
Chapter 3

Programmatic Analyses and Tiering

Programmatic NEPA analyses⁴⁷ and tiering⁴⁸ can reduce or eliminate redundant and duplicative analyses and effectively address cumulative effects. Federal agencies have used programmatic analyses for broad categories of activities ranging from facilities and land use planning to sequencing multistage actions. Some actions were successful and some were not.

Programmatic NEPA analyses and documents are valuable decisionmaking tools. Some agencies use programmatic analyses to evaluate cumulative effects effectively and to formulate mitigation efforts comprehensively, while others struggle with how best to use this analytical tool. Still other agencies use programmatic analyses to address mitigation parameters at the broad landscape, ecosystem or regional level, thereby reducing the need to re-address these measures at the site-specific level.

Agencies and interest groups who are most dissatisfied with programmatic NEPA analyses and tiered documents proposed alternative approaches to programmatic decisionmaking including:

- ❖ Focusing programmatic documents on outcomes and adaptive management principles, without additional NEPA analyses at the project level or
- ❖ Not doing NEPA analyses at the programmatic level, thus allowing project-level analyses and documents to meet all NEPA requirements to support the decisions.

The above contrasting alternatives indicate that programmatic documents are not meeting agency and stakeholder needs. Most agencies and stakeholders agree that

⁴⁷ For this discussion, programmatic analysis is any type of analysis and documentation from which subsequent NEPA documents are tiered, while the word program describes a specific type of programmatic document.

⁴⁸ The coverage of general matters in broader EISs, with subsequent narrower tiered statements or environmental analyses, incorporating, by reference, general discussions and concentrating solely on the issues specific to the statement subsequently prepared. 40 C.F.R. § 1508.28.

programmatic analyses are not being fully used for their intended purposes. A better understanding of how to provide an analysis in a programmatic NEPA document to support the broad decision being made and a strong commitment to tier site-specific analyses that will be subject to public review is needed.

In discussions with the task force, many issues were raised by the public and Federal agencies concerning programmatic analyses and tiering. This chapter is divided into the following five sections:

- ❖ Types of programmatic documents;
- ❖ Scope of programmatic analyses;
- ❖ Content of programmatic documents;
- ❖ Longevity of programmatic documents; and
- ❖ Links to adaptive management and environmental management systems.

The above organization is essential to address the following questions:

- ❖ How to define programmatic and program analysis?
- ❖ How can this type of analysis be effectively used?
- ❖ What should the NEPA documents derived from these analyses contain?
- ❖ What is the life expectancy of these documents?
- ❖ Are adaptive management and environmental management systems applicable to programmatic NEPA analyses?

3.1. Types of Programmatic NEPA Documents

The public and Federal agencies gave the task force information about the various ways that the terms programmatic and program analyses are defined and used. We also discovered that agencies have used the term programmatic analyses to address a range of issues and uses, and that most of the analyses result in subsequent tiered documents. Agency definitions are strongly oriented toward their mission and/or culture. Differing definitions are one reason for the lack of consistency and uniformity when using programmatic NEPA analyses.

The task force believes that a distinction exists between programmatic analyses that result in NEPA documents and support a decision, and those that do not involve a decision. Some Federal agencies use the term programmatic analysis to describe analyses that directly support decisionmaking; these are programmatic NEPA analyses and documents. Others use the term for data gathering and analyses covering a vast area where no decisions to take or change agency actions are being made. Similarly, some agencies use the term to describe baseline and cause-effect analyses of physical, biological, social, and economic components of the human environment. Such analyses are used for a variety of purposes, such as setting priorities for solving problems, establishing trends in environmental degradation or improvement, and updating cumulative effects analyses. Some of these assessments are eventually used in support

of a decisionmaking process. This chapter focuses on programmatic NEPA analyses and documents that are developed to support a decision.

