



## United States Department of the Interior

Office of the Secretary

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PEP/ER

### PEP – ENVIRONMENTAL STATEMENT MEMORANDUM NO. ESM 13-13<sup>1</sup>

To: Heads of Bureaus and Offices

From: Michaela E. Noble, Director /s/01/13/2020  
Office of Environmental Policy and Compliance

Subject: Approving and Publishing Proposed and Final Bureau Categorical Exclusions (CEs) under the National Environmental Policy Act (NEPA)

#### **PURPOSE**

The purpose of this memorandum is to provide guidance on the process steps to clear proposed new or revised CEs and final CEs, and their associated Federal Register Notices (FRNs), which originate with a bureau or office.

#### **BACKGROUND**

The Council on Environmental Quality (CEQ) regulations implementing NEPA define a categorical exclusion (CE) as a category of actions that do not individually or cumulatively have a significant effect on the human environment, and for which, therefore, neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required ([40 CFR 1508.4](#)). The Department of the Interior (Department) has established CEs at [43 CFR 46.210](#). In addition, bureaus and offices can have bureau or office (bureau) specific CEs in their NEPA procedure Departmental Manual (DM) chapters at part 516 of the DM. This memorandum, ESM 13-13, provides the process steps for bureaus to follow when proposing and finalizing bureau specific CEs for Departmental clearance and Federal Register notice (FRN) publication, including the review and surname process with the Assistant Secretary, Policy Management and Budget Office (PMB) to file the FRN electronically with the Office of Federal Register (OFR).

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<sup>1</sup> 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.

## **DEVELOPMENT OF SUBSTANTIATION PACKAGE**

1. Bureau notifies the Office of Environmental Policy and Compliance (OEPC) upon the agreement of bureau leadership to pursue establishing a new CE or revising an established CE. Bureaus and offices are encouraged to seek OEPC assistance for early communication with CEQ and with initial drafting of proposed revisions or new CEs in their DM NEPA chapters and prior to bureau and SOL review to avoid additional iterative concurrences later. (Note that additional concurrent changes to the bureau DM NEPA chapter beyond the proposed CE might be desired or necessary and should be coordinated early with OEPC and the Office of the Executive Secretariat and Regulatory Affairs (SIO REGS)).
2. Following OEPC guidance, Bureau collects and prepares the substantiation package<sup>2</sup> that complies with CEQ guidance in support of proposed CE text, as well as a draft FRN and DM NEPA chapter, to request public comment.
3. It is recommended that the Bureau send a preliminary package of the draft FRN, DM NEPA chapter, CE text and substantiation package to their Solicitor's Office (bureau SOL) for review and comment.

## **PRELIMINARY REVIEW**

1. The Bureau begins the surname process that culminates in CEQ concurrence to proceed with release of a draft CE proposal to the public. Required elements include draft FRN, DM NEPA Chapter, CE language, and substantiation package. Required surnames include: Bureau Director, relevant Assistant Secretary, Solicitor's Office, and OEPC.
2. Following OEPC review, OEPC updates, briefs and obtains concurrence from Assistance Secretary (A/S) PMB. Following A/S PMB Concurrence, OEPC sends the preliminary package to CEQ for review and comment, including the Bureau in its transmission.
3. Bureau works directly with and addresses CEQ comments. CEQ indicates affirmative coordination and support for proposed CE notice.

## **APPROVAL FOR PUBLICATION OF CATEGORICAL EXCLUSION**

1. Bureau prepares a concurrence package to publish the proposed CE, and if applicable the DM NEPA chapter changes, for public comment.<sup>3</sup> This proposed CE package includes the following items:
  - a. Documentation from CEQ indicating affirmative coordination and support for the CE notice
  - b. Federal Register Notice (FRN)
  - c. Briefing paper from the bureau

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<sup>2</sup> See [CEQ memorandum Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act, dated November 23, 2010](#), for more information.

<sup>3</sup> If the bureau DM NEPA chapter has changes that would substantively change the bureau NEPA procedures, other than the proposed CE pursuant to [40 CFR 1507.3](#) or basic corrections, the FRN should address these changes, and if there are proposed substantive NEPA procedure changes, then request public comment on both these changes and on the proposed CE.

- d. Communication plan
- 2. The bureau clears the CE package with bureau SOL and all of their required intra-bureau surnames as part of the surnaming package before transmitting the CE package for FRN publication through the Director, OEPC in PMB. The package should provide a target date for Federal Register publication of the notice.
- 3. PMB REGS will upload into DTS or add the Departmental surnames to the bureau DTS package and hand carry a hard copy to the Office of the Executive Secretariat and Regulatory Affairs (SIO REGS). The Bureau FR Liaison should be included for information in the DTS package to allow the bureau to track the package.
- 4. Director, OEPC will digitally sign the document according to the dates on the briefing paper and send file to PMB REGS; PMB REGS will send the file electronically to OFR and notify OEPC.
- 5. SIO REGS clears the record and will send out with a Notices Approved Form.
- 6. OEPC will monitor progress of the FRN CE package and keep the bureau informed of progress and the anticipated publication date for the FRN for the CE.

### **ADDRESSING PUBLIC COMMENTS AND OBTAINING CEQ CONFORMITY**

- 1. After the FRN is published, the Bureau will ensure an open process with integrity for the collection, tracking, disposition of comments received, and decision file.
- 2. Bureau submits its draft final CE package with the FRN, response to public comments, and DM NEPA chapter to OEPC for OEPC review and concurrence.
- 3. Following OEPC review, OEPC briefs and obtains concurrence from A/S PMB.
- 4. Following A/S PMB concurrence, OEPC sends the final CE package to CEQ for review and a letter of conformity with NEPA, including the Bureau in its transmission. If, after receiving the CEQ letter of conformity with NEPA for the final CE text and any other substantive NEPA procedure change in the bureau NEPA DM Chapter ([40 CFR 1507.3\(a\)](#)), any changes are made to the text of the final CE, DM Chapter NEPA procedures, or language in the remainder of the FRN package is changed substantially that could affect CEQ's determination, then the CE must be reviewed again for issuance of a CEQ letter of conformity with NEPA. (Note that if any substantive changes are made during this final concurrence process, previous surnames will need to be confirmed with the subsequent changes.)

### **APPROVAL FOR FINAL PUBLICATION**

- 1. The final CE package is similar to that for the proposed CE package above in section E.1, with the addition of the CEQ letter of conformity and the request for surnaming of the associated revised NEPA DM Chapter. This final CE package includes the following items:
  - a. A letter of conformity from CEQ
  - b. Federal Register Notice (FRN)
  - c. Updated bureau DM NEPA Chapter reflecting the CE language (and any other needed changes as coordinated with SIO REGS)
  - d. Briefing paper from the bureau

- e. Communication plan
  - f. Memo from Bureau Head through Assistant Secretary for bureau to OEPC.
2. Refer to and follow section E. 2-6 for publication of the final CE package.
  3. Bureaus can begin using the new CE(s) on the effective date noted in the FRN publication which is usually the date of publication unless a later date is specified in the FRN by the bureau.
  4. SIO REGS issues the revised bureau DM NEPA Chapter.

## **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 is new.