pdf*), and "collaboration" (Background and Other Cooperative Conservation Activities, *http://www.doi.gov/initiatives/conservation2.html*) in agency planning, NEPA analysis, and decision-making.

As the Department integrates the NEPA process into its collaborative and cooperative decision-making process, the Department needs documentation that reflects the way interactive and incremental decision-making occurs. There is a need to ensure that NEPA documents are used in "arriving at the decision." In order to do this, Department NEPA procedures need to reflect a more integrated process. As the NECRAC Report points out, there continues to be focus on preparing NEPA documents such as an EIS or Environmental Assessment (EA) for litigation rather than to facilitate an informed decision process. The proposed NEPA documentation requirements are intended to enable interested parties to engage more effectively in the decision-making process. The agency is proposing new NEPA procedures to allow content and circulation requirements for environmental documents to reflect how agency decisions actually occur, especially with more emphasis on cooperation and collaboration.

This proposed regulation will help the Department's bureaus better document environmental impacts of proposed actions and their alternatives, and facilitate development of an EIS that evolves as the decision evolves and therefore can be used throughout the entire NEPA process. Subsequent detailed statements could document changes to the proposal, its alternative(s), and the environmental effects to reflect the on-going evolution to a final Department decision while keeping the Responsible Official and interested parties informed. The EIS would then be used as a tool to foster collaborative and incremental decision-making processes. The record would reflect a history of how the detailed statement was used in collaboration and incremental decision-making, and the final draft and final EISs would address a more narrowly focused Department action for a final decision. While this proposed regulation does not require a decision to be made collaboratively, it does allow the Department to meet the procedural requirements of section 102 (2) of NEPA while fostering fulfillment of the Act's purpose in section 101.

The proposed NEPA procedures designed to allow for better alignment of an EIS with Department decision-making include: (1) Allowing proposals and alternative(s) to be explored and modified throughout the NEPA process (46.415(b)(2)); and (2) allowing the circulation of multiple preliminary detailed statement(s) without filing requirements (46.415(c)(2)).

The intent is to use environmental information effectively by multiple parties during the NEPA process rather than only at distinct comment periods for a draft and final impact statement. This is to allow interested parties to inform Department decision-making as they regularly exchange and discuss issues; differences; and necessary environmental, social, and economic effects analyses while alternatives are explored, evaluated, and modified throughout the NEPA process. The intent is to focus on a process and the appropriate disclosure outlined in section 102 of NEPA to promote the Act's purposes.

This proposed regulation is intended to implement fully the intent and spirit of the E.O. 13352 on Facilitation of Cooperative Conservation. This E.O. was issued specifically to ensure that Federal agencies implement laws relating to the environment and natural resources in a manner that promotes cooperation amongst interested parties, with emphasis on appropriate inclusion of local participation in Federal decision-making. As a result, the Federal government has placed increasing emphasis on "cooperating agencies," "cooperative conservation," environmental conflict resolution, and "collaboration" in agency planning, NEPA analysis, and decision-making.

The ongoing public involvement and collaborative processes encouraged and practiced in the Department and other agencies today can benefit from more expressed flexibility than the agency NEPA procedures currently encourage. Thus, these proposed changes to our NEPA procedures are intended to provide the Department, in cooperation with other Federal, State, and local agencies, Tribes, and other interested parties greater flexibility to meet the intent of NEPA through the procedural provisions of section 102(2) of NEPA. As an example, this proposed regulation allows incremental alternative development through scoping where the agency together with interested and affected members of the public are given the opportunity to develop alternatives.

As a part of the conversion of the Department's NEPA procedures from 516 DM to the CFR, a number of key changes will be made. This proposed regulation:

- Clarifies actions subject to NEPA section 102(2) by locating all relevant CEQ guidance in one place.
- Amends current direction so that immediate emergency responses do not require documentation under the CEQ regulations or NEPA section 102(2). The Responsible Official must assess and minimize potential environmental damage to the extent consistent with protecting life, property, and important resources.
- Incorporates CEQ guidance language that states that a past action must be "relevant" in illuminating or predicting direct and indirect effects of a proposed action when conducting cumulative effects analysis.
- Clarifies that alternatives, including the proposed action, may be modified through an incremental process if modifications are analyzed and documented.
- Clarifies that the agency has discretion to determine, on a case-by-case basis, how to involve the public in the preparation of EAs and whether an EA will be published in draft for public comment.
- Clarifies that adaptive management strategies may be incorporated into

alternatives, including the proposed action.

• Incorporates language from the statute and CEQ guidance that states EAs need only analyze the proposed action if there are no unresolved conflicts concerning alternative uses of available resources.

This proposed regulation is organized under subparts A through E, covering the material in 516 DM Chapters 1 through 6. The Department did not include 516 DM Chapter 7 in this proposed regulation because it provides guidance on review of environmental documents and project proposals prepared by other Federal agencies. Bureau-specific NEPA implementing procedures in 516 DM Chapters 8–15 continue to be available for their respective use.

This proposed regulation does not include sections in the DM that generally provide guidance to bureaus. This guidance will be addressed separately in bureaus' NEPA handbooks or in other Departmental documents such as 516 DM and ESMs.

The following paragraphs contain a section-by-section analysis of key proposed changes under each subpart from those currently in the 516 DM procedures. The Department has highlighted key changes, including new sections, under each subpart so that commenters can focus on the specific changes proposed by the Department in this proposed regulation.

**Section-by-Section Analysis of Proposed Changes**

**Subpart A: General Information**

*Section 46.30 Definitions.* This section supplements the terms found in the CEQ regulations and adds several new definitions. The terms affected are the following: Adaptive management; Bureau; Community-based training; Controversial; Environmental Statement Memoranda; Environmentally preferable alternative; Preliminary EIS; Reasonably foreseeable future action; and Responsible Official.

**Subpart B: Protection and Enhancement of Environmental Quality**

We removed portions of 516 DM Chapter 1 that address purely Departmental processes. This information will be retained in the DM or will be issued as additional guidance by the Office of Environmental Policy and Compliance. This subpart includes the following sections:

*Section 46.100 Federal action subject to the procedural requirements of NEPA.* This section provides clarification on when a proposed action is subject to the procedural requirements of NEPA.

*Section 46.105 Using a contractor to prepare environmental documents.* This section explains how bureaus may use a contractor to prepare any environmental document in accordance with the standards of 40 CFR 1506.5.

*Section 46.110 Using consensus-based management.* This section incorporates consensus-based management as part of the NEPA planning process.

*Section 46.113 Scope of the analysis.* This section addresses the relationships between connected, cumulative, and similar actions and direct, indirect and cumulative impacts.

*Section 46.115 Consideration of past actions in the cumulative effects analysis.* This section incorporates CEQ guidance issued on June 24, 2005, that clarifies how past actions should be considered in a cumulative effects analysis.

*Section 46.120 Using existing environmental analyses.* This section explains how to incorporate existing environmental analysis into the analysis being prepared.

*Section 46.125 Incomplete or unavailable information.* This section clarifies that the overall costs of obtaining information referred to in 40 CFR 1502.22 are not limited to the estimated cost of obtaining information unavailable at the time of the EIS, but can include other costs such as social costs that are more difficult to monetize. Specifically the Department requests comments on whether to provide guidance on how to incorporate non-monetized social costs into its determination of whether the costs of incomplete or unavailable information are exorbitant. The Department also requests comments on what non-monetized social costs might be appropriate to include in this determination; e.g., social-economic and environmental (including biological) costs of delay in fire risk assessments for high risk fire-prone areas.

*Section 46.130 Mitigation measures in analyses.* This section clarifies how mitigation measures and environmental best management practices are to be incorporated into and analyzed as part of the proposed action and its alternatives.

*Section 46.135 Using incorporation by reference.* This section establishes regulations for incorporating by reference.

*Section 46.140 Using tiered documents.* This section clarifies the use of tiering. The Department is considering developing more specific provisions as to the use of tiering, and invites public comment on this issue. For instance, an EA prepared in support of an individual action can be tiered to a programmatic or other broader EIS. The Department is considering under what conditions a FONSI may be reached for the individual action on the basis of such a tiered EA, if significant effects noted in that EA have already been disclosed and analyzed in the EIS to which the EA is tiered. The FONSI, in such circumstances would be, in effect, a finding of no significant impact other than those already disclosed and analyzed in the EIS to which the EA is tiered.

*Section 46.145 Using adaptive management.* This section incorporates adaptive management as part of the NEPA planning process.

*Section 46.150 Emergency responses.* This section clarifies that Responsible Officials can take immediate actions in response to the immediate effects of emergencies necessary to mitigate harm to life, property, or important resources without complying with the procedural requirements of NEPA, the CEQ regulations, or this proposed regulation. Furthermore, Responsible Officials can take urgent actions to respond to the immediate effects of an emergency when there is not sufficient time to comply with the procedural requirements of NEPA, the CEQ regulations, or this proposed regulation by consulting with the Department (and CEQ in cases where the response action is expected to have significant environmental impacts) about alternative arrangements.

*Section 46.155 Consultation, coordination, and cooperation with other agencies and organizations.* This section describes the use of procedures to consult, coordinate, and cooperate with relevant State, local, and tribal governments, other bureaus, and Federal agencies concerning the environmental effects of Department plans, programs, and activities.

*Section 46.160 Limitations on actions during the NEPA analysis process.* This section incorporates guidance to aid in fulfilling the requirements of 40 CFR 1506.1.

*Section 46.165 Ensuring public involvement.* This section incorporates public information and involvement requirements for Departmental proposed actions that have potential environmental impacts.

*Section 46.170 Environmental effects abroad of major Federal actions.* This section describes procedures the bureaus must follow in implementing E.O. 12114, which addresses the United States government's exclusive and

complete determination of the procedural and other proposed actions to be taken by Federal agencies to further the purpose of NEPA, with respect to the environment outside the United States, its territories, and possessions.

**Subpart C: Initiating the NEPA Process**

In the conversion from 516 DM 2 to 43 CFR Part 46, Subpart C, we have restructured the Department's requirements for initiating the NEPA process. We have put into regulation the essential parts of the NEPA process that are unique to the Department and which require further clarification of the CEQ regulations. This proposed regulation clarifies the requirements for applying NEPA early, using categorical exclusions (CXs), designating lead agencies, determining eligible cooperating agencies, implementing the Department's scoping process, and adhering to time limits for the NEPA process.

*Section 46.200 Applying NEPA early.* This section emphasizes early consultation and coordination with Federal, State, local, and Tribal entities and with interested private parties whenever practical and feasible.

*Section 46.205 Actions categorically excluded from further NEPA review.* This section provides Department-specific guidance on the use of CXs.

*Section 46.210 Listing of Departmental CXs.* This section includes a listing of the Department's CXs (currently 516 DM Chapter 2, Appendix B–1). This section includes the same number of CXs as were in the DM and the wording in the CXs is essentially unchanged. These CXs were each published for public comment prior to inclusion in the DM. There is one change in § 46.210(i), which replaces 516 DM Chapter 2, Appendix B–1, Number 1.10, correcting a typographical error. The phase " * * * technical or procedural nature; or * * *" from 516 DM as it existed in 1984 was inadvertently changed in 2004 in 516 DM to read " * * * technical or procedural nature; and * * *". We have corrected this error because there are certain circumstances where NEPA does not apply. For example, guidance to applicants for transferring funds electronically to the Federal Government is an action not subject to NEPA. The CXs are in paragraphs (a) through (l).

*Section 46.215 CXs: Extraordinary circumstances.* This section contains a listing of the Department's CXs: Extraordinary Circumstances (currently 516 DM Chapter 2, Appendix B–2). This section includes the same number of CXs: Extraordinary Circumstances as were in the DM and the wording in the CXs: Extraordinary Circumstances is essentially unchanged. Similarly to the listing of CXs, each of the Extraordinary Circumstances was published for public comment prior to inclusion in the DM. The CXs: Extraordinary Circumstances are in paragraphs (a) through (l).

*Section 46.220 How to designate lead agencies.* This section provides specific detail regarding the selection of lead agencies.

*Section 46.225 How to select cooperating agencies.* This section establishes procedures for selecting cooperating agencies and determining the roles of non-Federal agencies, such as tribal governments, and the further identification of eligible governmental entities for cooperating agency relationships. Criteria for identifying, and procedures for defining, the roles of cooperating agencies and the specific requirements to be carried out by cooperators in the NEPA process are set forth in this section.

*Section 46.230 Role of cooperating agencies in the NEPA process.* This section provides specific detail regarding the responsibilities of cooperating agencies.

*Section 46.235 NEPA scoping process.* This section discusses the use of NEPA's scoping requirements to engage the public in collaboration and consultation for the purpose of identifying concerns, potential impacts, possible alternatives, and interdisciplinary considerations. The regulatory language encourages the use of communication methods for a more efficient and proactive approach to scoping.

*Section 46.240 Establishing time limits for the NEPA process.* The section requires bureaus to establish time limits to make the NEPA process more efficient.

**Subpart D: Environmental Assessments**

In the conversion from 516 DM Chapter 3 to 43 Part 46 Subpart D, we have written this proposed regulation to incorporate procedural changes, expand upon existing procedures, give greater discretion and responsibilities to bureaus, and provide clarity in the EA process.

*Section 46.300 Purpose of an EA and when it must be prepared.* This section clarifies that the action being analyzed is a "proposed" action. It expands upon the purpose and clarifies when to prepare an EA.

*Section 46.305 Public involvement in the EA process.* This section incorporates procedural changes and differentiates the requirements for public involvement in the EA and EIS processes. This section requires bureaus to provide notice when they are proposing to undertake an action but gives bureaus discretion to determine the format for providing opportunities for public involvement. It has been expanded to give bureaus the discretion to provide cooperating agency status for EAs. It specifies that the publication of a draft EA for public comment is not always required.

*Section 46.310 Contents of an EA.* This section establishes new language outlining what information must be included in an EA. It describes the requirements for alternatives, if any, and provides for incorporating adaptive management strategies in alternatives. Sections on tiered analysis, from 516 DM Chapter 3, are found in subpart B of this proposed regulation since this information pertains to both EISs and EAs.

*Section 46.315 How to format an EA.* This section provides clarification on the EA format.

*Section 46.320 Adopting EAs prepared by another agency, entity, or person.* In this section, the term "and other program requirements" has been added to the compliance stipulations. It also expands the requirements of the Responsible Official in adopting an EA.

*Section 46.325 Conclusion of the EA process.* This section has been added to outline the possible conclusions of the EA process and to clarify the responsibilities of bureaus in the documentation of such conclusions.

**Subpart E: Environmental Impact Statements**

The language from 516 DM Chapter 4 that simply reiterates the CEQ regulations is not included in subpart E of this proposed regulation. These DM sections are: statutory requirements, cover sheet, summary, purpose and need, appendix, methodology and scientific accuracy, proposals for legislation, and time periods. Sections on tiering, incorporation by reference, incomplete or unavailable information, adaptive management, and contractor prepared environmental documents, from 516 DM Chapter 4 are found in subpart B of this proposed regulation since this information pertains to EISs and EAs. The term "environmentally preferred alternative" is found in the definitions, subpart A. This phrase expands on the definition as currently exists in 516 DM 4.10(A)(5). This proposed regulation incorporates procedural changes, clarifies the extent of discretion and responsibility that may be exercised by bureaus and provides clarity in the EIS process.

*Section 46.400 Timing of EIS development.* This section provides specific detail regarding when an EIS must be prepared. The Department is considering developing more specific provisions as to the timing of EIS preparation, and invites public comment on this issue. For example, courts have stated that NEPA requires an agency to complete its evaluation of the environmental effects before making its decision, which is prior to the point of commitment to any action which results in an irreversible and irretrievable commitment of resources. Specifically, we are seeking comments with respect to whether guidance should be developed to assist the Responsible Official toward identifying the point prior to the decision. We are also soliciting comments on whether it would be helpful to include in paragraph (a) examples of a major Federal action significantly affecting the quality of the human environment.

*Section 46.405 Remaining within page limits.* This section encourages bureaus to keep EISs within the page limits described in the CEQ regulations using incorporation by reference and tiering.

*Section 46.415 EIS format.* This section establishes an alternative EIS format. This section also provides direction for the development of alternatives, establishes language on the documentation of environmental effects with a focus on NEPA statutory requirements, and provides direction for circulating and filing the draft and final EIS.

*Section 46.420 Terms used in an EIS.* This section describes terms that are commonly used to describe concepts or activities in an EIS, including: (a) Statement of purpose and need, (b) Reasonable alternatives, (c) Range of alternatives, (d) Proposed action, (e) Preferred alternative, and (f) No action alternative.

*Section 46.425 Identification of the preferred alternative in an EIS.* This section clarifies when the preferred alternative must be identified.

*Section 46.430 Environmental review and consultation requirements.* This section establishes procedures for an EIS that also addresses other environmental review requirements and approvals. It should be noted that this section allows for the completion of the NEPA analysis prior to obtaining all permits. However, if the terms of the permit are outside of the scope analyzed, additional NEPA analysis will be required.

*Section 46.435 Inviting comments.* This section requires bureaus to request comments from Federal, State, and local agencies, or tribal governments, and the public at large. This section also clarifies that bureaus do not have to delay a final EIS because they have not received comments.

*Section 46.440 Eliminating duplication with State and local procedures.* This section allows a State agency to jointly prepare an EIS, if applicable.

*Section 46.445 Preparing a legislative EIS.* This section ensures that a legislative EIS is included as a part of the formal transmittal of a legislative proposal to the Congress.

*Section 46.450 Identifying the environmentally preferable alternative.* This section provides for identifying the environmentally preferable alternative in the ROD.

**Procedural Requirements**

**Regulatory Planning and Review (E.O. 12866)**

The Office of Management and Budget (OMB) has determined that this rule:

(1) Is not an economically significant action because it will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments.

(2) Will not interfere with an action taken or planned by another agency.

(3) Will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

(4) Is a significant rulemaking action subject to OMB review because of the extensive interest in Department planning and decision making relating to NEPA.

In accordance with the Office of Management and Budget (OMB) Circular A–4, "Regulatory Analysis," the Department has conducted a cost/benefit analysis. The analysis compared the costs and benefits associated with the current condition of having Departmental implementing procedures combined with Departmental explanatory guidance in the DM and the proposed condition of having implementing direction in regulation and explanatory guidance in the DM.

Many benefits and costs associated with the proposed rule are not quantifiable. Some of the benefits of this rule include collaborative and participatory public involvement to more fully address public concerns, timely and focused environmental analysis, flexibility in preparation of environmental documents, and improved legal standing. These will be positive effects of the new rule.

Moving NEPA procedures from the DM to the CFR is expected to provide a variety of potential beneficial effects. This rule would meet the requirements of 40 CFR 1507.3 by placing Department's implementing procedures in their proper regulatory position. Maintaining Departmental explanatory guidance in directives would facilitate timely agency responses to new ideas and information, procedural interpretations, training needs, and editorial changes to addresses and internet links to assist bureaus when implementing the NEPA process. Finally, the proposed changes to the Department NEPA procedures are intended to provide the Department specific options to meet the intent of NEPA through collaboration, the establishment of incremental alternative development, and the use of adaptive management principles.

