

# National Environmental Policy Act Requirements on Federal Projects

FEDERAL ENVIRONMENTAL REGULATIONS FOR CONSTRUCTION PROFESSIONALS

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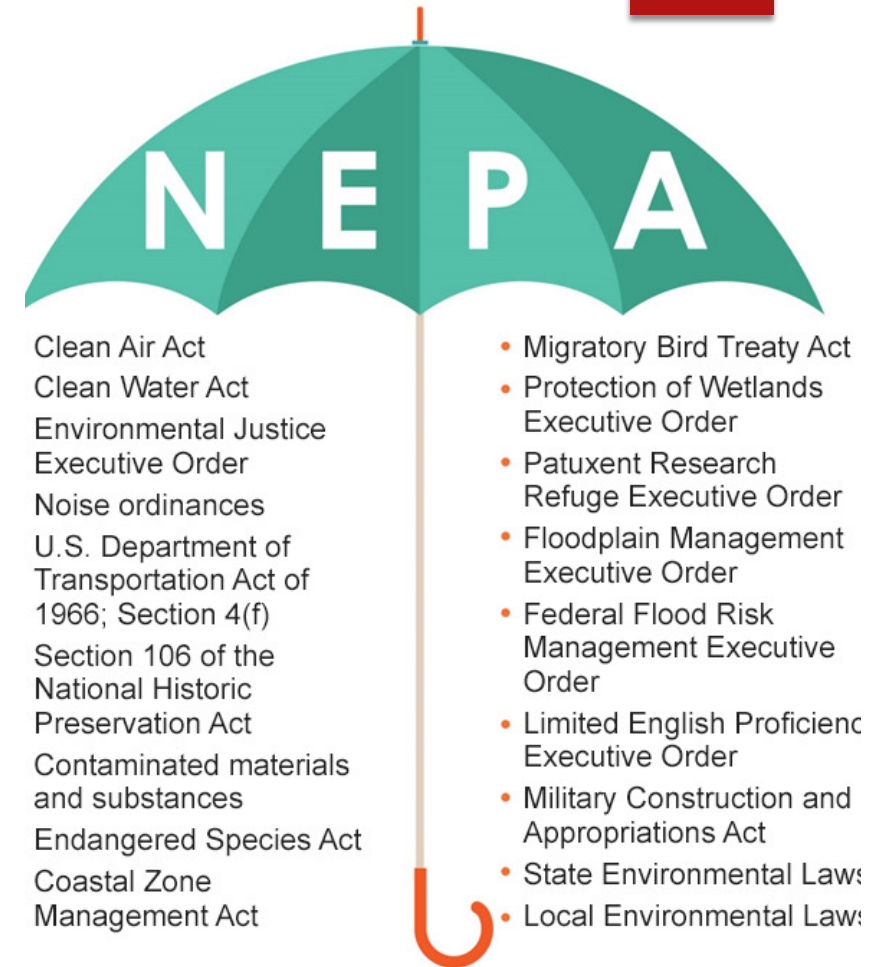
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# The National Environmental Policy Act (NEPA)

## Established January 1, 1970

- ▶ Requires federal government to use all practicable means to create and maintain conditions where man and nature can exist in productive harmony. 40 CFR 1500.1 (a)
- ▶ NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions.
- ▶ Umbrella law that encourages integrated compliance with other environmental laws.
- ▶ Referred to as the “Magna Carta” of Environmental Law
  - ▶ First major environmental law in the United States





# Effect or Impacts Defined

## 40 CFR 1508.1 (g)

- ▶ Changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives
- ▶ Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects.
- ▶ Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain.
- ▶ Effects do not include those effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action



# NEPA Implementation

## Council on Environmental Quality (CEQ)

- Established within the Executive Office of the President to ensure Federal Agencies meet NEPA obligations
- Issues guidance and interprets regulations on NEPA's procedural requirements
- Resolves inter-agency disputes on NEPA implementation

## Lead Agency

- The agency carrying out the federal action is responsible for complying with NEPA requirements
- Supervises the preparation of environmental analysis
- May be more than one agency and Federal agency may work jointly as lead agency with state, tribal or local agency

