



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

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National Policy Memorandum

**Bureau of Indian Affairs
Office of the Director**

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Title: Implementing National Environmental Policy Act (NEPA) Streamlining Directives

1. Purpose

The purpose of this memorandum is to establish interim policy that addresses the recent requirements of the Department of the Interior (DOI) to conduct more efficient and effective National Environmental Policy Act (NEPA) reviews.

On August 15, 2017, the President issued Executive Order (EO) 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*. EO 13807 is an attempt to ensure the federal environmental review and permitting process for infrastructure projects is coordinated, predictable, and transparent. Specifically, major infrastructure projects should complete the NEPA process within two years and all federal permits and environmental review processes should be coordinated to occur at the same time.

Shortly after the issuance of EO 13807, on August 31, 2017, the Secretary of the DOI issued Secretarial Order (SO) 3355, *Streamlining NEPA Reviews and Implementation of EO 13807*. This SO dovetails with EO 13807 in the context of the Department's overall efforts to streamline the NEPA process. SO 3355 applies to all Departmental actions and sets page and time limit requirements for Environmental Impact Statements (EISs). It also requires a review of bureau/office NEPA regulations, policies, guidance, and processes to identify opportunities for improvement in efficiencies.

On April 27, 2018, the DOI Deputy Secretary issued the following three memorandums to ensure implementation of SO 3355:

- *Additional Direction for Implementing Secretary's Order 3355*. This memorandum requires the use of a standard NEPA database that tracks general NEPA review progress, permitting, and compliance with the page limit and timeline requirements of SO 3355, and a waiver process. It also requires the review of bureau/office NEPA handbooks for consistency with SO 3355.

- *NEPA Document Clearance Process.* This memorandum replaces the surname process with a briefing process whereby the NEPA team briefs a seven member Review Team at several points during the NEPA process.
- *Compiling Contemporaneous Decision Files.* This memorandum requires contemporaneous compilation of Decision Files for decision-making processes that will or could result in a “final Agency action” subject to challenge under the Administrative Procedure Act, and to further establish a system for standardized Decision File tracking.

On August 6, 2018, the DOI Deputy Secretary issued an additional memorandum regarding *Additional Direction for Implementing Secretary’s Order 3355 Regarding Environmental Assessments*. This memorandum includes an Environmental Assessment (EA) page limit of 75 pages, and a timeline of 180 days to complete the EA process from application to the signing of a Finding of No Significant Impact (or a Notice of Intent to prepare an EIS if warranted). It also requires the review of bureau/office NEPA handbooks for consistency with this EA memorandum.

The EO, the SO, and the Deputy Secretary’s memorandums are hereby referred to as the “NEPA Streamlining Directives.” The SO and Deputy Secretary’s memorandums can be accessed on the DOI website at <https://www.doi.gov/nepa/requirements-guidance/DOI-requirements>.

2. Scope

This policy applies to all Bureau of Indian Affairs (BIA) programs, offices, regions, and agencies involved in the NEPA process.

3. Policy and Procedures

It is the BIA’s policy to comply with all federal laws and regulations as well as Departmental policies regarding NEPA and records management. BIA will implement the following steps in order to comply with the NEPA Streamlining Directives.

A. **BIA NEPA Handbook, Policy, and Best Practices** (per the *Additional Direction for Implementing Secretary’s Order 3355* memorandums)

The BIA NEPA Handbook, 59 IAM 3-H, was last published in August 2012 and requires a comprehensive revision to ensure compliance with the recent NEPA Streamlining Directives. While that revision process has begun, it will involve various stakeholders and take some time to be completed. The expectation is that it will be updated and published prior to the expiration of this interim policy. In the meantime, the existing BIA NEPA Handbook should continue to be used except in cases where it conflicts with directives, guidance, or recommendations in the NEPA Streamlining Directives, as defined above. In cases of conflict, the NEPA Streamlining Directives supersede any guidance in the existing BIA NEPA Handbook. Any questions regarding conflicts and/or the implementation of the NEPA Streamlining Directives should be directed to BIA Central Office, Division of Natural Resources, Branch of Environmental and Cultural Resources Management (BECRM).

The related BIA NEPA policy, 59 IAM 3, was last published in October 2011, and will also require a comprehensive review and revision process. Additionally, as stated in the Department's memorandum, "...each Bureau will identify best practices related to gathering information, coordinating with stakeholders, and preliminary drafting before the publication of the Notice of Intent (NOI)." BIA is working to identify these best practices, and will likely include them in its policy revision as well.

B. Decision File Compilation (per the *Compiling Contemporaneous Decision Files* memorandum)

A critical component of NEPA is to ensure that information regarding environmental impacts is available to decision-makers and to the public before decisions are made. NEPA accomplishes this by requiring federal agencies to prepare an EIS for major federal actions significantly affecting the quality of the environment. A Decision File is a collection of documents maintained by a designated employee who is generally the project's program manager, the project manager, or staff who has access to the relevant documents that detail the development of an Agency's (i.e., DOI) decision. If a decision is subjected to judicial review, the Decision File is used as the primary basis for the compilation of the Administrative Record that is submitted to a court. The Decision File may also serve as the primary compilation of documents in response to a Freedom of Information Act (FOIA) request, or other records request.

