

Planning and National Environmental Policy Act Considerations

Addressing Temporary Off-Highway Vehicle Closures Under the Authority of 43 CFR 8341.2 in National Environmental Policy Act Documents

Resource Management Plans (RMP), where possible and necessary, should address the need to temporarily close or restrict the use of public lands that are open to off-highway vehicle (OHV) use, where such use is causing or will cause considerable adverse effects to resources. See 43 CFR 8341.2.

All RMP and all Travel Management Plans (TMP) at a minimum shall include the following statement in accordance with 43 CFR 8341.2 with regard to OHV use:

“Where off-road vehicles are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability, other authorized uses, or other resources, the affected areas shall be immediately closed to the type(s) of vehicle causing the adverse effect until the adverse effects are eliminated and measures implemented to prevent recurrence.”

The above statement should be included in the RMP or TMP, which should also describe as specifically as possible the resources, uses, situations, and locations likely to be adversely affected by OHV use. The statement should be included in the section that sets forth the decisions common to all alternatives. If analyzed appropriately, temporary closures and restrictions considered under this process will not require further National Environmental Policy Act (NEPA) analysis and can be processed with a Determination of NEPA Adequacy when implementation of temporary OHV closures or restrictions are required.

Emergency Circumstances

When remedial action in response to an emergency situation will result in significant environmental consequences (positive or negative environmental consequences), the agency may seek alternative arrangements for NEPA compliance under 40 CFR 1506.11. In those circumstances, the BLM is required to consult with the Council on Environmental Quality (CEQ) prior to taking the action and the remedial action must be narrowly limited to whatever is necessary to control the immediate impacts of the emergency. The CEQ regulation provides the following:

“Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the federal agency taking the action should consult with the CEQ about alternative arrangements. Agencies and the CEQ will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.”

[40 CFR 1506.11, Emergencies]

While the regulation recognizes the need to react to emergencies, it is only when the action to remedy the situation will result in significant environmental consequences that CEQ regulations allow for limited circumvention of traditional NEPA review. As stated in the regulation, “Other actions remain subject to NEPA review.” The elements of NEPA review will include:

1. A brief statement of the factual circumstances giving rise to the agency’s need to intervene in the public’s use of the public lands,
2. An explanation of the agency’s authority to intervene,
3. Identification of the issue/problem in the vernacular of “purpose and need,”
4. Development of alternative remedial actions,
5. A description of the affected environment, and
6. Identification and discussion of the environmental consequences associated with each remedial action, followed by
7. A finding of insignificant environmental consequences associated with the selected alternative or the issuance of a record of decision.