Both the public and Federal agencies interviewed by the task force indicated that programmatic NEPA analyses were appropriate for a variety of decisions and could be used in a number of ways (e.g., analysis of a program, analysis of similar activities in an area). Regardless of how they are used, expectations about what should be addressed at the programmatic level must be understood and agreed upon. The purpose and use of programmatic documents and the related analytical requirements should be explained in the NEPA document to establish an understanding of what the programmatic document will contain and what level of analysis is appropriate.

CEQ regulations indicate that programmatic analyses can be used in a variety of ways.⁴⁹ Table 1 summarizes the task force’s characterization of the actions addressed in

Category of Action	Description	Example	Additional Information
Policy and/or strategy	National or regional integrated multiple program analyzes that establish program goals and objectives.	<p>APHIS—“Proposed Rule for the Importation of Unmanufactured Wood Articles from Mexico— with Consideration for Cumulative Impact of Methyl Bromide Use”</p> <p>TVA—“Integration of NEPA into a Comprehensive Environmental Management Systems”</p> <p>BPA—“Business Plan” and an example of use in “Longview Energy Development Plan”</p> <p>USCG—“Deepwater Program”</p>	<p>http://www.aphis.usda.gov/ppd/es/mb.html</p> <p>Contact Jon M. Loney jmloney@tra.gov</p> <p>http://www.efw.bpa.gov/cgi-bin/PSA/NEPA/SUMMARIES/BP_EIS0183</p> <p>http://www.efw.bpa.gov/cgi-bin/PSA/NEPA/SUMMARIES/LongviewEnergy</p> <p>Contact Kebby Kelly kkelly@comdt.uscg.mil</p>
Land Use	Integrated planning analyzes for a fixed geographical or landscape scope; might prescribe general standards and controls and procedures for project implementation.	<p>White River National Forest Plan and EIS</p> <p>APHIS—“Bison Management Plan for Montana and Yellowstone National Parks”</p>	<p>http://www.fs.fed.us/r2/whiteriver/rfp/White_river.htm</p> <p>http://www.aphis.usda.gov/ppd/es/vs/Bison.html</p>
Program	Resource or program-specific focused planning analyzes that decide future priorities for development and scheduling and set controls for implementation of site-specific actions.	<p>APHIS—“Rangeland Grasshopper and Mormon Cricket Suppression Program”</p> <p>BPA—“Fish and Wildlife Improvement Plan”</p>	<p>http://www.aphis.usda.gov/ppd/es/gh.html</p> <p>http://www.efw.bpa.gov/cgi-bin/PSA/NEPA/SUMMARIES/FishWildlifeImplementation</p>

Table 1. Summary of actions addressed in programmatic NEPA analyzes and documents.

⁴⁹ 40 C.F.R. § 1502.4(c).

programmatic documents and provides examples. The examples present a continuum of activities that have been addressed programmatically; there are no clear-cut boundaries and some activities might fit into more than one category.

Because not all programmatic documents have the same focus, they are subject to divergent decisions on the appropriate scope of alternatives and specificity of analysis. Additionally, the courts have not developed a specific test to determine the specificity required in programmatic EISs. The results often appear different because, on a case-by-case basis, the scope of the Federal project and the timing of the programmatic EIS dictate the specificity required. Programmatic EISs have been considered adequate without site-specific analyses when the Federal action does not contain a site-specific or critical decision.⁵⁰

The task force believes that CEQ should address the different uses of programmatic documents and the analytical requirements associated with each to foster agreement and consistency between agency decisions and public expectations. Additionally, we believe that CEQ should validate the different uses of programmatic analyses and examine whether the NEPA analyses and documents within each category have similar scope, range of alternatives, and specificity of environmental analysis.