Effective immediately, the guidance herein should be followed regarding Decision File compilation and tracking. If modifications are needed, this NPM will be updated accordingly. As outlined in the Department's memorandum, the Decision File itself should:

- contain the complete story of the Agency decision-making process, including options considered and rejected by the Agency;
- include important substantive information that was presented to, relied on, or reasonably available to the decision-maker;
- establish that the Agency complied with relevant statutory, regulatory, and Agency requirements; and
- demonstrate that the Agency followed a reasonable decision-making process.

Additionally, the following guidance should be followed:

- the DOI Office of the Solicitor should be consulted throughout the process as necessary;
- a Decision File should be created once consideration of a proposal, application, request, or decision begins, which will vary based on the situation;
- the Decision File should serve as a single organized source of information that records the Agency decision and decision-making process;

- as a routine matter, the Decision File should capture information from employees who are involved in the decision-making process prior to those employees leaving such roles;
- the Decision File should be kept in an accessible location and should be organized in a logical manner, such as chronologically or by topic—or even chronologically within each topic—so that documents can be added to the Decision File as they are generated or received;
- to the extent documents may be subject to a privilege, they should be so marked to the extent practicable during the decision-making process;
- all documents placed in the Decision File should be appropriately labeled and dated;
- substantive meetings that are relevant to the decision-making process should be sufficiently documented;
- drafts that help substantiate the Agency’s decision-making process should be included in the Decision File;
- documentation of electronic information (such as that found on websites) and communications (such as emails) should be maintained in the Decision File only if relevant, substantive, and if it documents the decision-making process;
- when information contained on websites is relied on, the Decision File should contain a contemporaneous copy of the website, including the address and date it was downloaded, to ensure that the information relied on is preserved before the website content changes;
- contemporaneous memoranda that document relevant oral communications, serve to explain otherwise confusing emails, or that document other matters that demonstrate the Agency’s decision-making process should be written or collected and placed in the Decision File before the final decision is reached; and
- once the decision-maker has made a final decision, the Decision File should be closed.

C. Decision File Tracking (per the *Additional Direction for Implementing Secretary’s Order 3355* memorandum)

Decision File tracking must comply with the Department’s requirements to immediately improve the NEPA process timelines. BIA is working to establish a standardized process for Decision File tracking in compliance with the Departmental memorandum and in coordination with the Office of the Solicitor, the Office of Environmental Policy and Compliance, and the Office of the Chief Information Officer. The expectation is that it will be established prior to the expiration of this interim policy.

4. Responsibilities

- 1) **Director, BIA** is responsible for ensuring that appropriate organizational arrangements, resources, and personnel are available to implement and maintain the environmental and

cultural program. The Director serves as the Senior Accountable Official for this program, and has primary responsibility for implementing and executing BIA programs in accordance with statute, regulation, and Departmental policy.

- 2) **Deputy Bureau Director (DBD), Field Operations, BIA** is responsible for overseeing the Regional Directors (RDs) and dissemination of policy relevant to the regions.
- 3) **DBD, Office of Trust Services (OTS), BIA** is responsible for ensuring that statutory and regulatory timetables for environmental documents are met, and that guidance is available to regional and BIA agency staff tasked with processing environmental and cultural documents; initiates periodic program reviews of regional and agency programs; and assists in the development and dissemination of trust resource policy to the RDs.
- 4) **Director, Division of Natural Resources, OTS** is responsible for overall policy and guidance development within the Division of Natural Resources.
- 5) **Chief, BECRM, Division of Natural Resources, OTS** is responsible for the day-to-day oversight of the environmental and cultural resources program, and establishes BIA's environmental and cultural program policies, guidance, and standards for complying with statutory and regulatory requirements, including NEPA. The Chief also ensures technical assistance and training is provided to BIA regions as needed; conducts program reviews; and manages BIA's federal reporting requirements as they relate to this program.
- 6) **Regional Environmental Scientist/NEPA Coordinator/Regional Environmental Program Manager, BECRM** is responsible for providing technical advice to RDs and Agency Superintendents regarding proper compliance with NEPA; reviewing NEPA Categorical Exclusion Exception Reviews (CEERs), EAs, and EISs for actions occurring within the regions, including documents prepared by BIA as well as documents prepared by other agencies for activities occurring on or affecting Indian lands; coordinating the compilation of Decision Files; serving as the regions' representatives for cooperating agencies on environmental analysis affecting Indian lands; and ensuring that all required mitigation measures are carried out in accordance with all regulatory requirements and BIA/DOI policies.
- 7) **BIA RDs** serve as the Senior Accountable Official for the environmental and cultural program in their respective regions and are responsible for reviewing and acting on any NEPA documents, including CEERs, EAs, and EISs that are not otherwise delegated to the BIA agency level.
- 8) **BIA Agency Superintendents** manage their respective organization's environmental and cultural program compliance in day-to-day operations, and coordinate reviews of NEPA documents, CEERs, and EAs with the Regional Environmental Scientist/NEPA Coordinator/Regional Environmental Program Manager. Superintendents are responsible for implementing NEPA responsibilities at the appropriate level as re-delegated by the DBD Field Operations or RD.

Such delegation will only be made when the BIA agency or program office has appropriate expertise on staff or are otherwise readily available.

5. Approval



Darryl LaCounte
Acting Director, Bureau of Indian Affairs

10-19-2018

Date