

QUESTIONS AND ANSWERS

What is the purpose of the NEPA procedures final rule?

The Department of the Interior's NEPA procedures rule places the procedures for implementing NEPA into the Code of Federal Regulations (CFR). The Department's NEPA procedures now more fully encourage public involvement and access to project planning and analysis throughout the NEPA process rather than only early in the planning process, during scoping, and late, during public comment periods for EAs and draft EISs. The rule also clarifies both Departmental and CEQ NEPA procedures.

When the Department initially developed implementing directions for NEPA after the statute was enacted in 1969 and the CEQ regulations were adopted, it chose to integrate the CEQ implementing procedures into the Departmental Manual (DM) at 516 DM, Chapters 1-15. Subsequent additional guidance has been issued by the Office of Environmental Policy and Compliance (OEPC) in the form of Environmental Statement Memoranda (ESMs), Environmental Compliance Memoranda (ECMs), and Environmental Review Memoranda (ERMs). Individual bureaus and offices have issued their own supplemental NEPA handbooks.

The NEPA procedures rule distinguishes between the Department's NEPA procedures (what to do) for implementing NEPA from its internal guidance, i.e., the Environmental Memoranda series, on *how to* implement NEPA the bureau and office-specific requirements in the respective bureau and office handbooks. The NEPA procedures are now part of the Code of Federal Regulations and Environmental Memorandum guidance will continue to be issued by OEPC. Bureau and office-specific NEPA handbooks will continue to be issued. The NEPA components of the DM will be pared back to include only the necessary administrative elements common to the Department and individual bureaus and offices. All internal Departmental NEPA guidance will be made available to the public.

By including its NEPA procedures in the CFR, the Department of the Interior is joining other federal agencies that already have their NEPA procedures in the Code of Federal Regulations.

The NEPA procedures rule was published in the Federal Register on October 15, 2008, and is effective November 14, 2008. In addition to the Federal Register notice, the regulations can be viewed at: <http://www.doi.gov/oepc/>

How does the NEPA procedures final rule differ from NEPA procedures that were previously in the Departmental Manual?

The final rule's procedures:

- Help field units conduct NEPA analyses and documentation more efficiently by encouraging public participation, early involvement with cooperating agencies and interested parties, transparent cooperative conservation initiatives, and formulation of adaptive management proposals and alternatives.
- Align the environmental analysis process with current decision making practices. It codifies in regulation that which we are already doing.
- Allow alternatives to be developed, analyzed, and documented throughout the environmental analysis process.
- Summarize the CEQ regulations and guidance relevant to the Department of the Interior in one place.

- Recognize that sometimes the Department needs to respond immediately to emergencies and ensure that line officers know what is required when there is not enough time for normal NEPA processes. Provides for alternative procedures in emergency situations.
- Incorporate CEQ guidance on cumulative effects analysis by clarifying those past actions that are “relevant and useful” to illuminate or predict the cumulative effects of proposed actions.
- Clarify that alternatives, including the proposed action, may include and encompass adaptive management strategies so bureau and office decisions can respond to the uncertainties of natural resource management.
- Incorporate CEQ guidance that allows analysis of only one alternative in situations where there are no unresolved conflicts about alternative uses of available resources.
 - Clarifies what past actions need to be considered in a cumulative effects analysis.
 - Clarifies how alternatives considered in EAs can be documented.
 - Clarifies when Federal actions are subject to NEPA.

What did the Department of the Interior hear from people who commented on the draft? What changes did the Department make between the draft rule and the final NEPA procedures rule?

A discussion of the changes between proposed and final rule can be found in the preamble to the final rule. The preamble to the final rule summarizes all the comments and provides responses to those comments. The responses describe what changes were made in response to comments – or why the language was not changed even though some people provided comments about a particular aspect of the rule. Based on comments from the public and other agencies on the draft NEPA procedures rule, changes were made to the final regulation. Many of the changes made are primarily editorial or are to add clarity.

What does the final rule allow that the Departmental Manual did not?

The final rule more fully incorporates adaptive management into the Department’s procedures. This will allow the Department to incorporate adaptive management strategies into management decisions, especially where uncertainties may necessitate making mid-course corrections when implementation of plans leads to unexpected outcomes or when monitoring finds that parts of the plan have not been as effective as was predicted when the plan was adopted. Present Departmental guidance encourages the use of adaptive management strategies, but the final NEPA regulations are more explicit.

Also, among the notable changes have been elimination of the section on “scope of analysis,” and a clarification of the role of public involvement and notification in the Environmental Assessment (EA) process, i.e., that it is subject to whether notification is practicable. In light of the confusion reflected in several of the comments, as well as upon further consideration, the Department eliminated the provision related to “scope of analysis” from the final regulations. Bureaus will continue to follow CEQ regulations regarding scope of analysis at 40 CFR 1508.25. Also, an articulation of the delegation of responsibilities in emergency situations has been added. Many commenters requested a definition of “community” and “consensus.” The final rule contains definitions of “community” and “consensus-based management” that were taken verbatim from Environmental Statement Memorandum 03-07.

In addition to incorporating the above concepts, the proposed final rule maintains the reforms that were incorporated into the, 2004 and 2005 revisions to the Departmental Manual. In 2004, the Department revised the DM to incorporate policies and procedures to assure compliance with the spirit and intent of NEPA. Procedural changes in 2005 clarified the responsibility of managers with respect to offering cooperating agency status to qualified agencies and governmental entities; the changes also clarified the role of cooperating agencies in implementation of the Department's NEPA compliance process.

