



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Oregon State Office

P.O. Box 2965

Portland, Oregon 97208



In Reply Refer to:

5003/1793 (OR-931) P

December 14, 2007

EMS TRANSMISSION 12/18/2007

Instruction Memorandum No. OR-2008-031

Expires: 9/30/2009

To: All District Managers

From: State Director, Oregon/Washington

Subject: Use of the Four Forestry Categorical Exclusions Published on August 14, 2007

Program Area: Forest management.

Purpose: This Instruction Memorandum (IM) establishes direction in the Oregon/Washington (OR/WA) Bureau of Land Management (BLM) *Federal Register* for use of four forestry Categorical Exclusions (CX) published on August 14, 2007. This direction should be considered as step-down guidance resulting from the issuance of Washington Office (WO) IM No. 2007-208, dated September 28, 2007, which references these forestry CXs.

Policy/Action: The following procedures apply for use of the four forestry CXs.

1. Include the general language regarding CXs (see Attachment 1) in all district planning updates.
2. Use the CX Documentation form (see Attachment 2), as modified by OR/WA, to write down the rationale for a determination that any extraordinary circumstances do not apply to the proposed project. Regarding extraordinary circumstance No. 2.3, the decision in *Friends of the Earth v. U.S. Army Corps of Engineers* D.D.C. 2000 stated that the "effects of an action are 'highly controversial' when there is 'a substantial dispute [about] the size, nature, or effect of the... action rather than the existence of opposition to a use'." The format in Attachment 2 is consistent with Appendix 6 of the BLM Draft National Environmental Policy Act (NEPA) Handbook H-1790-1 and includes information for the public on administrative remedies. This document is required for all projects other than hazardous fuels and fire rehabilitation projects and must be included in the project file. The WO IM No. 2007-208 requires that all CX Documentation include information for the public on the available administrative remedy. Section H of Attachment 2 provides example language for various decision notification scenarios.

3. Prepare a decision document that is separate from the CX Documentation and provide for notification of decisions. The decision document and on-site NEPA register update should reference the CX Documentation prepared for the project. The notification can be done utilizing existing district procedures, such as the use of an on-site NEPA register and posting of the notice of decision on the district internet site. The NEPA register and district internet site must be updated on the same date the decision document (supported by the CX review) is signed, and prior to project implementation.
4. For actions using the CXs identified in the IM, and where required by 43 CFR Part 5003(a), develop a decision document and provide for public notification of the decision in accordance with 43 CFR Part 5003(c).
5. If projects are to be implemented via an advertised timber sale, districts are encouraged to provide notification in a district Planning Update or in a brief Addendum to the Planning Update (specify date of most recent Planning Update) sent to the same mailing list, at least 30 days prior to the issuance of any forest management decision supported by one of the four forestry CXs. Publish a notice of decision in a local newspaper, pursuant to 43 CFR Part 5003.2(b), for any project supported by these CXs that are implemented with an advertised timber sale.

Timeframe: This direction becomes effective immediately.

Budget Impact: Use of CXs is expected to generate cost savings.

Background: On August 14, 2007, the BLM WO published the following four new forestry CXs in the *Federal Register*, making their use available to BLM, subject to certain conditions:

1. Felling, bucking, and scaling sample trees (fewer than an average of one per acre) to ensure accuracy of timber cruises (limited to use by the Salem, Eugene, Roseburg, Medford and Coos Bay Districts, and the Klamath Falls Resource Area in the Lakeview District).
2. Harvesting live trees not to exceed 70 acres, requiring no more than 0.5 miles of temporary road construction.
3. Salvaging dead or dying trees not to exceed 250 acres, requiring no more than 0.5 miles of temporary road construction.
4. 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.

The BLM's Draft NEPA Handbook H-1790-1 specifically requires the use of a prescribed format that OR/WA has tailored for the forestry CXs (see Attachment 2). The Draft Handbook also requires preparation of a separate decision document for any action covered by a CX, consistent with program specific guidance. The Final Handbook is expected to be issued in the near future.

