



United States Department of the Interior

Office of the Secretary

Washington, D.C. 20240

PEP - ENVIRONMENTAL STATEMENT MEMORANDUM NO. ESM 13-8¹

To: Heads of Bureaus and Offices

From: Michaela E. Noble, Director /s/ 09/24/2018
Office of Environmental Policy and Compliance

Subject: Preparing a Decision Memorandum When Using the Department's Categorical Exclusions for Hazardous Fuels Reduction or Fire Rehabilitation

PURPOSE

This memorandum supplements [43 CFR 46.210](#) for categorical exclusions (k) and (l) **only**. These two categorical exclusions were established in 2003, in coordination with the U.S. Department of Agriculture Forest Service (Forest Service). In *Sierra Club v. Bosworth*, 510 F.3d 1016, 2007 U.S. App. LEXIS 28013 (9th Cir., Dec. 5, 2007), the Ninth Circuit determined, in part, that the Forest Service's establishment of the hazardous fuels reduction categorical exclusion constituted establishment of a program for which a cumulative effects analysis was required. Because this litigation involved a categorical exclusion that is analogous to a categorical exclusion used by the Department at 43 CFR 46.210(k), the Department has determined that the categorical exclusion in question will remain in the regulation, with the understanding and written direction that it will not be used by the individual bureaus in areas within the jurisdiction of the Ninth Circuit.

PROCEDURE

When applying these categorical exclusions, bureau and office field managers must prepare a decision memorandum containing the elements of the Department's template to support the use of these categorical exclusions. This memorandum *does not* supersede bureau-specific guidance on the appropriate use of categories (k) or (l). Bureau personnel are directed to follow their own bureau-specific guidance concerning categories (k) or (l). Bureau or office checklists or other existing documentation may be used in conjunction with the template. However, any changes from the attached template must be approved by this office.

The Department's decision memorandum template is attached below.

¹ The guidance in this Environmental Statement Memorandum (ESM) are being issued under the authority provided to the Office of Environmental Policy and Compliance (OEPC) by 381 Departmental Manual (DM) 4.5B, to convey instructions and guidance through its Environmental Memoranda Series, and by 516 DM 3.2, which authorizes OEPC to provide advice and assistance to the Department on matters pertaining to environmental quality and for overseeing and coordinating the Department's compliance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations, and 516 DM 1.21, which authorizes OEPC to provide further guidance concerning NEPA.

GENERAL

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Additionally, nothing in this guidance is intended to affect the authority and responsibility of the United States Department of Justice with respect to the conduct of litigation on behalf of the United States.

This memorandum replaces ESM 10-16.

Attachment

**Decision Memorandum on Action and for Application of:
Categorical Exclusion for Hazardous Fuels Reduction Activities (43 CFR
46.210(k))**

Categorical Exclusion for Post-Fire Rehabilitation Activities (43 CFR 46.210(l))

[Keep the appropriate categorical exclusion title above and delete the other.]

Project Name

U.S. Department of the Interior
Bureau or Office Name
Bureau Field Station (State Office, Regional Office, etc.)
County, State

Purpose of and Need for Action

[Provide a description of the purpose and need and provide any pertinent facts such as applicable legal land description, statutory citations, and other agency involvements.]

Plan Conformance

[State that the Proposed Action is consistent with any land and resource management plans as required by appropriate Federal, State, or local statutes having a bearing on the decision.]
[State that the Proposed Action was designed in conformance with all bureau standards and incorporates appropriate guidelines for specific required and desired conditions relevant to project activities.] *[Insert findings for other applicable laws.]*

Compliance with the National Environmental Policy Act

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 43 CFR 46.210 (l). *[insert reasons.]*

The application of this categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects which may significantly affect the environment. *[Clearly state why none of the exceptions apply. If any apply, then the categorical exclusions cannot be utilized.]* Extraordinary circumstances are listed in 43 CFR 46.215.

I considered *[insert any pertinent situations that were brought up during the design of the activities and explain why there is no potential for significant effects]*.

Persons and Agencies Consulted

[Explain how the public was made aware of this proposed activity. Describe people and agencies consulted regarding the development of the action and steps taken based on this consultation.]

Decision and Rationale

I have decided to implement *[insert description of actions, including mitigation measures and reference any maps and drawings]*. These actions meet the need for action. In addition, I have reviewed the plan conformance statement and have determined that the proposed action is in conformance with the approved land use plan and that no further environmental analysis or documentation is required.

Implementation Date

This project will be implemented on or after *[insert implementation date and identify any conditions related to implementation]*.

[Insert Responsible Official's name]

Date

[Insert Responsible Official's title]

Administrative Review or Appeal Opportunities

[State whether the decision is or is not subject to administrative appeal. If it is subject to appeal, provide the citation of the appeal rules and provide appeal information.]

Contact Person

For additional information concerning this decision, contact *[Insert contact name, title, Office Name, Mailing Address, and phone number]*.