

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
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Instruction Memorandum No. 2010-118
Expires: 09/30/2011

To: All Field Officials

From: Director

Subject: Energy Policy Act Section 390 Categorical Exclusion Policy Revision

Program Areas: Oil and Gas, Lands and Realty, National Environmental Policy Act.

Purpose: This policy revises the Bureau of Land Management's (BLM) National Environmental Policy Act (NEPA) Handbook, H-1790-1, to:

- Provide amended instructions for using categorical exclusions (CX) 2 and 3 established by Section 390 of the Energy Policy Act of 2005 (P.L. 109-58).
- Require review of "extraordinary circumstances"^[1] in accordance with 43 CFR 46.205(c) and 43 CFR 46.215 for use of any of the Section 390 CXs.
- Ensure all actions approved through the use of a Section 390 CX are in conformance with the approved land use plan.
- Provide some general guidelines for ensuring compliance with NEPA.

Policy/Action: The following revises the BLM's Section 390 CX policy and provides general guidelines for ensuring compliance with NEPA.

A. Revised Section 390 CX Policy

The following changes are made to the policy contained in the BLM's NEPA Handbook, H-1790-1, for CXs established under Section 390 of the Energy Policy Act of 2005.

1. In order to use CX2 and CX3 prior NEPA analysis will have to have been completed as specified in this section, and any proposed use of these CXs will be subject to extraordinary circumstances review as specified in section A.2 below.
 - CX2: *Drilling an oil and gas well at a location or well pad site at which drilling has occurred within five years prior to the date of spudding the well.*

Section 390 CX2 may only be used if the specific location and/or well pad site for the proposed drilling was adequately analyzed^[2] in an existing activity-level or project-specific Environmental Impact Statement (EIS) or Environmental Assessment (EA).

- *CX3: Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed drilling as a reasonably foreseeable activity, so long as such plan or document was approved within five years prior to the date of spudding the well.*

Section 390 CX3 may only be used if the developed field in which the proposed drilling will take place was adequately analyzed in an existing activity-level or project-specific EIS or EA (not solely in an approved land use plan and associated EIS).

2. Field offices are directed to conduct a review for extraordinary circumstances when considering use of any of the Section 390 CXs. The extraordinary circumstances review will be conducted in accordance with 43 CFR 46.205(c), 43 CFR 46.215, and Chapter 4 and Appendix 5 of the BLM NEPA Handbook. If extraordinary circumstances exist in relation to the action being considered, then the BLM must either prepare an EA or EIS, or follow the procedures discussed in section B, below, if applicable.

Field offices will update their Section 390 CX documentation forms to include a discussion of extraordinary circumstances consistent with section C of the administrative CX form found in Appendix 6 of the BLM NEPA Handbook.

3. Field offices must ensure all oil and gas development actions approved through the use of a Section 390 CX conform with the approved land use plan and are within the range of environmental effects analyzed in the land use plan and its associated NEPA documentation (43 CFR 1610.5-3;^[3] BLM Land Use Planning Handbook, H-1601-1, Section VI(F)).

Field offices will update their Section 390 CX documentation forms to include a discussion of land use plan conformance consistent with section B of the administrative CX form found in Appendix 6 of the BLM NEPA Handbook.

B. General Guidelines for Ensuring Appropriate NEPA Compliance

In those instances where a Section 390 CX is not available for use as a result of extraordinary circumstances review, field offices may prepare an EA, an EIS, or, when appropriate, a Determination of NEPA Adequacy (DNA). Field offices may also employ tiering to existing NEPA documentation, as appropriate. As provided in Department of the Interior regulations at 43 CFR 46.120, Responsible Officials (i.e., BLM Authorized Officers) should make the best use of existing NEPA analyses for assessing impacts of a proposed action and any alternatives when such NEPA analyses adequately analyzed the effects anticipated. Use of existing NEPA analysis will reduce paperwork and possible delay in accordance with the Council on Environmental Quality's regulations implementing NEPA (40 CFR 1500.4, 40 CFR 1500.5). The BLM Authorized Officer will have the final decision-making authority with respect to the appropriate form of NEPA compliance for a given action.