The NEPA Handbook and Council on Environmental Quality guidance do not require notification and public involvement in the use of a CX. This IM provides specific public notification procedures for decisions that rely on these four CXs.

Manual/Handbook Sections Affected: The NEPA Handbook H-1790-1.

Coordination: Production of this IM was coordinated with the District Planners and Forestry Leads, and Roger Nesbit from the Office of the Solicitor.

Contact: For additional information, contact Lyndon Werner, Forester, at 503-808-6071 or Anita Bilbao, Natural Resource Advisor, at 503-808-6081.

Districts with Unions are reminded to notify their unions of this Instruction Memorandum and satisfy any bargaining obligations before implementation. Your servicing Human Resources Office or Labor Relations Specialist can provide you assistance in this matter.

Signed by
Michael S. Mottice
Acting, Associate State Director

Authenticated by
Paj Shua Cha
Records Section

2 Attachments

- 1 - [Categorical Exclusion Language for Planning Updates](#) (1p)
- 2 - [Format for Forestry Categorical Exclusions](#) (2pp)

Distribution

WO-270 (204 LS)
OR-014 (Mike Bechdolt)
OR-020 (Jon Reponen)
OR-035 (Marc Pierce)
OR-050 (Steve Castillo)
OR-082 (Randy Herrin)
OR-090 (Alan Corbin)
OR-100 (Steven Niles, Ken Roan)
OR-110 (Blair Moody)
OR-120 (Jon Menten)
OR-130 (Allen Gardner)
OR-931 (George McFadden)
OR-932 (Dave Harmon)
OR-952 (Stephanie Coleman)

Attachment 1: Categorical Exclusions Language for Planning Updates

“Certain activities within the BLM’s forestry program have been categorically excluded from preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The purpose of a categorical exclusion is to eliminate the need for unnecessary paperwork under NEPA. Specifically, Council of Environmental Quality (CEQ) regulations for the National Environmental Policy Act (NEPA) at 40 CFR §1508.4 state that:

“‘Categorical exclusion’ means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required...Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.”

“In implementation of the NEPA regulations, the BLM has developed categorical exclusions for certain silvicultural activities, such as reforestation, pre-commercial treatments, brush control, sample tree falling, and salvage, commercial thinning, and hazardous fuels reduction of limited acres. In developing categorical exclusions, the BLM demonstrated through rulemaking procedures how these actions do not typically result in significant environmental effects and set forth the methodology and criteria used to define the categories of actions. These rulemaking procedures included extensive public involvement and input, and CEQ review, regarding appropriate limits on the use of the categorical exclusion to assure that any categorically excluded action would remain within the effects of actions covered in the analysis for the rulemaking.

“As such, in deciding whether to proceed with such actions, the BLM will review their particular conditions to ensure that no extraordinary circumstances exist, as listed in the Department of the Interior’s NEPA Manual at 516 DM 2, Appendix 2 that would preclude the use of a categorical exclusion. The XX District/Field Office maintains an on-site NEPA register that lists ongoing actions, and seeks information from the public as to whether extraordinary circumstances exist for any of these ongoing actions that are categorically excluded. An “extraordinary” circumstance is one that could have significant environmental effects beyond the “ordinary” circumstances already described and considered as applicable to the excluded actions in the rulemaking procedure. These categorically excluded actions, by regulation, do not require the documentation necessary for an EA or EIS. The public was also provided a formal opportunity to participate in the agency’s review and approval of these categorically excluded activities. Given this context, the BLM may choose to proceed with these actions as part of the ordinary course of business in managing forest land with the posting of a notice of decision on the District internet site. This notice would advise the public of the formal administrative review process for these individual actions available under 43 CFR §4.450. Depending on circumstances, however, the BLM may invoke, by publishing a notice in a local newspaper of record, the administrative review process under 43 CFR §5003 for certain individual forest management actions.”