## Cooperating Agency

- Has jurisdiction by law or special expertise with respect to proposal

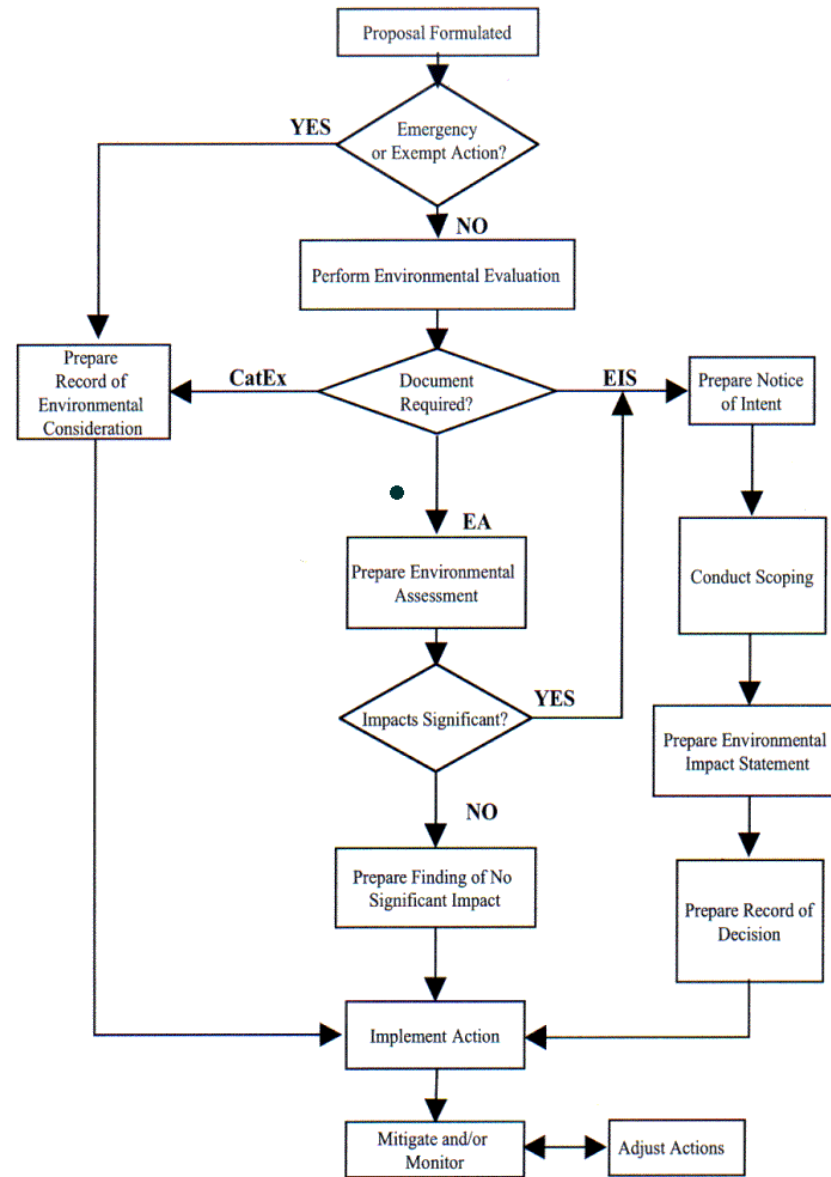
## Environmental Protection Agency

- Conducts NEPA oversight by reviewing Environmental Impact Statements (EISs) and Environmental Assessments (EAs) issued by Federal Agencies
- Provides comments to the public by publishing summaries in the *Federal Register*.



# NEPA Process Overview

Figure 3-1. The NEPA Process



# NEPA Process Cont.

- ▶ Special Situations
  - ▶ Congress may exempt certain federal actions from NEPA requirements
  - ▶ If insufficient time to prepare EIS due to emergency or extenuating circumstance
    - ▶ Agency can proceed immediately to mitigate harm to life, property, or important resources
    - ▶ Can work with CEQ to develop alternative arrangements for compliance with NEPA
  - ▶ If the action is classified, the agency is still required to comply with the analytical requirements of NEPA but information will not be released for public review
    - ▶ If only a portion of information is classified, the agency will organize classified material so unclassified portions can be made available for review





# Categorical Exclusions (CatEx or CEs)

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- ▶ The agency has determined these action do not normally have a significant effect on the human environment
  - ▶ Examples: Administrative personnel procedures, making minor facility renovations (such as installing energy-efficient lighting), and reconstruction of hiking trails on public lands.
- ▶ Agencies develop a list of CEs specific to their operations when they develop or revise NEPA procedures
- ▶ Agency may have previously conducted an Environmental Assessment, found no significant impact on the environment, and validated the lack of significant impacts after the implementation
  - ▶ Agency can amend implementing regulations to include as a CE
  - ▶ Draft agency procedures published in the *Federal Registrar* and public comment period is required,.





