



United States Department of the Interior

Office of the Secretary
Washington, D.C. 20240

PEP - ENVIRONMENTAL STATEMENT MEMORANDUM NO. ESM 13-12¹

To: Heads of Bureaus and Offices

From: Michaela E. Noble, Director /s/ 09/24/2018
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 (CEQ), and Departmental Procedures

PURPOSE

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](#).

NEPA COMPLIANCE CHECKLIST

This guidance, in the form of a standard checklist (Attachment), is recommended for use 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.

¹ The guidance 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.

GENERAL

This memorandum is not intended to, and does not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Additionally, nothing in this guidance is intended to affect the authority and responsibility of the United States Department of Justice with respect to the conduct of litigation on behalf of the United States.

This memorandum replaces ESM 10-22.

Attachment

ATTACHMENT TO ESM 13-12

DECISION MAKING AND NATIONAL ENVIRONMENTAL POLICY ACT (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,
- 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 the Office of the 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 the Office of the 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.
([43 CFR § 46.100](#))

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 environmental impact statement (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 ([43 CFR § 46.210](#)), bureau, or office categorical exclusion (CE) exist that applies to the proposed action? Bureaus and offices may not use another bureau’s or office’s CE (unless provided for by a specific CE), or that of any other Federal agency.

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? See [43 CFR § 46.215](#), which lists the 12 extraordinary circumstances.

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

Has it been shown that a CE applies, and that there are no extraordinary circumstances, thus demonstrating that the bureau or office’s NEPA compliance requirements have been fulfilled?

5. Deciding Between an environmental assessment (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. ([43 CFR § 46.235](#))

- Public involvement. For an EA, a bureau or office is required to “make diligent efforts to involve the public.” ([40 CFR § 1506.6](#)) ([See also 43 CFR § 46.305](#)) 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 a Finding of No Significant Impact (FONSI) is warranted. A FONSI documents the rationale for 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 includes the EA itself, or a summary of the EA.
- Mitigated FONSI. A mitigated FONSI documents that a project’s adverse environmental effects will be reduced below the significance threshold by the application of mitigation measures approved in the decision-making authorizing the project.²
- Courts also support agency decisions not to prepare an EIS upon adoption of mitigation measures.³

Is the proposed 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 proposed 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?

² See [CEQ’s January 14, 2011 memorandum, *Appropriate Use of Mitigation Monitoring and Appropriate Use of Mitigated Findings of no Significant Impact*](#).

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

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](#)?

Can the analysis support a 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? ([43 CFR § 46.300](#))

6. Developing the EA (43 CFR Subpart D)

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](#))⁴ Can the EA be made more succinct and useful as a planning tool?

Does the EA comply with the Deputy Secretary’s August 6, 2018, memorandum on [Additional Direction for Implementing Secretary’s Order 3355 Regarding Environmental Assessments](#)?

Does the EA provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact? ([40 CFR § 1508.9\(b\)](#))

The EA must include the following:

- brief discussions of the need for the proposal,
- brief discussions of alternatives as required by [Section 102\(2\)\(E\) of NEPA](#),

⁴ The [CEQ Forty Most Asked Questions](#), question 36a issued in 1981 indicated that 10-15 pages is generally appropriate for EAs. However, CEQ states in its memo [Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act](#) from March 6, 2012 that this guidance must be balanced with the requirement to take a hard look at the impacts of the proposed action. An EA's length should vary with the scope and scale of potential environmental problems.

- brief discussions of the environmental impacts of the proposed action and alternatives, and
- a listing of agencies and persons consulted.

See [43 CFR § 46.310\(b\)](#) for exceptions to alternatives in an EA.

Has the impact analysis looked at such factors as the anticipated beneficial effects of the proposed 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?

What kind of public involvement in the preparation of the EA was conducted, if any? ([43 CFR § 46.305](#)) If no public involvement opportunity was provided, why not?

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?⁵

Is the proposal a borderline situation, i.e., is there a reasonable argument for preparing an EIS, rather than an EA?

