



United States Department of the Interior

OFFICE OF THE SECRETARY
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PEP – ENVIRONMENTAL STATEMENT MEMORANDUM NO. ESM 10-22

To: Heads of Bureaus and Offices

From: Willie R. Taylor, Director *Willie R. Taylor*
Office of Environmental Policy and Compliance

Subject: Standard Checklist for Use in Preparing National Environmental Policy Act (NEPA) Documents and for Complying with NEPA, Council on Environmental Quality, and Departmental Procedures

The requirements in this Environmental Statement Memorandum (ESM) are being issued under the authority provided to the Office of Environmental Policy and Compliance (OEPC) by 381 Departmental Manual (DM) 4.5B, to convey instructions and guidance through its Environmental Memoranda Series, and by 516 DM 3.2, which authorizes OEPC to provide advice and assistance to the Department on matters pertaining to environmental quality and for overseeing and coordinating the Department's compliance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations, and 516 DM 1.21, which authorizes OEPC to provide further guidance concerning NEPA.

1. Purpose and Scope

The purpose of this memorandum is to transmit guidance to be used by Bureaus and Offices to ensure uniform compliance with the policies and procedural requirements of NEPA, the CEQ regulations implementing NEPA, Departmental regulations at 43 CFR Part 46, and the Departmental Manual at Part 516 DM, Chapters 1-15.

2. NEPA Compliance Checklist

This guidance, in the form of a standard checklist (Attachment), is to be used by Bureaus and Offices while engaging in NEPA compliance to make certain that a series of commonly accepted steps and necessary questions are addressed during completion of the process. The checklist is intended to focus the efforts of decision makers and NEPA practitioners on the broad and common requirements of the NEPA process embodied in the statute, regulations, and the Department's policies and practices for managing its environmental responsibilities.

This memorandum replaces ESM06-2.

Attachment

DECISION MAKING AND NEPA COMPLIANCE CHECKLIST

Answering the following series of questions and addressing the bulleted items will aid the Department's Bureaus and Offices in preparing NEPA documents.

1. NEPA Application Considerations

Does the decision involve a "major federal action" that may have a "significant" impact on the quality of the human environment? (40 CFR § 1502.3)

A "major federal action" includes actions "with effects that may be major and which are potentially subject to Federal control and responsibility." (40 CFR § 1508.18) It includes: new and continuing activities; project and programs entirely or partly financed, assisted, conducted, regulated, or approved by a federal agency; new or revised agency rules, plans, policies, or procedures; and legislative proposals. (40 CFR § 1508.18(a)) Does the action meet any of these criteria?

"Major federal actions" generally fall into one of the following categories:

- Adoption of official policies and rules/regulations,
- Adoption of formal plans (e.g., a land use plan),
- Adoption of programs, and
- Approval of specific projects (e.g., projects implementing a land use plan). (40 CFR § 1508.18(b))

Does the action fall into one of these categories?

A "major federal action" does NOT include: Funding assistance solely in the form of general revenue sharing funds, (e.g., funds distributed under the State and Local Fiscal Assistance Act of 1972, 31 USC 1221 et. seq.) with no federal agency control over the use of the funds. Another example is Payments in Lieu of Taxes (or PILT) which are Federal payments to local governments that help offset losses in property taxes due to nontaxable Federal lands within their boundaries (31 USC 6901, et. seq.)(40 CFR § 1508.18(a)) Is the action one of these types?

2. Circumstances When There is a Major Federal Action, but NEPA Does Not Apply

Does the decision or action qualify as a major federal action that has been specifically exempted by Congress from the usual compliance with NEPA requirements? (Consult with your Solicitor)

Is the decision or action mandated by statute in such a way that there is no discretion as to whether NEPA applies and it can be reasoned that NEPA does not apply? (Consult with your Solicitor)

3. Initial Development/Internal Scoping

Is there a proposal for a Federal action? Has the bureau formulated a concise "proposal" and conducted internal scoping to define potential effects and alternatives? Can the potential effects (impacts) of the proposal, and all feasible alternatives to it, be meaningfully evaluated? If not, review the proposal to determine the appropriate level of NEPA documentation or develop a better definition of the proposed action.