Thus, while no single effect of this proposed rule creates a significant quantifiable improvement, the benefits outlined above taken together create the potential for visible improvements in the Department's NEPA program. Further discussion of the cost-benefits associated with the proposed regulation is contained in the economic analysis which is incorporated in the administrative record for this proposed rulemaking and may be accessed on the Department's Office of Environmental Policy and Compliance Web site located at: *http://www.doi.gov/oepc.*

*Regulatory Flexibility Act*

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document provides the Department with policy and procedures under NEPA and does not compel any other party to conduct any action.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more. As explained above, this rule will not have an annual effect on the economy of $100 million or more and is expected to have no significant economic impacts.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions. Compliance with NEPA and supplementing the CEQ regulations will not affect costs or prices.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Compliance with NEPA and supplementing CEQ regulations in this rule should have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises.

*Unfunded Mandates Reform Act*

Under Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

*Takings (E.O. 12630)*

This proposed rule has been analyzed in accordance with the principles and criteria contained in E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the proposed rule does not pose the risk of a taking of Constitutionally protected private property.

*Federalism (E.O. 13132)*

The Department has considered this proposed rule under the requirements of E.O. 13132, Federalism. The Department has concluded that the proposed rule conforms with the federalism principles set out in this E.O.; 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 Department has determined that no further assessment of federalism implications is necessary.

*Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system;

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity, and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*Consultation With Indian Tribes (E.O. 13175)*

In accordance with E.O. 13175 of November 6, 2000, and 512 DM 2, we have assessed this document's impact on Tribal trust resources and have determined that it does not directly affect Tribal resources since it describes the Department's procedures for its compliance with NEPA.

*Paperwork Reduction Act*

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

*National Environmental Policy Act*

The CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are 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. The determination that establishing agency NEPA procedures does 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. III. 1999), *aff'd* 230 F.3d 947. 954–55 (7th Cir. 2000).

*Data Quality Act*

In developing this rule we did not conduct or use a study requiring peer review under the Data Quality Act (Pub. L. 106–554).

*Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

*Clarity of This Proposed Regulation*

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

—Be logically organized;
—Use the active voice to address readers directly;
—Use clear language rather than jargon;
—Be divided into short sections and sentences; and
—Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments as instructed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

*Public Availability of Comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**List of Subjects in 43 CFR Part 46**

Environmental protection, EISs.

**James E. Cason,**

*Associate Deputy Secretary.*

For the reasons given in the preamble, the Office of the Secretary proposes to add a new part 46 to Subtitle A of title 43 of the Code of Federal Regulations to read as follows:

## PART 46—IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Sec.

**Subpart A—General Information**

46.10 Purpose of this part.
46.20 How to use this part.
46.30 Definitions.

**Subpart B—Protection and Enhancement of Environmental Quality**

46.100 Federal action subject to the procedural requirements of NEPA.
46.105 Using a contractor to prepare environmental documents.
46.110 Using consensus-based management.
46.113 Scope of the analysis.
46.115 Consideration of past actions in the cumulative effects analysis.
46.120 Using existing environmental analyses.
46.125 Incomplete or unavailable information.
46.130 Mitigation measures in analyses.
46.135 Using incorporation by reference.

46.140 Using tiered documents.
46.145 Using adaptive management.
46.150 Emergency responses.
46.155 Consultation, coordination, and cooperation with other agencies and organizations.
46.160 Limitations on actions during the NEPA analysis process.
46.165 Ensuring public involvement.
46.170 Environmental effects abroad of major Federal actions.

**Subpart C—Initiating the NEPA Process**

46.200 Applying NEPA early.
46.205 Actions categorically excluded from further NEPA review.
46.210 Listing of Departmental CXs.
46.215 CXs: Extraordinary circumstances.
46.220 How to designate lead agencies.
46.225 How to select cooperating agencies.
46.230 Role of cooperating agencies in the NEPA process.
46.235 NEPA scoping process.
46.240 Establishing time limits for the NEPA process.

**Subpart D—Environmental Assessments**

46.300 Purpose of an EA and when it must be prepared.
46.305 Public involvement in the EA process.
46.310 Contents of an EA.
46.315 How to format an EA.
46.320 Adopting EAs prepared by another agency, entity, or person.
46.325 Conclusion of the EA process.

**Subpart E—Environmental Impact Statements**

46.400 Timing of EIS development.
46.405 Remaining within page limits.
46.415 EIS format.
46.420 Terms used in an EIS.
46.425 Identification of the preferred alternative in an EIS.
46.430 Environmental review and consultation requirements.
46.435 Inviting comments.
46.440 Eliminating duplication with State and local procedures.
46.445 Preparing a legislative EIS.
46.450 Identifying the environmentally preferable alternative.

**Authority:** 42 U.S.C. 4321, *et seq.* (The National Environmental Policy Act of 1969, as amended); Executive Order 11514, (Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977)); 40 CFR parts 1500–1508 (43 FR 55978) (National Environmental Policy Act, Implementation of Procedural Provisions).

## Subpart A—General Information

### § 46.10 Purpose of this part.

This part establishes procedures for the Department, and its constituent bureaus, to use for compliance with:

(a) The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*); and

(b) The Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508).

### § 46.20 How to use this part.

(a) This part supplements, and is to be used in conjunction with, the CEQ regulations except where it is inconsistent with other statutory requirements. The following table shows the corresponding CEQ regulations for the sections in subparts A–E of this part. Some sections in those subparts do not have a corresponding CEQ regulation.

| | 40 CFR |
|---|---|
| Subpart A: | |
| 46.10 ..... | Parts 1500–1508. |
| 46.20 ..... | No corresponding CEQ regulation. |
| 46.30 ..... | No corresponding CEQ regulation. |
| Subpart B: | |
| 46.100 ..... | 1508.14, 1508.18, 1508.23 |
| 46.105 ..... | 1506.5 |
| 46.110 ..... | No corresponding CEQ regulation. |
| 46.113 ..... | 1508.25 |
| 46.115 ..... | 1508.7 |
| 46.120 ..... | 1502.9, 1502.20, 1502.21, 1506.3 |
| 46.125 ..... | 1502.22 |
| 46.130 ..... | 1502.14 |
| 46.135 ..... | 1502.21 |
| 46.140 ..... | 1502.20 |
| 46.145 ..... | No corresponding CEQ regulation. |
| 46.150 ..... | 1506.11 |
| 46.155 ..... | 1502.25, 1506.2 |
| 46.160 ..... | 1506.1 |
| 46.165 ..... | 1506.6 |
| 46.170 ..... | No corresponding CEQ regulation. |
| Subpart C: | |
| 46.200 ..... | 1501.2 |
| 46.205 ..... | 1508.4 |
| 46.210 ..... | 1508.4 |
| 46.215 ..... | 1508.4 |
| 46.220 ..... | 1501.5 |
| 46.225 ..... | 1501.6 |
| 46.230 ..... | 1501.6 |
| 46.235 ..... | 1501.7 |
| 46.240 ..... | 1501.8 |
| Subpart D: | |
| 46.300 ..... | 1501.3 |
| 46.305 ..... | 1501.7, 1506.6 |
| 46.310 ..... | 1508.9 |
| 46.315 ..... | No corresponding CEQ regulation. |
| 46.320 ..... | 1506.3 |
| 46.325 ..... | 1505.1 |
| Subpart E: | |
| 46.400 ..... | 1502.5 |
| 46.405 ..... | 1502.7 |
| 46.415 ..... | 1502.10 |
| 46.420 ..... | 1502.14 |
| 46.425 ..... | 1502.14 |
| 46.430 ..... | 1502.25 |
| 46.435 ..... | 1503.1 |
| 46.440 ..... | 1506.2 |
| 46.445 ..... | 1506.8 |
| 46.450 ..... | 1505.2 |

(b) The Responsible Official shall coordinate the appropriate NEPA review with the decisionmaking process for proposals subject to this part.

(c) During the decisionmaking process for each proposal subject to this part, the Responsible Official shall consider the relevant NEPA documents, public and agency comments (if any) on those documents, and responses to those comments, as part of consideration of the proposal and with the exception of § 46.210(a) through (j), shall include such documents, including supplements, comments, and responses as part of the administrative record.

(d) The Responsible Official's decision on a proposed action shall be within the range of alternatives discussed in the relevant environmental document.

(e) For situations involving an applicant, the Responsible Official should initiate the NEPA process upon acceptance of an application for a proposed Federal action. The Responsible Official shall make policies or staff available to advise potential applicants of studies or other information foreseeably required for later Federal action.

### § 46.30 Definitions.

For purposes of this part, the following definitions supplement terms defined at 40 CFR parts 1500–1508.

*Adaptive management* is a system of management practices based on clearly identified outcomes and monitoring to determine if management actions are meeting desired outcomes; and, if not, facilitating management changes that will best ensure that outcomes are met or re-evaluated. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain.

*Bureau* means bureau, office, service, or survey.

*Community-based training* in the NEPA context is the training of local participants together with Federal participants in the intricacies of the environmental planning effort as it relates to the local community(ies).

*Controversial* refers to cases where a substantial dispute exists as to the size, nature, or effect of the proposed action rather than to the existence of opposition to a proposed action, the effect of which is relatively undisputed.

*Environmental Statement Memoranda (ESM)* are a series of instructions to provide information and guidance in the preparation, completion, and circulation of NEPA documents.

*Environmentally preferable alternative* is the alternative required by 40 CFR 1505.2(b) to be identified in a ROD, that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and

natural resources. The Responsible Official must consider and weigh long-term environmental impacts against short-term impacts in evaluating what is the best protection of these resources. In some situations, there may be more than one environmentally preferable alternative.

*Preliminary environmental impact statement* is an interim environmental document that a Responsible Official may use to initiate discussion, solicit comments, and inform interested parties and agency personnel while proposals, alternatives, and environmental effects are explored and considered prior to filing a draft or final EIS. A preliminary EIS is an option available for Responsible Official to use and is not required.

*Reasonably foreseeable future actions* include those activities not yet undertaken, for which there are existing decisions, funding, or proposals identified by the agency.

*Responsible Official* is the bureau employee who exercises the authority to make and implement a decision on a proposed action.

## Subpart B—Protection and Enhancement of Environmental Quality

### § 46.100 Federal action subject to the procedural requirements of NEPA.

(a) The determination of whether a proposed action is subject to the procedural requirements of NEPA depends on the extent to which bureaus exercise control and responsibility over the proposed action and whether Federal funding or approval will be provided to implement it. If Federal funding is provided in the form of general revenue sharing funds with no Federal agency control as to the expenditure of such funds by the recipient, NEPA compliance is not necessary.

(b) A bureau proposal is a Federal action and subject to the procedural requirements of NEPA when it meets all of the following criteria:

(1) The bureau has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal;

(2) The proposed action is subject to bureau control and responsibility (40 CFR 1508.18);

(3) The proposed action would cause effects on the human environment (40 CFR 1508.14) that can be meaningfully evaluated (40 CFR 1508.23); and

(4) The proposed action is not statutorily exempt from the requirements of section 102(2) of NEPA.

### § 46.105 Using a contractor to prepare environmental documents.

A bureau may use a contractor to prepare any environmental document in accordance with the standards of 40 CFR 1506.5(b) and (c). If a bureau uses a contractor, the bureau remains responsible for:

(a) Preparation and adequacy of the environmental documents; and

(b) Independent evaluation of the environmental documents after their completion.

### § 46.110 Using consensus-based management.

(a) For the purposes of this Part, consensus-based management is the inclusion of interested parties with an assurance for the participants that the results of their work will be given consideration by the Responsible Official in selecting a course of action.

(b) In practicing consensus-based management, bureaus should give full consideration to any reasonable alternative(s) put forth by participating interested parties. While there can be no guarantee that a community's proposed alternative will be taken as the agency proposed action, bureaus must be able to show that a community's work is reflected in the evaluation of the proposed action and the final decision. To be considered, the community's alternative must be fully consistent with NEPA, the CEQ Regulations, and all applicable Departmental and bureau written policies and guidance.

### § 46.113 Scope of the analysis.

To determine the scope of the NEPA analysis and documentation for a proposed action, bureaus shall consider whether, to what extent, and how they will analyze connected, cumulative, and similar actions. The NEPA document should contain discussions of the effects of connected and cumulative actions, and may contain discussions of the effects of similar actions. For example, when the proposed Federal action determines the location or design of a non-Federal connected action, the effects of that connected action should be included in the discussion of the indirect impacts of the proposed Federal action. The effects of non-Federal and Federal cumulative actions and actions with cumulative effects on the same resource values affected by the proposed Federal action should be included in the discussion of the cumulative impacts of the proposed Federal action. A non-Federal connected action that impacts the same resource values affected by the proposed Federal action should be included in the discussion of the indirect and cumulative impacts of the proposed Federal action.

### § 46.115 Consideration of past actions in the cumulative effects analysis.

When considering the effects of past actions as part of a cumulative effects analysis, the Responsible Official must analyze the effects in accordance with guidance established by CEQ:

(a) The analysis of cumulative effects begins with consideration of the direct and indirect effects on the environment that are expected or likely to result from the alternative proposals for bureau action. Bureaus then look for present effects of past actions that are, in the judgment of the bureau, relevant and useful because they have a significant cause-and-effect relationship with the direct and indirect effects of the proposal for bureau action and its alternatives. CEQ regulations do not require the consideration of the individual effects of all past actions to determine the present effects of past actions. Once the bureau has identified those present effects of past actions that warrant consideration, the bureau assesses the extent that the effects of the proposal for bureau action or its alternatives will add to, modify, or mitigate those effects. The final analysis documents a bureau assessment of the cumulative effects of the actions considered (including past, present, and reasonably foreseeable future actions) on the affected environment.

(b) With respect to past actions, during the scoping process and subsequent preparation of the analysis, the bureau must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects. Cataloging past actions and specific information about the direct and indirect effects of their design and implementation could in some contexts be useful to predict the cumulative effects of the proposal. The CEQ regulations, however, do not require bureaus to catalogue or exhaustively list and analyze all individual past actions. Simply because information about past actions may be available or obtained with reasonable effort does not mean that it is relevant and necessary to inform decisionmaking.

### § 46.120 Using existing environmental analyses.

(a) The Responsible Official should use existing analyses for assessing the impacts of a proposed action and any alternatives as allowed by this section.

(b) If existing analyses include data and assumptions appropriate for the analysis at hand, the Responsible

Official should use the existing analyses where feasible.

(c) An existing environmental analysis may be used if the Responsible Official determines, with appropriate supporting documentation, that it adequately assesses the environmental effects of the proposed action and reasonable alternatives. The supporting record must include an evaluation of whether new circumstances, new information, changes in the action or its impacts not previously analyzed, warrant new analysis.

(d) Bureaus should make the best use of existing NEPA documents and avoid redundancy and unneeded paperwork through supplementing, incorporating by reference, or adopting previous environmental analyses.

**§ 46.125 Incomplete or unavailable information.**

In 40 CFR 1502.22, the over-all costs of obtaining information being exorbitant refers not only to monetary costs, but can include other non-monetized social costs when appropriate.

**§ 46.130 Mitigation measures in analyses.**

The analysis of the proposed action and any alternatives must include an analysis of the effects of the proposed action or alternative without additional mitigation as well as analysis of the effects of any other appropriate mitigation measures or best management practices that are considered for addition to the proposed action or alternatives. The additional mitigation measures can be analyzed either as elements of alternatives or in a separate discussion of mitigation.

**§ 46.135 Using incorporation by reference.**

(a) The Responsible Official must determine that the analysis and assumptions used in the reference document are appropriate for the analysis at hand.

(b) Citations of specific information or analysis from other source documents must include the pertinent page numbers.

(c) All literature references must be listed in the bibliography. Literature references that are incorporated by reference shall be readily available for review; literature references that are not readily available shall be made available for review as part of the administrative record supporting the proposed action.

**§ 46.140 Using tiered documents.**

A NEPA document that tiers to a broader NEPA document in accordance with 40 CFR 1508.28 must include a finding that the conditions and environmental effects described in the broader NEPA document are still valid.

(a) Where the impacts of the narrower action are identified and analyzed in the broader NEPA document, no further analysis is necessary.

(b) To the extent that any relevant analysis in the broader NEPA document is out-of-date or otherwise inadequate, the tiered NEPA document must explain this and provide any necessary analysis.

(c) Bureaus will review their existing guidance concerning the use of tiering, and ascertain whether additional guidance is needed. Guidance must include, but is not limited to, guidance on finding and using similar information, examples of tiered analyses, a set of procedural steps to make the most of tiered analyses, knowledge of when to use previous material, and how to use tiered analyses without sacrificing references to original sources.

**§ 46.145 Using adaptive management.**

Bureaus should use adaptive management as part of their decision making processes, as appropriate, particularly in circumstances where long-term impacts may be uncertain and future monitoring will be needed to make necessary adjustments in subsequent implementation decisions. The NEPA analysis conducted in support of a bureau's decision to adopt an adaptive management approach should identify the range of management options that may be taken in response to the results of monitoring, and should analyze the effects of such options. The environmental effects of any adaptive management strategy must be evaluated in this or subsequent NEPA analysis.

**§ 46.150 Emergency responses.**

(a) If the Responsible Official determines that an emergency exists that makes it necessary to take emergency actions before completing a NEPA analysis and documentation in accordance with the provisions in subparts D and E of this part, then these provisions apply.

(b) The Responsible Official may take emergency actions necessary to control the immediate impacts of the emergency to mitigate harm to life, property, or important resources. When taking such actions, the Responsible Official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practical.

(c) If the Responsible Official determines that proposed emergency actions, beyond actions noted in paragraph (b) of this section, are not likely to have significant environmental impacts, the Responsible Official shall document that determination in an EA and finding of no significant impact (FONSI) prepared in accordance with this regulation, unless categorically excluded (subpart C of this part). If the Responsible Official finds that the nature and scope of the subsequent actions related to the emergency require taking such proposed actions prior to completing an EA and FONSI, the Responsible Official shall consult with the Department about alternative arrangements for NEPA compliance. Consultation with the Department must be coordinated through the appropriate bureau's office.

(d) If the Responsible Official determines that proposed emergency actions, beyond actions noted in paragraph (b) of this section, are likely to have significant environmental impacts, then the Responsible Official shall consult with CEQ, through the appropriate bureau office and the Department, about alternative arrangements as soon as possible. Alternative arrangements address the proposed actions necessary to control the immediate impacts of the emergency. Other proposed actions remain subject to NEPA analysis and documentation in accordance with this regulation.

**§ 46.155 Consultation, coordination, and cooperation with other agencies and organizations.**

(a) The Responsible Official must whenever possible:

(1) Consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of bureau plans, programs, and activities within the jurisdictions or related to the interests of these outside entities; and

(2) Include consensus-based management (see § 46.110) and, when doing so, comply with the applicable provisions of the Federal Advisory Committee Act (FACA).

(b) Bureaus must develop procedures to implement this section.

