



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

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## **PEP - ENVIRONMENTAL REVIEW MEMORANDUM NO. ERM 10-11**

To: Heads of Bureaus and Offices

From: Stephen G. Tryon, Director /s/ 06.28.2022  
Office of Environmental Policy and Compliance

Subject: Departmental Clearance Process for Environmental Impact Statements

### **PURPOSE**

The purpose of this memorandum is to transmit guidance for use by bureaus and offices (Bureaus) to improve the approval process for Environmental Impact Statements (EISs) in order to maximize efficiency, empower frontline decisionmakers, and focus Departmental leadership where most needed to ensure effective and efficient implementation of the Department's policies in analysis conducted pursuant to the [National Environmental Policy Act of 1969 \(NEPA\)](#). In addition, this guidance is intended to ensure uniform compliance with the policies and procedural requirements of [NEPA](#), the [Council on Environmental Quality \(CEQ\) regulations](#) implementing NEPA at [40 CFR Part 1500](#), Departmental NEPA regulations at [43 CFR Part 46](#), and the Departmental Manual at [Part 516 DM, Chapters 1-15](#).

### **SCOPE**

This memorandum applies to all bureaus and offices (Bureaus) that are authorized to carry out a major Federal action that is likely to significantly impact the quality of the human environment, and therefore requires preparation of EIS under NEPA. All EISs will be reviewed according to the guidance below as of the date of publication of this memorandum. In general, the review process starts with an initial screening prior to issuance of a Notice of Intent (NOI) to determine if Departmental review is necessary. For those EISs that require Departmental review, the full review process consists of formal briefings at the NOI, draft EIS, and final EIS stages, with an additional briefing at the end of scoping on an as needed basis. The review process concludes with a notification at the Record of Decision (ROD)<sup>1</sup>.

Using the information in the Department-wide NEPA Tracking Database ("the Database")<sup>2</sup> at <https://ecl.doi.gov/nepadocs.cfm>, the Office of Environmental Policy and Compliance (OEPC) will create a list of those proposed actions under analysis in an EIS for which a Bureau has issued, or plans to issue, a NOI and the EIS process has not concluded as of the date of this memorandum. Each Assistant Secretary will review the list of proposed actions within their area of responsibility and jointly determine with the Office of the Secretary and Deputy Secretary those actions/EIS reviews that will be subject to the Departmental Review Team (DRT) procedure outlined in this memorandum.

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<sup>1</sup> A visual representation of the review procedure is available on [OEPC's NEPA SharePoint site](#).

<sup>2</sup> Instructions on use of the Database can be found in Environmental Review Memorandum 10-9, *Entering Information into the Department's National Environmental Policy Act (NEPA) Tracking Database*.

## **GUIDANCE**

The first Senior Executive Service (SES) member with line authority over a Federal action (“Bureau Executive”) will bear ultimate responsibility to ensure their Bureau EIS team complies with the following EIS review processes. The Bureau Executive may delegate certain communications with the DRT to the staff responsible for leading the EIS effort within the Bureau, as appropriate. Further, at least one attorney in the Office of the Solicitor, based in the field, regionally, or in Washington, D.C. is to be incorporated as part of each EIS team, regardless of whether that EIS is subject to the DRT process or not.

### **A. Initial Action Database Entry and Review Process Determination**

When a Bureau determines to move forward with an EIS, following either receipt of a completed application from an external project proponent or an internal determination to pursue an action, the Bureau will complete the initial action fields within the Database consistent with the guidance in Environmental Review Memorandum (ERM) 10-9. This data entry in the Database comprises the initial action and should be completed a minimum of 45 calendar days prior to the NOI’s target publication date to allow sufficient time to complete the screening process.

The OEPC will provide each Assistant Secretary a weekly report showing all new initiated action(s) for an EIS analysis within their purview along with the recommendation by the Bureau Executive as to which should be subject to the DRT process outlined in part B below. If there are no new initiated action(s) that fall within an Assistant Secretary’s area of responsibility for a given week, then no report will be provided to that Assistant Secretary. The Assistant Secretary will provide a list of new initiated actions and associated recommendations to the Offices of the Secretary and Deputy Secretary and reach a joint determination on which actions will be subject to the DRT process. To the extent practicable, the Department will reach a joint determination within 30 calendar days of the issuance of the weekly report. Within five business days of the Department’s determination, the Chiefs of Staff for the Assistant Secretaries should notify the appropriate Bureau(s) of that determination and the Bureau will complete the DRT determination field in the Database.

Those actions that are determined to be exempt from the DRT process may proceed with the EIS process consistent with their Bureau’s applicable EIS procedures pursuant to the Department Manual Part 516 Chapter 3 (516 DM 3). Bureaus are to continue to complete timely data entry within the Database for all EISs, regardless of whether the DRT process is required.

