



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

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Memorandum

To: Assistant Secretaries
Head of Bureaus and Offices
Directors of State, Regional, and Field Offices

From: Deputy Secretary 

Subject: Standardized Intra-Department Procedures Replacing Individual Memoranda of Understanding for Bureaus Working as Cooperating Agencies

Department of the Interior (Department or DOI) Bureaus that are asked by another DOI Bureau that is the lead agency in a National Environmental Policy Act (NEPA) review shall act as a cooperating agency based on the following parameters, and without the need for an individual Memorandum of Understanding (MOU).

Background

The National Environment and Policy Act (NEPA),¹ through the Council on Environmental Quality,² directs lead agencies conducting environmental reviews to include other Federal or State agencies with jurisdiction, either by subject matter expertise or by law, as cooperating agencies during a NEPA analysis. Federal and State Agencies historically formalize this relationship through the use of a MOU to clarify each agency's roles and responsibilities.

Despite residing within the same department, DOI's Bureaus have also employed NEPA cooperating agency MOUs. Intra-Department MOUs were intended to coordinate Bureau efforts and direct the deployment of resources, yet they often and unnecessarily delay environmental reviews. Accordingly, the following guidance replaces the Intra-Department MOU process with standardized guidance for efficient NEPA review and Bureau collaboration.

Directive

Intra-Department Bureaus that are asked to participate in the NEPA process³, where another DOI Bureau is the lead Agency, and that qualifies as a cooperating agency under 42 U.S.C. § 4332 and 40 CFR 1501.6, shall act as a cooperating agency without developing an individual MOU. Instead, the agreements below should serve as their operating agreement.

¹ 42 U.S.C. §4332.

² 40 CFR 1501.6.

³ The direction in this Memorandum applies to Environmental Impact Statements, Environmental Assessments, Categorical Exclusions, and any other form of analysis under NEPA.

Agreements

Intra-Department cooperating agency relationships shall be conducted in accordance with 40 CFR 1501.5 and 1501.6 and this section, which sets forth the Bureaus' cooperative roles in the NEPA review process:

Determination of Lead Agencies

When a project proponent or agency proposes an action as defined by the Administrative Procedure Act §704 or by 40 CFR §1508.18, lead and cooperating agencies shall be determined as soon as practicable according to 40 CFR 1501.5 and 1501.6. The lead and cooperating agency shall immediately designate a Point of Contact (POC) to represent each Bureau in Intra-Departmental consultations regarding that project or action.⁴

In executing this process, Lead Agencies shall:

- a. request the participation of each cooperating agency in the NEPA process at the earliest practicable time;
- b. use the environmental analysis and proposals of cooperating agencies with jurisdiction, by law or special expertise, to the maximum extent possible, consistent with its responsibility as the lead agency;
- c. to the extent possible:⁵
 1. Recover costs from project proponents; and
 2. Fund major activities or analyses it requests from cooperating agencies, and include such funding requirements for NEPA analysis in project budget requests, to the extent that project proponents are not already paying for the analysis.
- d. organize the NEPA review for a proposed project or action, including assigning a Senior Executive Service (SES) official to lead the NEPA review process and identifying a primary POC at each cooperating or participating agency;
- e. meet with a cooperating agency at that Bureau's request;
- f. prepare and coordinate Federal Register notices and filing Environmental Impact Statement (EIS) with EPA;
- g. prepare the sole NEPA analysis for the project in coordination with the cooperating agencies. All NEPA analyses should include an adequate level of detail to inform decision makers regarding the environmental impacts of a proposed project or action while maintaining the Department's document and timeline standards;
- h. inform cooperating agencies of new material information and changes related to the project or action;
- i. review and consider comments submitted by cooperating agencies;

⁴ In instances where Bureaus are co-lead agencies, it is incumbent upon them to determine which acts as the administrative lead agency with final responsibility responsible for completion of the tasks within the Lead Agency section of this Memorandum. However, co-lead agencies shall work together to complete these responsibilities.

⁵ The terms in this paragraph apply to both intra and inter Departmental NEPA analysis.