Use of DNAs

A DNA is used to confirm that a proposed action is adequately analyzed in existing EAs or EISs. A DNA for a new proposed action may rely on a single existing NEPA document or multiple existing NEPA documents. Please refer to the updated 2008 DNA worksheet for NEPA document evaluation criteria

(Appendix 8, NEPA Handbook, H-1790-1) and BLM NEPA Handbook, section 5.1 for further information.

The NEPA Handbook section 5.1 is supplemented with the following example of appropriate DNA use specific to oil and gas development:

An applicant proposes to construct a road and well pad, drill 16 new gas wells on the pad, and run buried power and liquids gathering flowlines along the new road. The BLM previously analyzed in a field-development EIS the impacts associated with constructing, drilling, and producing 2,000 new gas wells and associated infrastructure of which the proposed 16 well development would be a part. The EIS did not identify the specific pads and related infrastructure being proposed, but it did identify siting constraints and mitigation measures for protecting the important resources such as wildlife habitat, sensitive soils, and scenic quality that are present at the subject location. Field offices should review the EIS to determine if the proposed action fits within the development level analyzed in the EIS and the EIS adequately addresses the impacts, constraints, and mitigation measures relevant to the proposed action. If the proposed action fits within that development level and the EIS adequately addresses the issues above, a DNA may be used.

Use of Tiering

An EA may be prepared, and a finding of no significant impact reached, for a proposed action with significant effects, whether direct, indirect, or cumulative, if the EA is tiered to a broader EIS that fully analyzed those significant effects (BLM NEPA Handbook, H-1790-1, section 5.2.2). Tiering to the broader-scope EIS would allow the preparation of an EA and a finding of no significant impact for the individual proposed action, so long as any previously unanalyzed effects are not significant. A finding of no significant impact other than those already disclosed and analyzed in the EIS to which the EA is tiered is referred to as a finding of “no new significant impact” by the Department of the Interior regulations at 43 CFR 46.140.

Timeframe: This Instruction Memorandum (IM) is effective immediately.

Budget Impact: This policy will result in additional NEPA review and associated program costs. Making appropriate use of existing NEPA analyses may help to mitigate this impact.

Background: On September 30, 2005, the BLM issued guidance on implementing the five CXs established by Congress in Section 390 of the Energy Policy Act of 2005. Since that time, four primary issues have been raised by the public and Congress regarding the BLM’s interpretation of the language of the Act: 1) whether use of CX2 must be based on previous NEPA analysis, 2) whether use of CX3 could be based solely on a general land use plan, 3) whether oil and gas development complies with the approved land use plan and is within the range of environmental effects of oil and gas development analyzed in the land use plan and its associated NEPA documentation, and 4) whether to require a review of extraordinary circumstances prior to applying Section 390 CXs. This IM revises the BLM NEPA Handbook Section 390 CX policy to address these issues.

Manual/Handbook Sections Affected: This IM transmits interim policy that will be incorporated into Handbook, H-1790-1, National Environmental Policy Act, Chapter 4, section 4.1 and Appendix 2 during the next revision.

Coordination: The policy expressed in this IM was coordinated with the U.S. Department of the Interior Office of the Solicitor and the Council on Environmental Quality.

Contact: If there are any questions concerning this IM, please contact Michael D. Nedd, Assistant Director, Minerals and Realty Management at 202-208-4201, or your staff may contact Jim Perry, Senior Natural Resource Specialist, Washington Office Division of Fluid Minerals (WO-310), at 202-912-7145 or

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Signed by:
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Authenticated by:
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[1] “Extraordinary circumstances” are circumstances in which actions that are otherwise categorically excluded from the requirements under NEPA to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) may have a significant environmental effect and require additional analysis and action (40 CFR 1508.4, 43 CFR 46.205(c)). The Department of the Interior’s list of extraordinary circumstances can be found at 43 CFR 46.215 and Appendix 5 of the BLM NEPA Handbook.

[2] For guidance on determining the adequacy of existing National Environmental Policy Act (NEPA) analysis, refer to the BLM’s NEPA Handbook (H-1790-1) Chapter 5.1.2 – Reviewing Existing Environmental Documents.

[3] With respect to leases issued prior to the approval of the current land use plan, refer to 43 CFR 1610.5-3(b).

Last updated: 05-17-2010

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