

## Department of the Interior Departmental Manual

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**Effective Date:** 07/28/20

**Series:** Environmental Quality Programs

**Part 516:** National Environmental Policy Act of 1969

**Chapter 10:** Managing the NEPA Process--Bureau of Indian Affairs

**Originating Office:** Bureau of Indian Affairs

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### 516 DM 10

**10.1 Purpose.** This Chapter provides supplementary requirements for the Bureau of Indian Affairs (BIA) when implementing the Department's National Environmental Policy Act (NEPA) regulations at 43 CFR Part 46 and provisions of 516 DM 1 through 4.

#### 10.2 NEPA Responsibility.

A. The Assistant Secretary – Indian Affairs (AS/IA) oversees policies for all BIA programs, has responsibility for NEPA compliance for BIA programs, and reviews and acts on NEPA documents raised to the Assistant Secretary's level.

B. The Director, BIA, is responsible for: Oversight of the BIA NEPA program; direction and leadership for BIA environmental policy, coordination, and procedures; ensuring appropriate resources are available for NEPA compliance; and reviewing and taking action on NEPA documents raised to the Director's level.

C. The Director, BIA Office of Trust Services (OTS), manages the Central Office staff in the Division of Environmental and Cultural Resources Management who serve as the lead for BIA NEPA policy and guidance.

D. The Division of Environmental and Cultural Resources Management (DECRM) is responsible for advising and assisting Regional Offices, Agency Superintendents, and other field support personnel in their environmental activities. DECRM provides training on NEPA and acts as the BIA Director's liaison with Indian Tribal governments on NEPA. Information about BIA NEPA documents or the NEPA process can be obtained by contacting DECRM Staff.

E. Other BIA Central Office Directors and Division Chiefs are responsible for ensuring that the programs and activities they manage comply with NEPA.

F. BIA Regional Directors and Project Officers are responsible for: Ensuring NEPA compliance for all activities under their jurisdiction, providing advice and assistance to Agency Superintendents, and consulting with the Indian Tribes on environmental matters related to NEPA. BIA Regional Directors have the primary responsibility for approving actions on Indian

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trust lands and thus the bulk of the NEPA responsibility and expertise is in the BIA Regional Offices. Regional Directors and Project Officers are responsible for ensuring that trained staff members carry out NEPA compliance.

G. BIA Regional NEPA Coordinators are located at each Regional Office and advise the Regional Directors. The Regional NEPA Coordinators also advise and assist other BIA programs on NEPA compliance.

H. Agency Superintendents and Field Unit Supervisors are responsible for NEPA compliance and enforcement within their area of responsibility.

### 10.3 Guidance to Applicants and Tribal Governments.

#### A. Relationship with Applicants and Tribal Governments.

##### (1) Guidance to Applicants.

(a) An “applicant” is any organization or individual that proposes to undertake any activity that will require BIA action. Applicants may include Tribal governments, private entities, state and local governments or other Federal Agencies. BIA compliance with NEPA is congressionally mandated. The requirement for BIA NEPA compliance is initiated when a BIA action (43 CFR 46.100) is necessary in order to implement a proposed action.

(b) Applicants should contact the BIA official who has approval authority over the action to be taken. The BIA Agency Superintendent, Regional Director, and their NEPA staff are the main contacts for applicants seeking assistance on the NEPA process because they have primary responsibility for approving actions on Indian trust and restricted lands.

(c) If the applicant’s proposed action (43 CFR 46.30) will affect or involve more than one Tribal government, state or Federal Agency, or BIA, or where the action may be of state-wide or regional significance, the applicant should contact the respective BIA Regional Director(s) with jurisdiction over the area where the proposed action will occur. The Regional Director(s) has discretion to assign the lead NEPA compliance responsibilities to one Regional Office or, as appropriate, to one Agency Superintendent. From that point, the applicant will deal with the designated lead office.

(d) Since much of the applicant’s planning may take place outside the BIA system, the applicant should prepare a milestone chart for BIA use at the earliest possible stage in order to coordinate the efforts of BIA and the applicant. Early communication with the responsible BIA office will expedite determination of the type of NEPA documentation that is required for the proposed action.

##### (2) Guidance to Tribal Governments.

(a) Tribal governments may be applicants and/or be affected by a proposed action of BIA or another Federal Agency. When BIA determines that Tribal governments could

be affected by a proposed action, Tribal governments are to be consulted during the preparation of environmental documents and, at their option, may cooperate in the review or preparation of such documents. Regardless, the BIA retains sole responsibility and discretion in all NEPA compliance matters.

(b) Tribal programs, particularly those with Public Law 93-638, Contracts or Compacts, may prepare the necessary documents for NEPA compliance but the BIA has responsibility for the adequacy of the documents and for ensuring compliance with NEPA.