Has the bureau or office developed a “purpose and need” statement?

Is the proposal a major Federal action having the potential to significantly affect the quality of the human or natural environment? If so, is an EIS planned? If not, why not?

Has NEPA compliance already been completed for this action in a previous document?

4. Categorical Exclusions

Does a Departmental, bureau, or office categorical exclusion exist that applies to the proposed action? If so, document this. See 43 CFR 46.215 which lists the 12 extraordinary circumstances.

Do any extraordinary circumstances exist as defined in the Departmental regulation that would disallow the option to categorically exclude the action from further NEPA analysis? If so, document this.

Is the proposed action one for which, in the absence of extraordinary circumstances or controversy, neither an EA nor an EIS would be required?

Does your bureau or office have any other specific guidance directing use of categorical exclusions that should be applied?

Bureaus and offices may not use another bureau’s or office’s categorical exclusion. Has this requirement been observed?

Has it been shown that a categorical exclusion applies, and that there are no extraordinary circumstances, and have these facts and the reasons for these facts been documented, thus demonstrating that the bureau or office’s NEPA compliance requirements have been fulfilled? Have all procedural requirements for actions that are categorically excluded been fulfilled?

Is the action subject to the five categories of statutory categorical exclusions established by Section 390 of the Energy Policy Act of 2005 which involve oil and gas operations under the program jurisdiction of BLM? (516 DM, Chapter 11) Note that use of these categorical exclusions is not subject to extraordinary circumstances.

5. Deciding Between an EA or EIS

Several important distinctions exist between an EA and an EIS and include the following:

- External Scoping. Scoping is the process by which a bureau or office obtains public input for determining the scope of the issues to be addressed in an EIS and for identifying the significant issues related to the proposed action. (40 CFR § 1501.7) The regulations provide that a bureau or office must go through the scoping process for an EIS (40 CFR §§ 1501.4(d) and 1501.7) Scoping is optional for an EA.
- Public involvement. For an EA, a bureau or office is required to “make diligent efforts to involve the public.” (40 CFR § 1506.6) Public involvement often includes notices of meetings, hearings, and the availability of the EA and/or FONSI. The regulations require a bureau or office to make a FONSI available for public review

in certain limited circumstances, i.e., when the proposed action is, or is closely similar to, one which normally requires an EIS, and when the nature of the proposed action is one without precedent. (40 CFR § 1501.4(e)(2)) Although there is no requirement to circulate a draft EA for public review and comment, this is one way to satisfy the requirement for public involvement. For an EIS, a bureau or office is required to circulate a draft EIS for public review and comment for a minimum of 45 days. (40 CFR §§ 1502.19 and 1503.1)

- FONSI. The second step in the NEPA process when a bureau or office prepares an EA is to then decide whether to prepare an EIS or whether to prepare a FONSI. A FONSI is defined as a document that explains why the proposed action will not have a significant effect on the human environment and for which an EIS therefore will not be prepared. (40 CFR § 1508.13) The FONSI is a separate document from the EA itself.
- Mitigated FONSI. A consistent and well-understood definition of a mitigated FONSI does not exist. A mitigated FONSI is used to reduce a project's adverse environmental effects below the significance threshold. The Council on Environmental Quality (CEQ) supports the use of mitigated FONSI's to reduce project impacts below the significance threshold. Courts also support agency decisions not to prepare an EIS upon adoption of mitigation measures.¹

Is the action one that normally requires the preparation of an EA under the individual bureau or office procedures in 516 DM?

Is the proposal one which normally requires an EIS under the individual bureau or office procedures in 516 DM?

If the action cannot be categorically excluded and is not an action normally requiring the preparation of an EIS, is it a candidate action for evaluation using an EA?

Has the scoping process been used to evaluate whether an EA or EIS is needed? Did you have a public participation plan for scoping? If a public participation plan for scoping was not used, why not?