**§ 46.160 Limitations on actions during the NEPA analysis process.**

During the preparation of a program or plan NEPA document, the Responsible Official may undertake any major Federal action within the scope of, and analyzed in the existing NEPA document supporting the current plan or program, so long as there is adequate NEPA documentation to support the individual action.

**§ 46.165 Ensuring public involvement.**

Bureaus should develop and implement procedures in accordance with this part to ensure:

(a) The fullest practical provision of timely public information about bureau proposed actions that have environmental impacts, including information on the environmental impacts of alternative courses of action; and

(b) Appropriate public involvement in the development of NEPA analyses and documents.

**§ 46.170 Environmental effects abroad of major Federal actions.**

(a) In order to facilitate informed and responsible decision-making, the Responsible Official having ultimate responsibility for authorizing and approving proposed actions encompassed by the provisions of Executive Order (E.O.) 12114 shall follow the provisions and procedures of that E.O. E.O. 12114 represents the United States government's exclusive and complete determination of the procedural and other proposed actions to be taken by Federal agencies to further the purpose of NEPA, with respect to the environment outside the United States, its territories, and possessions.

(b) When implementing E.O. 12114, bureaus shall coordinate with the Department. The Department shall then consult with the Department of State, which shall coordinate all communications by the Department with foreign governments concerning environmental agreements and other arrangements in implementing E.O. 12114.

## Subpart C—Initiating the NEPA Process

**§ 46.200 Applying NEPA early.**

(a) For any proposed Federal action (40 CFR 1508.23 and 1508.18) that may have environmental impacts, bureaus must coordinate, as early as feasible, with:

(1) Any other bureaus or Federal agencies, State, local, and tribal governments having jurisdiction by law or special expertise; and

(2) Appropriate Federal, State, local, and tribal governments authorized to develop and enforce environmental standards or to manage and protect natural resources or other aspects of the human environment.

(b) Bureaus must solicit the participation of all interested parties and organizations as early as possible, such as at the time an application is received, or when the bureau initiates the NEPA process for a proposed action.

(c) Bureaus should provide, where practicable, any appropriate community-based training to reduce costs, prevent delays, and facilitate and promote efficiency in the NEPA process.

(d) Bureaus should inform private or non-Federal applicants, to the extent feasible, of:

(1) Any appropriate environmental information that the applicants must include in their applications; and

(2) Any consultation with other Federal agencies, or State, local, or tribal governments that the applicant must accomplish before or during the application process.

**§ 46.205 Actions categorically excluded from further NEPA review.**

CXs are a group of actions that have no significant individual or cumulative effect on the quality of the human environment.

(a) Except as provided in paragraph (c) of this section, if an action is covered by a Departmental CX, the bureau is not required to prepare an EA (see subpart D of this part) or an EIS (see subpart E of this part).

(b) The actions listed in § 46.210 are categorically excluded, Department-wide, from preparation of EAs or EISs.

(c) The CEQ Regulations at 40 CFR 1508.4 require agency procedures to provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect and require additional analysis and action. Section 46.215 lists the extraordinary circumstances under which actions otherwise covered by a CX require analyses under NEPA.

(1) Any action that is normally categorically excluded must be evaluated to determine whether it meets any of these extraordinary circumstances, in which case, further analysis and environmental documents must be prepared for the action.

(2) Bureaus must work within existing administrative frameworks, including any existing programmatic agreements, when deciding how to apply any of the § 46.215 extraordinary circumstances.

(d) Congress may establish CXs by legislation, in which case the terms of the legislation determine how to apply the CX.

**§ 46.210 Listing of Departmental CXs.**

The following actions are categorically excluded under § 46.205(b), unless any of the extraordinary circumstances in § 46.215 apply:

(a) Personnel actions and investigations and personnel services contracts.

(b) Internal organizational changes and facility and bureau reductions and closings.

(c) Routine financial transactions including such things as salaries and expenses, procurement contracts (e.g., in accordance with applicable procedures and Executive Orders for sustainable development or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

(d) Departmental legal activities including, but not limited to, such things as arrests, investigations, patents, claims, and legal opinions. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA in accordance with 40 CFR 1508.18(a).

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

(f) Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (e.g., limited size and magnitude or short-term effects).

(g) Management, formulation, allocation, transfer, and reprogramming of the Department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.)

(h) Legislative proposals of an administrative or technical nature (including such things as changes in authorizations for appropriations and minor boundary changes and land title transactions) or having primarily economic, social, individual, or institutional effects; and comments and reports on referrals of legislative proposals.

(i) Policies, directives, regulations, and guidelines:

(1) That are of an administrative, financial, legal, technical, or procedural nature; or

(2) Whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

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

(k) Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical

methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities:

(1) Shall be limited to areas—

(i) In wildland-urban interface; and

(ii) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface;

(2) Shall be identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10–Year Comprehensive Strategy Implementation Plan;"

(3) Shall be conducted consistent with bureau and Departmental procedures and applicable land and resource management plans;

(4) Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and

(5) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction. (Refer to the ESM Series for additional, required guidance.)

(l) Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities must comply with the following (Refer to the ESM Series for additional, required guidance.):

(1) Shall be conducted consistent with bureau and Departmental procedures and applicable land and resource management plans;

(2) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and

(3) Shall be completed within three years following a wildland fire.

**§ 46.215 CXs: Extraordinary circumstances.**

Extraordinary circumstances (see § 46.205(c)) exist for individual actions within CXs that may meet any of the criteria listed in paragraphs (a) through (l) of this section. Applicability of extraordinary circumstances to CXs is determined by the Responsible Official.

(a) Have significant impacts on public health or safety.

(b) Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (E.O. 11990); floodplains (E.O. 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

(c) Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)].

(d) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

(e) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

(f) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

(g) Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places.

(h) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.

(i) Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

(j) Have a disproportionately high and adverse effect on low income or minority populations (E.O. 12898).

(k) Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (E.O. 13007).

(l) Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and E.O. 13112).

**§ 46.220 How to designate lead agencies.**

(a) In most cases, the Responsible Official should designate one Federal agency as the lead with the remaining Federal, State, tribal governments, and local agencies assuming the role of cooperating agency. In this manner, the other Federal, State, and local agencies can work to ensure that the NEPA document will meet their needs for adoption and application to their related decision(s).

(b) In some cases, a non-Federal agency (including a tribal government) must comply with State or local requirements that are comparable to the NEPA requirements. In these cases, the Responsible Official may designate the non-Federal agency as a joint lead agency. (See 40 CFR 1501.5 and 1506.2 for a description of the selection of lead agencies, the settlement of lead agency disputes, and the use of joint lead agencies.)

(c) In some cases, the Responsible Official may establish a joint lead relationship among several Federal agencies. If there is a joint lead, then one Federal agency must be identified as the agency responsible for filing the EIS with EPA.

**§ 46.225 How to select cooperating agencies.**

(a) An "eligible governmental entity" is:

(1) Any Federal agency that is qualified to participate in the development of an EIS as provided for in 40 CFR 1501.6 and 1508.5 by virtue of its jurisdiction by law, as defined in 40 CFR 1508.15; or

(2) Any Federal agency that is qualified to participate in the development of an EIS by virtue of its special expertise, as defined in 40 CFR 1508.26; or

(3) Any non-Federal agency (State, Tribal, or local) with qualifications similar to those in paragraphs (a)(1) and (a)(2) of this section.

(b) Except as described in paragraph (c) of this section, the Responsible Official for the lead bureau must invite eligible governmental entities to participate as cooperating agencies when the bureau is developing an EIS.

(c) The Responsible Official for the lead bureau must consider any request by an eligible governmental entity to participate in a particular EIS as a cooperating agency. If the Responsible Official for the lead bureau denies a request, or determines it is inappropriate to extend an invitation, it must state the reasons in the EIS. Denial of a request or not extending an invitation for cooperating agency status is not subject to any internal administrative appeals process, nor is it a final agency action subject to review under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

(d) Bureaus should work with cooperating agencies to develop and adopt a memorandum of understanding

that includes their respective roles, assignment of issues, schedules, and staff commitments so that the NEPA process remains on track and within the time schedule. Memoranda of understanding must be used in the case of non-Federal agencies and must include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the bureau of the draft NEPA document.

(e) The procedures of this section may be used for an EA.

**§ 46.230 Role of cooperating agencies in the NEPA process.**

In accordance with 40 CFR 1501.6, throughout the development of an environmental document the lead bureau will collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise. Cooperating agencies may, by agreement with the lead bureau, help to do the following:

(a) Identify issues to be addressed in the EIS;

(b) Arrange for the collection and/or assembly of necessary resource, environmental, social, economic, and institutional data;

(c) Analyze data;

(d) Develop alternatives;

(e) Evaluate alternatives and estimate the effects of implementing each alternative; and

(f) Carry out any other task necessary for the development of the EIS.

**§ 46.235 NEPA scoping process.**

(a) Scoping is a process that continues throughout the planning and early stages of preparation of an EIS. While scoping is required for an EIS, as described in this section, it may also be appropriate to engage in scoping during the preparation of an EA. For an EIS, bureaus must use scoping to engage State, local and tribal governments, and the public in the early identification of concerns, potential impacts, possible alternative actions, and interdisciplinary considerations. Scoping is an opportunity to bring agencies and applicants together to lay the groundwork for setting time limits, expediting reviews where possible, integrating other environmental reviews, and identifying any major obstacles that could delay the process. The Responsible Official shall determine whether, in some cases, the invitation requirement in 40 CFR 1501.7(a)(1) may be satisfied by including such an invitation in the notice of intent (NOI).

(b) In scoping meetings, newsletters, or other communication methods, the lead agency must make it clear that the lead agency is ultimately responsible for the scope of an EIS and that suggestions obtained during scoping are considered to be advisory.

**§ 46.240 Establishing time limits for the NEPA process.**

(a) For each proposed action, on a case-by-case basis, bureaus shall:

(1) Set time limits from the start through to the finish of the NEPA analysis and documentation consistent with the requirements of 40 CFR 1501.8 and other legal obligations, including statutory and regulatory timeframes;

(2) Consult with cooperating agencies in setting time limits; and

(3) Encourage cooperating agencies to meet established time frames.

(b) Time limits should reflect the availability of personnel and funds. Efficiency of the NEPA process is dependent on the management capabilities of the lead bureau, which must assemble a qualified staff commensurate with the type of project to be analyzed to ensure timely completion of NEPA documents.

## Subpart D—Environmental Assessments

**§ 46.300 Purpose of an EA and when it must be prepared.**

The purpose of an EA is to allow the Responsible Official to determine whether to prepare an EIS or a FONSI.

(a) A bureau must prepare an EA for all proposed Federal actions, except those:

(1) That are covered by a CX;

(2) That are covered sufficiently by an earlier environmental document as determined by the Responsible Official; or

(3) For which the bureau has already decided to prepare an EIS.

(b) A bureau may prepare an EA for any proposed action at any time to:

(1) Assist in planning and decision-making;

(2) Further the purposes of NEPA when no EIS is necessary; or

(3) Facilitate EIS preparation.

**§ 46.305 Public involvement in the EA process.**

(a) The bureau must provide for public notification when an EA is being prepared. The bureau must, to the extent practicable, provide for public involvement when an EA is being prepared. However, the method for providing opportunities for public involvement is at the discretion of the bureau.

(1) The bureau must consider comments resulting from the notice that are timely received, whether specifically solicited or not.

(2) Although scoping is not required, the bureau may apply a scoping process to an EA.

(b) Publication of a "draft" EA is not required. Bureaus may seek comments on an EA if they determine it to be appropriate, such as when the level of public interest or the uncertainty of effects warrants.

(c) The bureau must notify the public of the availability of an EA and any associated FONSI once they have been completed. Comments on a FONSI must be solicited only as required by 40 CFR 1501.4(e)(2).

(d) Bureaus may allow cooperating agencies (as defined in § 46.225) to participate in developing EAs.

**§ 46.310 Contents of an EA.**

(a) At a minimum, an EA must include brief discussions of:

(1) The proposal;

(2) The need for the proposal;

(3) The environmental impacts of the proposed action;

(4) The environmental impacts of the alternatives considered; and

(5) A list of agencies and persons consulted.

(b) When there is consensus about the proposed action with respect to alternative uses of available resources, the EA need only consider the proposed action and proceed without consideration of additional alternatives, including the no action alternative. (See section 102(2)(e) of NEPA).

(c) In addition, an EA may describe a broader range of alternatives to facilitate planning and decision-making.

(d) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(e) The level of detail and depth of impact analysis should normally be limited to the minimum needed to determine whether there would be significant environmental effects.

(f) Bureaus may choose to provide additional detail and depth of analysis as appropriate in those EAs prepared under § 46.300(b).

(g) An EA must contain objective analyses that support conclusions concerning environmental impacts.

**§ 46.315 How to format an EA.**

(a) An EA may be prepared in any format useful to facilitate planning, decision-making, and appropriate public participation.

(b) An EA may be accompanied by any other planning or decision-making document. The portion of the document that analyzes the environmental impacts of the proposal and alternatives must be clearly and separately identified and not spread throughout or interwoven into other sections of the document.

**§ 46.320 Adopting EAs prepared by another agency, entity, or person.**

(a) A Responsible Official may adopt an EA prepared by another agency, entity, or person, including an applicant, if the Responsible Official:

(1) Independently reviews the EA; and

(2) Finds that the EA complies with this subpart and relevant provisions of the CEQ Regulations and with other program requirements.

(b) When appropriate, the Responsible Official may augment the EA to be consistent with the bureau's proposed action.

(c) In adopting or augmenting the EA, the Responsible Official will cite the original EA.

(d) The Responsible Official must ensure that its bureau's public involvement requirements have been met before it adopts another agency's EA.

**§ 46.325 Conclusion of the EA process.**

(a) Upon review of the EA by the Responsible Official, the EA process concludes in either:

(1) A NOI to prepare an EIS;

(2) A FONSI; or

(3) No further action on the proposal.

(b) Bureaus must document the final decision reached under paragraph (a) of this section.

## Subpart E—Environmental Impact Statements

**§ 46.400 Timing of EIS development.**

(a) The bureau must prepare an EIS for each proposed major Federal action significantly affecting the quality of the human environment before making a decision on whether or not to proceed with the proposed action.

(b) The Responsible Official must inform applicants as soon as practicable of any responsibility they will bear for funding environmental analyses associated with their proposals.

**§ 46.405 Remaining within page limits.**

To the extent possible, bureaus should use techniques such as incorporation by reference and tiering in an effort to remain within the normal page limits stated in 40 CFR 1502.7.

**§ 46.415 EIS format.**

The Responsible Official may use any EIS format and design as long as the statement is in accordance with 40 CFR 1502.10.

(a) *Contents.* The Responsible Official may use any EIS format as long as the statement discloses:

(1) A statement of the purpose and need for the action;

(2) A description of the proposed action;

(3) The environmental impact of the proposed action;

(4) A brief description of the affected environment;

(5) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(6) Alternatives to the proposed action;

(7) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

(8) Any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented; and

(9) The incremental process used, if any, of coordination with other Federal agencies, State, Tribal and local governments, and commonly recognized community groups pursuant to §§ 46.110, 46.145 and 46.155 and the results thereof.

(b) *Alternatives.* The EIS shall document the examination of reasonable alternatives to the proposed action. Reasonable alternatives are those that meet the purpose and need and address one or more significant issues (40 CFR 1501.7) related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed. In addition to the requirements at 40 CFR 1502.14, the Responsible Official has an option to use the following procedures to develop and analyze alternatives.

(1) The effects of the no-action alternative may be documented by contrasting the current condition and expected future condition should the proposed action not be undertaken with the impacts of the proposed action and any reasonable alternatives.

(2) To facilitate collaborative processes and sound decisions, the Responsible Official may collaborate with interested parties to modify a proposed action and alternative(s) under consideration prior to issuing a draft EIS. In such cases the Responsible Official may consider the incremental changes as alternatives considered. The documentation of these incremental changes to a proposed action or alternatives may be incorporated by reference in accordance with 40 CFR 1502.21 rather than duplicating the description and analysis in the statement.

(3) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(c) *Circulating and filing draft and final EISs.*

(1) The draft and final EISs shall be filed with EPA's Office of Federal Activities in Washington, DC (40 CFR 1506.9).

(2) If preliminary drafts are prepared, the Responsible Official shall make those preliminary draft and preliminary final EISs available to those interested and affected persons and agencies for comment; however, requirements at 40 CFR 1506.10 and 40 CFR 1502.19 shall only apply to the last draft statement and the final statement.

**§ 46.420 Terms used in an EIS.**

The following terms are commonly used to describe concepts or activities in an EIS:

(a) *Statement of purpose and need.* In accordance with 40 CFR 1502.13, the statement of purpose and need briefly indicates the underlying purpose and need to which the bureau is responding.

(1) In some instances it may be appropriate for the bureau to describe its "purpose" and its "need" as distinct aspects. The "need" for the action may be described as the underlying problem or opportunity to which the agency is responding with the action. The "purpose" may refer to the goal or objective that the agency is trying to achieve, and should be stated to the extent possible, in terms of desired outcomes.

(2) When an agency is asked to approve an application or permit, the agency should consider the needs and goals of the parties involved in the application or permit as well as the public interest.

(b) *Reasonable alternatives.* In addition to the requirements of 40 CFR 1502.14, this term also includes

alternatives that are technically and economically practical or feasible and that meet the purpose and need of the proposed action.

(c) *Range of alternatives.* This term includes all alternatives that would reasonably accomplish the purpose of the proposed action, that will be rigorously explored and objectively evaluated as well as other alternatives that are analyzed in any preliminary draft or preliminary final EIS.

(d) *Proposed action.* This term refers to the agency activity under consideration. It includes a non-Federal entity's planned activity that falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal approvals, funding, or regulatory instruments. The proposed action:

(1) Is not necessarily, but may become, during the NEPA process, a preferred alternative or an environmentally preferable alternative; and

(2) Must be clearly described in order to proceed with NEPA analysis.

(e) *Preferred alternative.* This term refers to the alternative which the agency believes would best accomplish the purpose and need of the proposed action, while fulfilling its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. It may or may not be the same as the agency's or the non-Federal entity's proposed action.

(f) *No action alternative.* This term has two interpretations. First "no action" may mean "no change" from a current management direction or level of management intensity. Second "no action" may mean "no project" in cases where a new project is proposed for construction. Regardless of the interpretation, a "no action" alternative is required to be analyzed in an EIS.

**§ 46.425 Identification of the preferred alternative in an EIS.**

(a) Unless another law prohibits the expression of a preference, the draft EIS should identify the bureau's preferred alternative or alternatives, if one or more exists.

(b) Unless another law prohibits the expression of a preference, the final EIS must identify the bureau's preferred alternative.

**§ 46.430 Environmental review and consultation requirements.**

(a) An EIS that also addresses other environmental review and consultation requirements must clearly identify and discuss all the associated analyses, studies, and surveys relied upon by the agency as a part of that review and consultation. Also:

(1) The EIS should indicate that the associated analyses are included;

(2) The EIS must reference or include as an appendix any supporting analyses or reports; and

(3) The bureau preparing the EIS must send copies of all supporting analyses or reports to reviewing agencies as appropriate in accordance with applicable regulations or procedures.