(c) Any Tribal proposed action that does not require BIA or other Federal approval, funding, or action is not subject to the NEPA process.

B. General Program Guidance. AS/IA has prepared a Guidebook (59 IAM 3-H) that provides guidance for NEPA compliance to all BIA programs and offices.

#### **10.4 Major Actions Normally Requiring an Environmental Impact Statement (EIS) or an Environmental Assessment (EA).**

A. The following BIA actions normally require the preparation of an EIS:

(1) Proposed mining contracts (for other than oil and gas), or the combination of a number of smaller contracts comprising a mining unit for:

(a) New mines of 640 acres or more, other than surface coal mines.

(b) New surface coal mines of 1,280 acres or more, or having an annual full production level of 5 million tons or more.

(2) Proposed water development projects which would, for example, inundate more than 1,000 acres, or store more than 30,000 acre-feet, or irrigate more than 5,000 acres of undeveloped land.

(3) Construction of a treatment, storage, or disposal facility for hazardous waste or toxic substances.

(4) Construction of a solid waste facility for commercial purposes.

B. If, for any of the above actions, it is proposed not to prepare an EIS, an EA will be developed in accordance with 40 CFR 1501.4(a)(2) and 43 CFR Part 46, Subpart D.

**10.5 Categorical Exclusions.** In addition to the actions listed in the Department's categorical exclusions at 43 CFR 46.210, the following BIA actions are hereby designated as categorical exclusions unless one or more extraordinary circumstances listed at 43 CFR 46.215 apply that would require an EA or EIS. These activities are single, independent actions not associated with a larger existing or proposed complex or facility.

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- A. Operation, Maintenance, and Replacement of Existing Facilities. Examples are normal renovation of buildings, road maintenance, and limited rehabilitation of irrigation structures.
- B. Transfer of Existing Federal Facilities to Other Entities. Transfer of existing operation and maintenance activities of Federal facilities to Tribal groups, water user organizations, or other entities where the anticipated operation and maintenance activities are agreed to in a contract, follow BIA policy, and no change in operations or maintenance is anticipated.
- C. Human Resources Programs. Examples are social services, education services, employment assistance, Tribal operations, law enforcement, and credit and financing activities not related to development.
- D. Administrative Actions and Other Activities Relating to Trust Resources. Examples are: Management of trust funds (collection and distribution), budget, finance, estate planning, wills, and appraisals.
- E. Self-Determination and Self-Governance.
- (1) Self-Determination Act contracts and grants for BIA programs listed as categorical exclusions or for programs in which environmental impacts are adequately addressed in earlier NEPA analysis.
  - (2) Self-Governance compacts for BIA programs listed as categorical exclusions or for programs in which environmental impacts are adequately addressed in earlier NEPA analysis.
- F. Rights-of-Way.
- (1) Rights-of-Way inside another right-of-way, or amendments to rights-of-way where no deviations from or additions to the original right-of-way are involved and where there is an existing NEPA analysis covering the same or similar impacts in the right-of-way area.
  - (2) Service line agreements to an individual residence, building, or well from an existing facility where installation will involve no clearance of vegetation from the right-of-way other than for placement of poles, signs (including highway signs), or buried power/cable lines.
  - (3) Renewals, assignments, and conversions of existing rights-of-way where there would be essentially no change in use and continuation would not lead to environmental degradation.
- G. Minerals.
- (1) Approval of permits for geologic mapping, inventory, reconnaissance, and surface sample collecting.

- (2) Approval of unitization agreements, pooling, or communitization agreements.
- (3) Approval of mineral lease adjustments and transfers, including assignments and subleases.
- (4) Approval of royalty determinations such as royalty rate adjustments of an existing lease or contract agreement.

H. Forestry.

- (1) Approval of free-use cutting, without permit, to Indian owners for on-reservation personal use of forest products, not to exceed 2,500 feet board measure when cutting will not adversely affect associated resources such as riparian zones, areas of special significance, etc.
- (2) Approval and issuance of cutting permits for forest products not to exceed \$5,000 in value.
- (3) Approval and issuance of paid timber cutting permits or contracts for products valued at less than \$25,000 when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
- (4) Approval of annual logging plans when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
- (5) Approval of Fire Management Planning Analysis detailing emergency fire suppression activities.
- (6) Approval of emergency forest and range rehabilitation plans when limited to environmental stabilization on less than 10,000 acres and not including approval of salvage sales of damaged timber.
- (7) Approval of forest stand improvement projects of less than 2,000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
- (8) Approval of timber management access skid trail and logging road construction when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
- (9) Approval of prescribed burning plans of less than 2,000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.
- (10) Approval of forestation projects with native species and associated protection

and site preparation activities on less than 2,000 acres when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(11) Harvesting live trees not to exceed 70 acres, requiring no more than 0.5 mile of temporary road construction. Such activities:

(a) Shall not include even-aged regeneration harvests or vegetation type conversions.

