

COUNCIL ON ENVIRONMENTAL QUALITY
EXECUTIVE OFFICE OF THE PRESIDENT

A Citizen's Guide to NEPA

Having Your Voice Heard



JANUARY 2021

The Council on Environmental Quality (CEQ) revised this guide in January 2021 to reflect the updated National Environmental Policy Act (NEPA) Implementing Regulations that became effective on September 14, 2020. CEQ modernized and clarified the regulations to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies. This guide provides an explanation of NEPA, how it is implemented, and how people outside the Federal Government—individual citizens, private sector applicants, members of organized groups, and representatives of Tribal, State, or local government agencies—can participate in the assessment of environmental impacts conducted by Federal agencies. This guide is informational, does not establish new requirements, and is not formal CEQ guidance. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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List of Acronyms

CE	Categorical Exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
FONSI	Finding of No Significant Impact
NCECR	McCain Center for Environmental Conflict Resolution
NEPA	National Environmental Policy Act
NOI	Notice of Intent
ROD	Record of Decision
U.S.C.	United States Code

Purpose of the Guide

CEQ developed this guide to help citizens and organizations effectively participate in Federal agencies' environmental reviews under the National Environmental Policy Act (NEPA), which requires the consideration of environmental effects in Federal decision making.¹ With some limited exceptions, all Federal agencies in the executive branch have to comply with NEPA before they make final decisions about major Federal actions that could have environmental effects. The Federal Government takes hundreds of actions every day that may be subject to NEPA, including Federal construction projects, plans to manage and develop federally owned lands, and Federal approvals of non-Federal activities such as grants, licenses, and permits.

The environmental review process under NEPA provides an opportunity for citizens to get involved in a Federal agency's decision-making process. This guide will help you understand proposals for Federal actions, when to offer your thoughts on alternative ways for the agency to accomplish what it proposes, and how to offer your comments on the agency's analysis of the environmental effects of the proposed action and possible mitigation of potential harmful effects of such actions. NEPA requires Federal agencies to consider the effects of their actions on the environment, including interrelated social, cultural, and economic effects. Citizens often possess helpful information about the potential environmental, social, and economic effects that proposed Federal actions may have on people, places, and resources. NEPA's requirements provide you the opportunity to provide information to a Federal agency so it can take your input and unique perspective into account during the decision-making process.

History and Purpose of NEPA

Congress enacted NEPA in December 1969, and President Nixon signed it into law on January 1, 1970. NEPA established this country's national environmental policy and a process to implement it. Section 101 of NEPA declares that the national policy is "to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and [to] fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. 4331(a).

What are the Procedural Requirements of NEPA?

Section 102 of NEPA contains procedures to ensure Federal agencies carry out the national policy of Section 101. These procedures require Federal agencies to engage in an environmental review process that integrates the consideration of the environment in Federal agency decision-making. NEPA also directs Federal agencies, to the fullest extent possible, to interpret and administer the policies, regulations, and public laws of the United States consistent with the policies set forth in NEPA.²

In NEPA, Congress recognized that the Federal Government's actions may cause significant environmental effects. Using the NEPA process, agencies must determine if their proposed actions will have significant environmental effects and consider the reasonably foreseeable environmental and related social and economic effects of their proposed actions that have a reasonably close causal relationship to the proposed actions. NEPA does not require particular

results or outcomes. Rather, NEPA encourages better decisions by requiring agencies to consider the environmental effects of their proposed actions in making their decisions. This environmental review process has two major purposes: ensuring that agencies consider the significant environmental consequences of their proposed actions and informing the public about their decision making.

NEPA also created the Council on Environmental Quality (CEQ). One of the responsibilities of CEQ is to consult with Federal agencies on procedures to implement NEPA's procedural requirements. In 1978, CEQ issued binding regulations directing agencies on the fundamental requirements necessary to fulfill their NEPA procedural obligations. CEQ updated these regulations in 2020 to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies and to improve interagency coordination.³

Who is Responsible for Implementing NEPA?