Has the bureau or office determined that the impacts of a proposed action will be significant based on the "context" and "intensity" factors identified in 40 CFR § 1508.27?

Would an EA provide sufficient analysis for determining whether to prepare an EIS? Can the analysis support a Finding of No Significant Impact (FONSI)?

Would an EA aid in the bureau's compliance with NEPA or planning processes when no EIS is necessary?

Would an EA facilitate the preparation of an EIS if one were necessary? Or would it be more efficient to go directly to an EIS if one is needed?

¹ City of Auburn v. United States, 154 F.3d 1025, 1033 (9th Cir. 1998).

6. Developing the EA

Should a joint EA be developed to minimize duplication with state, tribal, or local procedures?

If the EA has been applicant-prepared, has the bureau made its own independent evaluation of the environmental issues and assumed responsibility for the scope and content of the EA?

Is the EA a concise document? (40 CFR § 1508.9) The Council on Environmental Quality (CEQ) has generally advised agencies to keep the length of EAs to no more than 10-15 pages. (CEQ; Forty Most Asked Questions; 36a.) Is the EA more than 15 pages? If it is more than 15 pages, can it be made more succinct and useful as a planning tool?

Does the EA include sufficient information, e.g., an explanation of the need for the proposed action, a discussion of the proposed action and an alternatives analysis if required under Section 102(2)(E) of NEPA, an impact assessment of the proposed action and alternatives, a list of agencies and persons consulted, and public participation disclosure?(40 CFR § 1508.9(b)). See 43 CFR 46.310(b) for exceptions to alternatives in an EA.

Has the impact analysis looked at such factors as the beneficial effects of the action, impacts on public health, the degree of controversy, cultural or historic resources, or threatened or endangered species? Has the EA considered reasonably foreseeable, direct and indirect impacts versus remote and/or speculative impacts?

Were cumulative impacts of the proposed action and alternatives analyzed and disclosed?

Was public review and comment allowed on the EA? Note that public comment is required for activities in floodplains and wetlands under EO 11514 § 2(b), Section 7, and other legal requirements such as §106.

Did the EA result in the preparation of a FONSI?

Does the FONSI, if one was prepared, explain the reasons why the action will not have a significant effect on the human or natural environment and thus will not result in the preparation of an EIS?

Do circumstances require the bureau or office to make the FONSI available for the public to review for 30 days before the bureau or office makes its final determination whether to prepare an EIS and before the action can begin? (Public review is necessary, for example, (a) if the proposal is a borderline case, i.e., when there is a reasonable argument for preparation of an EIS; (b) if it is an unusual case, a new kind of action, or a precedent setting case such as a first intrusion of even a minor development into a pristine area; (c) when there is either scientific or public controversy over the proposal; or (d) when it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS(CEQ; Forty Most Asked Questions;37b)).

Is the proposal a borderline situation, i.e., is there a reasonable argument for preparing an EIS, rather than an EA? If so, why not prepare one?

7. An EIS

Does the decision based on the EA, or on other relevant information, indicate the need to prepare an EIS? If so, prepare one. Or did initial review identify significant effects, and would it be more efficient to proceed directly to an EIS?

8. Cooperating Agencies (40 CFR §§ 1501.5 and 1501.6)

Have you invited eligible Federal, state, tribal and local governmental entities to become cooperating agencies (required for an EIS, or you must explain in the EIS why an eligible entity was denied cooperating agency status).

As the lead agency, did you establish a formal cooperating agency/lead agency relationship with a Memorandum of Understanding, Memorandum of Agreement, or other document that formally delineates the commitments and expectations of the lead and cooperating agencies?

9. Public Participation

Has a Notice of Intent to Prepare an Environmental Impact Statement been published in the *Federal Register*?

Is there an alternative that is supported by the affected community and stakeholders? If so, is this the preferred alternative?

Is staff trained in public participation practices? Did staff complete the required DOI Public Participation training? If not, training should occur before any public meeting is held.

Has public scoping been planned? Initiated? Completed? If not, what kind of public involvement is anticipated or did occur?