3.2. Scope of Programmatic Analyses

Agencies rely on programmatic or broad-scale analyses to focus the scope of alternatives, environmental effects analyses, and mitigation in subsequent tiered levels of documentation. When agencies fail to resolve issues of scope, content, and purpose at the start of a programmatic NEPA analysis, citizens, stakeholders, and cooperators are usually dissatisfied, which results in higher costs, inefficiencies, and unmet expectations. Some agencies and respondents have abandoned the concept of tiering concluding that it is ineffective and inefficient.

The public is concerned that when tiering occurs the issues are vaguely described at the programmatic level and then not fully explored or refined at the site-specific level. Because of concerns that the site-specific analysis will either not be done or not involve the public (e.g., tiering to an EA with little or no public involvement), the public is pressuring Federal agencies to include site-specific analyses and decisions in programmatic analyses and documentation. Combining different levels of site-specific and programmatic analyses leads to confusion about the purpose, scope, and adequacy of the analysis in the programmatic NEPA document. Other agency practitioners have embraced the concept of tiering believing that programmatic NEPA analyses can focus the scope of subsequent tiered project-level analyses.

The use of programmatic analyses is increasing at most government levels, and coordination of analyses at broad levels is improving. Most of the Federal agencies that the task force spoke with view programmatic analyses and decisionmaking processes positively (e.g., protection of threatened and endangered species habitat, river basin cumulative effects analysis, and other broad policies that might not be considered in site-specific NEPA analyses).

⁵⁰ For example, see *Northern Alaska Environmental Center v. Lujan*, 961 F.2d 886, 891 (9th Cir. 1992).

The task force believes that CEQ should emphasize the importance of collaboration as agencies expand the use and scope of programmatic NEPA analyses. Collaboration among Federal, State, and local agencies and Tribes is necessary as jurisdictional boundary issues are more common in programmatic than in site-specific analyses. Agencies might require different spatial and temporal scales of analyses to address resources adequately and satisfy agency-specific legal and regulatory requirements. Overlapping authorities between agencies with different missions must be considered in programmatic analyses that address resources or actions across jurisdictional boundaries. The importance of collaboration is magnified substantially as the geographical scope of analysis expands (see the Federal and Intergovernmental Collaboration chapter of this report).

When the geographical scope expands, cumulative effects become more complex, solutions to problems affect multiple agencies, and information sharing becomes essential. Training should be developed to help practitioners prepare programmatic NEPA analyses and documents, and to communicate the nature of the programmatic analyses to the public.

The task force also believes that CEQ should evaluate the depth and breadth of the analysis and documentation associated with the different uses of programmatic documents identified in Table 1. Agencies, stakeholders, and the public must understand the analytical requirements for programmatic documents. A better understanding of the different uses and purposes of programmatic NEPA analyses and documents will foster focused and effective communication and clearer expectations. CEQ should convene a Federal Advisory Committee to further a better understanding of the uses and purposes of programmatic NEPA analyses and documents to foster more effective communication.

The task force believes that using a Federal Advisory Committee to provide CEQ advice on guidance or changes to the regulations implementing NEPA would mitigate stakeholder and public concern that Federal agencies are biased when completing NEPA analyses and studies. Committee members should represent Federal, State, local, and regulatory agencies, Tribes, industry, and environmental groups concerned with natural resources, transportation, energy, and other special issues. A diverse membership would foster a nonfederal perspective and encourage public trust. The Federal Advisory Committee should also include an attorney with NEPA-process litigation experience and a member of academia with a NEPA-related research focus.

Reliance on programmatic NEPA documents has resulted in public and regulatory agency concern that programmatic NEPA documents often play a “shell game” of when and where deferred issues will be addressed, undermining agency credibility and public trust. If programmatic NEPA documents are focused, some respondents fear that some issues and analyses will be deferred and, ultimately, never addressed. The task force believes that CEQ should require that programmatic documents provide a roadmap, explaining where and when deferred issues raised by the public and/or regulatory agencies will be addressed.