NEPA's procedural requirements apply to all Federal agencies in the executive branch and some Federal boards, commissions, independent agencies, and committees. NEPA does not apply to the President, to Congress, or to the Federal courts.⁴

Because NEPA implementation is an important responsibility of the Federal Government, many Federal agencies have established offices dedicated to NEPA policy and program oversight. Employees in these offices prepare NEPA guidance, policy, and procedures for the agency, and often make this information available to the public through the Internet. A "senior agency official" oversees the agency's overall compliance with NEPA and resolves any implementation issues that may arise, including those related to agency timelines and schedules for environmental reviews.⁵ Federal agencies must develop their own capacity within a NEPA program in order to develop analyses and documents (or review those prepared by others) to ensure informed decision making.⁶ Most agency NEPA procedures are available online at [NEPA.gov](https://www.nepa.gov) or on individual agency websites, which agencies are required to maintain to allow agencies and the public to efficiently and effectively access information about NEPA reviews.⁷ Agency NEPA procedures also are published in the *Federal Register* for public review and comment when first proposed and some are later codified and published in the Code of Federal Regulations.⁸ If you experience difficulty locating an agency's NEPA procedures, you can contact the agency NEPA point of contact and ask for a copy of their procedures.⁹

To What Do the Procedural Requirements of NEPA Apply?

NEPA's procedural requirements apply to a Federal agency's decisions on proposed actions, including providing permits for private actions; financing, assisting, conducting, or approving projects or programs; issuing agency rules, regulations, plans, policies, or procedures; making Federal land management decisions; and an agency's legislative proposals.¹⁰ NEPA applies when a Federal agency has discretion to choose among one or more alternative means of accomplishing a particular goal.¹¹

Frequently, private individuals or companies will become involved in the NEPA process when they need a permit issued by a Federal agency. When a company applies for a permit (for example, for crossing Federal lands or impacting waters of the United States), the agency that is

being asked to issue the permit must evaluate the reasonably foreseeable environmental effects of the permit decision that have a reasonably close causal relationship to the agency decision. Federal agencies might require the private company or developer to pay for the preparation of analyses, but the agency remains responsible for the scope and accuracy of the analysis.

When Does NEPA Apply?

NEPA requires agency decision makers to make informed decisions. Therefore, the NEPA process must be completed before an agency makes a final decision on a proposed action. As a threshold matter, agencies start the NEPA process early by evaluating in their agency NEPA procedures the extent to which a proposed action requires environmental analysis.¹² NEPA does not require the decision maker to select the environmentally preferable alternative or prohibit adverse environmental effects. Indeed, decision makers in Federal agencies often must take into account other concerns and policy considerations in the decision-making process, such as social, economic, technical or national security interests. But NEPA does require that decision makers be informed of the environmental consequences of their decisions.

Federal agencies also can use the NEPA process to comply with other environmental requirements like the Endangered Species Act, the National Historic Preservation Act, the Environmental Justice Executive Order, and other Federal, State, Tribal, and local laws and regulations.¹³ Agencies often coordinate to conduct these other environmental reviews concurrently to increase efficiency and avoid duplication.¹⁴

Who Oversees the NEPA Process?

There are two Federal agencies that have particular responsibilities relating to NEPA. CEQ has primary responsibility for overseeing implementation of NEPA by Federal agencies. Congress placed CEQ in the Executive Office of the President and gave it many responsibilities, including the responsibility to ensure that Federal agencies meet their obligations under the Act. CEQ oversees implementation of NEPA, principally through issuance and interpretation of NEPA regulations that implement the procedural requirements of NEPA. CEQ also reviews and approves Federal agency NEPA procedures, approves alternative arrangements for compliance with NEPA in the case of emergencies, and helps to resolve disputes between Federal agencies and with other governmental entities and members of the public.

The CEQ regulations set forth requirements for agencies and call for agencies to update their own implementing procedures that implement these requirements based on each agency's specific mandates, obligations, and missions.¹⁵ These agency-specific NEPA procedures account for the slight differences in agencies' NEPA processes.

