

## Department of the Interior Departmental Manual

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**Effective Date:** 9/1/09

**Series:** Environmental Quality Programs

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

**Chapter 4:** Review of Environmental Impact Statements and Project Proposals Prepared by Other Federal Agencies

**Originating Office:** Office of Environmental Policy and Compliance

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### 516 DM 4

#### 4.1 Purpose.

A. These procedures implement the policy and directives of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (NEPA); Section 2(f) of Executive Order No. 11514 (March 5, 1970); the Council of Environmental Quality (CEQ) Regulations, 40 Parts 1500-1508; Bulletin No. 72-6 of the Office of Management and Budget (September 14, 1971); and provide guidance to bureaus and offices of the Department in the review of Environmental Impact Statements (EISs) prepared by and for other Federal agencies.

B. In accordance with 112 DM 4.2F, these procedures further govern the Department's environmental review of non-Interior proposals such as regulations, applications, plans, reports, and other environmental documents which affect the interests of the Department. Such proposals are prepared, circulated, and reviewed under a wide variety of statutes and regulations. These procedures ensure that the Department responds to these review requests with coordinated comments and recommendations under the Department's various authorities.

4.2 **Policy.** The Department considers it a priority to provide competent and timely review comments on EISs and other environmental or project review documents prepared by other Federal agencies for their major actions that significantly affect the quality of the human environment. All such documents are hereinafter referred to as "environmental review documents." The term "environmental review document" as used in this chapter is separate from and broader than the term "environmental document" found in 40 CFR 1508.10 of the CEQ Regulations. These reviews are predicated on the Department's jurisdiction by law or special expertise with respect to the environmental impact involved and shall provide constructive comments to other Federal agencies to assist them in meeting their environmental responsibilities.

#### 4.3 Responsibilities.

A. The Assistant Secretary - Policy, Management and Budget (AS/PMB) shall be the Department's contact point for the receipt of requests for reviews of environmental review

documents prepared by or for other Federal agencies. This authority shall be carried out through the Director, Office of Environmental Policy and Compliance (OEPC).

B. The Director, Office of Environmental Policy and Compliance.

(1) Shall determine whether such review requests are to be answered by a Secretarial Officer, the Director, OEPC, or by a Regional Environmental Officer (REO), and determine which bureaus and/or offices shall perform such reviews.

(2) Shall prepare, or where appropriate, shall designate a lead bureau responsible for preparing the Department's review comments. The lead bureau may be a bureau, Secretarial office, other Departmental office, or task force and shall be that organizational entity with the most significant jurisdiction or environmental expertise in regard to the requested review.

(3) Shall establish review schedules and target dates for responding to review requests and monitor their compliance.

(4) Shall review, sign, and transmit the Department's review comments to the requesting agency.

(5) Shall consult with the requesting agency on the Department's review comments on an "as needed" basis to ensure resolution of the Department's concerns.

(6) Shall consult with the Office of Congressional and Legislative Affairs and the Solicitor when environmental reviews pertain to legislative or legal matters, respectively.

C. The Office of Congressional and Legislative Affairs shall ensure that requests for reviews of environmental review documents prepared by other Federal agencies that accompany or pertain to legislative proposals are immediately referred to the AS/PMB.

D. Regional Environmental Officers, when designated by the Director, OEPC, shall review, sign, and transmit the Department's review comments to the requesting agency.

E. Program Assistant Secretaries and Heads of Bureaus and Offices.

(1) Shall designate officials and organizational elements responsible for the coordination and conduct of environmental reviews and report this information to the Director, OEPC.

(2) Shall provide the Director, OEPC, with appropriate information and material concerning their delegated jurisdiction and special expertise in order to assist in assigning review responsibilities.

(3) Shall conduct reviews based upon their areas of jurisdiction or special expertise and provide comments to the designated lead bureau or office assigned responsibility for preparing the Department's comments.

(4) When designated lead bureau by the Director, OEPC, shall prepare and forward the Department's review comments as instructed.

(5) Shall ensure that review schedules for discharging assigned responsibilities are met and promptly inform other concerned offices if established target dates cannot be met and when they will be met.