At each stage of the EIS process, the Bureau should assess whether the EIS is expected to comply with the CEQ time and page limits of two years between the NOI and issuance of the ROD at 40 CFR 1501.10(b)(2) and 150 pages, or 300 pages for proposals of unusual scope or complexity, at 40 CFR 1502.7. If a waiver from the page or time limits is necessary, the Bureau Executive, through the Bureau/Office Director, will make a written waiver request for Department NEPA Senior Agency Official (SAO)<sup>3</sup> signature that addresses the consideration requirements at 40 CFR 1501.10(b)(2) and establishes a new page or time limit as required by 40 CFR 1501.10(b)(2) and 40 CFR 1502.7, as applicable. The waiver request should be included

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<sup>3</sup> Defined at 40 CFR 1508.1(dd).

with the briefing materials for the next applicable stage in the DRT process.<sup>4</sup> The SAO approval is necessary to extend either the page or time limits beyond the CEQ regulatory limits.

Notices for the Federal Register associated with the EIS process are not required to go through the Office of the Executive Secretariat and Regulatory Affairs for senior leadership review, regardless which clearance process is used.<sup>5</sup>

### **B. Departmental Review Team Process**

The DRT comprises the following officials or their designee(s), as appropriate to the EIS subject matter:

- Regional or State Director;
- Bureau/Office Director;
- Assistant Secretary;
- Chief of Staff for the applicable Assistant Secretary;
- Director, OEPC<sup>6</sup>;
- Deputy Solicitor;
- Associate or Regional Solicitor;
- Senior Advisor to the Secretary; and
- Department NEPA SAO.

All DRT members should attend the applicable briefing either in-person or virtually; or designate a proxy to attend. At any stage of the DRT process, the DRT may determine that Departmental review is no longer needed, making the EIS exempt from the remainder of the DRT process. If a determination is made that an EIS no longer requires Departmental review, any member of the DRT or the Chief of Staff, will communicate that determination to the Bureau in a timely manner.

### **Stage 1: Notice of Intent Briefing**

When the Bureau is ready to publish the NOI in accordance with 40 CFR Part 1501.9(d), a briefing to the DRT is needed prior to publication of the NOI in the Federal Register. The Bureau Executive should schedule the NOI briefing by coordinating with the applicable Assistant Secretary's Chief of Staff, who will inform the DRT of the briefing and ensure DRT members or their designees are invited to the briefing. To the extent practicable, the NOI briefing should be scheduled within two weeks of a request by the Bureau Executive and a minimum of two weeks prior to the anticipated date of publication of a NOI.

- a. Bureaus are responsible for preparing all briefing materials and having the Bureau Executive submit them electronically to all DRT members no later than one

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<sup>4</sup> For EISs not subject to the DRT process, Bureaus should submit waiver requests to OEPC using [nepa\\_oepec@ios.doi.gov](mailto:nepa_oepec@ios.doi.gov) for review and coordination with the Department's SAO.

<sup>5</sup> Per memorandum from Office of the Executive Secretariat and Regulatory Affairs dated April 13, 2021, titled, [“Review and Clearance of Decision Memoranda, Memoranda of Understanding/Agreement, Annual Tribal Governance Reports, and Certain Federal Register Notices and Other Documents.”](#)

<sup>6</sup> Communications to the Director, OEPC should include a cc: to the mailbox [nepa\\_oepec@ios.doi.gov](mailto:nepa_oepec@ios.doi.gov).

calendar week prior to the NOI briefing. Briefing materials will include a draft NOI, appropriate map(s) of the study/project area and a one to two-page briefing paper. Alternatively, Bureaus may combine the maps and briefing paper content into a slide deck presentation. At a minimum, the briefing paper or presentation must include:

- i. A description of how any potentially affected underserved and overburdened communities (those with environmental justice concerns) and federally recognized Tribes, including those with a historic presence in the area, have been engaged or consulted early in the study or project planning process; and
  - ii. A statement as to whether there is significant stakeholder or Congressional interest in the proposed action and if so, a list of those stakeholders and/or Members of Congress.
- b. The DRT will provide feedback to the EIS team during the briefing or up to five business days after the date of the briefing. During this briefing, the DRT will decide whether an additional briefing at the conclusion of scoping and prior to preparation of a draft EIS is needed (Stage 1a.). If no objections are raised during the briefing or within the five business days, the Bureau Executive may publish the NOI in the Federal Register.

**Stage 1a: End of Scoping Briefing (only if required by the DRT or determined necessary by the Bureau Executive)**

If determined necessary by the DRT as part of Stage 1; or if upon conclusion of scoping, public comments or consultations lead to material changes including to the purpose and need or range of alternatives to be considered, the Bureau Executive should request scheduling of the Stage 1a briefing to provide additional Departmental awareness prior to completion of an administrative Draft EIS. The Bureau Executive will schedule the briefing for the DRT through their Assistant Secretary's Chief of Staff prior to proceeding with draft EIS development. To the extent practicable, the briefing should be scheduled within two weeks of the Bureau Executive's request.