3.3. Content of Programmatic Documents

Agencies and the public believe that programmatic NEPA documents should be concise and clear and provide vision and goals for the next level of decisionmaking. At a minimum, agencies should state the significant issues and clarify what the purpose of the first tier document is in relationship to subsequent levels of analyses and documentation. Many respondents expressed frustration that the contents of programmatic documents do not fulfill expectations for scope of alternatives and scope and specificity of effects analysis.

Little formal guidance exists to distinguish the content requirements of a programmatic analysis and that of a site-specific analysis. The specificity of analysis can vary from document to document and agency to agency. As indicated, much of the variance is due to the different applications of programmatic NEPA documents.

Stakeholders often ask for a greater level of specificity of the environmental effects analysis at the programmatic level than agencies believe is necessary or even possible. Agencies that explain how specific, outstanding, or future actions will be addressed in subsequent tiered documents, and how the analyses will be vetted publicly, successfully complete and use programmatic documents.

The task force believes that guidance describing the content of programmatic documents should distinguish among the various uses (Table 1). Such guidance would help documentation become more comparable among agencies, provide better standards to evaluate requirements for the different uses of programmatic documents, help define public expectations, and increase public review and comment on programmatic NEPA documents.

3.4. Longevity of Programmatic Documents

A number of agencies and the public expressed frustration with uncertainties regarding the useful life of programmatic NEPA documents. Concerns were expressed that programmatic documents become quickly outdated depending on specificity and analysis. Several interests expressed concern that some programmatic documents have been used for tiering long after the environmental effects analysis has any relevancy. As a result, some interests would like to see CEQ establish a time frame for use of programmatic documents while others suggest imposing a time frame during which programmatic-level documents are viable and could not be challenged as outdated.

Most Federal agencies do not have a formal process or clearly defined time frames for the periodic reevaluation of programmatic documents. Currently, agencies that do evaluate the longevity of programmatic documents do so on as long as a 5- to a 15-year cycle. The task force found that agencies that have the greatest level of specificity in programmatic documents have the greatest difficulty in maintaining the viability and durability of these documents. Most agencies indicated that they oppose CEQ stipulating a time frame for reevaluating programmatic NEPA documents.

The difficulties associated with maintaining document relevance have led some agencies and members of the public to conclude that preparing programmatic NEPA

documents is not cost effective. However, supplemental NEPA analyses are effectively used to keep programmatic documents current. Documents that are in need of more extensive changes are entirely rewritten and distributed for comment as DEISs. Supplemental NEPA analyses should also mitigate concerns that site-specific actions tiered to older programmatic documents are at increased risk of legal challenge.

The task force believes that questions about the relevance of a programmatic document should be addressed by CEQ in greater detail than currently exists in the Forty Most Asked Questions Concerning CEQ's NEPA Regulations.⁵¹ CEQ should develop criteria for agencies to use when evaluating whether a programmatic document has become outdated and should articulate a general life expectancy for different programmatic documents. CEQ could develop the necessary guidance by using a work group or by obtaining advice from the Federal Advisory Committee recommended previously.

3.5. Links to Adaptive Management and Environmental Management Systems

Adaptive management is in an early stage of application in programmatic NEPA analyses. The “predict, mitigate, implement, monitor, and adapt” model of adaptive management is rarely fully incorporated at the programmatic NEPA level. When adaptive management is being used at the programmatic level, it assumes varied applications. Several agencies use the programmatic analysis to “predict, mitigate and implement,” and then they use research and monitoring to better understand ecosystem functions and linkages and adapt their actions and mitigation measures. These subsequent adaptive actions are modified or adapted based on the information gathered, and they typically require NEPA analysis and documentation. The task force agrees with many commentators who believe that adaptive management principles have great potential for programmatic NEPA analyses. Although the Adaptive Management and Monitoring chapter of this report does not distinguish programmatic from other NEPA analyses, the discussion is applicable to all programmatic analyses.