(6) Shall provide a single, unified bureau response to the lead bureau, as directed.

(7) Shall ensure that the policies of 516 DM 4.2 regarding competency and timeliness are carried out.

(8) Shall provide the necessary authority to those designated in 4.3E(1) above to carry out all the requirements of 516 DM 4.

#### 4.4 **Types of Reviews.**

##### A. Descriptions of Proposed Actions.

(1) Federal agencies and applicants for Federal assistance may circulate descriptions of proposed actions for the purpose of soliciting information concerning environmental impacts in order to determine whether to prepare EISs. Such descriptions of proposed actions are not substitutes for EISs.

(2) Requests for reviews of descriptions of proposed actions are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

##### B. Environmental Assessments.

(1) Environmental Assessments are not substitutes for EISs. These assessments or reports may be prepared by Federal agencies, their consultants, or applicants for Federal assistance. They are prepared either to provide information in order to make a finding that there are no significant impacts or that an EIS should be prepared. If they are separately circulated, it is generally for the purpose of soliciting additional information concerning environmental impacts.

(2) Requests for reviews of EAs are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. If a bureau requests and OEPC agrees, a control number may be assigned with appropriate instructions. Review comments are for the purpose of providing informal

technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

C. Finding of No Significant Impact.

(1) Findings of No Significant Impact (FONSI) are prepared by Federal agencies to document that there is no need to prepare an EIS. A FONSI is a statement for the record by the proponent Federal agency that it has reviewed the environmental impact of its proposed action (in an EA), that it determines that the action will not significantly affect the quality of the human environment, and that an EIS is not required. Public notice of the availability of such findings shall be announced; however, FONSI are not normally circulated.

(2) FONSI are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues.

D. Notice of Intent and Scoping Requests.

(1) Notices of intent (NOI) and scoping requests mark the beginning of the formal review process. NOI are published in the Federal Register and announce that an agency plans to prepare an environmental review document under NEPA. Often the NOI and notice of scoping meetings and/or requests are combined into one Federal Register notice.

(2) Reviews of NOI and scoping requests are processed through the OEPC with instructions to bureaus to comment directly to the requesting agency. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

E. Preliminary, Proposed, or Working Draft Environmental Impact Statements.

(1) Preliminary, proposed, or working draft EISs are sometimes prepared and circulated by Federal agencies and applicants for Federal assistance for consultative purposes.

(2) Requests for reviews of these types of draft EISs are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

F. Draft Environmental Impact Statements.

(1) Draft EISs are prepared by Federal agencies under the provisions of Section 102(2)(C) of NEPA and provisions of the CEQ Regulations. They are filed with the Environmental Protection Agency (EPA) and officially circulated to other Federal, State, and local agencies (see 40 CFR 1503.1(a), 1506.9, 1506.10) for review based upon their jurisdiction

by law or special expertise with respect to the agency mission, related program experience, or environmental impact of the proposed action or alternatives to the action (see 4.5A(1)). They are presented to the public for review and comment as well (see 40 CFR 1503.1(a)(4); 43 CFR 46.435).

(2) All requests from other Federal agencies for review of draft EISs shall be made through the Director, OEPC. Review comments shall be handled in accordance with the provisions of this chapter and guidance memoranda may be issued and updated by the OEPC.

G. Final Environmental Impact Statements.

(1) Final EISs are prepared by Federal agencies following receipt and consideration of review comments. They are filed with the EPA and are circulated to the public for an administrative waiting period of thirty days and sometimes for comment.

(2) The Director, OEPC, shall review final EISs to determine whether they reflect adequate consideration of the Department's comments. Bureaus and offices shall not comment independently on final EISs, but shall inform the Director, OEPC, of their views. Any review comments shall be handled in accordance with the instructions of the OEPC.

H. License and Permit Applications.

(1) The Department receives draft and final environmental review documents associated with applications for other Federal licenses and permits. This activity largely involves the regulatory program of the Corps of Engineers and the hydroelectric and natural gas pipeline licensing programs of the Federal Energy Regulatory Commission (FERC).

