



United States Department of the Interior

Office of the Secretary
Washington, D.C. 20240

PEP - ENVIRONMENTAL STATEMENT MEMORANDUM NO. ESM 13-2¹

To: Heads of Bureaus and Offices

From: Stephen G. Tryon, Acting Director
Office of Environmental Policy and Compliance

Subject: Approving and Filing Environmental Impact Statements

PURPOSE

This memorandum provides guidance for obtaining the necessary approvals for environmental impact statements (EISs) and for filing EISs with the Environmental Protection Agency (EPA). It pertains to both draft and final EISs and both delegated and non-delegated EISs. This memorandum is issued pursuant to [43 CFR 46.415](#), supplements [516 DM 3.3](#), and is consistent with the Deputy Secretary's memorandum, [National Environmental Policy Act \(NEPA\) Document Clearance Process](#), issued on April 27, 2018 (Deputy Secretary's memorandum).

DEFINITIONS

Decision authority - The bureau(s) and/or office(s) with decision responsibility(ies) for the proposed project for which the EIS is being prepared. Decision authority goes beyond a coordination role where another Federal agency has the legal authority to make the decision; it is a role where the bureau/office must make a binding decision, such as issuing a permit for the proposed project to proceed, versus a consultation requirement before another Federal agency makes a decision. Having decision authority is different from being a cooperating agency with jurisdiction by law or special expertise as defined by [40 CFR 1508.1\(e\)](#).

¹ The guidance in this Environmental Statement Memorandum (ESM) is being issued under the authority provided to the Office of Environmental Policy and Compliance (OEPC) by 381 Departmental Manual (DM) 4.5B, to convey instructions and guidance through its Environmental Memoranda Series, and by 516 DM 3.2, which authorizes OEPC to provide advice and assistance to the Department on matters pertaining to environmental quality and for overseeing and coordinating the Department's compliance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations, and 516 DM 1.21, which authorizes OEPC to provide further guidance concerning NEPA.

Delegated EIS - A delegated EIS is one for which the decision authority on the proposed action is delegated to a single Assistant Secretary or a single subordinate officer.

Lead Agency - A lead agency or agencies preparing or having taken primary responsibility for preparing the EIS ([40 CFR 1508.1\(o\)](#)). For purposes of this memorandum, a lead agency would be a bureau or office of the Department of the Interior.

Non-delegated EIS – A non-delegated EIS is one to which any one of the following conditions applies:

- the decision authority for the proposed action requires the approval of more than one Assistant Secretary (or bureaus under more than one Assistant Secretary),
- the decision authority is reserved or elevated to the Secretary of the Interior (or Office of the Secretary), including by the project’s authorizing legislation, or by expressed interest of the Secretary, Deputy Secretary, the Chief of Staff, the Solicitor or the Assistant Secretary for Policy, Management and Budget (AS/PMB), or
- the decision authority is so designated at the discretion of the Secretary, Deputy Secretary, or the AS/PMB.

EARLY COORDINATION

At the earliest possible stage, the Lead Agency (DOI bureau) shall request that other Interior bureaus and offices participate as cooperating agencies or co-lead agencies, as needed. This is especially critical for major infrastructure proposals because such projects often require decisions on a tight schedule involving multiple DOI bureaus or other Federal agencies. For projects requiring an EIS, the lead agency should provide a notice to [potential cooperating \(40 CFR 1508.1\(e\)\) and participating agencies](#) (40 CFR 1508.1(w)) at the project initiation phase, in addition to notifying them of the notice of intent (NOI) to prepare an EIS in the *Federal Register*.

The Deputy Secretary’s memorandum on [Standardized Intra-Department Procedures Replacing Individual Memoranda of Understanding for Bureaus Working as Cooperating Agencies](#) applies to Interior bureaus and offices.

DELEGATED VS. NON-DELEGATED DETERMINATION AND EIS NOTIFICATION

a. The Lead Agency shall determine if the EIS is delegated or non-delegated, as defined in Section 2, before or concurrently with identification of cooperating agencies or co-lead agencies that will be involved in development of the EIS.

b. The Lead Agency shall notify the Office of Environmental Policy and Compliance (OEPC) of a non-delegated EIS determination through the briefing materials provided to the Review Team at the Initial Action Notice stage, consistent with the Deputy Secretary’s memorandum. Initial Action Notice briefing materials should be sent to the OEPC at nepa_oepc@ios.doi.gov. If the determination is made after the Initial Action Notice, then the OEPC notification should occur via email to the assigned [Regional Environmental Officer](#), the [OEPC HQ staff contact](#), and nepa_oepc@ios.doi.gov.