(b) The draft EIS must list all Federal permits, licenses, or approvals that must be obtained to implement the proposal. To the extent possible and authorized by law, the environmental analyses for these related permits, licenses, and approvals should be integrated and performed concurrently. The bureau may complete the NEPA analysis before all approvals are in place.

**§ 46.435 Inviting comments.**

(a) A bureau must seek comment from the public as part of the NOI to prepare an EIS and notice of availability on the draft EISs;

(b) In addition to paragraph (a) of this section, a bureau must request comments from:

(1) Federal agencies;

(2) State agencies through procedures established by the Governor under E.O. 12372;

(3) Local agencies, to the extent that they include the affected local jurisdictions; and

(4) Applicant, if any, and persons or organizations who may be interested or affected.

(c) The bureau must request comments from the tribal government, unless the tribal government has designated an alternate review process, when the proposed action may affect the environment of either:

(1) Indian trust or restricted land; or

(2) Other Indian trust resources, trust assets, or tribal health and safety.

(d) A bureau does not need to delay preparation and issuance of a final EIS when any Federal, State, and local agencies, or tribal governments from which comments must be obtained or requested do not comment within the prescribed time period.

**§ 46.440 Eliminating duplication with State and local procedures.**

A bureau must incorporate in its regulations provisions allowing a State agency to jointly prepare an EIS, to the extent provided in 40 CFR 1506.2.

**§ 46.445 Preparing a legislative EIS.**

When required, the Department must ensure that a legislative EIS is included as a part of the formal transmittal of a legislative proposal to the Congress.

**§ 46.450 Identifying the environmentally preferable alternative.**

In accordance with the requirements of 40 CFR 1505.2, a bureau must identify the environmentally preferable alternative in the ROD. It is not necessary that the environmentally preferable alternative be selected in the ROD.

[FR Doc. E7–25484 Filed 12–31–07; 8:45 am]

BILLING CODE 4310–RG–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 300

**[Docket No. 071218860–7866–01]**

**RIN 0648–AW26**

## Pacific Halibut Fisheries; Catch Sharing Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes to approve and implement changes to the Pacific Halibut Catch Sharing Plan (Plan) for the International Pacific Halibut Commission's (IPHC or Commission) regulatory Area 2A off Washington, Oregon, and California (Area 2A). NMFS proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC, which includes the sport fishery management measures for Area 2A. These actions are intended to enhance the conservation of Pacific halibut, to provide greater angler opportunity where available, and to protect yelloweye rockfish and other overfished groundfish species from incidental catch in the halibut fisheries.

**DATES:** Comments on the proposed changes to the Plan and on the proposed domestic Area 2A halibut management measures must be received no later than 5 p.m., local time on February 1, 2008.

**ADDRESSES:** Copies of the Plan and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) are available from D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070. Electronic copies of the Plan, including proposed changes for 2008, and of the draft RIR/IRFA are also available at the NMFS Northwest Region website: *http://www.nwr.noaa.gov*, click on "Groundfish & Halibut."

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

January 29, 2008

In Reply Refer To:
1278 (560) P

EMS TRANSMISSION 02/05/2008
Instruction Memorandum No. 2008-059
Expires: 09/30/2009

To: All Bureau of Land Management (BLM) Employees

From: Director

Subject: Freedom of Information Act (FOIA) Policy to Improve Customer Service per Executive Order 13392: "Improving Agency Disclosure of Information."

**Program Area:** All program areas, Freedom of Information Act (FOIA)

**Purpose:** This Instruction Memorandum (IM) describes requirements for all employees to improve customer service and response time regarding Freedom of Information Act (FOIA) requests. In order to process public requests for information, BLM FOIA coordinators will contact program managers for assistance. Program offices should respond to these inquiries from the requesting BLM FOIA office within 5 days from the initial notification, in order to begin processing the request in a timely manner.

In accordance with Executive Order (E.O.) 13392, it is the policy of BLM to make records available to the public to the greatest extent possible, in keeping with the spirit of the FOIA, while at the same time protecting sensitive information. The President, through E.O. 13392, instructed all agencies to improve their FOIA operations with both efficiency and timeliness in mind. Therefore, the BLM is continuing to advance policies with the spirit and intent of the order.

**Policy/Action:** All employees (including contractors) of the BLM are required to assist in facilitating and expediting the production and dissemination of documents requested under the FOIA. While the specific FOIA request may be filed with the State, Center, or Field Office FOIA Coordinator, all employees of the BLM are potentially called upon to produce the necessary information and documents to support this request. Responding to FOIA requests is a necessarily high priority and should be executed the utmost courtesy. In many cases, employees may need to respond directly to the public to a follow-up request or telephone requests for information and, if called upon, should be prompt and helpful in their reply. All requests must be responded to by FOIA Coordinators within the statutory time limit of 20 workdays. Since oversight agencies will monitor BLM to ensure compliance with E. O. 13392, the BLM will evaluate employee performance based on timeliness and the quality of customer service in responding to FOIA requests. A copy of E. O. 13392 and the Office of Management and Budget's implementing directive are available on www.whitehouse.gov/omb/memoranda/fy2006/m06-04.pdf

**Timeframe:** Effective immediately.

**Background:** In December 2005, the President issued E.O. 13392 to improve processing of requests under the FOIA. Since responding to FOIA requests requires participation by all employees in furnishing documents, this directive reasserts BLM policy on responding to FOIAs promptly and courteously.

**Budget Impact:** None. Responding to FOIA request is considered part of program duties.

**Manual/Handbook Sections Affected:** BLM Manual 1278 – External Access to BLM Information.

**Coordination:** This IM has been coordinated with all of the Directorates.

**Contact:** Keel Ross, Division Chief, IRM Governance (WO-560) at (202) 557-3561.

Signed by:
Theresa Coleman
Acting, Deputy Assistant Director
Information Resources Management

Authenticated by
Robert M. Williams
Division of IRM Governance,WO-560

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
http://www.blm.gov

March 26, 2008

In Reply Refer To:

1790 (FA-600/WO-200) P

EMS TRANSMISSION 04/01/2008
Instruction Memorandum No. 2008-099
Expires: 09/30/2009

**To:** State Directors

**From:** Director

**Subject:** Use of the Healthy Forests Initiative Hazardous Fuels Reduction Categorical Exclusion
**Program Areas:** Fire, Forestry, Rangeland Management, Wildlife

**Purpose:** This Instruction Memorandum (IM) outlines the Bureau of Land Management's (BLM) use of the Department of the Interior (DOI) Healthy Forest Initiative Hazardous Fuels Reduction Categorical Exclusion (DOI HFI CX).

**Policy:** Due to recent litigation regarding the United States Department of Agriculture Healthy Forest Initiative Hazardous Fuel Reduction Categorical Exclusion (USDA HFI CX ), BLM offices are directed to discontinue issuing any new decisions approving projects that rely on the DOI HFI CX set forth in 516 Departmental Manual 2, Appendix 1, 1.12 that are within jurisdiction of the Ninth Circuit (Alaska, Arizona, California, Idaho, Montana, Nevada and Oregon/Washington)

For projects outside the jurisdiction of the Ninth Circuit, BLM may continue to utilize the DOI HFI CX, as appropriate, and should continue to carefully and thoroughly apply the extraordinary circumstances provisions set forth in 516 Departmental Manual 2, Appendix 1, 2.

**Timeframe:** This IM is effective immediately upon receipt.

**Budget Impact:** Field offices may incur increased project planning costs due to the need to complete environmental assessments for projects that could have been implemented with the DOI HFI CX.
**Background:** On December 5, 2007, the U.S. Court of Appeals for the Ninth Circuit declared the USDA HFI CX, developed in 2003 under the President's Healthy Forests Initiative, invalid and indicated that it will order the U.S. District Court for the Eastern District of California to:

- 1. Issue an injunction against further use of the USDA HFI CX.
- 2. Determine which activities approved after October 8, 2004, under the USDA HFI should be enjoined.

While the DOI HFI CX was not specifically at issue in this case, the DOI HFI CX was developed in conjunction with the USDA HFI CX. In view of this circumstance, and as a result of consultation with the Solicitor's Office, the BLM has elected to discontinue issuing any new decisions within the jurisdiction of the Ninth Circuit that rely on the DOI HFI CX. The Circuit's ruling does not extend to other categorical exclusions.

**Manual/Handbook Sections Affected:** For affected States, this instruction memorandum supersedes direction provided in the BLM NEPA Handbook (H-1790-1) regarding use of the DOI HFI CX.

**Coordination:** This IM has been coordinated among the Renewable Resources and Planning and the Fire and Aviation Directorates and the Office of the Solicitor.

**Contact:** If you have any questions, please contact Deb Rawhouser, Chief, Planning and Science Policy at 202-452-0354, or Ted Milesnick, Fire Planning and Fuels Management at 208-387-5198.

Signed by:
James L. Caswell
Director

Authenticated by:
Robert M. Williams
Division of IRM Governance,WO-560

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
http://www.blm.gov

August 1, 2008

In Reply Refer To:
1610 (210) P

EMS TRANSMISSION 08/06/2008
Instruction Memorandum No. 2008-166
Expires: 09/30/2009

**To:** All Washington Office and Field Office Officials

**From:** Deputy Director, Programs & Policy

**Subject:** Technical Correction to the Bureau of Land Management's (BLM) National Environmental Policy Act (NEPA) Handbook

**Program Area:** All program areas which comply with the NEPA.

**Purpose:** This Instruction Memorandum (IM) transmits a technical correction to the BLM Manual Handbook (H-1790-1) for NEPA (NEPA Handbook).

**Policy/Action:** All Washington Office and Field Office employees and officials will remove and replace the paragraph addressed below from the NEPA Handbook. This will clarify the use of the categorical exclusions established by the Energy Policy Act of 2005.

On page number 144 (Appendix 2) of the BLM NEPA Handbook (Manual Release # 1-1710 of 01/30/2008) you are directed to remove the last paragraph on the page, beginning with "Note:" and replace it with the following paragraph.

> Note: The CX numbers one (1) and three (3) reference previous NEPA documents. Field Offices must apply the same or more effective mitigating measures considered in the parent NEPA documents to all actions approved under any CX. Additionally, BMPs are to be applied as necessary to reduce impacts to any authorization issued, regardless of the NEPA analysis or exclusion used.

**Timeframe:** Effective upon issuance.

**Background:** The BLM NEPA Handbook (H-1790-1) was published in January 2008. The purpose of this Handbook is to help the BLM comply with the National Environmental Policy Act, the Council on Environmental Quality's (CEQ) NEPA regulations (40 CFR Parts 1500-1508), and the Department of Interior NEPA Manual.

**Budget Impact:** None

**Manual/Handbook Sections Affected: The BLM Handbook H-1790-1 (Rel. 1-1710), of 2008 is now modified to incorporate the corrected text.**

**Coordination:** This IM has been coordinated with Assistant Directors for WO-200, WO-300, WO-800, and Solicitors.

**Contact:** For further information, please contact Peg Sorensen, NEPA Specialist, Division of Decision Support, Planning and the NEPA (WO-210) at 202-452-0364; or Sandra Meyers, Branch Chief, Division of Decision Support, Planning and the NEPA at 202-557-3373.

Signed by:
James L. Caswell
Deputy Director, Programs and Policy

Authenticated by:
Robert M. Williams
Division of IRM Governance,WO-560

Last updated: 08-07-2008

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
http://www.blm.gov

August 19, 2008

In Reply Refer To:
1610 (210) I

EMS TRANSMISSION 08-20-2008
Instruction Memorandum No. 2008-171
Expires: 09/30/2009

**To:** All Washington Office and Field Office Officials

**From:** Director

**Subject:** Guidance on Incorporating Climate Change into Planning and NEPA Documents DD: 8/29/08

**Program Area**: Land Use Planning.

**Purpose**: This Instruction Memorandum (IM) provides draft guidance on incorporating climate change analysis into management plans and National Environmental Policy Act (NEPA) documents at the BLM, and is to be used in the interim while the final guidance is prepared. Please provide comments on by the due date cited above.

**Policy/Action**: The attachment to this IM provides draft guidance for BLM offices to follow to adequately incorporate climate change considerations into the Land Use Planning/NEPA analysis process. This guidance supplements the procedures established in the BLM Land Use Planning Handbook (H-1601-1), and is to be used during the resource management planning process. To assure that climate change is suitably addressed in NEPA analyses, follow these procedures:

Environmental Impact Statements - Evaluate whether or not climate change analysis for an Environmental Impact Statement (EIS) being proposed can be tiered to an existing EIS. If not, the appropriate climate change sections of the attached guidance should be applied. The attachment to this IM addresses in detail the procedures to follow in order to adequately incorporate climate change considerations into the EIS process. This guidance follows and supplements the procedures established in the Land Use Planning Handbook (H-1601-1), identifying additional considerations specific to climate change.

Environmental Assessments - Evaluate whether or not individual Environmental Assessments can tier their climate change analyses to either applicable Environmental Impact Statements or can incorporate by reference other analyses. Otherwise, although less extensive than necessary for Environmental Impact Statements, the Environmental Assessment should utilize many of the same analysis processes identified in the attached guidance.

Categorical Exclusions - Consider the potential for climate change impacts from implementation of an anticipated activity. If there is a potential for significant climate change impacts, evaluate whether or not the impacts are addressed in Appendix 5 – Extraordinary Circumstances of the NEPA Handbook. In particular, determine the applicability of Circumstances numbers 2.4 or 2.6, and take appropriate action.

When determining the scope and content of air resource related climate analyses, offices are directed to contact their servicing air resource specialist, or air resource specialists at the National Operations Center, Division of Resource services.

**Timeframe**: Effective upon issuance.

**Budget Impact**: As climate change analyses are incorporated into the existing NEPA/Planning process and do not require extensive additional effort, funding requirements to incorporate these analyses should not be significant

**Background**: On June 18, 2008, the BLM Director requested that the Office of Renewable Resources and Planning formulate guidance for addressing climate change in the Bureau's Planning/NEPA analysis process. A climate change team, was assembled to draft this guidance. The mission of this team was to (1) integrate climate change into the Bureau's planning and NEPA processes, while (2) minimizing the administrative burden associated with implementing the guidance.

**Manual/Handbook Sections Affected**: Land Use Planning Handbook (H-1601-1): Chapter 1 (C)(1)(a) Issues Used to Develop all Alternatives, (H) Overall Vision; Chapter 2 (B) Management Common to all Alternatives, (G) Comparison of Impacts; Chapter 3 (A) Resources, (B) Resource Uses, (C) Special Designations, (D) Social and Economic; Chapter 4 (A)(1) Analytical Assumptions, (A)(2) Types of Effects to be Addressed, (A)(4) Incomplete or Unavailable Information, (B) Resources by Alternative, (C) Resource Uses, (D) Special Designations, (E) Social and Economic.

**Coordination**: Preparation of this draft IM was coordinated with the Assistant Director – Renewable Resources and Planning (WO-200); the Division of Decision Support, Planning and NEPA (WO-210); the Division of Environmental Quality and Protection (WO-280); the Division of Resource Services (DRS); the Division of Fluid Minerals (WO-310); and the Office of the Solicitor (DOI-OS)

**Contact**: For further information, contact Ron Huntsinger, National Science Coordinator (WO-200) on 202-452-5177, or Angela Zahniser, Air Resource Specialist (WO-280) on 202-452-0327.

Signed by:
James L. Caswell
Director

Authenticated by:
Robert M. Williams
Division of IRM Governance,WO-560

2 Attachments

1 H-1601-1 – LAND USE PLANNING HANDBOOK – Appendix F as Modified by Guidance on Addressing Climate Change (20 pp)
2 References for information about climate change (1 p)

Guidance on Addressing Climate Change in the Planning Process

*Introduction: Climate is both a driving force and a limiting factor for biological, ecologic, and hydrologic processes, and has great potential to influence renewable resource management. Climate change is a phenomenon that has the potential to alter natural resource and ecologic conditions on spatial and temporal scales that we have not yet experienced. The Intergovernmental Panel on Climate Change (IPCC) has stated that "Most of the observed increase in global average temperatures since the mid-20th century is very likely due to the observed increase in anthropogenic greenhouse gas concentrations." The general consensus is that as atmospheric concentrations of greenhouse gases (GHGs) continue to rise, average global temperatures and sea levels will rise, precipitation patterns will change, and climatic trends will change and influence earth's natural resources in a variety of ways. In addition to the increase in atmospheric GHGs, other human activities contribute to climate change, such as vegetative modification or other surface disturbing activities. Therefore, to the extent possible and appropriate, incorporation of climate and climate change information to help inform decisions regarding BLM planning and program activities is an integral element of effective program management.*

*When conducting long-range planning, when making major decisions with BLM activities, projects, and programs, and when authorizing uses of the public lands, the BLM must include consideration of climate change. The depth and the scale of the climate change analysis should be in accordance with and reflective of the extent to which the climate change information is needed in order to make planning decisions, and the level of information that is available. Sometimes a qualitative analysis may be the most appropriate method to address climate change, other times a quantitative assessment is more appropriate, and others might include a combination thereof. Carbon dioxide, methane, and/or nitrous oxide are the three major anthropogenic greenhouse gases BLM will consider, in addition to climate change impacts related to surface disturbing activities. There are at least two different but simultaneous approaches to consider when incorporating climate change into the LUP process.*

1. *How may resources and resource uses be affected by climate change, and how will management respond?*
2. *How will the proposed activities and management plans contribute to the effects of climate change (i.e. GHG emissions, absorption or sequestration, and/or changes to the natural carbon cycle due to land management practices)?*

*The following provides guidance on how to incorporate climate change into the Resource Management Planning (RMP) process. The flow of this document mirrors the steps outlined in the BLM planning handbook (H-1601). It includes instruction on standard language that should be inserted into particular sections of the RMP documents, as well as guidance on how to address climate change within a Field Office's planning area. The indented, italicized language throughout this guidance document is standardized language that should be inserted into the RMP. The procedures that each Field Office should follow for developing and incorporating climate change language into their particular RMP are placed under the appropriate heading, and are neither italicized nor indented.*

*Prep Plan:*
*Discuss how the Field Office plans to address climate change in the RMP/EIS, i.e. the effects climate change is having on natural resources, how BLM activities may contribute to the effects of climate change, and how BLM will integrate climate change considerations into the RMP.*

*Scoping:*
*Acknowledge climate change will be addressed and considered as part of the baseline assumptions; recognize that climate change is an ongoing and dynamic process.*

*Analysis of the Management Situation (AMS):*
*The AMS should give clear direction to help guide the level and detail of climate change analysis in the development of the alternatives. The discussion should recognize that there are synergistic climate change effects across disciplines that will continue over time. That recognition will facilitate the development of the Affected Environment discussions.*

## *Appendix F-4: Annotated Outline for a Draft and Final RMP (Amendment)/EIS*

The following outline applies to draft and full text final EISs. If minor changes consisting of technical, editorial, or nonsubstantive factual corrections are made in the draft EIS in response to comments, then an abbreviated final EIS may be prepared. An abbreviated final EIS only contains substantive comments received on the draft, responses to those comments, and an errata section with specific modifications and corrections to the draft EIS in response to comments (see 40 CFR 1503.4).