(b) May include incidental removal of trees for landings, skid trails, and road clearing.

(c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BIA or Tribal transportation systems and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract. Examples include, but are not limited to:

(i) Removing individual trees for sawlogs, specialty products, or fuelwood.

(ii) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

(12) Salvaging dead or dying trees not to exceed 250 acres, requiring no more than 0.5 mile of temporary road construction. Such activities:

(a) May include incidental removal of live or dead trees for landings, skid trails, and road clearing.

(b) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BIA or Tribal transportation systems and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(c) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as

necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

(d) For this categorical exclusion, a dying tree is defined as a standing tree that has been severely damaged by forces such as fire, wind, ice, insects, or disease, such that in the judgment of an experienced forest professional or someone technically trained for the work, the tree is likely to die within a few years. Examples include, but are not limited to:

(i) Harvesting a portion of a stand damaged by a wind or ice event.

(ii) Harvesting fire damaged trees.

(13) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than 0.5 miles of temporary road construction. Such activities:

(a) May include removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease; and

(b) May include incidental removal of live or dead trees for landings, skid trails, and road clearing.

(c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BIA or Tribal transportation systems and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

(d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract. Examples include, but are not limited to:

(i) Felling and harvesting trees infested with mountain pine beetles and immediately adjacent uninfested trees to control expanding spot infestations (a buffer); and

(ii) Removing or destroying trees infested or infected with a new exotic insect or disease, such as emerald ash borer, Asian longhorned beetle, or sudden oak death pathogen.

I. Land Conveyance and Other Transfers. Approvals or grants of conveyances and

I. Land Conveyance and Other Transfers. Approvals or grants of conveyances and other transfers of interests in land where no change in land use is planned.

J. Reservation Proclamations. Lands established as or added to a reservation pursuant to 25 U.S.C. 467, where no change in land use is planned.

K. Waste Management.

(1) Closure operations for solid waste facilities when done in compliance with other Federal laws and regulations and where cover material is taken from locations which have been approved for use by earlier NEPA analysis.

(2) Activities involving remediation of hazardous waste sites if done in compliance with applicable Federal laws such as the Resource Conservation and Recovery Act (P.L. 94-580), Comprehensive Environmental Response, Compensation, and Liability Act (P.L. 96-516) or Toxic Substances Control Act (P.L. 94-469).

L. Roads and Transportation.

(1) Approval of utility installations along or across a transportation facility located in whole within the limits of the roadway right-of-way.

(2) Construction of bicycle and pedestrian lanes and paths adjacent to existing highways and within the existing rights-of-way.

(3) Activities included in a "highway safety plan" under 23 CFR 402.

(4) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(5) Emergency repairs under 23 U.S.C. 125.

(6) Acquisition of scenic easements.

(7) Alterations to facilities to make them accessible for the elderly or handicapped.

(8) Resurfacing a highway without adding to the existing width.

(9) Rehabilitation, reconstruction, or replacement of an existing bridge structure on essentially the same alignment or location (e.g., widening, adding shoulders or safety lanes, walkways, bikeways, or guardrails).

(10) Approvals for changes in access control within existing right-of-ways.

(11) Road construction within an existing right-of-way which has already been acquired for a HUD housing project and for which earlier NEPA analysis has already been



prepared.

(12) Oversight of a Tribe's Tribal Transportation Program (TTP) activities under 25 CFR Part 170, when the categorical exclusions under NEPA at 23 CFR 771.117 governing the use of funds made available through title 23 apply to qualifying TTP projects involving the construction or maintenance of roads. (25 CFR 170.453)

M. Other.

(1) Data gathering activities such as inventories, soil and range surveys, timber cruising, geological, geophysical, archeological, paleontological, and cadastral surveys.

(2) Establishment of non-disturbance environmental quality monitoring programs and field monitoring stations including testing services.

(3) Actions where BIA has concurrence or co-approval with another Bureau and the action is categorically excluded for that Bureau.

(4) Approval of an Application for Permit to Drill for a new water source or observation well.

(5) Approval of conversion of an abandoned oil well to a water well if water facilities are established only near the well site.

(6) Approval and issuance of permits under the Archaeological Resources Protection Act (16 U.S.C. 470aa-11) when the permitted activity is being done as a part of an action for which a NEPA analysis has been or is being prepared.

(7) Approvals of leases, easements, or funds for single family homesites and associated improvements, including, but not limited to, construction of homes, outbuildings, access roads, and utility lines, which encompass five acres or less of contiguous lands, provided that such sites and associated improvements do not adversely affect any Tribal cultural resources or historic properties and are in compliance with applicable Federal and Tribal laws. Home construction may include up to four dwelling units, whether in a single building or up to four separate buildings.

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