

Series: Environmental Quality  
 Part 516: National Environmental Policy Act of 1969  
 Chapter 2: Initiating the NEPA Process  
 Originating Office: Office of Environmental Policy and Compliance

## 516 DM 2

### 2.1 Purpose

This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to initiating the NEPA process. The numbers in parentheses signify the appropriate citation in the CEQ Regulations.

### 2.2 Apply NEPA Early (40 CFR 1501.2)

A. Bureaus shall initiate early consultation and coordination with other bureaus and any Federal agency having jurisdiction by law or special expertise with respect to any environmental issue that should be addressed, and with appropriate Federal, State, local and Indian tribal governments authorized to develop and enforce environmental standards or to manage and protect natural resources.

B. Bureaus shall also initiate the consultation process with interested parties and organizations at the time an application is received, or when the bureau initiates action on an agency plan or project requiring NEPA compliance.

C. Bureaus shall revise or amend program regulations, requirements, and directives to ensure that private or non-Federal applicants are informed of any environmental information required to be included in their applications and of any consultation with other Federal agencies, or State, local, or Indian tribal governments required prior to making the application. A discussion and a list of these regulations, requirements, and directives are found in 516 DM 6.4 and 6.5. The specific regulations, requirements, and directives for each bureau are found in separate chapters of this Part beginning with Chapter 8.

D. It is imperative that bureaus enlist the participation of all stakeholders as early as possible (including any necessary community-based training) in order to reduce costs, prevent delays, and to promote efficiency in the NEPA process. It is the intent of these procedures to achieve early consensus on the scope of NEPA compliance and the methodologies for collecting needed baseline data. Consensus-based management [as described in 516 DM 1.5(A)(1)] should be used to facilitate this process. Further, it is the intent of these procedures to avoid the late introduction of issues and alternatives that should have been identified initially during scoping.

E. Bureaus shall engage in a rigorous interdisciplinary approach at the earliest possible time to ensure adequate identification and consideration of the wide variety of environmental factors and considerations inherent in NEPA compliance activities.

### 2.3 Whether To Prepare an Environmental Impact Statement (EIS) (40 CFR 1501.4)

#### A. Categorical Exclusions (CX) (40 CFR 1508.4)

(1) The following criteria will be used to determine actions to be categorically excluded from the NEPA process: (a) The action or group of actions would have no significant individual or cumulative effect on the quality of the human environment [NEPA; Section 102(2)(c)]; and (b) The action or group of actions would not involve unresolved conflicts concerning alternative uses of available resources [NEPA; Section 102(2)(e)].

(2) Based on the above criteria, the classes of actions listed in Appendix 1 to this Chapter are categorically excluded, Department-wide, from the NEPA process. A list of CX specific to bureau programs will be found in the bureau chapters beginning with Chapter 8. Note that 1508.18(a) excludes judicial or administrative civil or criminal enforcement actions.

(3) The CEQ Regulations at 40 CFR 1508.4 require agency procedures to provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect thus requiring additional analysis and action. The exceptions to categorical exclusions listed in Appendix 2 of this Chapter apply to extraordinary circumstances in which a normally excluded action may have a significant environmental effect. Any action that is normally categorically excluded must be subjected to sufficient environmental review to determine whether it meets any of the extraordinary circumstances, in which case, environmental documents must be prepared for the action. Bureaus are reminded and encouraged to work within existing administrative frameworks, including any existing programmatic agreements, when deciding how to apply any of the Appendix 2 extraordinary circumstances.

#### B. Environmental Assessment (EA) (40 CFR 1508.9)

See 516 DM 3. Decisions/actions which would normally require the preparation of an EA will be identified in each bureau chapter beginning with Chapter 8.

#### C. Finding of No Significant Impact (FONSI) (40 CFR 1508.13)

A FONSI will be prepared as a separate covering document based upon a review of an EA. Accordingly, the words *include(d)* in Section 1508.13 should be interpreted as *attach(ed)* in reference to the EA.

#### D. Notice of Intent (NOI) (40 CFR 1508.22.)

An NOI will be prepared as soon as practicable after a decision to prepare an EIS and shall be published in the **Federal Register**, with a copy to the OEPC and made available to the affected public in accordance with Section 1506.6. Publication of an NOI may be delayed if there is proposed to be more than three (3) months between the decision to prepare an EIS and the time preparation is actually initiated. The notice, at a minimum, identifies key personnel, sets forth a schedule, and invites early comment. Scoping requests generally announce a

schedule for scoping meetings where the agencies and the public can participate in the formal scoping process. These notices are also usually published in the **Federal Register** and may contain the text of a draft scoping document. The draft scoping document may also be made available upon request to a contact usually named in the notice.

#### E. Environmental Impact Statement (40 CFR 1508.11)

See 516 DM 4. Decisions/actions which would normally require the preparation of an EIS will be identified in each bureau chapter beginning with Chapter 8.

F. Existing environmental analyses should be used in analyzing impacts of a proposed action to the extent possible and appropriate. CEQ Regulations encourage agencies to make the best use of existing NEPA documents and to avoid redundancy and unneeded paperwork through supplementing, incorporating by reference, or adopting previous environmental analyses. Use of existing documents carries with it a presumption that the bureaus will determine, in a deliberative manner and through agency procedures, that existing environmental analyses still adequately cover current actions.

### 2.4 Lead Agencies (40 CFR 1501.5)

A. The AS/PMB shall designate lead bureaus within the Department when bureaus under more than one Assistant Secretary are involved and cannot reach agreement on lead bureau status. The AS/PMB shall represent the Department in consultations with CEQ or other Federal agencies in the resolution of lead agency determinations.

B. Bureaus will inform the OEPC of any agreements to assume lead agency status. OEPC will assist in the coordination and documentation of any AS/PMB designations made in 2.4A.

C. To eliminate duplication with State and local procedures, a non-Federal agency (including Indian tribal governments) may be designated as a joint lead agency when it has a duty to comply with State or local requirements that are comparable to the NEPA requirements.

D. In general, 40 CFR 1501.5 describes the selection of lead agencies, the settlement of lead agency disputes, and the concept of joint lead. While the joint lead relationship is not precluded among several Federal agencies, the Department recommends that it be applied sparingly. Instead, the Department recommends that one Federal agency be selected as the lead with the remaining Federal, State, Indian tribal governments, and local agencies assuming the role of cooperating agency. In this manner, the other Federal, State, and local agencies can ensure themselves that the ensuing NEPA document will meet their needs for adoption and application to their related decision, if one exists. If joint lead is dictated by other law, regulation, policy, or practice, then only one Federal agency may be the official filing agency for the EIS.

E. Lead agency designations may be required by law in certain circumstances.