(2) Environmental review of applications is generally handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

(3) While review of NEPA compliance documents associated with Corps of Engineers permit applications is managed in accordance with this chapter, review of Corps of Engineers permit applications is managed in accordance with 503 DM 1. Reviewers are referred to that Manual Part and to 4.5C(3) below for the processing of concurrent reviews.

I. Project Plans and Reports without Associated Environmental Review Documents.

(1) The Department receives draft and final project plans and reports under various authorities which do not have environmental review documents circulated with them. This may be because NEPA compliance has been completed, will be completed on a slightly different schedule, NEPA does not apply, or other reasons.

(2) Environmental review of these documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to

efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

J. Federal Regulations.

(1) The Department circulates and controls the review of advance notices of proposed rulemaking, proposed rulemaking, and final rulemaking which are environmental in nature, may impact the quality of the human environment, and may impact the Department's natural resources and programs.

(2) Environmental review of these documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

K. Documents Prepared Pursuant to Other Environmental Statutes.

(1) The Department receives draft and final project plans prepared pursuant to other environmental statutes [e.g., National Historic Preservation Act (NHPA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Resource Conservation and Recovery Act (RCRA), and the Oil Pollution Act (OPA)], which may not have environmental review documents circulated with them.

(2) Environmental review of these documents is handled consistently with the policies and provisions of this part, and in accordance with further guidance from the Director, OEPC. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

L. Section 4(f) Documents.

(1) Under Section 4(f) of the Department of Transportation Act, the Secretary of Transportation may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if there is no prudent and feasible alternative to using that land and the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

(2) Environmental review of Section 4(f) documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

#### 4.5 Content of Comments on Environmental Review Documents.

##### A. Departmental Comments.

(1) Departmental comments on environmental review documents prepared by other Federal agencies shall be based upon the Department's jurisdiction by law or special expertise with respect to the agency mission, related program experience, or environmental impact of the proposed action or alternatives to the action. The adequacy of the document in regard to applicable statutes is the responsibility of the agency that prepared the document and any comments on its adequacy shall be limited to the Department's jurisdiction or environmental expertise.

(2) Reviews shall be conducted in sufficient detail to ensure that both potentially beneficial and adverse environmental effects of the proposed action and alternatives, including cumulative and secondary effects, are adequately identified. Wherever possible, and within the Department's competence and resources, other agencies will be advised on ways to avoid or minimize adverse impacts of the proposed action and alternatives, and on alternatives to the proposed action that may have been overlooked or inadequately treated.

(3) Review comments should not capsule or restate the environmental review document, but should provide clear, concise, substantive, fully justified, and complete comments on the stated or unstated environmental impacts of the proposed action and, if appropriate, on alternatives to the action. Comments, either positive or negative, shall be objective and constructive.

(4) Departmental review comments shall be organized as follows:

(a) Control Number. The Departmental review control number shall be typed in the upper left hand corner below the Departmental seal on the letterhead page of the comments.

(b) Introduction. The introductory paragraph shall reference the other Federal agency's review request, including the date, the type of review requested, the subject of the review; and, where appropriate, the geographic location of the subject and the other agency's control number.

(c) General Comments, if any. This section will include those comments of a general nature and those which occur throughout the review which ought to be consolidated in order to avoid needless repetition.

(d) Detailed Comments. The format of this section shall follow the organization of the other agency's environmental review document. These comments shall not comment on the proposed actions of other Federal agencies, but shall constructively and objectively comment on the statement's adequacy in describing the environmental impacts of the action, the alternatives, and the impacts of the alternatives. Comments shall specify any corrections, additions, or other changes required to make the statement adequate.

(e) Summary Comments, if any. In general, the Department will not take a position on the proposed action of another Federal agency, but will limit its comments to those above. However, in those cases where the Department has jurisdiction by statute, Executive Order, memorandum of agreement, or other authority, the Department may comment on the proposed action. These comments shall be provided in this section and may take the form of support for, concurrence with, concern over, or objection to the proposed action and/or the alternatives.

B. Bureau and Office Comments. Bureau and office reviews of EISs prepared by other Federal agencies are considered informal inputs to the Department's comments and their content will generally conform to paragraph 4.5A of this chapter with the substitution of the bureau's or office's delegated jurisdiction or special environmental expertise for that of the Department.

