

OVERVIEW OF THE NATIONAL ENVIRONMENTAL PROTECTION ACT (NEPA)

BACKGROUND

NEPA documents are required for nearly every action that multiple-use recreationists are involved in ranging from trail improvements to travel management. Multiple-use recreationists can be even more effective NEPA participants by a better understanding of the NEPA process.

The 1960's in America brought about an increased public awareness of the environment and concern for the pressure that human activity was placing on the condition of the sensitive ecological system. In response to this, Congress passed and President Richard Nixon signed into law, the National Environmental Policy Act of 1969 (NEPA). The Act, considered the basic "National Charter" for protection of the environment, was developed to meet three major goals:

1. NEPA sets a national environmental policy for protection of our natural and human resources. Several amendments to the original law have been enacted. Additional background on NEPA laws can be found at:
<http://es.epa.gov/oeca/ofa/nepa.html>
<http://ceq.eh.doe.gov/nepa/nepanet.htm>
<http://www.fhwa.dot.gov/environment/nepa/nepa.htm>
<http://www.fs.fed.us/forum/nepa/>
2. NEPA establishes the processes for environmental analyses and decision-making for all proposed actions. All proposed actions now require an appropriate NEPA analysis and decision.
3. NEPA created the Council on Environmental Quality (CEQ). The Council on Environmental Quality coordinates federal environmental efforts and works closely with agencies and other White House offices in the development of environmental policies and initiatives. CEQ reports annually to the President on the state of the environment; oversees federal agency implementation of the environmental impact assessment process; and acts as a referee when agencies disagree over the adequacy of such assessments. CEQ has developed over a dozen documents since 1969 to guide the implementation of the NEPA process. More information on CEQ can be found at
<http://www.whitehouse.gov/ceq/index.html> and
<http://ceq.eh.doe.gov/nepa/regs/guidance.html> .

The intent of NEPA when it was created in the late 1960's was to better incorporate environmental concerns into proposed actions while still meeting the needs of the public. Up until that time, consideration of the natural environment was not always required and impacts to the natural environment were not always adequately considered. A significant correction has been made since then.

Several important requirements of NEPA that are not always fully considered in actions involving multiple-use recreationists include:

- One of the basic requirements of NEPA is to “**achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities**” (Public Law 91-190, Title I, Section 101 (b) (5)).
- NEPA requires that agencies “**Rigorously explore and objectively evaluate all reasonable alternatives...**” [40 CFR 1502.14(a)].

IMPLEMENTATION OF A PROPOSED ACTION OF NEPA

Proposed actions require an appropriate NEPA process. Refer to the attached NEPA Flow Chart for an overview of the process. There are three choices:

1. A categorical exclusion (CATEX) can be used when no significant impact on the natural or human environment can be easily demonstrated without the use of detailed analyses.
2. A environmental assessment (EA) which can used when analyses are required to demonstrate that the proposed action will not produce a significant impact on the natural or human environment. A finding of no significant impact (FONSI) is the final decision-making document.
3. A environmental impact statement (EIS) must be used when the proposed action will produce a significant impact on the natural or human environment. The final decision-making document for an EIS is a record of decision (ROD).

NEPA PUBLIC INVOLVEMENT PROCESS

The public has the opportunity to provide input on proposed actions through two procedures; (1) the public scoping process, and (2) public review of the draft and final EA or EIS document. **It is extremely important that the multiple-use public participate in both the scoping and review processes** because; (1) public input and comments received must be considered in the analysis, document and decision and, (2) an appeal of the decision cannot be filed unless you or your group participated in the public involvement process. Additionally, CEQ guidelines require that NEPA documents be driven by issues brought forward during the public involvement process. Therefore, **the public involvement process is the time to get all of the issues on the table for consideration and getting issues considered early in the process is an advantage.**

NEPA APPEAL PROCESS UNDER THE FOREST SERVICE

NEPA decisions (FONSI or ROD) under Forest Service actions can be sent to a higher authority for administrative review of a decision by using the appeals process. Additional information on appeals can be found at <http://www.fs.fed.us/forum/nepa/appealoverview.htm>. Forest Service appeals are governed by 36 CFR Part 215 which can be found at http://www.access.gpo.gov/nara/cfr/waisidx_00/36cfr215_00.html .

An appellant is a person or organization filing a notice of appeal. Usually, all administrative (appeal) processes established by the Secretary or required by law must be exhausted before a person may bring a court action associated with resource management decisions.

The content of an appeal is specified by 36CFR § 215.14 Content of an appeal:

(a) It is the appellant's responsibility to provide sufficient written evidence and rationale to show why the Responsible Official's decision should be remanded or reversed.

(b) An appeal submitted to the Appeal Deciding Officer becomes a part of the appeal record. An appeal must meet the following requirements:

(1) State that the document is an appeal filed pursuant to 36 CFR part 215;

(2) List the name and address of the appellant and, if possible, a telephone number;

(3) Identify the decision document by title and subject, date of the decision, and name and title of the Responsible Official;

(4) Identify the specific change(s) in the decision that the appellant seeks or portion of the decision to which the appellant objects;

(5) State how the Responsible Official's decision fails to consider comments previously provided, either before or during the comment period specified in § 215.6 and, if applicable, how the appellant believes the decision violates law, regulation, or policy.

Therefore, filing an appeal is not that difficult and does not require legal expense. The appeal itself could simply be comments made during the EA or EIS process that were not adequately addressed along with several paragraphs in the beginning addressing the points listed above.

The appeal then goes to an Appeals Officer in the Regional Forest Office (Missoula for Region 1) who reviews the points in the appeal versus the EA or EIS and FONSI or ROD. Therefore, filing an appeal will force a review of forest level decisions by regional Forest Service management. Additionally, the Forest Service must review each appeal independently. Therefore, if every individual in an organization files an individual appeal, then the Appeals Officer will be required to review each appeal. This will give the proposed action a considerable amount of attention and will generate a considerable amount of support for the appeal and a revised decision.

If the basis of the appeal is supported by the Appeals Officer, then the Appeals Officer will overturn the decision made by the local forest and the action will be sent back (remanded) to the local forest for additional analysis or revisions to the proposed action with the intent of adequately addressing the concerns expressed in the appeal. If the Appeals Officer rejects the appeal, then legal action may be the only recourse.

NATIONAL ENVIRONMENTAL POLICY ACT PROCESS FLOWCHART