What will be in the Departmental Manual relevant to NEPA?

The DM at Part 516 will address the Department's administrative requirements associated with NEPA and the CEQ regulations, including Departmental officials responsible for the NEPA process. Also included will be Departmental internal review requirements for NEPA documents. Guidance for internal Departmental explanations interpreting CEQ and NEPA procedures will remain in the Environmental Memoranda series. Bureau and office handbooks may include some additional explanations to help the field implement the procedures unique to each bureau and office mission. Updating handbooks and the residual NEPA parts of the DM are anticipated as a future undertaking.

Did the Department of the Interior prepare an environmental impact statement on the final NEPA procedures rule?

No. The Council on Environmental Quality (CEQ) does not direct agencies to prepare a NEPA analysis or document before agencies establish procedures that supplement CEQ's implementing regulations.

Will the NEPA procedures regulations take away the public's ability to comment on projects?

The regulations will not take away or limit the public's current ability to comment on projects. The rule incorporates the existing language on public comment currently in the CEQ regulations as well as the Department's procedures that were previously in the DM, and those that remain within the Environmental Memoranda series. Moreover, the NEPA procedures regulations are intended to encourage interested parties to become more effectively engaged in the decision making process rather than to be merely reviewers of proposals and final documents. Specifically, the regulations include language promoting cooperative conservation and consensus-based management through an open and transparent process.

How will the NEPA procedures make it easier for the public to work with the Department of the Interior?

Hearing the public's ideas is important throughout the NEPA process rather than just at the beginning and end. The final rule allows the Department to respond to new ideas during analysis. The Department's environmental analysis and decision making processes will now be more open and transparent to the public.

The final rule integrates NEPA and an open and transparent process making the Departmental NEPA process more interactive with the public. The final rule also works hand-in-hand with the Council on Environmental Quality's latest guidance on how to enact different aspects of NEPA based on many years of experience.

How will putting procedures in Code of Federal Regulations make field-level NEPA analysis easier and more effective?

The final rule aligns the environmental analysis process with the Department's current goals and objectives for implementing on collaboration, adaptive management, consensus-based management, and cooperative conservation. Developing alternatives in an open and transparent

manner and using adaptive management strategies to help achieve better outcomes will increase the field's efficiency and having the public actively involved as the analysis progresses may reduce litigation.

Will the NEPA procedures reduce paperwork and time to plan projects?

The final rule will help reduce paperwork and time spent planning projects for the following reasons:

- Using adaptive management strategies, including adaptive management for alternatives and for the proposed action, may be modified as the analysis progresses allowing analysis to be more focused and, if successful, will minimize the need for additional subsequent NEPA analyses for the same project.
- The rule may reduce future analysis, by allowing a proposed action to be adapted to changing conditions as it is developed and implemented. If there are no unresolved conflicts, environmental assessments only have to analyze the proposed action.
- Retroactive NEPA compliance will not be done for emergency actions.
- The requirements for tiering from an existing analysis have been clarified.

What is adaptive management?

Adaptive management is a system of management practices based on clearly identified outcomes and monitoring to determine whether management actions are meeting desired outcomes; and, if not, facilitating management changes that will best ensure that outcomes are met or re-evaluated. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain.

How does the final rule handle categorical exclusions?

The final rule incorporates Departmental Manual categorical exclusion language exactly, except for five exceptions. Four of those changes are made between the rule as proposed and final because of minor editorial changes from how the categorical exclusions appeared in the DM.

First, § 46.210(b) has been revised from "Internal organizational changes and facility and office reductions and closings" as it appeared in the DM to "Internal organizational changes and facility and bureau reductions and closings" to conform to the definition of "bureau" in the final rule, at § 46.30, which includes "office." The DM had not provided a definition of "bureau" and so used both "bureau" and "office."

Second, the word "development" was inadvertently added, so that the parenthetical in the proposed rule at § 46.210(c) read "(e.g., in accordance with applicable procedures and Executive Orders for sustainable development or green procurement)." This change has been deleted from this final rule.

Third, the numbering system has been changed in the CE § 46.210(k) from the DM, originally published as final on June 5, 2003 (68 FR 33814), in order to more clearly set out the requirements for use of the CE for hazardous fuels reduction activities. The meaning of the CE has not changed.

Fourth, in paragraphs 46.210(k) and (l), the citations to the ESM series, which appeared in parentheticals in the DM, but as footnotes in the Notice published on March 8, 2004 (69 FR 10866), have been placed in the text itself for ease of reference.

Fifth, paragraph 46.210(i), which replaces 516 DM Chapter 2, Appendix B-1, Number 1.10, has been changed to correct an error during the finalization of the revision to these DM chapters in 2004. Prior to 1984, and up until 2004, this CE, as established and employed by the Department,

covered “Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.” 49 FR 21437 (May 21, 1984); 516 DM 2, Appendix 1 (June 30, 2003) (Archived versions of 516 DM chapters, including the 1984, 2003, and 2004 versions of 516 DM 2, may be accessed at

http://elips.doi.gov/app_dm/index.cfm?fuseaction=ShowArchive) No problems with the use of the CE were brought to the attention of the Department during this period. It is the version of the CE that was in place prior to 2004 that was proposed in the Department’s January 2, 2008 Notice of Proposed Rulemaking (73 FR 126, 130), and is announced as final in the rule published today.