# Environmental Assessment (EA)

- ▶ Purpose:
  - ▶ to determine the significance of the potential environmental effects of a proposed federal action; and
  - ▶ Look at alternative means to achieve the agencies objectives
- ▶ Outcome:
  - ▶ Prepare an Environmental Impact Statement
  - ▶ Finding of No Significant Impact (FONSI)
- ▶ Must be completed within *ONE YEAR* of the agency decision to prepare an EA
  - ▶ *Unless a senior agency official of the lead agency approves a longer period in writing and establishes a new time limit.*
- ▶ Limited to 75 pages unless approved by senior agency official





# EA Procedures

- ▶ Agency has discretion on the level of Public Involvement
  - ▶ CEQ regulations require agencies involve, *to the extent practicable*, the public, State, Tribal, and local governments, other relevant agencies and the applicant
  - ▶ Some agencies use the same EIS scoping and public comment periods
  - ▶ Some agencies make the EA and draft FONSI available to interested members of the public (usually subscribed to an email or mailing list)
- ▶ Public Comment for Finding of No Significant Impact (FONSI)
  - ▶ When the proposed action has not been done before by the agency
  - ▶ OR
  - ▶ If the action typically would require an EIS under the agency NEPA procedures





# Environmental Impact Statement (EIS)

- ▶ Four Stages
  - ▶ 1) Scoping and Public Notice of Intent (NOI)
  - ▶ 2) Draft EIS and Comment Period
  - ▶ 3) Final EIS
  - ▶ 4) Record of Decision (ROD)



# EIS Process

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- ▶ Scoping and Public Notice of Intent (NOI)
  - ▶ Scoping involves identifying significant issues, eliminating non-significant issues from further study, and determining the range of actions, alternatives, and impacts to be considered by the EIS.
  - ▶ NOI briefly summarizes the proposal, including the purpose and need, expected impacts, and possible alternatives
  - ▶ Published in the *Federal Register* by the lead agency
- ▶ Draft EIS and Comment Period
  - ▶ The Lead Agency publishes the EIS on its website and EPA publishes a Notice of Availability in the *Federal Register*
  - ▶ Comment period at least 45 days
  - ▶ Must include "Reasonable Alternatives" - technically and economically feasible
  - ▶ If agency has a preferred alternative it should be identified in the Draft EIS
  - ▶ No Action alternative must also be described and analyzed





# EIS Process

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- ▶ Final EIS
  - ▶ Following the public comment period the agency;
    - ▶ Analyzes and responds to comments
    - ▶ Conducts further analysis and alternatives as necessary
  - ▶ Upon the agency's publishing of the Final EIS
    - ▶ 30 Day waiting period begins w/ EPA's Notice of Availability in the *Federal Register*
    - ▶ Agency cannot make a decision on action until waiting period expires
  - ▶ Pre-decisional referrals
    - ▶ If EPA or another agency determines that the proposed action is environmentally unacceptable
    - ▶ Can refer to CEQ within 25 days after Notice of Availability is published





- ▶ Record of Decision (ROD)
  - ▶ states what the decision is; identifies the alternatives considered, including the environmentally preferred alternative; and discusses mitigation plans, including any enforcement and monitoring commitments.
  - ▶ will contain a certification by the decision maker that, in developing the EIS, the agency has considered all of the alternatives, information, analysis, and objections submitted by State, Tribal, and local governments and public commenters.
  - ▶ ROD is a public document available of the agency website or *Federal Register*





# Sources

- ▶ <https://ceq.doe.gov/>
- ▶ <https://www.epa.gov/nepa/national-environmental-policy-act-review-process>
- ▶ <https://ceq.doe.gov/docs/laws-regulations/NEPA-Implementing-Regulations-Desk-Reference-2022.pdf>
- ▶ <https://ceq.doe.gov/docs/get-involved/citizens-guide-to-nepa-2021.pdf>