10. Tiered Analysis (40 CFR §§ 1502.20, 1508.28)

Did you consider using tiering from a larger analysis or from an existing programmatic EIS?

11. Incorporation by Reference

Did you consider incorporating a comparable analysis from a previous document? Is the analysis over 10 years old? If so, is it still relevant? Document the relevance. If not, have you attempted to obtain relevant information that is available at reasonable cost?

Does the EIS make use of incorporation by reference whenever and wherever it will cut down on bulk without impeding agency and public review of the action? (40 CFR § 1502.21)

Has the incorporated material been cited in the EIS and its content briefly described? (40 CFR § 1502.21)

Is the material incorporated by reference reasonably available for inspection by potentially interested persons within the time allowed for comment? (40 CFR § 1502.21)

12. Incomplete or Unavailable Information (40 CFR § 1502.22)

If a bureau or office has evaluated reasonably foreseeable significant adverse effects on the human environment in an EIS and there is incomplete or unavailable information, has the bureau or office made it clear that the information is lacking?

13. Adopting another Agency's NEPA Document (40 CFR §1506.3)

Can another agency's NEPA document, whether an EA or an EIS, be adopted for the proposal under consideration? Does the analysis meet the standards of the CEQ regulations?

Have you independently reviewed and evaluated the analysis and assumed the responsibility for scope and content of the document?

14. Format and Content

The following format in the prescribed order is recommended. Have you included all of the following components? Does the EIS contain the elements from the list below in the prescribed order? (40 CFR § 1502.10) Please explain any deviation from this format and these elements.

Cover sheet (not to exceed one page)?

Summary?

Table of contents?

Purpose of and need for action?

Alternatives including proposed action?

Affected environment?

Environmental consequences?

List of preparers?

List of Agencies, Organizations, and persons to whom copies of the statement are sent?

Index?

Appendices (if any)?

Does the "Purpose and Need" statement clearly specify the underlying need for why the agency is initiating the proposed action and the reasons for the choice of alternatives including the proposed action? (40 CFR § 1502.13) Does the range of alternatives, to a large extent, meet the objectives of the purpose of and need for the plan? (40 CFR § 1502.14)

Have proposals which are related closely enough to be, in effect, a single course of action been analyzed in a single EIS? If not, why not?

Was scoping initiated early and was it an open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action? (40 CFR § 1501.7)

Are the alternatives and the proposed action clearly presented and capable of being compared as to their differing impacts? (40 CFR § 1502.14)

Do all alternatives sharply define the issues and show a clear basis for choice among them?

Do the decision maker and the public understand the options based on the comparison made among the alternatives?

Have all reasonable alternatives, including, where applicable, alternatives employing adaptive management strategies, been rigorously explored and objectively evaluated? (See 40 CFR § 1502.14 and 43 CFR Part 46.145).

Were any alternatives, identified during the scoping process, eliminated from detailed study? If so, have the reasons been thoroughly explained? (40 CFR § 1502.14)

Were the alternatives chosen for detailed study awarded sufficient analysis to allow proper evaluation of their comparative merits, including a comparison of potential impacts and environmental consequences?

Did you include any reasonable alternatives that are not within the jurisdiction of the lead agency? If not, why not? These alternatives, too, should be included.

Did you include a “no action” alternative? (See 40 CFR § 1502.14(d)) and 43 CFR Part 46.30).

Does the EIS succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration? (40 CFR § 1502.15)

Does the environmental consequences section include the environmental impacts of the alternatives and the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man’s environment and the maintenance of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented? (40 CFR § 1502.16) This section should not duplicate discussions in the comparison of alternatives section. (See 40 CFR § 1502.14)

Have you considered and included any needed mitigation? (40 CFR § 1502.14(f), 1508.20)

Is the draft more than 150 pages? (40 CFR § 1502.7) Why is this length necessary? Is it possible to use tiered or transferred analyses? Is it possible to incorporate by reference?

Did you allow at least 45 days for public comment? (40 CFR § 1506.10(c) and (d)) If not why not (must be a compelling reason)?