- c. If a delegated EIS changes to a non-delegated EIS or vice versa, the OEPC should be notified as soon as possible via email to the assigned Regional Environmental Officer and/or OEPC HQ staff contact, as well as to nepa_oepc@ios.doi.gov. If applicable, this notification may be concurrent with the notification to the OEPC when a bureau or office accepts or declines a request to become a cooperating or co-lead agency pursuant to [516 DM 1.10.B](#).
- d. When it is unclear whether an EIS will be delegated or non-delegated, bureaus are to send an email notification to the assigned Regional Environmental Officer and/or the OEPC HQ staff contact, as well as to nepa_oepc@ios.doi.gov. The OEPC may advise the bureau or office and the AS/PMB on the determination.
- e. If the OEPC does not concur with the delegated or non-delegated determination, the OEPC will advise the bureau or office in writing within 30 business days setting forth its reasons for the non-concurrence.
- f. The bureaus and offices are to ensure that the [Department's National Environmental Policy Act and Permit Tracking Database](#) contains current information on whether an EIS will be delegated or non-delegated and list all cooperating agencies, consistent with [Environmental Review Memorandum 10-9](#).

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

- a. Once a determination is made under section a. of Delegated vs Non-Delegated Determination and EIS Notification, above, the Lead Agency is responsible for publishing the NOI to prepare an EIS in the *Federal Register*. A template for the NOI is included in this memorandum as Attachment 1. Bureaus and offices should also refer to their internal guidance on publishing NOIs.
- b. The bureaus and offices should distribute electronic copies of their NOIs or links to the *Federal Register* notice to all other Interior bureaus and offices to ensure all Interior bureaus are aware of upcoming EISs and are able to determine whether they should have a role in developing them. This duty also applies to situations where a bureau/office is a co-lead agency with a non-Interior agency. [Bureau/Office NEPA contacts](#) are listed on the OEPC website.
- c. The bureaus and offices not already identified by the Lead Agency for participation who wish to, or are required by law or special expertise to, participate in the preparation of the EIS are responsible for contacting the lead bureau/office and indicating the level of participation sought. In some cases, this coordination could result in a change from a delegated to non-delegated EIS, or vice versa, as well as a request for a bureau to become a cooperating agency.

DELEGATED EIS FILING PROCESS

- a. The OEPC will participate in the review of delegated EISs as part of the Review Team described in Section 1 of the Deputy Secretary's memorandum. Documents submitted to OEPC

in compliance with the process set out in the Deputy Secretary's memorandum should be sent to nepa_oepc@ios.doi.gov.

b. Prior to filing an EIS with Environmental Protection Agency (EPA) pursuant to 40 CFR 1506.10), bureaus and offices are to transmit the document to Federal agencies with jurisdiction by law or special expertise, State and local agencies, and Indian Tribes authorized to set and enforce related environmental standards, and make it available to the public. The bureaus and offices must transmit Draft EISs to Federal agencies with jurisdiction by law or special expertise ([40 CFR 1503.1\(a\)\(1\)](#)). Circulation to other entities with known or anticipated interest should also occur. Upon transmittal, the responsible official should promptly provide copies (two copies on electronic media accepted by the Department's Library are sufficient) to the Department's Natural Resources Library as required by [481 DM 1 Section 1.3 B\(3\)](#). (U.S. Department of the Interior Library, Mail Stop: 1151), 1849 C Street NW, Washington, DC 20240.

c. Assistant Secretaries, bureaus, and offices will file EISs directly with EPA upon completion of the clearance process set out in the Deputy Secretary's memorandum. The comment deadline in the *Federal Register* notice published by EPA is the official comment deadline. The EPA and the public should be notified if a comment period is to be extended beyond the minimum 45 days for a Draft EIS. There is not an official comment period on a Final EIS, rather there is a 30-day wait period before issuance of a Record of Decision (ROD).

d. The EPA's guidance for filing EISs was published in the *Federal Register* on August 24, 2012 ([77 FR 51530](#)). Filing guidance is also available on EPA's website "[Environmental Impact Statement Filing Guidance](#)."

e. It is optional for the Lead Agency to publish a notice of availability in the *Federal Register* that is separate from EPA's notice.

NON-DELEGATED EIS APPROVAL AND FILING PROCESS

a. Non-delegated EISs must be approved by the AS/PMB. The AS/PMB has assigned this responsibility to the OEPC. The OEPC provides clearance as a member of the Review Team in accordance with the Deputy Secretary's memorandum.

b. Prior to submittal of documents for clearance by the Review Team, the OEPC is available for providing or interpreting guidance and, subject to the availability of resources, reviewing preliminary drafts (or portions of drafts) at headquarters or at OEPC Regional Environmental Offices. The bureaus and offices are encouraged to consult early with the OEPC in preparing these documents. This advance consultation and coordination with the OEPC will facilitate the EIS clearance process.

c. Absent any advance review, OEPC will review and approve documents for non-delegated EISs as part of its participation on the Review Team and as outlined in the Deputy Secretary's memorandum referenced in Section 1. The bureaus and offices should submit documents for OEPC's review to nepa_oepc@ios.doi.gov.

d. For filing, noticing, and distribution, Assistant Secretaries, bureaus and offices should follow the same procedures as described above in Section 6.b-e.

GENERAL

This memorandum 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, or entities, its officers, employees, or agents, or any other person. Additionally, nothing in this guidance is intended to affect the authority and responsibility of the United States Department of Justice with respect to the conduct of litigation on behalf of the United States.

This memorandum replaces ESM 13-2 issued on September 24, 2018.