The Environmental Protection Agency's (EPA's) Office of Federal Activities also conducts NEPA oversight as it reviews environmental impact statements (EISs) and some environmental assessments (EAs) issued by Federal agencies.¹⁶ It provides its comments to the public by publishing summaries of them in the *Federal Register*, a daily publication that provides notice of Federal agency actions. Appendix B has information on the *Federal Register*. EPA's reviews are intended to assist Federal agencies in improving their NEPA analyses and decisions.¹⁷

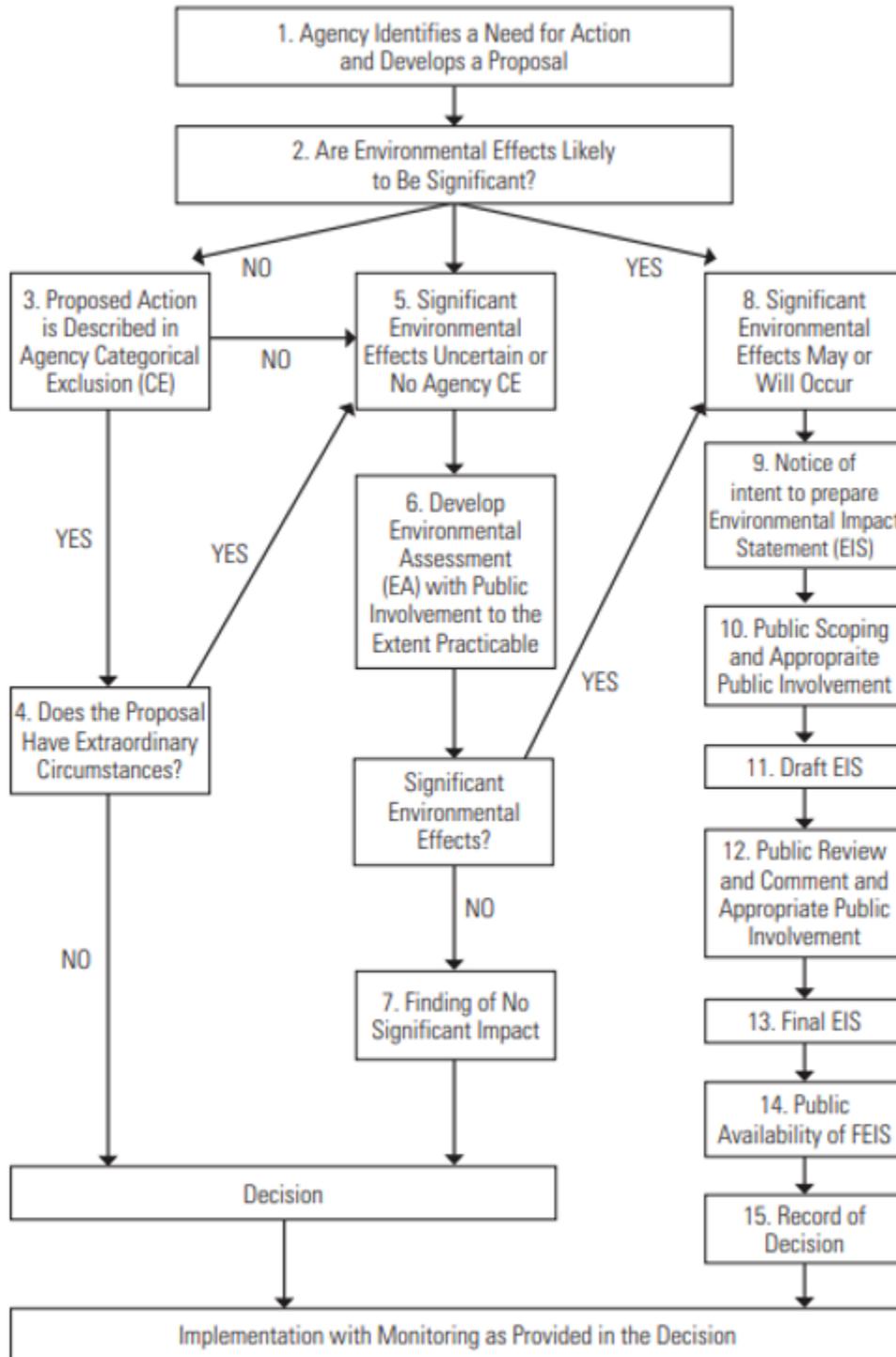
In addition to CEQ's and EPA's oversight, other agencies also may assist in the NEPA process, particularly in issue resolution (for example, the McCain Center for Environmental Conflict Resolution (NCECR) and Federal Permitting Improvement Steering Council).