C. Relationship to Other Concurrent Reviews.

(1) Where the Department, because of other authority or agreement, is concurrently requested to review a proposal as well as its EIS, the Department's comments on the proposal shall be separately identified and placed in front of the comments on the EIS. A summary of the Department's position, if any, on the proposal and its environmental impact shall be separately identified and follow the review comments on the EIS.

(2) Where another Federal agency elects to combine other related reviews into the review of the EIS by including additional or more specific information into the statement, the introduction to the Department's review comments will acknowledge the additional review request and the review comments will be incorporated into appropriate parts of the combined statement review. A summary of the Department's position, if any, on the environmental impacts of the proposal and any alternatives shall be separately identified and follow the detailed review comments on the combined statement.

(3) In some cases, the concurrent review is not an integral part of the environmental compliance review but is being processed within the same general time period as the environmental review. If there is also an environmental review being processed by the OEPC, there is potential for two sets of conflicting comments to reach the requesting agency. Bureaus must recognize that this possibility exists and must check with the Regional Environmental Officer to determine the status of any environmental review prior to forwarding the concurrent review comments to the requesting agency. Any conflicts must be resolved before the separate comments may be filed. One review may be held up pending completion of the concurrent review and consideration of filing a single comment letter. A time extension may be necessary and must be obtained if a review is to be held up pending completion of a concurrent review.

(4) The Department's intervention in another agency's adjudicatory process is also a concurrent review. Such reviews are governed by 452 DM 2 which must be consulted in applicable cases. The most common cases involve the Department's review of hydroelectric and



natural gas applications of FERC. In these cases, it is recommended that bureaus consult frequently with the appropriate attorney of record in the Office of the Solicitor.

#### **4.6 Availability of Review Comments.**

A. Prior to the public availability of another Federal agency's final EIS, the Department shall not independently release to the public its comments on that agency's draft EIS. In accordance with Section 1506.6(f) of the CEQ Regulations, the agency that prepared the statement is responsible for making the comments available to the public, and requests for copies of the Department's comments shall be referred to that agency. Exceptions to this procedure shall be made by the OEPC and the Office of the Solicitor.

B. The availability of various internal Departmental memoranda, such as the review comments of bureaus, offices, task forces, and individuals, which are used as inputs to the Department's review comments is governed by the Freedom of Information Act (5 U.S.C. Section 552) and the Departmental procedures established by 43 CFR 2. Upon receipt of such requests and in addition to following the procedures above in 4.6A, the responsible bureau or office shall notify and consult their bureau Freedom of Information Act Officer and the OEPC to coordinate any responses.

#### **4.7 Procedures for Processing Environmental Reviews.**

##### **A. General Procedures.**

(1) All requests for reviews of environmental review documents prepared by or for other Federal agencies shall be received and controlled by the Director, OEPC.

(2) If a bureau or office, whether at headquarters or field level, receives an environmental review document for review directly from outside of the Department, it should ascertain whether the document is a preliminary, proposed, or working draft circulated for technical assistance or input in order to prepare a draft document or whether the document is in fact a draft environmental review document being circulated for official review.

(a) If the document is a preliminary, proposed, or working draft, the bureau or office should handle independently and provide whatever technical assistance possible, within the limits of their resources, to the requesting agency. The response should clearly indicate the type of assistance being provided and state that it does not represent the Department's review of the document. Each bureau or office should provide the Regional Environmental Officer and the Director, OEPC, copies of any comments involving significant or controversial issues.

(b) If the document is a draft or final environmental review document circulated for official review, the bureau or office should inform the requesting agency of the Department's procedures in subparagraph (1) above and promptly refer the request and the document to the Director, OEPC, for processing.

(3) All bureaus and offices processing and reviewing environmental review documents of other Federal agencies will do so within the time limits specified by the Director, OEPC. From thirty (30) to forty-five (45) days are normally available for responding to other Federal agency review requests. Whenever possible the Director, OEPC, shall seek a forty-five (45) day review period. Further extensions shall be handled in accordance with paragraph 4.7B(3) of this chapter.