Attachment

NOTICE OF INTENT TEMPLATE

Instructions for drafting and preparing this notice are written in BLUE. Instructions show where the author must insert applicable text specific to this notice. Insert text by highlighting the blanks and typing applicable text. The blanks are set for proper text formatting. The left margin must be 1½ inches and the top, bottom, and right margins must be 1 inch. The font must be 12 point Times New Roman. The document text must be double-spaced. All text in BLACK is required and needs to be retained unless noted otherwise (sometimes information is only required if it exists). Page numbers must be centered at the bottom starting with page 2. Delete the blue text as you draft your document. For specific information on notices see the [Federal Register Document Drafting Handbook](#). . The notice of intent to prepare an environmental impact statement must be prepared as soon as practicable after determining that a proposal is sufficiently developed to a point that allows for meaningful public comment, consistent with 40 CFR § 1501.9(d), and 43 CFR 46.235.

The notice begins as follows:

[Insert bureau billing code]

DEPARTMENT OF THE INTERIOR

Insert bureau name in bold

Insert FBMS accounting code in bold

Insert title in bold

(Once the title of the EIS under preparation has been identified in the notice of intent, use the same title on the cover of the draft and final EISs.)

AGENCY: Bureau name, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Briefly describe the nature and scope of the proposed action. Do not put legal citations or background information in the SUMMARY section; these belong in the SUPPLEMENTARY INFORMATION section.

DATES: Do not compute the end of comment period date. Leave the sentence in black type below as it is, including the black brackets, and insert only the number of days the comment period is to be. For example, a 30-day comment period would read, “Comments concerning the scope of the analysis must be received by [insert date 30 days from date of publication in the Federal Register].” The black brackets in the sentence below alerts the scheduling office at the Office of the Federal Register to compute the date and enter it prior to publication. Upon request, they will provide the comment due date when notifying the agency of the notice’s publication date. [The bureau] requests comments concerning the scope of the analysis, and identification of relevant information, studies, and analyses. All comments must be received by [insert number of days in comment period] days from date of publication in the Federal Register]. The draft environmental impact statement is scheduled for [insert estimated month and year] and the final environmental impact statement is scheduled for [insert estimated month and year] with a Record of Decision [insert estimated month and year].

ADDRESSES: Send written comments to [insert address]. Comments may also be sent via e-mail to [insert e-mail address]. In this section, you also may put additional addresses, locations of meetings, etc. Do not put more than four addresses in this section. If there are more than four pertinent addresses, create a heading for them under the SUPPLEMENTARY INFORMATION section of the notice.

FOR FURTHER INFORMATION CONTACT: [insert name(s) and contact information you wish to use, such as telephone number and e-mail address].

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m.,

Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

The headings that follow are required unless otherwise noted.

Purpose and Need for the Proposed Action

Describe the proposed action and why the bureau/office is proposing the action: Why here? Why now? If the action involves an application, the goals of the applicant must be used to determine the purpose and need.

Preliminary Proposed Action and Alternatives

Describe the proposed action and alternatives that may be considered. This is new in 2020.

Summary of Expected Impacts

This should be only a brief summary sufficient to inform the public's ability to recommend additional information, alternatives or analysis. This is new in 2020.

Anticipated Permits and Authorizations

List out all those permits and other authorizations that are anticipated to be required in order to proceed with the action. This should include both lead and cooperating agency actions. This is new in 2020.

Schedule for the Decision-Making Process

This may include information for all the anticipated permits or authorizations, or just for the NEPA compliance process. This is new in 2020.

Public Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Describe any public comment opportunities, including whether, when, and where any scoping meetings will be held. Describe additional

information related to the scoping process and nature of comments being sought.

Describe where additional information may be obtained. Bureaus must consider the ability of affected persons and agencies to access electronic media when arranging scoping meetings and providing of additional information.

Request for Identification of Potential Alternatives, Information, and Analyses

Relevant to the Proposed Action

Invite comment identifying alternatives, information, and analyses pertaining to the Proposed Action. This is new in 2020.

Lead and Cooperating Agencies

Include only if there are other agencies to list as joint lead agencies and/or cooperating agencies (delete heading if not used).

Decision Maker

Provide the title of the decision maker who is the responsible official(s). Use of the decision maker's name is optional.

Nature of Decision To Be Made

Describe the framework or scope of the decision(s) to be made by the responsible official(s).

Addresses

Include this section only if all addresses could not be included in the SUMMARY (delete heading if not used).

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

(Date)

Important signature information:

The signature line and date should be typed three double-spaced lines below the last line of the text. The signature line must fall on a page with other text. If necessary, cut a previous page shorter in order to add text to the signature page.

Do not type in the name of the person you believe will sign the document. The name and title are to be filled in after it is signed. Signers must sign their own name, not “for” another. For instance, an acting Director would sign his or her own name as “Acting Director...” not “for the Director.”

After the document is signed, stamp, or type the signer’s name, title, and the date of signature. Remember to delete all instructions in BLUE and be sure all text is black.

This attachment may be revised as necessary without revising the entire ESM.
This attachment is dated September 14, 2020.