Additionally, the broad approach of some programmatic NEPA reviews and the holistic systems approach of environmental management systems are similar (e.g., facility-based reviews with a potential application of environmental management systems to land management facilities). Both environmental management systems and NEPA processes involve a review of activities to identify those with potentially significant environmental impacts and to implement measures to avoid, minimize, or eliminate the causes of adverse environmental impacts. Because of these and other similarities, the integration of environmental management systems and NEPA processes seems logical (see the Adaptive Management and Monitoring chapter of this report). However, the task force was unable find many examples where environmental management systems are integrated with NEPA analyses, or where they are clearly understood by Federal agency NEPA practitioners.

⁵¹ Council on Environmental Quality, “Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,” 46 Fed. Reg. 18,026 (Mar. 23, 1981), available at <http://ceq.eh.doe.gov/nepa/regs/40/40P1.htm>.

We encourage future interaction among NEPA practitioners and those charged with the development and implementation of agency environmental management systems. Integrating the NEPA process into agency environmental management systems appears to offer an opportunity to improve the development of environmental management systems and to further the environmental sustainability and enhancement policies contained in Section 101 of NEPA.⁵²

3.6. Issues and Recommendations

Throughout this chapter, the task force has discussed issues and recommendations that it believes CEQ should consider regarding guidance or changes to the regulations implementing NEPA. All the issues and recommendations are presented in this section.

To promote consistent, clear, cost-effective programmatic NEPA analyses, documents, and tiering that meet agency and stakeholder needs, the task force recommends that CEQ provide guidance to:

- ❖ Emphasize the importance of collaboration as agencies expand the use and scope of programmatic NEPA analyses.
- ❖ Include a section in the first tier document that explains the relationship between the programmatic analysis and document and future tiered analyses and documents, and describes how stakeholders will be involved.
- ❖ Emphasize that programmatic documents should explain where and when deferred issues that were raised by the public and/or regulatory agencies will be addressed, and describe the proposed temporal and spatial scales that will be used when analyzing those issues.
- ❖ Develop criteria for agencies to use when evaluating whether a programmatic document has become outdated, and articulate a general life expectancy for the different programmatic documents.

To assist in developing this guidance, CEQ could form a Federal Advisory Committee to provide advice or form a CEQ chartered work group.

The task force also recommends that CEQ convene a Federal Advisory Committee to aid in evaluating and improving understanding of the uses and purposes of programmatic NEPA analyses and documents by providing advice on:

- ❖ Validating the different uses of programmatic analyses.
- ❖ Examining whether programmatic NEPA analyses and documents for the different uses have similar scope, range of alternatives, and specificity of environmental analysis.

⁵² 42 U.S.C. § 4331.

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- ❖ Evaluating the depth and breadth of the analyses and documentation associated with the different uses of programmatic documents.
 - ❖ Proposing guidance or regulatory changes to clearly define the uses and appropriate scope, range of issues, depth of analyses, and the level of description required in NEPA analyses and documents.

3.7. Summary of Recommendations

The task force recommends that CEQ convene a Federal Advisory Committee to provide advice on the different uses of programmatic analyses, tiering, and associated documentation; and, where necessary, provide advice on guidance or regulatory change to clearly define the uses and appropriate scope, range of issues, depth of analyses, and the level of description required in NEPA documentation.

The task force also recommends that CEQ provide guidance to agencies about the importance of including future partners, stakeholders, and cooperating agencies in discussions early in the programmatic NEPA analysis process, so that concerns can be effectively and efficiently addressed in the subsequent tiered NEPA documents. CEQ should further clarify in guidance that programmatic NEPA documents should include a section that explains the relationship between the programmatic document and future tiered documents, including who will be involved in subsequent tiering, how and when they will be involved, how and where potential issues will be addressed, and the proposed temporal and spatial scales that will be used when analyzing those issues.

Lastly, the task force recommends that CEQ provide guidance about criteria for agencies to use to determine when an old programmatic NEPA analysis and document requires supplementation.