Contractor logos should not be placed anywhere in the documents (although it is recommended that the role of the contractor be acknowledged in the list of preparers in Chapter 5).

**1. Abstract** *(Inside front cover)*

**2. Cover sheet** *or title page*

**3. Dear Reader Letter** *(include privacy statement)*

**4. Protest procedures** *(final EIS)*

**5. Table of contents**

**6. Summary** *(approximately 15 pages)*

*(Optional Reader's Guide to help explain chapter format and contents)*

**Chapter 1. Introduction** *(approximately 5–10 pages)*

A. Purpose and Need for the Plan

B. Planning Area and Map

C. Scoping/Issues

1. Issues Addressed
   a. *Issues used to develop alternatives* [1]

   Climate Change Addendum: Climate Change should be identified as an issue used to develop all alternatives. Insert the following language:

   "The temperature of the planet's atmosphere is regulated by a balance of radiation received from the sun and the amount of that radiation absorbed by the earth and atmosphere. Greenhouse gases (e.g., carbon dioxide and methane), as well as water vapor and particulate matter in the atmosphere keep the planet's temperature warmer than it would be otherwise; allowing the planet to sustain life. While these gasses and particles have occurred naturally for millennia, there has been a marked increase in their atmospheric concentration since the start of the industrial age, contributing to observed climatic variability beyond the historic norm. As appropriate, this plan describes (1) the effects that a changing climate may have on the resources in the planning area, and (2) how the reasonably foreseeable activities under each alternative would affect climate change."

   b. *Issues addressed in other parts of the EIS*

2. Issues Considered but Not Further Analyzed
   a. *Issues beyond the scope of the plan*
   b. *Issues addressed through administrative or policy action*

D. Planning Criteria/Legislative Constraints

E. Planning Process

1. Relationship to BLM Policies, Plans, and Programs

2. Collaboration
   a. Intergovernmental, inter-agency, and Tribal relationships
   b. Other stakeholder relationships

F. Related Plans: *Discuss consideration of state, local, and Tribal land use plans that "are germane in the development of land use plans for public lands."* [2]

DRAFT

[1] Italics here show optional categories for issues.
[2] Federal Land Policy and Management Act, Section 202(c)(9).

G. Policy: *Discuss policies and decisions that existed prior to the plan being written that are outside the scope of the plan but may influence the decisions, constrain the alternatives, or are needed to understand management of the area. Examples include: proclamations, legislative designations, and court settlements.*

H. Overall Vision: [3] *Identify the overall vision for management of the planning area. This vision should reflect the goals that are common to all alternatives. This can serve to help integrate programs.*

Climate Change Addendum: In your discussion of the Overall vision, insert the following:

"There is substantial scientific evidence that increased atmospheric concentrations of GHGs as well as land-use changes are contributing to an increase in average global temperature (global warming). This warming is associated with climatic variability that exceeds the historic norm (climate change). Though the average global temperature has increased by 1.8°F from 1890 to 2006, temperature change and climactic variability are not evenly distributed across the globe. Observed temperature increases in northern latitudes have been greater than those in other areas, and seasonal low temperatures are generally increasing faster than high temperatures. Other unevenly distributed effects of climate change include altered weather patterns, sea levels, precipitation rates, wildfire occurrences, seasonal timing, desert distribution, and plant and animal distribution. Given the observed and anticipated long-term dynamic of climate change, the alternatives considered in this plan analyze climate change-related impacts on the resources within the planning area, to the degree practicable and reasonably foreseeable. In addition, the analysis will address how BLM activities under each alternative may affect climate change."

## 8. Chapter 2. Alternatives [4]

A. General Description of each Alternative: *Highlight the characteristics that distinguish each alternative. Rather than naming alternatives, number or letter each alternative and briefly describe the theme of each alternative.*

B. Management Common to All Alternatives: *Primarily goals for resource conditions and resource uses.*

[3] Optional.

[4] There has been some discussion of reversing the order of the Alternatives and Affected Environment chapters of the EIS. However, the Office of Environmental Policy and Compliance in the Department of the Interior has issued guidance stating that we must follow the recommended format in the CEQ regulations (40 CFR 1502.10) or obtain approval from OEPC to deviate from it.

C. No-Action Alternative: *Description of existing management direction including current decisions from relevant plans and reasonable, foreseeable, management scenarios.*

D. Action Alternatives: [5] *Detailed description of each of the alternatives, by alternative, needed to display a reasonable range of options to meet the stated Purpose and Need and address issues. Each alternative description should address the issues or programmatic areas. The decisions in the alternatives should follow the format for land use plan "Management Decisions" provided in Appendix F-5.*

E. Alternatives Considered but Not Analyzed in Detail

F. Comparison of Alternatives *(table)*

G. Comparison of Impacts *(table)*

*Climate Change Example: The calculations of net gain or loss of greenhouse gas emissions for each alternative will appear in this table (resulting in a comparison between alternatives in terms of their net GHG emissions). These numbers will be derived from the analysis conducted in Chapter 4 under "Air and Atmospheric Values." See guidance included under the Chapter 4 heading for information on how these calculations are derived.*

Sample: Greenhouse Gas (GHG) Emissions by Alternative.

| Net GHG Emissions | Alternative A | Alternative B | Alternative C | Alternative D |
|---|---|---|---|---|
| Tons $CO_2e$ | - 4.5 | + 18 | + 12 | - 100 |

**9. Chapter 3. Affected Environment** *(keep as short and concise as possible): Limit discussion to what is needed to understand issues and environmental consequences and provide context for the Goals and Objectives. This chapter may also be formatted in the same way as the Area Profile section of the Analysis of the Management Situation (See Appendix F-3).*

*Climate Change: This guidance introduces some changes to the Affected Environment descriptions. The first change is structural. The "Air Quality" section has been changed to "Air and Atmospheric Values." This new heading contains three sections: (1) the traditional "Air Quality" description; (2) a section called "Climate and Meteorology; and (3) a new section called "Climate Change."*

In its various subsections, Chapter 3 will include language that:

(1) describes the causes and phenomena of global climate change (See boilerplate language under "Climate Change");

[5] At the draft stage in the preparation of an EIS, the preferred alternative is identified in Chapter 2 of the draft EIS. At the final EIS stage, the proposed plan is presented with the alternatives. The proposed plan should be in a clearly delineated section to make it easily identifiable and may also be pulled out as a separate document.

DRAFT

(2) discusses how individual resources in the planning area (e.g., invasive species, forestry, etc.) are currently affected and are projected to be affected by climate change, (See "Resources" section); and

(3) identifies actions and activities within the planning area that may be affected by climate change (i.e., wildland fire, grazing).

*It is important to note that Chapter 3 focuses on Affected Environment; that is, only the ongoing effects of climate change on the resources and management activities within the planning area will be discussed. If emissions will be inventoried or estimated in the plan, this will occur in the Chapter 4 – Environmental Consequences analysis.*

A. Resources: *Physical, biological, and cultural resources (current conditions and trends). This is not necessarily a comprehensive list.*

1. [DELETE Air Quality INSERT Air and Atmospheric Values

a. Air Quality

*This section describes the existing Air Quality conditions, including background concentrations, legal requirements, and sensitive areas (where appropriate.)*

b. Climate and Meteorology

*In this section you should discuss the current climate and climate trends in the planning area. This will include a general description of the current climatic features of the planning area (i.e., what kind of system is it? - arid, alpine, arctic, etc.) Identify whether there are or have been have been weather-related trends that are affecting resources in the planning area (e.g., drought, tornadoes, increased precipitation, cooler /warmer weather, etc.)*

c. Climate Change]

Climate Change Addendum: In your discussion of Affected Environment – Climate Change, insert the following paragraphs:

"Ongoing scientific research has identified the potential impacts of anthropogenic (man-made) greenhouse gas (GHG) emissions and changes in biological carbon sequestration due to land management activities on global climate. Through complex interactions on a regional and global scale, these GHG emissions and net losses of biological carbon sinks cause a net warming effect of the atmosphere, primarily by decreasing the amount of heat energy radiated by the earth back into space. Although GHG levels have varied for millennia, recent industrialization and burning of fossil carbon sources have caused $CO_2$(e) concentrations to increase dramatically, and are likely to contribute to overall global climatic changes. The Intergovernmental Panel on Climate Change recently concluded that "warming of the climate system is unequivocal" and "most of the

observed increase in globally average temperatures since the mid-20th century is very likely due to the observed increase in anthropogenic greenhouse gas concentrations. 6

"Global mean surface temperatures have increased nearly 1.8°F from 1890 to 2006. Models indicate that average temperature changes are likely to be greater in the Northern Hemisphere. Northern latitudes (above 24° N) have exhibited temperature increases of nearly 2.1°F since 1900, with nearly a 1.8°F increase since 1970 alone. Without additional meteorological monitoring systems, it is difficult to determine the spatial and temporal variability and change of climatic conditions, but increasing concentrations of GHGs are likely to accelerate the rate of climate change.

"In 2001, the IPCC indicated that by the year 2100, global average surface temperatures would increase 2.5 to 10.4°F above 1990 levels. The National Academy of Sciences has confirmed these findings, but also has indicated there are uncertainties regarding how climate change may affect different regions. Computer model predictions indicate that increases in temperature will not be equally distributed, but are likely to be accentuated at higher latitudes. Warming during the winter months is expected to be greater than during the summer, and increases in daily minimum temperatures is more likely than increases in daily maximum temperatures. Increases in temperatures would increase water vapor in the atmosphere, and reduce soil moisture, increasing generalized drought conditions, while at the same time enhancing heavy storm events. Although large-scale spatial shifts in precipitation distribution may occur, these changes are more uncertain and difficult to predict.

"As with any field of scientific study, there are uncertainties associated with the science of climate change. This does not imply that scientists do not have confidence in many aspects of climate change science. Some aspects of the science are known with virtual certainty, because they are based on well-known physical laws and documents trends (EPA 2008). [7]

"Several activities contribute to the phenomena of climate change, including emissions of GHGs (especially carbon dioxide and methane) from fossil fuel development, large wildfires and activities using combustion engines; changes to the natural carbon cycle; and changes to radiative forces and reflectivity (albedo). It is important to note that GHGs will have a sustained climatic impact over different temporal scales. For example, recent emissions of carbon dioxide can influence climate for 100 years.

[6] Intergovernmental Panel on Climate Change (IPCC). 2007a. Climate Change 2007: Synthesis Report (Summary for Policymakers). Cambridge University Press. Cambridge, England and New York, New York.
Available online at: http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf .
[7] U.S. Environmental Protection Agency. 2008. "Climate Change – Science – State of Knowledge" webpage.
Available online at: http://www.epa.gov/climatechange/science/stateofknowledge.html .

"It may be difficult to discern whether global climate change is already affecting resources, let alone the Planning or Decision Areas for the RMP. In most cases there is more information about potential or projected effects of global climate change on resources. It is important to note that projected changes are likely to occur over several decades to a century. Therefore many of the projected changes associated with climate change described below may not be measurably discernible within the reasonably foreseeable future."

*After inserting the paragraphs above, you should discuss available scientific assessments of regional impacts and projections for the planning area. Research and identify climate change projections associated with the region that encompasses the planning area, making sure to use peer-reviewed information. A list of some reliable sources can be obtained from the Air Resources Program. Be aware that at present, the availability of downscaled climate models that are able to make climate change predictions at regional and local scales is limited. However, this is likely to change over time. Use the best available science.*

*Identify the appropriate scale where climate change information is available. For example, some predictions are available for the area that includes the "Northern Rockies" or the "Southern Cascades;" others are available at a finer scale for Alaska. There are some available studies that predict which geographic regions are expected to experience ecologic and climatic changes, such as where scientists expect to see increased rainfall, longer droughts, earlier snow pack runoff, etc. Decide whether these predictions are applicable and appropriate to incorporate into the RMP/EIS.*

If there are no valid data, or if the information is too speculative or inappropriate for use, then insert the following paragraph:

"Existing climate prediction models are global in nature; therefore they are not at the appropriate scale to estimate potential impacts of climate change on the planning area."

If Climate Change data are available and defensible, then insert the following paragraph:

"Existing and anticipated effects of climate change on resources and resource uses in the planning area are incorporated into the relevant sections below. The following resources have been or are anticipated to be affected by climate change: ..."

*Next, identify which resources and resource uses within the planning area may be affected by climate change (in a list form - the actual discussion will be contained in the relevant resource sections that follow). See other Resources (2. Geology, etc.), B. Resource Uses, C. Special Designations, and D. Social and Economic sections below for guidance on how to determine whether you will include a climate change discussion in any given resource or resource use description, respectively.*

*Climate Change – Other Resources:*
*The guidance contained in this section should be applied to all the affected resources discussed in your plan.*

*Consider whether climate change has affected, is affecting, or will foreseeably affect each resource and incorporate a discussion of these effects into the description of that resource.*

*It is important to note that the climate-related information used must be based on reliable, peer-reviewed scientific study; do not discuss effects on resources that are speculative in nature, or are unsupported by substantial and credible evidence. Though it is BLM practice that considering potential future effects is not limited to the "life of the plan" (e.g., 15-20 years), the further in the future the climate change projection is, the more speculative in nature it is. Therefore, when deciding what information to cite in your climate effects analyses, you should consider the following:*

*(1) The degree to which the climate effects on the resource uses are observable;*
*(2) The source of the information;*
*(3) The timeframe of the projected impacts;*
*(4) The specificity of the projections, both in terms of the effect on the resource use and the relevance of the information to your specific planning area; and*
*(5) The confidence of the projection.*

*If you determine that the climate change literature relevant to the resource you are analyzing is uncertain, speculative, or otherwise not credible, do not discuss potential climate effects on that resource in your RMP. The essence of the analysis is to (1) capture existing, observable, climatic effects on your resource, and (2) describe the effects of climate change on your resource that are reasonably foreseeable.*

*Below are some examples:*

*Vegetation composition is integral to many native cultures. Potential changes in vegetation associated with projected effects of climate change may alter the availability of plants for traditional use purposes.*

*Climate change contributes to changes in stream systems, such as flow, temperature, and turbidity. It is predicted that climate change will exacerbate the effects of land management activities to streams and aquatic habitats. Changes in climate can influence the timing and length of seasons, which in turn can have a direct effect on plants and animals. This includes changes in ranges, abundances, phenology (timing of an event such as breeding), morphology and physiology, and community composition, biotic interactions and behavior. Changes are being seen in all different types of taxa, from insects to mammals, in North America as well as on many other continents.*

*Climate change is contributing to effects on glacial systems, which are advancing or receding, depending on local conditions.*

*Climate change predictions include increased duration and frequency of droughts and an increase in extreme precipitation events. This combination can result in an increase of surface soil erosion and*

*gullying beyond current levels. Continental scale shifts in precipitation may lead to areas where there are increases and decreases in soil moisture. Prolonged drought would also affect soil respiration, resulting in a decreased soil carbon pool.*

*Climate change (warmer/drier summer conditions, warmer winters) may be one of the factors in recently observed changes in forest health involving large areas of tree mortality from a variety of insect agents. Many forest communities are resilient in responding to normal variations in weather and climate to which they are adapted. However, currently occurring increases in forest insect infestations and tree mortality throughout the Planning Area may be partially due to global climate change acting in concert with other variables such as long-term fire suppression, particularly in areas where stands are overstocked.*

*Due to changes in climate, grasslands and rangeland could expand into previously forested areas. Additionally, sagebrush habitats may decline sharply throughout the region and be replaced with grasslands. Increasing $CO_2$ concentrations also lead to preferential fertilization and growth of specific plant species, such as invaders like cheat grass. Climate change may favor certain shrub species, both native and exotic. Increased $CO_2$ in the atmosphere may favor growth of most woody plants and "cool-season" grasses at the expense of "warm season grasses." These and other differences among species could lead to changes in the composition of rangeland vegetation, but generalizations are difficult.*

*Climate change affects the water cycle through decreased snow pack, runoff timing, and changes to total runoff volumes. Increased frequency of high intensity rainfall events related to global climate change could result in increased stream sedimentation or alteration of stream channels.*

2. Geology
3. Soil Resources
4. Water Resources
5. Vegetative Communities
    a. Forests and Woodlands
    b. Rangelands
    c. Riparian and Wetlands
6. Fish and Wildlife
7. Special Status Species
8. Wild Horses and Burros
9. Wildland Fire Ecology and Management
10. Cultural Resources
11. Paleontological Resources

DRAFT

12. Visual Resources
13. Wilderness Characteristics
14. Cave and Karst Resources

B. Resource Uses: *Resource uses (current conditions and trends). This is not necessarily a comprehensive list.*

*Climate Change: Much like the "Resources" section above, in the "Resource Uses" section, you should consider whether climate change has affected, is affecting, or will foreseeably affect each resource use and incorporate a discussion of these effects into the description of each resource use.*

*It is important to note that the information used must be based on reliable, peer-reviewed scientific information; do not discuss effects on resources that are speculative in nature, or are unsupported by substantial and credible evidence. Though it is BLM practice that considering potential future effects is not limited to the life of the plan, the further in the future the projection is, the more speculative in nature it is. Therefore, when deciding what information to include in your climate effects on resource uses analyses, you should consider the following:*

*(1) The degree to which the climate effects on the resource uses are observable;*
*(2) The source of the information;*
*(3) The timeframe of the projected impacts;*
*(4) The specificity of the projections, both in terms of the effect on the resource use and the relevance of the information to your specific planning area; and*
*(5) The confidence of the projection.*

*If you determine that the climate impact-related literature on the resource use you are analyzing is uncertain, speculative, or otherwise not credible, do not discuss potential climate affects on that resource use in your RMP. The essence of the analysis is to capture (1) existing, observable, climatic effects on your resource, and (2) the effects due to climate change are reasonably foreseeable, and (3) how those effects are affecting resource use.*

*Be aware of information in the climate and meteorology section of this RMP (Chapter 3, "Air and Atmospheric Values" section, "Climate and Meteorology"), as well as the other affected resources discussed (e.g., water and soil) to help inform you about changing climate trends and predictions.*

*Below are some examples:*

*The consequences of weather and climate change on livestock grazing, and grassland use can be subtle and complex. The projected changes in climate – increases in temperature, reductions in soil moisture, and more intense rainfall events – may require changes in livestock management. The availability of feed and water for livestock grazing is extremely vulnerable to drought; hence the carrying capacity of land may influence livestock management.*

DRAFT

*The geology and development of mineral resources in the planning area are not directly impacted by climate change. The manner of mineral resource development will likely be increasingly impacted by climate change issues as any large scale mineral development will have an extensive "carbon footprint" through the use of large earth-moving equipment. Mine operators generally attempt to utilize equipment as efficiently as possible to limit operational costs, and it can be anticipated that this will become increasingly important in response to both climate change issues and increasing fuel costs.*