- j. if required, develop the NEPA document's purpose and need, identify the range of alternatives to be analyzed, identify the preferred alternative(s), and determine whether to develop the preferred alternative to a higher level of detail;
- k. provide cooperating agencies the opportunity to review and contribute to all relevant and substantive phases of the NEPA analysis and its preparation;
- l. if required by One Federal Decision (OFD), prepare and publish a single Record of Decision (ROD) for all cooperating agencies responsible for the project or action to support any necessary authorization decisions. The ROD will incorporate the decisions of each such agency; and
- m. maintain a contemporaneous Decision File of the information assembled and utilized by the cooperating agencies as the basis for their NEPA review.

In executing this process, Cooperating Agencies shall:

- a. participate in the NEPA process beginning at the earliest practicable time;
- b. participate in the scoping process, attend regularly scheduled meetings, and engage in any other activity necessary to efficiently conduct a project's NEPA analysis;
- c. upon the request of the lead agency, assume responsibility for developing information and preparing environmental analyses, including portions of an Environmental Assessment (EA) or EIS with which that Bureau has special expertise;
- d. review and submit comments to the lead agency on the environmental analysis performed by the lead and other cooperating agencies within the specified timeframe;
- e. if required by OFD, participate in the preparation of a single ROD by providing technical drafting assistance and comments that support the underlying authorization decision;
- f. compile a contemporaneous Decision File composed of all documents and communications that inform the cooperating agency's analysis, and systematically provide those documents to the lead agency; and
- g. make staff support available at the lead agency's request, within the Bureau's available resources.

Dispute Resolution

- a. Any disputes arising among lead and cooperating agencies in the NEPA review process shall be promptly brought to the attention of the appropriate first line SES members with authority over the project, or the office responsible for the NEPA review, and be resolved by them;
- b. In the event that first line SES members are unable to resolve such disputes, the issue shall be raised to the appropriate Bureau directors for resolution;
- c. In the event that Bureau directors are unable to resolve such disputes, the issue shall be raised to the appropriate Assistant Secretaries for resolution; and
- d. In the event that Assistant Secretaries are unable to resolve such disputes, the issue shall be raised to the Office of the Deputy Secretary for resolution.

NEPA Timelines, Schedules, and Document Page Count

- a. When conducting a NEPA analysis, Intra-Departmental cooperating agencies shall strive to meet the page count and timelines set forth in Secretarial Order 3355 by agreeing upon a timeline or schedule of milestones;
- b. If a proposed project or agency action qualifies as a Fixing America's Surface Transportation Act or OFD action, then Intra-Departmental Bureaus will comply with the timelines set forth in the OFD Memorandum of Understanding;
- c. To comply with agreed upon timelines, Intra-Departmental agencies shall cooperate, communicate, share information, and resolve conflicts that could prevent timely completion of the NEPA review; and
Each agreed upon project or action schedule shall be uploaded to the NEPA and Permit Database by the lead agency, and where appropriate, the Federal Permitting Dashboard, as soon as is practicable based upon the timely filing of the project or action's Notice of Intent (NOI).

Communication

Intra-Department cooperating agencies shall proactively participate in environmental reviews by communicating with one another, as well as project proponents and stakeholders, in an effective and structured manner that starts early and continues throughout the review process. Active communication will provide all cooperating agencies with the opportunity to identify concerns, raise potential issues early in the review process, and identify solutions.

Concurrent Reviews

Cooperating agencies shall carry out their obligations with respect to NEPA concurrent to the review performed by the lead agency.⁶ Intra-Department NEPA reviews shall also be conducted according to the guidelines within Secretary Order 3355.

Additional Provisions

- a. Nothing contained in this Memorandum is intended to or should be construed to limit or affect the authority or legal responsibilities of the Department's Bureaus, nor bind Bureaus to perform actions beyond their respective authorities;
- b. This Memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations;
- c. Specific activities that involve the transfer of money, services, or property between or among the Bureaus may require execution of separate agreements or contracts that occur as a matter of course;
- d. This Memorandum does not preclude the utilization of NEPA compliance agreements between Bureaus that were in place prior to its effective date; and

⁶ Concurrent review includes but is not limited to Section 7 review under the Endangered Species Act, Section 106 review under the National Historic Preservation Act, and other permitting activities such as coordinating Right-of-Way authorizations.

- e. This Memorandum is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Effective Date

This Memorandum is effective immediately upon distribution and shall remain in effect until revoked in writing by the Deputy Secretary.

The Heads of Bureaus and Offices are responsible for transmitting this Memorandum to the appropriate staff in the State, regional, and field offices.