United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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Memorandum

To: Horst Greczmiel, Associate Director for NEPA Oversight
Council on Environmental Quality

Through: Willie R. Taylor, Director
Office of Environmental Policy and Compliance

From: Laura Ceperley, Acting Assistant Director
Renewable Resources and Planning

Subject: Submission of Comments for the National Environmental Policy Act (NEPA) Guidance on Categorical Exclusions (CXs)

Thank you for the opportunity to provide comments on the Council on Environmental Quality's proposed guidance for establishing and using CXs. This memorandum transmits the Bureau of Land Management's (BLM) consolidated comments. The BLM believes the NEPA Task Force effort helps to clarify procedures for developing and implementing administrative CXs.

Specific comments are attached in the document entitled "BLM Consolidated Comments CEQ CX Guidance." Additionally, the BLM requests a clear disclaimer or clarification stating that proposed guidance applies only to administratively created categorical exclusions. Agencies should review the Energy Policy Act of 2005 or other statutory language for guidance on implementing statutory CXs.

If you have questions, please contact Deb Rawhouser, Chief, Division of Planning and Science Policy at (202) 452-0354.

Bud Cribley
Acting Deputy Assistant Director,
Renewable Resources and Planning

Attachment

BLM Consolidated Comments CEQ CX Guidance

Part III:

Subpart A, 2nd paragraph: The language states that CXs "should not be established in a disaggregated or segmented format." The guidance needs to provide an example to better explain what this means.

Subpart A, end of 3rd paragraph: provides that an agency "may develop extraordinary circumstances that specifically relate to the new categorical exclusion and propose them in conjunction with the [CX]"-- We recommend dropping this concept along with all subsequent references to it. We feel that it unnecessarily complicates the CX process by introducing a separate avenue for CX-specific extraordinary circumstances that duplicates the CX description process and muddies the current "single source for extraordinary circumstances" approach. Any needed qualifiers can simply be incorporated into the description of the CX itself (as they are currently -- e.g., "for 3 years or less" or "where no road construction is involved"). Extraordinary Circumstances for CXs should exist in a single source list, as do the CXs themselves. Users can readily access both self-contained lists without worrying about additional sources.

Subpart B, 3rd paragraph: the statement about "sources with substantial similarities to the proposed [CX]" proving "to be the most useful" implies that experiences in one area can be extrapolated to similar situations elsewhere. This makes sense, but it conflicts with earlier statements (Subpart A, 1st paragraph) about needing to have demonstrated insignificant effects in particular geographic areas (leading to our current proposals for CXs applicable only to certain western Oregon BLM Districts or only BLM Nevada). This specific geographic area demonstration criterion discounts effects analysis concepts regarding "predictability based on similar conditions, etc." and the site-specific purposes served by extraordinary circumstances, thereby unnecessarily limiting the usefulness of the CXs as originally envisioned.

Subpart B, item 2. Impact Demonstration Projects: This item appears to allow for more extrapolation than we're currently being allowed to use under the "geographically specific" criterion addressed above. We agree with this more flexible, cause and effect-oriented concept. Similarly, the final sentence under Item 4 regarding another Federal agency's experience appears to support more tolerance for extrapolation. This approach is further addressed in the next comment.

Subpart C, 2nd paragraph: This paragraph speaks to limiting a CX if an agency finds that an action would lead to significant effects outside a particular region of applicability. This approach would be more useful than limiting CXs only to those geographic areas where insignificance has been statistically demonstrated. The perspective becomes one of extrapolating experiences with effects of certain actions to similar resources and conditions elsewhere and determining where the limits of such similarities exist, relying on extraordinary circumstances to address site-specific risks.

Part IV:
CFR quote and 5th paragraph: The current regulations call for CEQ to complete its review of proposed CXs within 30 days. This timeframe would be welcomed, but is it realistic relative to today's emphasis on detailed statistical analysis and increasing CX proposals?

Part VI:
1st paragraph and quote from CEQ guidance: We strongly support the continued emphasis on not requiring additional paperwork and formal public comment opportunities that would negate the streamlining intent of CXs. Agencies have developed their own policies allowing for documentation and public availability of decisions and background NEPA support.

Subpart B. Public Involvement: The statement "in situations where there is high public interest in an action that will be categorically excluded, CEQ encourages Federal agencies to involve the public in some manner" serves to undo the intent behind 48 FR 34263 quoted at the beginning of Part VI. There is no difference in impact significance between a CX action with high public interest and one without. And the concept of "high public interest" is undefined. At least the CEQ regulations limit "high controversy" to "controversy over the effects" rather than "political controversy" or "personal preferences." The "high public interest" is dealt with at the time the CX is proposed through draft and final Federal Register Notices. The statement is unnecessary -- the guidance need only indicate that agencies may, at their discretion, choose to involve publics in some way if they determine that such involvement would assist with review of the applicability of extraordinary circumstances. As currently written, agencies will need to make a "finding" regarding the presence or absence of "high public interest" in response to individual claims to the contrary.

Part VII:
This section doesn't appear to add anything particularly helpful regarding periodic reviews of existing CXs for continued applicability -- and, in fact, may provide yet another toe-hold for the increasing numbers of challenges to agency actions. When it can take up to decades to approve proposed CXs, providing vague guidance that can set up a public expectation for possibly 3-5 year CX re-evaluations is highly inappropriate. Experience shows that agencies review all of their CXs on an as-needed basis, as evidenced by proposing CX revisions, replacements, and deletions along with new CXs.