*Additional research will be necessary in order to determine whether or not climate change has in fact had any on recreation opportunities and uses. Should temperatures increase, drought conditions increase and summer stream flows decrease in the future, then recreation opportunities, seasonal uses and experience levels will be impacted especially for water based activities (such as fishing, swimming, or rafting) under all alternatives. Quality of fishing experiences could also decline if water quality and quantity decrease the availability or value of aquatic habitats for target fish species. Additionally, dispersed upland uses (hunting, hiking, camping, horseback riding, etc) during the late summer and fall could become more restricted due to increased fire dangers. To date GCC in and of itself has had no known specific effects on recreation quality or management decisions.*

1. Facilities
2. Forestry and Woodland Products
3. Livestock Grazing
4. Minerals
    a. Leasable Minerals (e.g. oil, gas, and geothermal)
    b. Locatable Minerals (e.g. gold and silver)
    c. Salable Minerals (e.g. sand and gravel)
5. Recreation
6. Renewable Energy
7. Transportation and Access
8. Utility Corridors and Communication Sites
9. Land Tenure
10. Land Use Authorizations
11. Withdrawals

C. Special Designations

*Climate Change: When discussing each specially designated area, consider whether climate change has affected, is affecting, or foreseeably will affect each designation, and incorporate these effects into the description of the affected environment as it pertains to each designation. As stated above, the guiding principle for determining whether a climate change discussion should be included is whether (1) climatic effects on special designations are existing and observable, and (2) the effects on your special designation due to climate change are reasonably foreseeable. If you determine that the climate impact-related literature on the special designation you are analyzing is uncertain, speculative, or otherwise not credible, do not discuss potential climate affects on that special designation in your RMP.*

*For example, if a river has been designated as a recreational river, climate change impacts on stream flow and riparian area could affect recreational values.*

1. Areas of Critical Environmental Concern
2. Back Country Byways
3. National Recreation Areas
4. National Trails
5. Wild and Scenic Rivers
6. Wilderness
7. Wilderness Study Areas

D. Social and Economic

*Climate Change: Identify whether the socioeconomic state of affairs in the planning area has been, is, or will be affected by climate change (i.e., coastal communities in Alaska). To the degree that the scientific literature is reliable and projected effects are reasonably foreseeable, describe the relevant climatic conditions and trends as they pertain to socioeconomic issues. If you determine that the climate impact-related literature on socioeconomic issues is uncertain, speculative, or otherwise not credible, do not discuss potential climate affects on these issues in your RMP.*

1. Tribal Interests
2. Public Safety
   a. Abandoned Mines
   b. Debris Flows
   c. Hazardous Materials
3. Social and Economic Conditions (including Environmental Justice and other considerations)

**10. Chapter 4. Environmental Consequences**. *Document sufficient analysis to support all conclusions. This chapter may also be formatted in the same way as the Area Profile section of the Analysis of the Management Situation (See Appendix F-3.)*

A. Introduction

1. Analytical assumptions (reasonably foreseeable development scenarios for oil and gas, anticipated levels of vegetation treatment, etc.)

Climate Change Addendum: In your discussion of Analytical assumptions, insert the following paragraph:

"Climate change analyses are comprised of several factors, including greenhouse gases (GHGs), land use management practices, the albedo effect, etc. The tools necessary to quantify climatic impacts are presently unavailable. As a consequence, impact assessment of specific effects of anthropogenic activities cannot be determined. Additionally, specific levels of significance have not yet been established. Therefore, climate change analysis for the purpose of this document is limited to accounting and disclosing of factors that contribute to climate change. Qualitative and/or quantitative evaluation of potential contributing factors within the planning area are included where appropriate and practicable."

2. Types of effects to be addressed (direct, indirect, and cumulative)

Climate Change—Limits on analysis and discussion—consumption:
Environmental and economic climate change impacts from commodity consumption are not effects of the planning decisions and thus are not required to be analyzed under NEPA. They are not direct effects, as defined by the CEQ, because they do not occur at the same time and place as the action. Nor are they indirect effects, because the plan actions and the resulting production would not be a proximate cause of the emissions or other factors resulting from consumption. And, because the impacts of consumption are not direct or indirect effects of the proposed action, a cumulative impact analysis would not reveal an incremental effect attributable to the proposed plan decisions.

There is no reliable methodology to assess the relationship between the plan decisions and the ultimate consumption of the resources produced as a result of the plan decisions. An attempt to analyze the impacts of GHG emissions and other climate change factors from the ultimate consumption of the resources produced from the planning area would be a highly speculative exercise unnecessary for the land management decisions for which the BLM is responsible. The BLM does not dictate the destination of the resource produced from federal lands. The effects from consumption are not only speculative, but beyond the scope of agency authority or control.

Therefore, the RMP/EIS does not analyze nor address the consumption of resources produced as a result of planning decisions.

Climate Change Addendum: In your discussion of Types of effects to be addressed, insert the following paragraph:

"Direct, indirect and cumulative effects of climate change will be analyzed in this document. Some of the GHGs associated with each alternative and their activities will be naturally sequestered, while the balance of those emissions will accumulate with GHG concentrations in the atmosphere. This in turn will contribute to further manifestations of climate change."

*Below are examples of each type of impact as it relates to climate change for a hypothetical RMP where the desired future condition is to convert from pinyon-juniper woodland to grassland.*

*Direct Effects: The area that undergoes this transition may contribute to climate change via changes in reflectivity of the vegetation, changes in ground cover (more or less exposed soil), changes in thermal balance, changes as biomass composition, or changes in carbon cycling rates. Cutting and burning the vegetation would lead to direct emissions from the burning practices. Similarly, cutting the vegetation and allowing it to biodegrade would also lead to direct effects (such a methane production from decomposition).*

*Indirect Effects: If the pinyon-juniper vegetation were to be designated for a Fuels-for-Schools program, the emissions associated with its incineration would be indirect if the school burns wood provided by the BLM instead of fuel oil. This is an example of indirect effects of an action because the effects of GHG emissions occur at a different time and a different place than the direct effect (the cutting of the trees).*

*Cumulative Effects: When analyzing cumulative effects in this example, one would include the direct and indirect effects mentioned above, along with other GHG-emitting activities in the planning area, including wood burning by residences, power plants and other combustion, etc. The direct and indirect emissions that escape natural sequestration will accumulate in the atmosphere, resulting in further manifestations of climate change.*

3. Summarize critical elements that are addressed, not affected, or not present

4. Incomplete or unavailable information

Climate Change Addendum: In your discussion of Incomplete or unavailable information, insert the following paragraph:

"While global and national inventories are established, regional and state-specific inventories are in varying levels of development. Quantification techniques are in development – for example, there is a good understanding of climate change emissions related to fuel usage; however measuring and understanding the effects of albedo is less comprehensive. Analytical tools necessary to quantify climatic impacts are presently unavailable. As a consequence, impact assessment of specific effects of anthropogenic activities cannot be determined."

For program areas, include discussions as outlined in 40 CFR 1502.16 for the alternatives by program area listed below.

B. Resources: *Physical and biological resources addressed in alphabetical order. This is not necessarily a comprehensive list.*

*Climate Change: As with Chapter 3, the air quality section has been renamed "Air and Atmospheric Values." This new section is divided into "Air Quality" (which remains unchanged), and "Climate Change" (which contains the climate change analysis).*

1. [DELETE Air Quality INSERT Air and Atmospheric Values
   a. Air Quality

   *This section describes reasonably foreseeably impacts to Air Quality, including emissions estimates, modeled impacts, and comparison to significance thresholds (where appropriate.)*

b. Climate Change]

*The purpose of this section is, to the degree practicable, to account for and disclose the contributions that planning activities will contribute to climate change. Identify and list the potential sources of GHG emissions, sinks, and other contributions from land management activities. You will have to make a determination as to whether these contributions will be characterized qualitatively or quantitatively. The availability of information regarding reasonably foreseeable development scenarios, the degree to which GHG emissions or sequestration can be quantified, and the ability to quantify other climate related factors will help to determine the nature of the analysis (whether it will be quantitative, qualitative, or a mixture). Where necessary information is not available, the analysis should so state, and further impact analysis should not be attempted.*

*Where you have information indicating that a proposed action would contribute to climate change, but do not have necessary information to quantify the action's contributions at this stage, use a qualitative description of the contribution. These qualitative analyses should appear in each resource section, as appropriate.*

*On the other hand, if necessary information is available to reasonably quantify the actions' contribution to climate change, do so when reasonable and practicable. These quantitative analyses (including GHG accounting from emissions or changes in carbon fluxes due to land management activities) will be consolidated in the "Climate Change" section of Chapter 4.*

*If it has been determined that GHG emissions will be quantified, disclose those emissions. It is not possible at this time to determine significance because threshold levels have not yet been established. However, it is necessary to create a meaningful contextual analysis for the public and decision maker. At a minimum, emissions must be compared to current total global and U.S. emission levels. Additional comparisons to other relevant and appropriate data should also be included if data are reliable (e.g., total state GHG emissions, appropriate economic sector emissions, etc.).*

*Climate Change – Other Resources: Consider the climate change consequences of the actions in each alternative. Briefly incorporate these consequences into the description of the environmental effects. The following are some examples of factors to consider:*

*Fish and Wildlife: habitat, composition, shifts to higher elevation/latitudes, reduced vegetation food sources, altered migration routes, less available water sources, streamflow change impacts on migratory aquatic species*

*Soil: erosion, effects on permafrost, ability of soils to sequester carbon, impacts to soil moisture, fugitive dust concentrations, changes to ice road season*

*T&E Species: effects of moisture stress on species, changes to migration patterns*

*Vegetation: Preferential $CO_2$ metabolites, species migration, establishment of invasive species, pathogens, warm/cool season plants, growing season, carbon sequestration*

*Water: changes to quality, quantity, precipitation, flow regimes, dilution, water temperatures, elevation of snow pack, annual snow pack longevity, groundwater elevations, water rights*

*Wildfire: fire frequency, fuel load quantity and composition, fuel temperatures, relative humidity, water availability (e.g. for suppression), tree mortality due to drought and infestations, increased severe precipitation/soil loss*

2. Cave and Karst Resources
3. Cultural Resources
4. Fish and Wildlife
5. Geology
6. Paleontological Resources
7. Soil Resources
8. Special Status Species
9. Vegetative Communities
    a. Forests and Woodlands
    b. Rangelands
    c. Riparian and Wetlands
10. Visual Resources
11. Water Resources
12. Wild Horses and Burros
13. Wilderness Characteristics
14. Wildland Fire Ecology and Management

C. Resource Uses: *Resource uses addressed in alphabetical order. This is not necessarily a comprehensive list.*

*Climate Change: Consider the climate change consequences of the actions in each alternative. Briefly incorporate these consequences into the description of the environmental effects. The following are some factors to consider:*

*Facilities: changes in HVAC, energy use, energy conservation measures, energy source emissions*

*Livestock Grazing: transportation sources of GHGs, changes in forage, ruminant methane*

*Renewable Energy: displace fossil carbon emission sources, albedo changes with land use*

*Transportation and Access: transportation sources of GHGs, albedo changes with road building or OHV trail expansion and use*

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*Land Use Authorizations: utility corridor construction for new energy production sources, albedo changes with land use*

1. Facilities
2. Forestry and Woodland Products
3. Land Tenure
4. Land Use Authorizations
5. Livestock Grazing
6. Minerals
    a. Leasable Minerals (e.g. oil, gas, and geothermal)
    b. Locatable Minerals (e.g. gold and silver)
    c. Salable Minerals (e.g. sand and gravel)
7. Recreation
8. Renewable Energy
9. Transportation and Access
10. Utility Corridors and Communication Sites
11. Withdrawals

D. Special Designations

*Climate Change: Consider whether the actions associated with specially designated areas have an impact on climate change. Incorporate the potential effects into the description of each area. For example, designating an area as an ACEC or expanding an existing ACEC could increase carbon sequestration or reduce GHG emissions. The following are some factors to consider: changes in GHG emissions from transportation sources, such as increases in vehicle miles traveled; changes in flow regimes; and alteration of natural vegetation types and conditions.*

1. Areas of Critical Environmental Concern
2. Back Country Byways
3. National Recreation Areas
4. National Trails
5. Wild and Scenic Rivers
6. Wilderness
7. Wilderness Study Areas

E. Social and Economic

*Climate Change: Identify ancillary climate change consequences from the socioeconomic effects of the Alternatives. For example, climate change consequences (such as loss of carbon sinks or increased GHG emissions) due to urbanization resulting from proposed actions (such as increased land use sales, recreation opportunities, increased minerals development, etc.)*

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1. Tribal Interests
2. Public Safety
    a. Abandoned Mines
    b. Debris Flows
    c. Hazardous Materials
3. Social and Economic Conditions (including Environmental Justice and other considerations)

**11. Chapter 5. Consultation and Coordination**

A. Description of specific actions taken to consult and coordinate with:
1. Tribes
2. Intergovernmental (State, Local, County, and City)
3. Federal Agency
4. Interest Groups
5. National Mailing List

B. Describe additional collaboration

C. Responses to comments by issue area (FEIS only)

D. List of Preparers

**12. Appendices**

**13. Glossary**

**14. References**

**15. Index**

**16. Abbreviations/Acronyms** (inside back cover): *Placement can also occur with the Reader's Guide, Summary, or in the Glossary.*

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http://www.blm.gov

August 11, 2008

References for Information about Climate Change

## Tools, Resources, Literature and Websites

- Inter-governmental Panel on Climate Change http://www.ipcc.ch/
- US Climate Change Science Program http://www.climatescience.gov/
- Climate Impacts Group, University of Washington http://cses.washington.edu/cig/
- Climate Change Resource Center http://www.awma.org/CCRC/index.html
- Climate Assessment for the Southwest, University of Arizona http://www.climas.arizona.edu/
- Southern Global Climate Change Program http://www.sgcp.ncsu.edu/
- EPA Greenhouse Gas Equivalencies Calculator http://www.epa.gov/cleanenergy/energy-resources/calculator.html
- EPA Climate Change & Forests http://epa.gov/climatechange/effects/forests.html
- Regional Integrated Sciences and Assessments Program, National Oceanic and Atmospheric Administration http://www.climate.noaa.gov/cpo_pa/risa/
- United States Climate Action Partnership http://www.us-cap.org/
- Forest Plan Implementation (1900-1) Training Materials http://fsweb.wo.fs.fed.us/em/nepa/nepa_coordination_training/00index.html
- Consortium for Research on Renewable Industrial Materials http://www.corrim.org/
- Forest Vegetation Simulator (FVS) http://www.fs.fed.us/fmsc/fvs/
- CONSUME http://www.fs.fed.us/pnw/fera/research/smoke/consume/index.shtml
- Tools for Carbon Inventory, Management, and Reporting http://nrs.fs.fed.us/carbon/tools/
- Climate, Fire, and Carbon Cycle Sciences http://www.nrs.fs.fed.us/units/climate/

## References & Literature


- Science and Assessment Program (SAP 4.4), Adaptation Options for Climate-Sensitive Ecosystems and Resources, U.S. Climate Change Science Program. http://www.climatescience.gov/Library/sap/sap4-4/public-review-draft/ch3-forests/sap4-4prd-chap3figs.pdf

- Silviculture and Forest Management Under a Rapidly Changing Climate, Millar, et al, Ecol. Applications, 2007. http://www.fs.fed.us/psw/publications/documents/psw_gtr203/psw_gtr203_004skinner.pdf

- British Columbia Department of Forests Research Publications by Dave Spittlehouse for the Pacific Northwest. http://www.for.gov.bc.ca/hre/pubs/dspittle.htm

- Intergovernmental Panel on Climate Change's Fourth Assessment Report. http://www.ipcc.ch/ipccreports/assessments-reports.htm

- Climate change and Forests of the Future: Managing in the Face of Uncertainty, *Ecological Applications*, 17(8), 2007, pp. 2145–2151. http://www.fs.fed.us/psw/publications/millar/psw_2007_millar029.pdf

- April 2007 interim update to the 2000 RPA Assessment. http://www.fs.fed.us/research/rpa/2005rpa/2000-RPA-Assessment-Update.pdf

- NOAA climate change website http://www.ncdc.noaa.gov/oa/climate/climateextremes.html

- USGS climate change website http://www.usgs.gov/science/science.php?term=168

- Canadian websites link http://www.climatechangenorth.ca/section-RS/E4_Canadian.html

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May 12, 2008

In Reply Refer To:
7300 (280) I

EMS TRANSMISSION 05/14/2008
Information Bulletin No. 2008-078

**To:** All Washington Office Officials, State Directors, and Center Directors

**From:** Assistant Director, Renewable Resources and Planning

**Subject:** Review of Instruction Memorandum (IM) on Determining Air Resource Analysis Needed for National Environmental Policy Act (NEPA) Documentation

A draft Instruction Memorandum providing policy and guidance on air resource analysis is attached for your review. The IM and 14 attachments provide guidance for determining the appropriate level of analysis needed for air resources in Land Use Plans (LUPs) and other planning activities requiring NEPA documentation. The IM and attachments expand on the program-specific and resource-specific guidance in Appendix C of the LUP Handbook (H-1601-1), describing steps and methods needed for adequate evaluations of impacts and integration of air resource management with LUP processes.

Interdisciplinary planning has advanced as a practical process in recent years, but new and more intense land uses with more complex and far reaching impacts continue to emerge and require new or unfamiliar analyses. Air resource impacts are in that category. This guidance should provide the answers to many questions being asked about air resource analysis needed for NEPA documentation. The guidance combines technical and planning expertise of the Bureau of Land Management (BLM) air resource and planning specialists.

Please review the draft IM and attachments considering whether it meets your organization's planning needs and provides the direction needed by your planning

and resource staffs. Comments should be sent to Angela Zahniser, Division of Environmental Quality and Protection (WO280) no later than May 30, 2008. If you have questions on the review or the documents themselves, please call Angela at 202-452-0327. The attachments can also be accessed electronically at ftp://ftp.int.blm.gov/blmshare/. The files are (1) IM draft Air Analysis_Planning.doc and 2) Attachments.zip.

Thank you for your assistance in improving the quality of BLM NEPA documents.