(4) The Department's review comments on other Federal agencies' environmental review documents shall reflect the full and balanced interests of the Department in the protection and enhancement of the environment. Lead bureaus shall be responsible for resolving any intra-Departmental differences in bureau or office review comments submitted to them. The OEPC is available for guidance and assistance in this regard. In cases where agreement cannot be reached, the matter shall be referred through channels to the AS/PMB with attempts to resolve the disagreement at each intervening management level. The OEPC will assist in facilitating this process.

**B. Processing Environmental Reviews.**

(1) The OEPC shall secure and distribute sufficient copies of environmental review documents for Departmental review. Bureaus and offices should keep the OEPC informed as to their needs for review copies, which shall be kept to a minimum, and shall develop internal procedures to efficiently and expeditiously distribute environmental review documents to reviewing offices.

(2) Reviewing bureaus and offices which cannot meet the review schedule shall so inform the lead bureau or office and shall provide the date that the review will be delivered. The lead bureau or office shall inform the OEPC in cases of headquarters-level response, or the REO in cases of field-level response, if it cannot meet the schedule, why it cannot, and when it will. The OEPC or the REO shall be responsible for informing the other Federal agency of any changes in the review schedule.

(3) Reviewing offices shall route their review comments through channels to the lead bureau or office, with a copy to the OEPC. When, in cases, of headquarters-level response, review comments cannot reach the lead bureau within the established review schedule, reviewing bureaus and offices shall send a copy marked "Advance Copy" directly to the lead bureau or office. Review comments shall also be sent to the lead bureau or office by electronic means to facilitate meeting the requesting agency's deadline.

(4) In cases of headquarters-level response.

(a) The lead bureau shall route the completed comments through channels to the OEPC in both paper copy and electronic word processor format. Copies shall be prepared and attached for all bureaus and offices from whom review comments were requested, for the OEPC, and for the REO when the review pertains to a project within a regional jurisdiction. In addition, original copies of all review comments received or documentation that none were

provided shall accompany the Department's comments through the clearance process and shall be retained by the OEPC.

(b) The OEPC shall review, secure any necessary additional surnames, surname, and either sign the Department's comments or transmit the Department's comments to another appropriate Secretarial Officer for signature. Upon signature, the OEPC shall transmit the comments to the requesting agency.

(5) In cases of field-level response.

(a) The lead bureau shall provide the completed comments to the appropriate REO in both paper-copy and electronic word processor format. In addition, original copies of all review comments received or documentation that none were provided shall be attached to the paper copy.

(b) The REO shall review, sign, and transmit the Department's comments to the agency requesting the review. In addition they shall reproduce and send the Department's comments to the regional bureau reviewers. The entire completed package including the bureau review comments shall be sent to the OEPC for recording and filing.

(c) If the REO determines that the review involves policy matters of Secretarial significance, they shall not sign and transmit the comments as provided in subparagraph (b) above, but shall forward the review to the OEPC in headquarters for final disposition.

C. Referrals of Environmentally Unsatisfactory Proposals to the Council on Environmental Quality.

(1) Referral to CEQ is a formal process provided for in the CEQ Regulations (40 CFR 1504). It is used sparingly and only when all other administrative processes have been exhausted in attempting to resolve issues between the project proponent and one or more other Federal agencies. These issues must meet certain criteria (40 CFR 1504.2), and practice has shown that these issues generally involve resource concerns of national importance to the Department.

(2) A bureau or office intending to recommend referral of a proposal to CEQ must, at the earliest possible time, advise the proponent Federal agency that it considers the proposal to be a possible candidate for referral. If not expressed at an earlier time, this advice must be outlined in the Department's comments on the draft EIS.

(3) CEQ referral is a high level activity that must be conducted in an extremely short time frame. A referring bureau or office has 25 days after EPA has published a notice of availability of the final EIS in the Federal Register in which to file the referral unless an extension is granted per 40 CFR 1504.3(b). The referral documents must be signed by the Secretary of the Interior.

(4) Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website at: <http://www.doi.gov/oepec/>, and consult with the OEPC for the most current review guidance.