

**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 EAAs 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 FONSIIs and the underlying activities in establishing the CXs described in this final action. Categories of actions were considered eligible for CXs when the EAs, FONSIIs, 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](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](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 in 1992.

**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](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](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](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](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](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](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](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/eme/lth/1998\\_details.pdf](http://www.fs.fed.us/eme/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](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/FONSI. 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](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 FONSI 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 FONSI for grazing permits are found to be unlawful. If more had been challenged, it is likely that many more of the FONSI 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 FONSI 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 FONSI 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 interdisciplinary 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 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(lk); 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/wofy01/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](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**

*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.

#### **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, communization 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 repellent, 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, wildlings, 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.

[FR Doc. E7-15746 Filed 8-13-07; 8:45 am]

**BILLING CODE 4310-84-P**