Signed by:
Edwin L. Roberson
Assistant Director
Renewable Resources and Planning

Authenticated by:
Robert M. Williams
Division of IRM Governance,WO-560

15 Attachments

1 - IM: Instructions for Determining Air Resource Analysis in RMPs and Associated NEPA Documents (4 pp)
2 - Air Resource Analysis Decision Tree (11pp)
3 - Air Resource Analysis Toolkit (2pp)
4 - Emissions Inventories Data Requirements (8pp)
5 - Description of Air Models (5 pp)
6 - Air Resource Monitoring as a Tool (4 pp)
7 - Best Management Practices and Options for Control Measures (10 pp)
8 - Air Resource Monitoring Sites (5 pp)
9 - Air Resource Frequently Asked Questions (22 pp)
10 - Scenario Example #1: An Example of a Fundamental Revision of a Land Use Plan (7 pp)
11 - Scenario Example #2: Example of an RMP with an Allotment or Wildlife Management Plan as the Key Issue (5 pp)
12 - Scenario Example #3: An Example of and RMP Amendment to Increase the Use of Prescribed Burning (7 pp)
13 - Scenario Example #4: An Example of an RMP Amendment with New Oil and Gas RFD in Areas with Sensitive Concerns (6 pp)
14 - Scenario Example #5: An Example of an RMP Amendment with Increased Oil and Gas Development Due to Revised RFD Assumptions (6 pp)
15 - Scenario Example #6: An Example of an RMP Amendment with Increased Off Highway Vehicle Activity In a Particulate Matter (PM10) Non-attainment Area (6 pp)

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May 2, 2008

In Reply Refer To:
1010 (280)

EMS TRANSMISSION date
Instruction Memorandum No. 2008-???
Expires: date

**To:** All Assistant Directors, State Directors, Center Directors, and Washington Office Managers

**From:** Assistant Director, Renewable Resources and Planning

**Subject:** Instructions for Determining Air Resource Analysis in Resource Management Plans and associated NEPA documents, at the allocation level and the implementation level

**Program Areas:** Soil, Water, and Air, Planning and Science Policy, Recreation, Fire and Aviation, Forests and Woodlands, Fluid Minerals, Solid Minerals, Lands and Realty, and Wildlife.

**Purpose:** The purpose of this Instruction Memorandum (IM) is to provide policy and guidance to Bureau of Land Management (BLM) Field/State Offices on determining the appropriate analysis of the air resource (air quality and climate) in Resource Management Plans and associated National Environmental Policy Act (NEPA) documents, including Environmental Impact Statements (EIS) and Environmental Assesments (EA). This applies at both the allocation level and the implementation level of decision-making.

**Background:** The BLM determines appropriate access to public lands for public use and resource management actions based on management objectives through its Land Use Planning (LUP) processes. The inclusion of a rational, planned, and appropriately assessed air resource impact analysis is a fundamental component of Land Use plans. The LUP process includes preparation of Resource Management Plans (RMPs), and any subsequent EISs and EAs, which are executed at both the allocation and the implementation level of decision-making. This process is flexible and allows for revision, amendment, or maintenance of an RMP, as appropriate.

In March 2005, the BLM released its LUP Handbook (H-1601-1). This handbook provides guidance for the LUP process and requirements for the BLM programs that are

to be addressed through planning. Appendix C discusses program-specific and resource-specific decision guidance. However, there is a need for more specific direction to describe the steps and processes necessary to (1) evaluate impacts to the air resource (air quality and climate), and (2) to better integrate the planning process with the appropriate level of air resource analysis on a timely basis. This IM is consistent with all policy contained in the LUP Handbook (H-1601).

The BLM lacks informative guidance and formal policy on Air Resource Management, while issues regarding air quality and climate have become more and more prevalent throughout the Bureau. In addition, there has been disagreement between BLM and the US Environmental Protection Agency as to when it is (and is not) appropriate to conduct specific types of air resource analysis, including atmospheric dispersion modeling. BLM and EPA are engaging in development of a Memorandum of Understanding (MOU) to address this issue. It has therefore become necessary to issue policy and guidance on how to approach these ongoing air resource issues.

**Policy/Action:** As directed in FLPMA, BLM State and Field Offices manage the air resource (air quality and climate) on the public lands in compliance with applicable Federal, State, Tribal, and local air quality standards, and to support the accomplishment of management objectives for all resource programs. As the BLM develops new RMPs and makes implementation decisions accordingly, it must assess present and future resource uses and needs, and evaluate air resource effects stemming from these uses. This can only be accomplished through an interdisciplinary process—one that requires involvement and information exchange among BLM resource programs. The specific type of air resource analysis performed at the allocation and the implementation levels of decision making will vary according to the availability of information. The following policy clarifications promote a comprehensive, consistent, and organization-wide approach to the process of managing and planning for the effects of BLM activities and BLM-authorized uses on the air resource, as well as the effects of the air resource on BLM activities and BLM-authorized uses.

- Air is a resource just like any other, and includes both air quality and climate. All Land Use Plans and associated and applicable NEPA documents will include an analysis of the air resource.

- The attached guidance document entitled "Air Resource Analysis Decision Tree" shall be used at both the land use planning and implementation levels when determining the appropriate level and extent of the air resource analysis. As a guide, it is not meant to be prescriptive; rather, it is meant to assist in identifying and addressing air resource issues in the planning process and when preparing NEPA documents.

- The type of analysis performed depends largely on the availability and specificity of information which exists at each level of the LUP process. Therefore, the decision-making process for RMPs and EISs is the same.

- Attachments #2 – #14 shall be used as reference and information guidance documents. They serve as examples of elements which may be included in an air analysis. The scenario examples and other guidance documents, including the emissions inventories, monitoring, and modeling guidance and information are intended to be as informative and inclusive as possible.

**Timeframe:** This IM is effective upon receipt.

**Budget Impact:** The effect of this IM on the budget is variable. The types of air resource analyses and atmospheric dispersion modeling that would be used in a given case will depend on available information, BLM capabilities, staff resources, and funding within the constraints imposed by approved resource management plans, NEPA documents, and this IM.

**Manual/Handbook Sections Affected:** Sections affected are the guidance provided in the BLM Land Use Planning Handbook (H-1601-1), Appendix C, and the draft Air Resource Management Program Manual (M-7300).

**Coordination:** Preparation of this draft IM was coordinated with WO-210, WO-220, WO-230, WO-250, WO-270, WO-310, WO-320, and the Office of Fire and Aviation.

**Contact:** If you have any questions regarding this IM, please contact the Project Lead, Angela Zahniser, Air Resource Management Program Lead, 202-452-0327, or Scott Archer, Senior Air Resource Specialist, 303-236-6400.

**Attachments:**

1 – Air Resource Analysis Decision Tree (11pp)
2 – Air Resource Analysis Toolkit (2pp)
3 – Emissions Inventories Data Requirements (8pp)
4 – Description of Air Models (5 pp)
5 – Air Resource Monitoring as a Tool (4 pp)
6 – Best Management Practices and Options for Control Measures (10 pp)
7—Air Resource Monitoring Sites (1 pp)
8 – Air Resource Frequently Asked Questions (21 pp)
9 – Scenario Example #1: An Example of a Fundamental Revision of a Land Use Plan (7 pp)
10 – Scenario Example #2: Example of an RMP with an Allotment or Wildlife Management Plan as the Key Issue (5 pp)
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12 – Scenario Example #4: An Example of an RMP Amendment with New Oil and Gas RFD in Areas with Sensitive Concerns (6 pp)
13 – Scenario Example #5: An Example of an RMP Amendment with Increased Oil and Gas Development Due to Revised RFD Assumptions (6 pp)

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14—Scenario Example #6: An Example of an RMP Amendment with Increased Off Highway Vehicle Activity In a Particulate Matter ($PM_{10}$) Non-attainment Area (6 pp)

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# Air Resource Analysis Decision Tree

## The Air Resource

Climate and air quality are the components of air resource management, which includes applications, activities, and management of the air resource. The air resource consists of both climate and air quality. Air quality is determined by atmospheric pollutants and chemistry, dispersion meteorology and terrain, and also includes applications of noise, smoke management, and visibility. The Clean Air Act has identified seven nationally regulated ambient air pollutants, and 189 other hazardous air pollutants, subject to change over time. Activities, programs, and projects initiated by the BLM, as well as operator-initiated activities and projects the BLM authorizes, have the potential to affect air quality conditions. Therefore, BLM must analyze the potential effects of BLM and BLM-authorized activities on air quality as part of the planning and decision making process.

Climate is the composite of generally prevailing weather conditions of a particular region throughout the year, averaged over a series of years. Climate is both a driving force and a limiting factor for biological, ecological, and hydrologic processes, as well as for resource management activities such as disturbed site reclamation, wildland fire management, drought management, rangeland and watershed productivity, and wildlife habitat administration. Climate has great potential to influence renewable and non-renewable resource management (affecting the productivity and success of many BLM activities); therefore, incorporating effective application of climate information into BLM programs, projects, activities and decisions authorizing use of the public lands is critical for effective management. Climate data includes information such as trends in precipitation, temperature, wind speed, cloud cover, relative humidity, and solar radiation. It is important that BLM managers and staff are familiar with, understand, and apply climate and weather information to resource management planning and applicable site-specific actions.

## Regulatory Authority and BLM Responsibility

### BLM Legal Responsibility

Through the Clean Air Act, Congress assigned primary air quality regulatory responsibility to the US EPA. As required, the EPA established National Ambient Air Quality Standards and other regulations in order to limit public health and welfare impacts. In addition, Congress delegated responsibility for achieving these Federal standards to applicable Tribal, State and local regulatory agencies, subject to EPA oversight. In turn, those agencies may establish their own air quality regulations which may be more, but not less, stringent than the Federal regulations. State air regulatory agencies are typically the entities which issue air quality permits or otherwise implement and enforce the regulations in the Clean Air Act. All BLM initiated or authorized activities *must* comply with all applicable Federal, State Tribal, and local air quality regulations, laws, statutes, standards, and implementation plans. The BLM is responsible for ensuring that BLM activities, programs, and projects comply with applicable regulations and with conditions and stipulations in leases and permits. In addition, certain applications for public land uses on BLM administered lands may require an air quality permit from the State. In such cases, the BLM or the proponent must obtain any permits and pay any applicable fees before conducting any site specific activities.

**BLM Management Responsibility**
In other words, generally, States and Tribes have air quality regulatory authority for implementing, maintaining, and enforcing plans to meet air quality standards and goals; the BLM is responsible for managing actions and authorized activities in a manner consistent with those plans. However, the BLM is also responsible for managing the air as a resource, where natural resource management objectives and obligations often include more than ensuring compliance with regulatory standards. It is important to understand that air is a resource, just like any other managed by the BLM (such as wildlife or water). Just as with water quality, the BLM does not regulate by setting standards or issuing permits; rather its role is in ensuring compliance *as well as* managing and protecting that resource, within and (if it so chooses) beyond regulatory standards. Often, achieving management objectives set forth in Land Use Plans require certain actions and management of the air resource to achieve those objectives. For example, this may include monitoring for non-regulated pollutants such as mercury, managing for noise, or closing roads to off highway vehicles for dust abatement. Monitoring air quality and climatic conditions when it is not required is managing air as a resource.

In another example, if a certain field office area contains a nearby astronomical observatory, which has urged that land and resource uses be managed to minimize the occurrence of light pollution and particulate matter, BLM management may choose to implement actions such as speed limits, road surfacing, or restrict vehicle access to reduce particulate matter, even though the applicable air quality standards may not have been threatened. (Explained in more detail in Section 3(a) of this document).

Air resource management work is accomplished through interagency coordination, participation in state implementation plan development and processes, collecting and acquiring data, modeling potential air quality impacts, monitoring changes in air resource conditions, developing environmental analyses documents as required under NEPA, applying emission control measures and Best Management Practices, and implementing adaptive management practices as outlined in BLM Handbook H-1601-1.

**The Purpose of this Document:** is to assist Field Offices in making decisions regarding air resource analyses. It is not meant to be prescriptive in nature; rather, it is meant to assist in identifying and addressing air resource issues in the planning process and in other NEPA documents. Furthermore, the six example scenarios that follow this "Decision Tree" serve as examples of elements which may be included; however, the information provided in the examples is not necessarily all that would be included in a particular RMP/EIS/EA. The examples and other guidance documents (including the emissions inventories, monitoring, and modeling guidance and information) were prepared to be as inclusive and informative as possible. For example, to complete an emissions inventory for a specific proposed coal mining operation may (or may not) require all of the information identified in the emissions inventory guidance document, depending on the circumstances. It is also important to note that incorporating and planning for air quality and climate applications, analysis, and management differ from each other. They may each require different types of information and may be applied differently for effective management application. This decision tree and the attached guidance

documents do include some climate guidance; however, the focus is primarily on air quality. Additional, more specific, climate (and climate change) guidance is forthcoming.

## A. Guidance on Addressing Air Resources in the Analysis Process

This process can be applied to developing environmental analysis documents within the NEPA process, including Land Use Plans (i.e., Resource Management Plans [RPMs]), Environmental Impact Statements [EISs], or project specific Environmental Assessments [EAs].

**1. Develop the assessment of the air quality and/or climate situation:** As you begin the analysis process for the identified Land Use Plan, EIS, or EA, identify and assess the air resource situation. The situation analysis should include qualitative and, when possible, quantitative descriptions of the air resource as follows:

**a.** Identify the existing issues, current condition, and the management situation of the air resource (both climate and air quality). This may include assessing if there is available inventory or other information to characterize the resource for the Field Office. For example, specific types of relevant data may include wind speed and direction, soil particle size, and topography, as they are all important factors when modeling for pollutant dispersion.

**i.** Identify current air quality for criteria pollutants, including trends.

**ii.** Identify current related air impacts (e.g, visibility and deposition), including trends.

**ii.** Identify current climate, including trends.

**iv.** Identify current and projected climate impacts.

**v.** Identify any known or perceived issues related to air resources.

**b.** Identify the existing regulatory environment for the air resource (see also Appendix C of the Land Use Planning Handbook, H-1601-1). This may include identifying jurisdictions and their roles. For example, in California, the State has delegated permitting authority to the local air districts. The local air districts in California also prepare sections for inclusion in the State Implementation Plan (SIP). This information can usually be found by navigating your State's Department of Environment Quality (DEQ) website (See Table 2).

**i.** Identify any relevant Federal, State, Tribal, or local air quality standards, rules and regulations. Through the Clean Air Act, EPA has delegated primary authority to the states. A state may have

ambient air quality standards that are more, but not less, stringent than the National Ambient Air Quality Standards (NAAQS). Identify any State air quality standards that differ from Federal standards, and document. State air quality standards can be found through your State DEQ. See tables 1 and 2.

**ii.** Identify any nonattainment and maintenance areas in the planning and adjacent areas. The state's department of environmental quality is a resource that can provide this information. In addition the US EPA's greenbook lists all designated nonattainment areas, and can be accessed at: http://epa.gov/oar/oaqps/greenbk/ Note that this site does not list maintenance areas. Identification of nonattainment and maintenance areas is important because the Clean Air Act requires that all Federal agencies must conduct General and Transportation Conformity analyses (and when applicable, formal Determinations) prior to conducting activities within designated nonattainment or maintenance areas. For more detailed information, see the Air Resource Analysis FAQ document. Also, see http://epa.gov/ttn/oarpg/genconformity.html.

**iii.** Identify any sensitive areas such as mandatory federal Class I areas, other National Parks and Wilderness Areas, urban areas, schools, hospitals, sensitive Class II areas, Wilderness Study Areas, or wildland/urban interface areas.

**c.** Identify how air quality and climate expertise will be identified and utilized (e.g. training materials, experts at the National Operations Center expertise, the state climatologist, state air quality contacts, LUP Handbook, "air monitoring sites" guidance document, etc.). Explain what they will be used for, e.g. for review, for writing, for analysis, for data collection, etc.

2. **Scoping:** To determine the scope of air resource issues to be addressed in the document, the Office should:

**a.** Where appropriate, invite affected federal, state, tribal, and local agencies to participate in the analysis process. This would include the state, tribal and/or local air resource contacts and the regional EPA office. Non-government entities should not be involved unless full FACA requirements are met.

**b.** Invite the public to suggest issues or concerns that should be included in the plan or analysis through established formal channels (such as by publishing the Notice of Intent in the Federal Register, scoping notice, or media involvement).

**c.** Determine if there are applicable existing analyses or other technical reports available to tier to or to incorporate by reference. If so, cite and summarize the relevant portions of the analysis and assure copies are available for review.

**d.** Identify any connected, similar, or cumulative actions associated with the proposal/proposed action.

**e.** Invite entities relying on public lands to coordinate and determine the extent of future interest and development plans in the area.

3. **Other factors to document:** For example, when developing an RMP, the interdisciplinary team should understand and understand how they will address air resources in the alternatives, which will in turn guide the NEPA analysis. The following questions will help guide the discussion and all responses and/or decisions are recorded for the administrative record:

**a.** Decide what the level of anticipated intensity for air resource management will be, i.e. how will air be managed as a resource? Will the BLM manage air primarily for ensuring regulatory compliance? Or will BLM manage the air resource within and beyond those regulatory standards? Will certain areas in the Land Use Plan manage air as a resource and other areas in the LUP manage air primarily for compliance?

Meeting the National and State ambient air quality standards is mandatory under the Clean Air Act (CAA) and FLPMA. The regulated ambient air pollutants currently include a set of seven pollutants (see Table 1), subject to revision by the US EPA. These regulations provide for minimum standards for air quality. States are required to develop plans to implement and enforce these standards. All BLM programs and authorized activities must comply with state plans to meet these standards. This is managing air for compliance in a regulatory environment.

On the other hand, managing air as a resource includes considering, in addition to the regulated pollutants, other pollutants (such as mercury) and/or other atmospheric qualities (such as climate) to be managed as an interactive part of a landscape. Monitoring air quality and climatic conditions when it is not required is also managing air as a resource. Managing the air as a resource often includes actions that are necessary in order to achieve management objectives and obligations set forth in the LUP.

For example, if a nearby astronomical observatory has urged that land and resource uses be managed to minimize the occurrence of light pollution and particulate matter impacting their facility, BLM management may choose to implement actions such as speed limits, road surfacing or restricting vehicle access (in order to reduce particulate matter), even though air quality standards would not be violated without these measures.

In another example, if the BLM is issuing permits for APDs and potential air pollutant emissions include NOx, verifying applicable standards are not violated would be managing in a regulatory manner. Calling for control measures and other mitigation techniques resulting in less emissions than may be legally allowed would be managing air as a resource. It is important to note, however, that in cases where air is managed as a resource *and* where issuing of State permits is required for activities, collaboration with the State regulatory agency is strongly encouraged. Because state agencies have air quality primacy, the relationship between BLM and the state should be a primary consideration before imposing emissions restrictions on, for example, conditions of approval.

**b.** Identify desired outcomes for air resources and area wide criteria or restrictions. Is air quality identified in the preliminary desired future conditions? If so, do existing management decisions reflect consideration of this?

**c.** Identify any and all other land use allocations/activities that you expect will significantly affect air resources (air quality and climate). What, if any, are the drivers that may potentially affect air resources?

**d.** Identify allowable uses and actions that may affect air resources. Identify if the proposed action causes changes in emissions. Subsequently identify emission control strategies, processes, and actions that would achieve the desired air resource conditions from direct or authorized activities. This may include identifying Best Management Practices relevant to the pollutant or activity of concern. This will include identifying all foreseeable activities associated with land use planning decisions.

i. Include discussion as to whether it is necessary to include emission reduction measures as (1) design features of the alternatives, or (2) mitigation to be applied to alternatives. Refer to section 6.5.1.1 of NEPA handbook H-1790-1.