Did you make the Draft EIS available for public review and invite comments? (40 CFR §§ 1503.1–1503.3)

Did you respond to all substantive comments in your final document? How? Did you revise relevant analyses, introduce new data and findings, or provide the basis for refuting a comment? (40 CFR § 1503.4)

Based on the responses to comments, are the changes to the Final EIS confined to minor corrections? Do the changes warrant preparing an abbreviated Final EIS?

Have you integrated all mitigation measures for the selected action into the bureau's or office's environmental management system (EMS) so that its implications and tracking for potentially years after the record of decision is signed can be easily facilitated?

Does the cover sheet include a list of the responsible agencies including the lead agency and any cooperating agencies? (40 CFR § 1502.11(a))

Does the cover sheet include the title of the proposed action that is the subject of the EIS—if appropriate the titles of related cooperating agency actions should be included—together with the State(s) and county(ies) (or other jurisdiction, if applicable) where the action is located? (40 CFR § 1502.11(b))

Does the cover sheet contain the name and complete contact information of the person who can supply additional information about the EIS? (40 CFR § 1502.11(c))

Does the cover sheet indicate the designation of the EIS as a Draft, Final, or Draft or Final supplement? Does the cover sheet include a one paragraph abstract of the EIS? (40 CFR §§ 1502.11(d), (e))

Does the Draft EIS identify the agency's preferred alternative or alternatives, if one or more exists? Does the Final EIS identify such alternative unless another law prohibits the expression of such a preference? (40 CFR § 1502.14(e)) Is there a reason why such an alternative may not have been identified in either the Draft or Final EIS?

Is the treatment of the environmental consequences scientific and analytical? (40 CFR § 1502.16) Does the analysis focus on significant issues and support the comparisons among the alternatives? Can readers make an informed comparison among the alternatives based on the scientific analysis of the environmental consequences associated with each alternative?

Have you properly acknowledged and/or referenced all sources of data and scientific findings used in the analysis?

Does the environmental consequences section clearly show the impacts likely to be associated with each of the impact producing factors that would occur from the adoption of any of the studied alternatives? Is there a clear demonstration of cause and effect?

Is there a clear discussion of any adverse environmental effects which could not be avoided if the proposal or any of the alternatives were implemented? (40 CFR § 1502.16)

Is there a clear discussion of the relationship between short-term uses of the human and natural environment and the maintenance of long-term productivity? (40 CFR § 1502.16)

Did you include a necessary discussion of any irreversible or irretrievable commitment of resources which would result if the proposal were implemented? (40 CFR § 1502.16)

Do all analyses of the environmental consequences include an even-handed treatment of all alternatives including the proposed action and the "no action" alternative although one or more of the alternatives may be unlikely (or less likely) to be selected?

Did you discuss the direct effects, the indirect effects, and the cumulative effects and their significance? (40 CFR §§ 1502.16, 1508.8)

Is there an analysis of the possible conflicts between the proposed action and any objectives of the Federal, regional, State, local or Indian Tribal land-use plans, policies, and controls for the area concerned? (40 CFR § 1502.16(c))

Is there a discussion of the energy requirements and conservation potential of the various alternatives and mitigation measures? (40 CFR § 1502.16(e))

Is there a discussion of natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures? (40 CFR § 1502.16(f))

Does the EIS discuss urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures? (40 CFR § 1502.16(g))

In the analysis, were any mitigation measures not already included in the proposed action or alternatives discussed? Did you include a means to mitigate adverse environmental impacts if not otherwise fully covered elsewhere? (40 CFR § 1502.16(h))

Have the mitigation measures beyond those required by applicable Federal, state, and local regulation been described in sufficient detail to allow assessment of their potential effectiveness to reducing any impacts?

Is the EIS a “full disclosure” document? Are all major points of view on the environmental impacts and the alternatives, including the proposed action discussed appropriately?

Is it written in plain language? (40 CFR § 1502.8) Were graphics used to ensure brevity and to enhance analytical adequacy? Were the graphics readily understandable to the general public?

