

NEPA Overview

NEPA Analysis – EA Focus (Course 1620-13)

The Act, Its Regulations and BLM Guidance

- The National Environmental Policy Act (NEPA) was signed into law on January 1, 1970 by President Richard M. Nixon.
- The President's Council on Environmental Quality (CEQ), created by the Act, issued final Regulations for Implementing the Procedural Provisions of NEPA on November 29, 1978. The regulations have only been changed once since then; in 1986, Section 1502.22 was changed to eliminate the requirement to do a worst case analysis.
- BLM's NEPA guidance consists of one Manual Section (MS 1790) and a NEPA Handbook (BLM Handbook H-1790-1). BLM also complies with Departmental NEPA Guidance provided in Departmental Manual - 516 DM 1-7. Appendix 1 of that document contains a listing of NEPA Statutory, Regulatory, and Guidance Documents applicable to BLM.

Five NEPA Mandates

In January, 1997, CEQ published *National Environmental Policy Act: A Study of its Effectiveness after Twenty-five Years*. In this report they listed the following five NEPA mandates:

Supplemental Mandate – to add to the existing authority of every federal agency the responsibility and power to protect the environment and integrate environmental, social, and economic objectives when carrying out agency functions.

Affirmative Mandate – not only to preserve existing environmental quality, but to make decisions that restore and enhance the environment.

Procedural Mandate – to use a planning and decision-making process for developing or considering the approval of plans, policies, programs or projects that gives “appropriate consideration to environmental values and amenities,” which occurs mainly through the analysis of environmental impacts and alternatives, including mitigation measures.

Substantive Mandate – to recognize that each person should have a healthful environment and has a responsibility to contribute to environmental quality, and to require all federal agencies “to the fullest extent possible” to interpret and administer all laws in ways that implement the policy of serving as trustee of the environment for present and future generations and the other policies set forth in NEPA; in other words, the responsibility to “act” to protect the environment.

Integration Mandate – to implement the substantive national environmental policy “to the fullest extent practicable” in a manner that is “consistent with other essential policy considerations;” in other words, to take the environmentally preferred course of action unless it poses a conflict with other essential policies, in which case the decision-maker looks to the substantive policies of NEPA as guidance for integrating varied considerations and making decisions directed toward achieving a *productive harmony between people and nature [sic]*.

What The Act Requires

While the US had had numerous environmental and resource management laws for over a century prior to NEPA, the nation had never articulated a comprehensive environmental *policy* until NEPA. The Act and the CEQ regulations establish the guiding principles for safeguarding the environment and directing agencies on how to make better decisions.

National Environmental Policy Act Principles (NEPA Section 101)

NEPA declares that the Federal Government's continuing policy is to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans.

Therefore, the BLM as an agency of the Federal Government is mandated to:

- fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- preserve important historic, cultural, and natural aspects of our national heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice;
- achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and
- enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

CEQ NEPA Principles

The CEQ Regulations require of all agencies, including the BLM, that (40 CFR 1500.1):

- Agency NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and actions taken. Rather than amassing needless detail, NEPA documents must concentrate on issues that are significant to the action in question.
- It is not better documents but better decisions that count. NEPA's purpose is **not** to generate paperwork, even excellent paperwork, but to foster excellent action. The NEPA process is intended to help public officials make decisions based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.

The CEQ regulations direct that to the fullest extent possible all federal agencies, including the BLM, shall do the following (40 CFR 1500.2):

- Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in NEPA and the CEQ regulations
- Prepare environmental documents that are concise, clear, and to the point and that are supported by evidence that agencies have made the needed environmental analyses

- Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such processes run concurrently rather than consecutively
- Encourage and facilitate public involvement in decisions that affect the quality of the human environment

BLM NEPA Principles

The BLM NEPA Handbook (H-1790-1) states that *all internally or externally proposed actions on or affecting public lands or resources under BLM jurisdiction must be reviewed for NEPA compliance*. Proposed actions fall into one of five categories:

- (1) a limited category of actions which are *exempt* from NEPA (see below)
- (2) actions which fall into a category which normally is *excluded* from the requirement to prepare an Environmental Impact Statement (EIS); these Categorical Exclusions (CXs) are types of actions which have been shown to not have significant direct, indirect or cumulative effects under normal circumstances and which are explicitly identified and listed by the Department of the Interior and the BLM. Actions in this category may require preparation of an Environmental Assessment (EA) under “extraordinary circumstances,” usually relating to the presence of important resource values or precedent-setting actions
- (3) actions which are *covered* by an existing NEPA environmental document
- (4) actions which *normally require preparation of an EA* to determine if an EIS is needed, or
- (5) actions which *normally require preparation of an EIS*

Most BLM actions are either covered by a Categorical Exclusion or require preparation of an Environmental Assessment.

The procedural and documentation requirements under NEPA are different for each category. Lists of BLM actions requiring various levels of documentation are contained in Appendices to the Handbook.

Only 3 kinds of actions are *exempt* from NEPA:

1. *Congressionally Exempt Actions*. Some actions are Congressionally exempt from NEPA compliance. Such actions are listed in Appendix 2 to the Handbook.
2. *Emergency Actions*. Certain emergency circumstances which require immediate action, though they may have significant environmental impacts, are exempt from CEQ's regulatory provisions for implementing NEPA (40 CFR 1506.11). In the event of such an emergency, the BLM must consult with CEQ to determine how to comply with NEPA. Guidance on such consultation is discussed in 516 DM 5.8.
3. *Rejections of Proposed Actions*. A proposed action may be rejected under another statutory or regulatory authority without NEPA review. For example, a proposed action may be rejected on the basis that it is not within the BLM's authority to approve or is not in conformance with the applicable land use plan and is judged not to warrant further consideration.

Coordination with Other Environmental Laws

NEPA compliance includes and incorporates compliance with other environmental laws, such as the National Historic Preservation Act and the Endangered Species Act. This means that all other applicable laws must be complied with during conduct of the environmental analyses required by NEPA, and the results of their consultations or permits must be documented in the appropriate NEPA document and its administrative record.

Who Does What

BLM Line Officers are responsible for ensuring that their actions comply with NEPA. While applicants or contractors may assist in conducting field work, environmental analyses, and document preparation, the BLM cannot delegate its authority for assuring completeness and accuracy of the information, and for compliance with all legal requirements (40 CFR 1506.5).

Legal Defensibility

NEPA documents themselves, such as EAs or EISs are not appealable because they are, by definition, analytical and disclosure documents. Only an actual BLM decision (or decision document, such as an EA Decision Record or an EIS Record of Decision) is appealable.

According to 30 years of federal case law (including 11 Supreme Court decisions), any BLM decision based on a NEPA analysis that considers all relevant information and complies with the applicable procedural requirements as provided in the CEQ regulations, must be upheld.

So, the key to NEPA compliance is to follow the rules, and document your analyses.