7. Cooperating Agencies ([40 CFR §§ 1501.5 and 1501.6](#). See also [43 CFR § 46.230](#))

Have you invited eligible Federal, state, tribal and local governmental entities to become cooperating or participating 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 comply with pre-existing, applicable Memoranda of Understanding or 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?

⁵ 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. ([40 CFR § 1501.4\(e\)\(2\)](#) and CEQ; Forty Most Asked Questions; [37b](#))

8. 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? ([43 CFR § 46.110](#))

Is staff trained in public participation practices? 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? ([43 CFR § 46.435](#))

9. Tiered Analysis ([40 CFR §§ 1502.20, 1508.28](#))

Did you consider using tiering from an analysis broader in scope, or from an existing programmatic EIS?

10. 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 accurately cited in the EIS and its content briefly described? ([40 CFR § 1502.21](#) and [43 CFR § 46.135](#))

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

11. Incomplete or Unavailable Information ([40 CFR § 1502.22](#) and [43 CFR § 46.125](#))

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?

12. Adopting another Agency's NEPA Document

Can another agency's NEPA document, whether an EA ([43 CFR § 46.320](#)) or an EIS ([40 CFR § 1506.3](#)), 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?

13. EIS Format and Content

The following format in the prescribed order is recommended. Have you included all of the following components?

- 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](#); [43 CFR § 46.420\(a\)](#))

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

Does the range of alternatives only include reasonable alternatives that meet the objectives of the purpose of and need for the plan? ([40 CFR § 1502.14](#); [43 CFR § 46.420\(c\)](#))

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 as 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 § 46.145](#))

Were any alternatives, identified during the scoping process, eliminated from detailed study? If so, have the reasons been documented? ([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?

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\(f\)](#) and [1508.20](#))⁶

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

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

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 address all substantive comments? How? Did you revise relevant analyses, introduce new data and findings, or provide the basis for refuting a comment? ([40 CFR § 1503.4](#))

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

⁶ See CEQ's January 14, 2011, memo on [Appropriate Use of Mitigation and Monitoring and Clarifying Appropriate Use of Mitigated Findings of No Significant Impact](#).

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 cover sheet include a box showing the estimated lead agency total costs associated with developing and producing the EIS?⁷

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 substantive and 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?

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\(e\)](#))

⁷ See Deputy Secretary's July 23, 2018, memo on [Reporting Costs Associated with Developing Environmental Impact Statements](#).

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 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?

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 decision file?

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 \(c\) \(4\)](#))

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

The bureau or office decision is separate from the analysis and should not be included as part of the supporting EA or EIS document. Has it been kept separate?

Does the decision file comply with the Deputy Secretary's April 27, 2018 memorandum on [Compiling Contemporaneous Decision Files](#)?

If the bureau or office has prepared an EA and a FONSI, the FONSI should briefly explain why a proposed action will not have a significant effect on the human environment. ([40 CFR § 1508.13](#)) The responsible official's decision may be documented along with the FONSI or in a separate decision record. (Note that if an EA has been prepared and the decision is to prepare an EIS or that no further action will be taken on the proposal, a FONSI is not required.) Has such documentation 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](#))

15. 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\(b\) \(2\)](#))

In the case of an EA prepared for a proposed action that is without precedent, or is similar to one which normally requires the preparation of an environmental impact statement, the finding of no significant impact must be made available for public review for 30 days before the bureau makes its final determination ([40 CFR § 1501.4\(e\)\(2\)](#)). Has sufficient time elapsed?

16. 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. Department of the Interior regulations at [43 CFR § 46.150](#) set forth a procedure for taking emergency actions and for consulting

with the Office of Environmental Policy and Compliance. Are you proposing to take an emergency action?⁸ Have the provisions of the regulations been followed?

This attachment may be revised as necessary without revising the entire ESM.
This attachment is dated September 19, 2018.

⁸ See additional guidance in Environmental Statement Memorandum (ESM) 13-3 on *National Environmental Policy Act (NEPA) Compliance in Emergency Situations*.