Did preparation of the EIS use an interdisciplinary approach to insure the integrated use of natural and social sciences and the environmental design arts? (40 CFR § 1502.6)

Were the disciplines of the preparers appropriate to the scope and issues of the analysis? Was a multidisciplinary team used?

Does the Final EIS respond fully, objectively, and completely to the substantive comments submitted on the Draft EIS? How? Did you revise relevant analyses, introduce new data and findings, or provide the basis for refuting a comment? (40 CFR § 1503.4)

Are responsible alternatives to scientific inquiry, such as traditional knowledge, which are not discussed in the Draft EIS, acknowledged and properly, respectfully, and professionally addressed in the Final EIS?

Is your agency’s response to the issues raised appropriate and clearly articulated? Did you make a substantial change to the proposed action that is relevant to the environmental concerns that would warrant preparing a supplement to the Draft or Final EIS? (40 CFR § 1502.9(c))

Are there significant new circumstances or information relevant to the environmental concerns and that bear on the proposed action or its impacts that would warrant such an action, i.e., a supplement to an EIS? Would the purposes of NEPA be served by preparing a supplement? (40 CFR § 1502.9(c))

Does your agency have procedures in place for introducing a supplement to an EIS into the formal administrative record? Are these procedures known by bureau and office NEPA practitioners?

If you have the need to supplement an EIS, are you aware that the supplement must be prepared, circulated, and filed with the Environmental Protection Agency in the same fashion (exclusive of scoping) as a Draft and Final EIS unless alternative procedures are approved by CEQ? (40 CFR § 1502.9 (c) (4))

15. Documenting the Decision When the EA or EIS Has Been Completed

The bureau or office decision is separate from the NEPA process and should not be included as part of the supporting NEPA document, whether categorical exclusion documentation, EA, or EIS. Has it been kept separate?

If the bureau or office has prepared an EA and a FONSI, it should prepare a Decision Record (DR). The DR briefly explains the decision that the bureau or office is making and the NEPA analysis upon which the decision is based. Has such a DR been prepared?

If a bureau or office has prepared an EIS, a concise public Record of Decision (ROD) is needed which briefly explains the decision that the bureau or office is making and the NEPA analysis upon which it is based. Does the ROD do this? (40 CFR § 1505.2)

16. Effective Date of the Decision Based on an EA or an EIS

In the case of an EIS, has a minimum of 90 days passed from the time that EPA has published the Notice of Availability of a Draft EIS in the *Federal Register* before a decision based on the EIS has been made? (40 CFR § 1506.10(b)(1))

In the case of an EIS, has a minimum of 30 days passed from the time that EPA has published the Notice of Availability of the Final EIS in the *Federal Register* before a decision based on the EIS has been made? (40 CFR § 1506.10(b) (2))

For an EA, a decision cannot be effective until 30 days after issuance of the Decision Record. Has sufficient time elapsed?

17. Miscellaneous

Emergencies. The CEQ regulations provide that when an emergency makes it necessary to take an action likely to have significant environmental effects without following the procedures in the regulations, the bureau or office should consult with CEQ about "alternative arrangements." (40 CFR § 1506.11) Alternative arrangements do not mean that the bureau or office can forgo any NEPA analysis. Alternative arrangements generally provide a process for the bureau or office to

complete its NEPA analysis after it has taken the emergency action. Have you taken an emergency action where these conditions may apply? Have alternative arrangements been made?

18. References for Preparation of NEPA Documents

The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347)
Council on Environmental Quality regulations for Implementing The Procedural Provisions of the National Environmental Policy Act (40 C.F.R. Parts 1500-1508)

Council on Environmental Quality Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act regulations (46 Fed. Reg. 18026 (March 23, 1981))
Department of the Interior regulations at 43 C.F.R Part 46
Department of the Interior, Departmental Manual (Part 516 DM, Chapters 1-15)

Individual Bureau and Office NEPA Handbooks

Notes:

1. This attachment may be revised as necessary without revising the entire ESM.
2. This attachment is dated March 10, 2010.