Attachment 2: Format for Forestry Categorical Exclusions

Categorical Exclusion Documentation

A. Background

BLM Office: _____ Lease/Serial/Case File No.: _____

Proposed Action Title: _____

Location of Proposed Action: _____

Description of Proposed Action: [Include documentation of why the proposed action is consistent with the specific requirements of the published CX.] _____

B. Land Use Plan Conformance

Land Use Plan Name: _____ Date Approved/Amended: _____

[Include one of the two following paragraphs:]

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s): _____

The proposed action is in conformance with the LUP, even though it is not specifically provided for, because it is clearly consistent with the following LUP decision(s) (objectives, terms, and conditions): _____

C: Compliance with NEPA:

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 2, Appendix 1, _____

[Insert appropriate DOI CX number and text, or a paraphrase of the text] or 516 DM 11, _____ [Insert appropriate BLM CX number and text, or a paraphrase of the text].

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment as documented in the following table. The proposed action has been reviewed, and none of the extraordinary circumstances described in 516 DM 2 apply.

CX EXTRAORDINARY CIRCUMSTANCES DOCUMENTATION			
The proposed categorical exclusion action will:		YES	NO
2.1	Have significant impacts on public health or safety.		
Rationale:			
2.2	Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.		
Rationale:			
2.3	Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].		
Rationale:			
2.4	Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		
Rationale:			
2.5	Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.		
Rationale:			
2.6	Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		
Rationale:			
2.7	Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.		
Rationale:			
2.8	Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on		

designated Critical Habitat for these species.		
Rationale:		
2.9 Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.		
Rationale:		
2.10 Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		
Rationale:		
2.11 Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).		
Rationale:		
2.12 Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).		
Rationale:		

I considered _____
 [Insert any pertinent design features incorporated into the project design, or relevant situations discussed during project design, and explain why there is no potential for significant impacts.]

F: Signature

Authorizing Official: _____ Date: _____
 (Signature)

Name: _____
 Title: _____

G. Contact Person

For additional information concerning this CX review, contact [Insert contact name, title, office name, mailing address, and telephone number].

H. Administrative Remedy

[Include one of the three following paragraphs:]

[For forest management decisions only intended for publication in Planning Updates or NEPA Registers:]

Notice of the forest management decision to be made on the action described in this categorical exclusion will be posted on the District internet website. The action is subject to protest under 43 CFR section 4.450-2. A decision in response to a protest is subject to appeal to the Interior Board of Land Appeals under 43 CFR part 4.

[For advertised timber sales:]

The forest management decision to be made on the action described in this categorical exclusion is subject to protest under 43 CFR subpart 5003. Under 43 CFR 5003.2 subsection (b), the decision will be published in local newspaper(s) and this notice shall constitute the decision document. Under 43 CFR 5003.3 subsection (a), protests may be filed with the authorized officer within 15 days of the publication date of the notice of timber sale advertisement. Under 43 CFR 5003.3 (b), protest(s) filed with the authorized officer shall contain a written statement of reasons for protesting the decision. A decision on this protest would be subject to appeal to the Interior Board of Land Appeals, although, under 43 CFR 5003.1 subsection (a), filing a notice of appeal under 43 CFR part 4 does not automatically suspend the effect of a decision governing or relating to forest management under 43 CFR 5003.2 or 5003.3.

[For negotiated timber sales or other forest management decisions intended for publication:]

The forest management decision to be made on the action described in this categorical exclusion is subject to protest under 43 CFR subpart 5003. Under 43 CFR 5003.2 subsection (c), a notice of decision will be published in local newspaper(s). Under 43 CFR 5003.3 subsection (a), protests may be filed with the authorized officer within 15 days of the publication date of the notice of timber sale advertisement. Under 43 CFR 5003.3 (b), protest filed with the authorized officer shall contain a written statement of reasons for protesting the decision. A decision on this protest would be subject to appeal to the Interior Board of Land Appeals, although, under 43 CFR 5003.1 subsection (a), filing a notice of appeal under 43 CFR part 4 does not automatically suspend the effect of a decision governing or relating to forest management under 43 CFR 5003.2 or 5003.3.