- a. Bureaus should update the briefing materials used in Stage 1, focusing on the results of the public comment period, and any changes to the proposed NEPA purpose and need statement or the range of alternatives for the EIS as a result of scoping. The Bureau Executive will submit the briefing materials electronically to all DRT members no later than one calendar week prior to the scoping briefing.
- b. The DRT will provide feedback during the briefing or up to five business days after the date of the briefing whether the EIS team should proceed with preparing a draft EIS. If no objections are received during this time period and assigned staff in the Office of the Solicitor concurs, the EIS team may proceed with draft EIS development.
- c. If a member of the DRT has an objection, the Bureau Executive will work with that member, with the support of the EIS team, to resolve the objection in a timely

manner or elevate the issue to the SAO for resolution prior to proceeding with further work on the draft EIS. To the extent practicable, any DRT issue resolution should be concluded within two weeks of the briefing.

### **Stage 2: Draft EIS Briefing**

Upon completion of an administrative draft of the EIS, at which point a preferred alternative or alternatives, if one or more exists (40 CFR 1502.14(d), have been identified, the Bureau Executive will ensure a link is provided to an electronic copy of the administrative draft to the DRT from Stage 1 and schedule the draft EIS briefing through the applicable Assistant Secretary's Chief of Staff. To the extent practicable, the draft EIS briefing should be scheduled within two weeks of the Bureau Executive's request and occur a minimum of two weeks prior to the anticipated date of publication of a Notice of Availability (NOA) for the draft EIS.

- a. Bureaus should update the briefing materials used in Stage 1, highlighting any changes or new developments in the EIS process since the previous briefing, and the Bureau Executive will provide the briefing materials electronically to the DRT members no later than one calendar week prior to the draft EIS briefing.
- b. Bureaus are not required to provide a draft of the NOA, if applicable per Bureau procedures, for the briefing.
- c. The DRT will provide feedback during the briefing or up to five business days after the date of the briefing whether the draft EIS should be approved for release for public comment. If no objections are received during this time period and assigned staff in the Office of the Solicitor concurs, the Bureau Executive may publish the draft EIS.
- d. If a member of the DRT has an objection, the Bureau Executive will work with that member, with the support of the EIS team, to resolve the objection in a timely manner or elevate the issue to the SAO for resolution prior to publishing the draft EIS. To the extent practicable, any DRT issue resolution should be concluded within two weeks of the briefing.

### **Stage 3: Final EIS Briefing**

Upon completion of the required public comment period and completion of an administrative final EIS and draft ROD, the Bureau Executive will ensure a link is provided to an electronic copy of the final EIS and draft ROD to the DRT and schedule the final EIS briefing through the Assistant Secretary's Chief of Staff. To the extent practicable, the final EIS briefing should be scheduled within two weeks of the Bureau Executive's request and occur a minimum of two weeks prior to the anticipated date of publication of the final EIS.

- a. Bureaus should update the briefing materials used in Stage 1 and 2, highlighting any changes or new developments in the EIS process since the previous briefing with an emphasis on the public, Tribal and agency comments received on the draft EIS. The Bureau Executive will provide the briefing materials electronically to the DRT no later than one calendar week prior to the final EIS briefing.

- b. Bureaus are not required to provide a draft of the NOA, if applicable per Bureau procedures, for the briefing.
- c. The DRT will provide feedback during the briefing or up to five business days after the date of the briefing as to whether the final EIS should be approved for release. If no objections are received during this time period, the Bureau Executive may approve the final EIS for publication.
- d. If a member of the DRT has an objection, the Bureau Executive will work with that member, with the support of the EIS team, to resolve the objection in a timely manner or elevate the issue to the SAO for resolution prior to approving the final EIS for publication. To the extent practicable, any DRT issue resolution should be concluded within two weeks of the briefing.

After publication of the final EIS and the prescribed waiting period under 40 CFR 1506.11(b) has occurred, Bureaus may sign and release the ROD without another formal briefing to the DRT, unless the action/decision is modified between the final EIS briefing and completion of the ROD, supplemental or new information is available that could change the decision, or unless requested by an Assistant Secretary or higher-level official. Bureaus should notify their Assistant Secretary's Chief of Staff prior to signing the ROD for awareness. The EIS team will update the Database to ensure all data entry has been completed at this time.

### **GENERAL**

This memorandum is intended to improve the internal management of the Department. It 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, instrumentalities or entities, its officers, employees, or agents, or any other person. To the extent there is any inconsistency between the provisions of this memorandum and any Federal law or regulations, the laws or regulation will control.

This memorandum replaces ERM 10-11 *Determining the Applicable Environmental Review Framework for Infrastructure Projects*, August 9, 2018.