

management decisions effective immediately, and expediting review of those decisions, will not unduly burden either administrative or judicial tribunals.

Comments from environmental interest groups addressed this issue by saying that, because the proposed rule will allow BLM to move forward with projects despite a pending appeal, the proposed rule would force citizens to go directly to court to prevent activities that they believe adversely affect the environment. These comments concluded that, for reasons of time, expense, and the necessity of retaining counsel, the Federal courts represent an impracticable and even unavailable venue for many members of the public to resolve these issues.

However, the final rule has been amended to make it clear that it does not prevent appellants from seeking a stay of the decision being appealed. Also, we do not believe that the wildfire management decisions we contemplate making will be appealed as frequently as the comment writers expect. Finally, if BLM's wildfire management projects are properly planned, with extensive public participation in the spirit of the Secretary of the Interior's philosophy of coordination, communication, and consultation in support of conservation, there should be few administrative or court challenges. Even if the final rule leads to increased resort to the Federal courts, the urgency of wildfire management justifies the arguable increased burden on the courts.

#### H. Paperwork Reduction Act

These regulations do not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I has not been prepared and has not been approved by the Office of Policy Analysis. These regulations simplify proof of service, codify who has a right of appeal, allow BLM to make wildfire management decisions effective immediately, and expedite review of those decisions. They do not require the public to provide information.

#### I. National Environmental Policy Act

The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Department Manual (DM). CEQ regulations, at 40 CFR 1508.4, define a "categorical exclusion" as a category of actions that the Department has determined ordinarily do not

individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3. The Department has determined that the final rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes "[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature." In addition, the Department has determined that none of the exceptions to categorical exclusions, listed in 516 DM 2, Appendix 2, applies to the final rule. The final rule is an administrative and procedural rule, relating to the timing of the effectiveness of BLM wildfire management decisions and the Department's administrative appeals process. The rule will not change the requirement that projects must comply with NEPA. Therefore, an environmental assessment or environmental impact statement under NEPA is not required.

One comment expressed concern about the cumulative impacts of the proposed rule and other elements of the President's "Healthy Forests Initiative." It cited—

- Changes in Forest Service regulations implementing the Appeals Reform Act,
- Direction to expedite Endangered Species Act consultation on fuel treatment projects, and guidance from the Council on Environmental Quality on conducting environmental assessments of such projects,
- The proposed revision of the National Forest Management Act regulations,
- The proposed Categorical Exclusions for salvage logging projects up to 250 acres, and
- The proposed Categorical Exclusions for fuel reduction projects on both Forest Service and BLM administered lands.

The comment went on to say that the Categorical Exclusion proposals would exempt Forest Service and BLM fuel reduction projects from NEPA documentation requirements, and that the proposed BLM wildfire regulations would not provide for a project stay on BLM-specific wildfire projects pending appeal. Consequently, the comment said, the cumulative effect of these two proposed rule changes is to eliminate environmental review of purported fuel reduction projects while allowing them to proceed on the ground during an administrative review. The comment

concluded that it is critical to evaluate the cumulative effect of these numerous rule changes. Another comment stated that this rule "may result in significant effects that are unknown and thus require at least an EA."

This rule is strictly procedural in nature, and is a small part of the overall wildfire management and Healthy Forests Initiative. It does not change any environmental review process that BLM must follow before implementing a wildfire management decision. The rule expedites the implementation of Federal decisions that still require proper NEPA documentation. BLM is preparing an Environmental Impact Statement to address the overall environmental effects of other aspects of the Initiative. We decline to address those concerns in this procedural final rule.

#### J. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

As required by Executive Order 13175 and 512 DM 2, the Department of the Interior has evaluated potential effects of the final rule on Federally recognized Indian tribes and has determined that there are no potential effects. The final rule will not affect Indian trust resources; it simplifies proof of service, codifies who has a right of appeal, allows BLM to make wildfire management decisions effective immediately, and provides for expedited review of those decisions.

We received one comment from a commission representing the interests of several Indian Tribes with respect to fishing, hunting, and gathering, and pasturing livestock. The comment expressed some of the same concerns shown in the comments of environmental organizations discussed elsewhere in this preamble as to the cumulative effects of this rule and other initiatives of the Administration affecting the environment. The comment said that the cumulative effect of these proposals would "allow potentially harmful projects to be planned and implemented without adequate tribal consultation, environmental review, or opportunity for appeal or public oversight." The comment went on to say:

These proposed regulations cannot be reviewed in a vacuum, but must be considered together with the Departments [sic] recent addition of a categorical exclusion from NEPA review for "hazardous fuel reduction" activities. The categorical exclusions have the potential to allow logging and even grazing projects to proceed without environmental review or adequate consultation with Tribes. The proposed appeal changes then would allow these