**Table 1**

**National Ambient Air Quality Standards**

| | Primary Standards | | Secondary Standards | |
|---|---|---|---|---|
| **Pollutant** | **Level** | **Averaging Time** | **Level** | **Averaging Time** |
| Carbon Monoxide | 9 ppm (10 mg/m$^3$) | 8-hour[(1)] | None | |
| | 35 ppm (40 mg/m$^3$) | 1-hour[(1)] | | |
| Lead | 1.5 µg/m$^3$ | Quarterly Average | Same as Primary | |
| Nitrogen Dioxide | 0.053 ppm (100 µg/m$^3$) | Annual (Arithmetic Mean) | Same as Primary | |
| Particulate Matter ($PM_{10}$) | 150 µg/m$^3$ | 24-hour[(2)] | Same as Primary | |
| Particulate Matter ($PM_{2.5}$) | 15.0 µg/m$^3$ | Annual[(3)] (Arithmetic Mean) | Same as Primary | |
| | 35 µg/m$^3$ | 24-hour[(4)] | Same as Primary | |
| Ozone | 0.075 ppm (2008 std) | 8-hour[(5)] | Same as Primary | |

| | | | | |
|---|---|---|---|---|
| | 0.08 ppm (1997 std) | 8-hour[6] | Same as Primary | |
| | 0.12 ppm | 1-hour[7] (Applies only in limited areas) | Same as Primary | |
| Sulfur Dioxide | 0.03 ppm | Annual (Arithmetic Mean) | 0.5 ppm (1300 $\mu g/m^3$) | 3-hour[1] |
| | 0.14 ppm | 24-hour[1] | | |

http://epa.gov/air/criteria.html

[1] Not to be exceeded more than once per year.

[2] Not to be exceeded more than once per year on average over 3 years.

[3] To attain this standard, the 3-year average of the weighted annual mean PM2.5 concentrations from single or multiple community-oriented monitors must not exceed 15.0 µg/m3.

[4] To attain this standard, the 3-year average of the 98th percentile of 24-hour concentrations at each population-oriented monitor within an area must not exceed 35 µg/m3 (effective December 17, 2006). [5] To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.075 ppm. (effective May 27, 2008).

[6] (a) To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm.

(b) The 1997 standard—and the implementation rules for that standard—will remain in place for implementation purposes as EPA undertakes rulemaking to address the transition from the 1997 ozone standard to the 2008 ozone standard. [7] (a) The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is < 1.

(b) As of June 15, 2005 EPA revoked the 1-hour ozone standard in all areas except the 8-hour ozone nonattainment Early Action Compact (EAC) Areas.

**Table 2:**

| State | General Air Website |
|---|---|
| Alaska | http://dec.alaska.gov/air/index.htm<br>http://www.climatechange.alaska.gov/ |
| Arizona | http://www.azdeq.gov/environ/air/index.html |
| California | http://www.arb.ca.gov/html/lawsregs.htm<br>http://www.arb.ca.gov/cc/cc.htm |
| Colorado | http://www.cdphe.state.co.us/ap/ |
| Eastern States | Various websites. Search for your state's department of environmental quality |
| Idaho | http://www.deq.state.id.us/about/divisions/air.cfm |
| Montana | http://www.deq.mt.gov/pcd/arm/index.asp<br>http://www.deq.state.mt.us/AirQuality/AQinfo.asp |
| Nevada | http://ndep.nv.gov/bapc/<br>http://ndep.nv.gov/BAQP/ |

| | |
|---|---|
| New Mexico | http://www.nmenv.state.nm.us/aqb/ |
| Oregon | http://www.oregon.gov/DEQ/AQ/<br>http://www.deq.state.or.us/aq/climate/index.htm |
| Utah | http://www.airquality.utah.gov/ |
| Wyoming | http://deq.state.wy.us/aqd/ |

## B. Guidance on Determining the Type of Air Resource Impact Analysis Needed

Once the above information is compiled, there will be a clearer understanding for the level of analysis needed for air resources in the identified allocation or implementation decision. If air quality and/or climate have been identified as significant issues to be analyzed, or if allocations, uses, or actions have been identified that may affect air resources, work through this decision tree to determine what type of analysis is best suited to your circumstances. If air quality and/or climate have not been identified as significant issues or have been covered by prior environmental review, then clearly document why they have been eliminated from detailed study or reference existing coverage. It is important to document all reasons and rationales for all decisions.

The process below can be used during development of an impact analysis as well as when implementing plan decisions. The information derived from part A. of this document should be used and referred to when determining the type of air resource impact analysis needed.

**1. Can reasonably foreseeable activities be identified at this time?** Also, identify at what stage any future analysis will be completed (including the cumulative impacts analysis), the scope of that future analysis, and what information will be needed.

a. If no…A *quantitative* analysis should not be done. Only a qualitative analysis is appropriate at this time. A large part of the qualitative analysis should have been completed when part A of this document was followed and appropriately documented.

b. If yes, disclose those activities and identify the available information (source types and location) to analyze and disclose potential impacts from those activities. Continue with part 2 below.

2. **Are emissions data associated with identified activities, allocations and/or uses available? Can this data be obtained?**

**a.** If "no," atmospheric dispersion modeling is not appropriate. BLM should not generate hypothetical data, inputs, or assumptions simply for the purpose of conducting quantitative or empirical air quality modeling.[1] A *quantitative* analysis should not be done. However, at this stage, BLM will identify if and when subsequent analysis may completed, which will be associated with availability of emissions data. Contact an air resource specialist at the NOC to determine the type of qualitative analysis most appropriate for this situation.

**b.** If "yes," identify what data are available, such as the following, and then continue with Part 3 below:

**i.** The potential emission sources associated with the implementation activities.

**ii.** The potential pollutants associated with those sources.

**iii.** Define the emissions/pollutants and their associated:

a. Intensity;
b. Duration;
c. Characteristics (e.g. plume rise, stack height, velocity, etc);
d. Controls (e.g. BMPs, mitigation).

**iv.** Receptor Locations

3. **Can reasonably foreseeable locations of the reasonably foreseeable activities associated with emissions sources be identified at this time?**[2] Can the locations of reasonably foreseeable activities be logically plotted on a map? If it is unclear whether the reasonably foreseeable locations are too speculative, consult with a technical expert for assistance.

**a.** If "no," atmospheric dispersion modeling is not appropriate. BLM should not generate hypothetical data, inputs, or assumptions simply for the purpose

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[1] Hypothetical Modeling: Although modeling itself is hypothetical,s the term "hypothetical modeling" means that emissions source location data has been assumed and is based on very limited or no factual information. Modeling should only be performed when, at the least, reasonably foreseeable emission source location data is available.

[2] Site specific information and geographic scale of potential activity and the methods to determine the location of such activity will determine if data from these sources is considered "reasonable." Modeling for the NEPA process should not be done in the absence of reasonably foreseeable location data.

of conducting quantitative or empirical air quality modeling.[3] However, at this stage, BLM will identify when subsequent analysis may be completed, which will be associated with availability of emissions data.

**i.** Next, consult with an air resource specialist to determine what additional analysis is necessary. Air resource specialists are located in some state offices, and every state office has an air contact person (often the state's soil, water, and air program lead). Technical experts at located at the National Operations Center.

- For example, the air resource specialist may advise the creation of an emissions inventory (note: information requirement for an emissions inventory is significant and should be considered in schedule development).

- Evaluate the analytical and decision-making limitations to the recommended analysis.

**b.** If "yes," consult with air resource specialist to discuss available analytical approaches most appropriate to assess potential impacts to air quality and climate. For example, the recommended approach may be emissions inventory, modeling, or monitoring, or a combination thereof.

- Air resource specialists are located in some state offices (the Colorado State Office, the Nevada State Office, the Wyoming State Office), and every state office has an air contact person (often the state's soil, water, and air program lead). Technical experts are located at the National Operations Center and the Washington Office.

[3] Hypothetical Modeling: Although modeling itself is hypothetical,s the term "hypothetical modeling" means that emissions source location data has been assumed and is based on very limited or no factual information. Modeling should only be performed when, at the least, reasonably foreseeable emission source location data is available.

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Publications
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# Section 106 Regulations Flow Chart

**Click on parts of the flow chart for more information.** (Flow chart best viewed in Netscape 4.0 or higher)

**Initiate Section 106 Process**
Establish undertaking
Identify appropriate SHPO/THPO *
Plan to involve the public
Identify other consulting parties

► *No undertaking/no potential to cause effects*

▼

*Undertaking is type that might affect historic properties*

▼

**Identify Historic Properties**
Determine scope of efforts
Identify historic properties
Evaluate historic significance

► *No historic properties affected*

▼

*Historic properties are affected*

▼

**Assess Adverse Effects**
Apply criteria of adverse effect

► *No historic properties adversely affected*

▼

*Historic properties are adversely affected*

▼

**Resolve Adverse Effects**
Continue consultation

► *Memorandum of Agreement*

▼

**FAILURE TO AGREE**

► **COUNCIL COMMENT**

| Key Elements of the Section 106 Process | | | |
|---|---|---|---|
| The Roles of Participants | Involving the Public | Consultation | Documentation |

**Click here to view all flow chart explanatory material in one long document—suitable for printing**

* The regulations define the term "THPO" as those tribes that have assumed SHPO

**responsibilities on their tribal lands and have been certified pursuant to Section 101(d)(2) of the NHPA. Nevertheless, remember that tribes that have not been so certified have the same consultation and concurrence rights as THPOs when the undertaking takes place, or affects historic properties, on their tribal lands. The practical difference is that during such undertakings, THPOs would be consulted *in lieu of* the SHPO, while non-certified tribes would be consulted *in addition to* the SHPO.**

*Updated February 12, 2001*

Return to Top

# Guidance to Client Agencies on Compiling the Administrative Record

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Many cases for which ENRD is responsible involve defending a federal agency's decision. In these cases, compiling an administrative record is necessary for the agency. It is the purpose of this article to provide guidance to the agency personnel who compile administrative records.

This article provides only internal Department of Justice guidance. It does not create any rights, substantive or procedural, which are enforceable at law by any party. No limitations are hereby placed on otherwise lawful prerogatives of the Department of Justice or any other federal agency.

**Introduction**

Under the Administrative Procedure Act (APA), a court reviews an agency's action to determine if it was "arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). In making this determination, a court evaluates the agency's entire administrative record. The administrative record is the paper trail that documents the agency's decision-making process and the basis for the agency's decision.

The APA governs judicial review of a challenged agency decision. However, several statutes specify what documents and materials constitute an administrative record *see* 42 U.S.C. §7607(d)(7)(A) (provision states what materials will constitute the record for judicial review of certain enumerated types of rule making issued under the Clean Air Act); 42 U.S.C. § 9613(j), (k)(CERCLA). At the outset, make sure to determine whether a stature, (other than the APA) applies in the case. In addition, regulations may govern how to assemble a record. *See, e.g.*, 40 C.F.R. §§ 300.800 – 825 (CERCLA); 40 C.F.R. Part 24 (RCRA Corrective Action). *See also* Federal Rules of Appellate Procedure Rules 16 and 17 (record on review or enforcement and filing of the record).

The purpose of this article is to provide guidance to agencies in compiling the administrative record of agency decision other than a formal rule making or an administrative adjudication. Optimally, an agency will compile the administrative record as documents and generation or receipt of materials occurs during the agency decision-making process. The record may be a contemporaneous record of the actions. However the agency may compile the administrative record after litigation has been initiated. An agency employee should be designated to be resp9nsible for compiling the administrative record. That individual will be responsible for certifying the administrative record to the court. The individual should keep a record of where she or he searched for the documents and materials, and whom they consulted while compiling the administrative record.

Taking great care in compiling a complete administrative record is critical for the agency. If the agency fails to compile the whole administrative record, it may significantly impact both our ability to defend and the court's ability to review a challenged agency decision.

## General Principles for Compiling the Administrative Record

The administrative record consists of all documents and materials directly or indirectly considered by the agency decision-maker in making the challenged decision. It is not limited to documents and materials relevant only to the merits of the agency's decision. It includes documents and materials relevant to the process of making the agency's decision. For example,

- Documents and materials whether or not they support the final agency decision;
- Documents and materials which were available to the decision-making office at the time the decision was made;
- Documents and materials that were before the agency at the time of the challenged decision, even if the final agency decision-maker did not specifically consider them, and
- Privileged and non-privileged documents and materials.

## Where to Find The Documents and Materials That Comprise The Administrative Record

The agency employee responsible for compiling the administrative record should be reliable, careful, and prepared to provide an affidavit. The person should keep a record of where he or she searched for documents and who he or she consulted in the process. The identified person should conduct a thorough search for compiling the whole record. They should:

- Contact all agency people, including program personnel and attorneys, involved in the final agency action and ask them to search their files and agency files for documents and materials related to the final agency action and include agency people in field offices;
- Contact agency units other than program personnel, such as congressional and correspondence components;
- Where personnel involved in the final agency action are no longer employed by the agency, search the archives for documents and materials related to the final agency action. A former employee may be contacted for guidance about where to search;
- Determine whether there are agency files relating to the final agency action. If there are such files, search them;
- If more than one agency was involved in the decision-making process, the lead agency should contact the other agencies to be sure the record contains all the documents and materials considered or relied on by the lead agency;
- Search a public docket room to determine whether there are relevant documents or materials.

## What Documents and Materials to Include in The Administrative Record

**A. Types of materials:**

- Documents to include in the administrative record should not be limited to paper but should include other means of communication or ways of storing or presenting information, including E-mail, computer tapes and discs, microfilm, and microfiche. *See* 36 C.F.R Chapter XII, subchapter B (electronic records). Data files, graphs, charts, and handwritten notes should also be included. Do not include personal notes, meaning an individual's notes taken at a meeting or journals

## How to Organize the Administrative Record

- Organize the documents and materials in a logical and accessible way;
- Organize the documents and materials in chronological order and/or by topic;
- Separate documents and materials that do not fit into a chronological order by category, e.g., internal policies, guidelines, or manuals;
- After a Department of Justice attorney or an AUSA has had the opportunity to review the administrative record for completeness and organization, date stamp or number each item. A Depart of Justice attorney or an AUSA may review the documents and materials the agency excluded form the administrative record;
- Prepare an index to the administrative record;
- Make sure the index identifies each document and material by the date stamp number or document number and includes a brief description of the document or material, for example, "memorandum dated June 5, 1997 from Mary Smith to the EPA Administrator Jones regarding June 6, 1997 meeting agenda." If a document or material is being withheld based on a privilege or prohibition, state the privilege or prohibition;
- Make sure the agency certified the administrative record. [1] Certification language should reflect how the agency person who was responsible for compiling the record has personal knowledge of the assembly of the administrative record. Attached are sample certificates. Neither a Department of Justice attorney nor an AUSA should certify the record in order to avoid the possibility of being called as a witness in the case;
- Make sure the Department of Justice attorney or the AUSA consults the local rules of the court in which the matter is pending to determine how to file the administrative record with the court. If the local rules are silent on the issue, the Department of Justice attorney or the AUSA can address the issue with the parties and the court. For example, it may be appropriate to file the index with the court and to give the parties copies of the index and the opportunity to review the record, or to file the parts of the record that the parties will rely on as grounds for the motions for summary judgment. The United States Attorney's Office in the jurisdiction in which the matter is pending should be consulted.

## Important for the Court to Have the Whole Administrative Record

- A court reviews the agency action based on the administrative record before the agency at the time the decision was made.
- The whole administrative record allows the court to determine whether the agency's decision complied with the appropriate APA standard of review.
- All agency findings and conclusions and the basis for them must appear in the record.
- The administrative record is the agency's evidence that its decision and its decision-making comply with relevant statutory and regulatory requirements.
- A court may remand the matter where the agency's reasoning for its decision is not contained in the administrative record.

## Consequences of Incomplete Administrative Record

- If the record is incomplete, the government may be permitted to complete it, but, by doing so, you also may raise

[1] If the agency fails to certify the record, the government may not be able to file a motion for summary judgment.

maintained by an individual, unless they are included in an agency file. Agency control, possession, and maintenance determine an agency file.

B. **Kinds of Information:**

- Include all documents and materials prepared, reviewed, or received by agency personnel and used by or available to the decision-maker, even though the final decision-maker did not review or know about the documents and materials;
- Include policies, guidelines, directives, and manuals;
- Include articles and books. Be sensitive to copyright laws governing duplication;
- Include information or data;
- Include communications the agency received from other agencies and from the public, and any responses to those communications. Be aware that documents concerning meetings between and agency and Office of Management and Budget (OMB) should be included by may qualify, either partially or fully, for the deliberative process privilege;
- Include documents and materials that contain information that supports or opposes the challenged agency decision;
- Exclude documents and materials that were not inexistence at the time of the agency decision;
- As a rule, do not include internal "working" drafts of documents, whether or not they were superseded by a complete, edited version of the same document. Generally, include all draft documents that were circulated for comment either outside the agency or outside the author's immediate office, if changes in these documents reflect significant input into the decision-making process. Drafts, excluding "working" drafts, should be flagged for advice from the Department of Justice attorney or the Assistant United States Attorney (AUSA) on whether; 1) the draft was not an internal "working" draft; and 2) the draft reflects significant input into the decision-making process;
- Include technical information, sampling results, survey information, engineering reports or studies;
- Include decision documents;
- Include minutes of meetings or transcripts thereof; and
- Include memorializations of telephone conversations and meetings, such as a memorandum or handwritten notes, unless they are personal notes.

**How to Handle Privileged Documents and Materials**

Generally, the administrative record includes documents and materials that are privileged and contain protected information. However, once the record is compiled, privileged or protected documents and materials are redacted or removed from the record.

The agency should consult with the agency counsel and the Department attorney or the AUSA as to the type and the extent of the privilege(s) asserted. Be sensitive to the relevant privileges and prohibitions against disclosure including but not limited to, attorney-client, attorney work product, Privacy Act, deliberative or mental processes, executive, and confidential business information.

If documents and materials are determined to be privileged or protected, the index of record must identify the documents and materials, reflect that they are being withheld, and state on what basis they are being withheld.

questions about the completeness of the entire record.

- If the court decides the record is not complete, it should remand the matter to the agency. It may, however, allow extra-record discovery, including depositions of agency personnel, and may allow court testimony of agency personnel.
- Generally, although it may vary from circuit to circuit, courts will allow discovery when a party has proffered sufficient evidence suggesting bad faith or improprieties that may have influenced the decision-maker, or that the agency relied on substantial materials not included in the record.
- A party must make a strong showing that one of these exceptions applies before a court will allow extra-record inquiry.

**Supplementation of the Record**

- When the administrative record fails to explain the agency's action, effectively frustrating judicial review, the court may allow the agency to supplement the record with affidavits or testimony.
- Be aware that once the government supplements the record with affidavits or testimony, the opposing party may depose your witnesses and/or submit additional affidavits or testimony.
- Be aware that if agency counsel becomes a potential witness, it may be appropriate to screen the agency counsel from participation in the litigation. ABA Model Rule of Professional Responsibility 3.7.

**Conclusion**

When an agency must defend a final agency action before a court, it should take great care in preparing the administrative record for that decision. It is worth the effort and may avoid unnecessary and unfortunate litigation issues later. [2]

[2] From: February 2000 United States Attorneys' **Bulletin.**