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National Environmental Policy Act (NEPA)

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Basic Information

Basic Information

The National Environmental Policy Act (NEPA) [42 U.S.C. 4321 et seq.] was signed into law on January 1, 1970. The Act establishes national environmental policy and goals for the protection, maintenance, and enhancement of the environment, and it provides a process for implementing these goals within the federal agencies. The Act also establishes the Council on Environmental Quality (CEQ). The [complete text](#) of the law is available for review at NEPAnet. [EXIT Disclaimer](#)

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NEPA Requirements

Title I of NEPA contains a Declaration of National Environmental Policy which requires the federal government to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony. Section 102 requires federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach. Specifically, all federal agencies are to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment. These statements are commonly referred to as environmental impact statements (EISs). Section 102 also requires federal agencies to lend appropriate support to initiatives and programs designed to anticipate and prevent a decline in the quality of mankind's world environment.

Title II of NEPA establishes the Council on Environmental Quality (CEQ).

Oversight Of NEPA

The Council on Environmental Quality, which is headed by a fulltime Chair, oversees NEPA. A staff assists the Council. The duties and functions of the Council are listed in Title II, Section 204 of NEPA and include: gathering information on the conditions and trends in environmental quality; evaluating federal programs in light of the goals established in Title I of the Act; developing and promoting national policies to improve environmental quality; and

conducting studies, surveys, research, and analyses relating to ecosystems and environmental quality.

Implementation

In 1978, CEQ promulgated regulations [40 CFR Parts 1500-15081] implementing NEPA which are binding on all federal agencies. The regulations address the procedural provisions of NEPA and the administration of the NEPA process, including preparation of EISs. To date, the only change in the NEPA regulations occurred on May 27, 1986, when CEQ amended Section 1502.22 of its regulations to clarify how agencies are to carry out their environmental evaluations in situations where information is incomplete or unavailable.

CEQ has also issued guidance on various aspects of the regulations including: an information document on "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act", Scoping Guidance, and Guidance Regarding NEPA Regulations. Additionally, most federal agencies have promulgated their own NEPA regulations and guidance which generally follow the CEQ procedures but are tailored for the specific mission and activities of the agency.

The NEPA Process

The NEPA process consists of an evaluation of the environmental effects of a federal undertaking including its alternatives. There are three levels of analysis depending on whether or not an undertaking could significantly affect the environment. These three levels include: categorical exclusion determination; preparation of an environmental assessment/finding of no significant impact (EA/FONSI); and preparation of an environmental impact statement (EIS).

At the first level, an undertaking may be categorically excluded from a detailed environmental analysis if it meets certain criteria which a federal agency has previously determined as having no significant environmental impact. A number of agencies have developed lists of actions which are normally categorically excluded from environmental evaluation under their NEPA regulations.

At the second level of analysis, a federal agency prepares a written environmental assessment (EA) to determine whether or not a federal undertaking would significantly affect the environment. If the answer is no, the agency issues a finding of no significant impact (FONSI). The FONSI may address measures which an agency will take to reduce (mitigate) potentially significant impacts.

If the EA determines that the environmental consequences of a proposed federal undertaking may be significant, an EIS is prepared. An EIS is a more detailed evaluation of the proposed action and alternatives. The public, other federal agencies and outside parties may provide input into the preparation of an EIS and then comment on the draft EIS when it is completed.

If a federal agency anticipates that an undertaking may significantly impact the environment, or if a project is environmentally controversial, a federal agency may choose to prepare an EIS without having to first prepare an EA.

After a final EIS is prepared and at the time of its decision, a federal agency will prepare a public record of its decision addressing how the findings of the EIS, including consideration of alternatives, were incorporated into the agency's decision-making process.

EA And EIS Components

An EA is described in Section 1508.9 of the Council's NEPA regulations. Generally, an EA includes brief discussions of the following: the need for the proposal; alternatives (when there is an unresolved conflict concerning alternative uses of available resources); the environmental impacts of the proposed action and alternatives; and a listing of agencies and persons consulted.

An EIS, which is described in Part 1502 of the regulations, should include discussions of the purpose of and need for the action, alternatives, the affected environment, the environmental consequences of the proposed action, lists of preparers, agencies, organizations and persons to whom the statement is sent, an index, and an appendix (if any).

Federal Agency Roles

The role of a federal agency in the NEPA process depends on the agency's expertise and relationship to the proposed undertaking. The agency carrying out the federal action is responsible for complying with the requirements of NEPA. In some cases, there may be more than one federal agency involved in an undertaking. In this situation, a lead agency is designated to supervise preparation of the environmental analysis. Federal agencies, together with state, tribal or local agencies, may act as joint lead agencies.

A federal, state, tribal or local agency having special expertise with respect to an environmental issue or jurisdiction by law may be a cooperating agency in the NEPA process.

A cooperating agency has the responsibility to assist the lead agency by participating in the NEPA process at the earliest possible time; by participating in the scoping process; in developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise; and in making available staff support at the lead agency's request to enhance the lead agency's interdisciplinary capabilities.

Under Section 1504 of CEQ's NEPA regulations, federal agencies may refer to CEQ interagency disagreements concerning proposed federal actions that might cause unsatisfactory environmental effects. CEQ's role, when it accepts a referral, is generally to develop findings and recommendations, consistent with the policy goals of Section 101 of NEPA. The referral process consists of certain steps and is carried out within a specified time frame.

EPA's Role

The Environmental Protection Agency, like other federal agencies, prepares and reviews NEPA documents. However, EPA has a unique responsibility in the NEPA review process. Under Section 309 of the Clean Air Act, EPA is required to review and publicly comment on the environmental impacts of major federal actions including actions which are the subject of EISs. If EPA determines that the action is environmentally unsatisfactory, it is required by Section 309 to refer the matter to CEQ.

Also, in accordance with a Memorandum of Agreement between EPA and CEQ, EPA carries out the operational duties associated with the administrative aspects of the EIS filing process. The Office of Federal Activities in EPA has been designated the official recipient in EPA of all EISs prepared by federal agencies.

The Public's Role

The public has an important role in the NEPA process, particularly during scoping, in providing input on what issues should be addressed in an EIS and in commenting on the findings in an agency's NEPA documents. The public can participate in the NEPA process by attending NEPA-related hearings or public meetings and by submitting comments directly to the lead agency. The lead agency must take into consideration all comments received from the public and other parties on NEPA documents during the comment period.