Navigating the NEPA Process

Each year, Federal agencies prepare thousands of EAs and hundreds of EISs. These documents provide citizens and communities with an opportunity to learn about and be involved in the agencies' environmental reviews that are part of the Federal agency decision-making process. It is important to understand that commenting on a proposal is not a "vote" on whether the proposed action should take place. Nonetheless, the information you provide during the EA and EIS process can influence the decision makers and their final decisions because NEPA requires that Federal decision makers be informed of the environmental consequences of their decisions.

This guide will help you better navigate the NEPA process and better understand the roles of the various other actors. While reading the guide, please refer to the flowchart, "The NEPA Process," in Figure 1, which details the steps of the NEPA process. For ease of reference, each step of the process is designated with a number that is highlighted in the text discussing that particular step. While agencies may differ slightly in how they comply with NEPA, understanding the basics will give you the information you need to work effectively with any agency's process.

The NEPA Process (Figure 1)



* Significant new circumstances or information relevant to environmental concerns or substantial changes in the proposed action that are relevant to environmental concerns may necessitate preparation of a supplemental EIS following either the draft or final EIS, or the Record of Decision. 40 CFR 1502.9(d).

The NEPA process begins when an agency develops a proposal to address a need to take an action. The need to take an action may be something the agency identifies itself, or it may be a need to make a decision on a proposal brought to it by someone outside of the agency, for example, an applicant for a permit. Based on the need, the agency develops a proposal for action (Number 1 in Figure 1). If it is the only Federal agency involved, that agency will automatically be the “lead agency,” which means it has the primary responsibility for compliance with NEPA.

Some large or complex proposals involve multiple Federal agencies along with State, Tribal, and local agencies. If another Federal, State, Tribal, or local agency has a major role in the proposed action and also has NEPA responsibilities or responsibilities under a similar NEPA-like law,¹⁸ that agency may be a “joint lead agency.” A “joint lead agency” shares the lead agency’s responsibility for management of the NEPA process, including public involvement and the preparation of documents.

Other Federal, State, Tribal, or local government agencies may have a decision or special expertise regarding a proposed action, but less of a role than the lead agency. In that case, such a Federal, State, Tribal, or local government agency may be a “cooperating agency.” A “cooperating agency” is an agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative). Thus, a “cooperating agency” typically will have some responsibilities for the analysis related to its jurisdiction or special expertise.

Special Situations

- Congress may exempt an action from NEPA.
- If the agency needs to take an action that would typically require preparation of an EIS in response to an emergency, and there is insufficient time to follow the regular NEPA process, then the agency can proceed immediately to mitigate harm to life, property, or important resources, and work with CEQ to develop alternative arrangements for compliance with NEPA (40 CFR 1506.12). The NEPA analyses and document may involve classified information. If the entire action is classified, the agency will still comply with the analytical requirements of NEPA, but the information will not be released for public review. If only a portion of the information is classified, the agency will organize the classified material so that the unclassified portions can be made available for review (40 CFR 1507.3(f)).

Implementing the NEPA Process

The CEQ NEPA regulations establish three levels of review for Federal agencies to assess proposals for agency action: a categorical exclusion (CE), an EA, or an EIS. Once it has developed a proposed action, the agency will determine which level of NEPA review the agency will pursue. Agencies may review expeditiously those actions that normally do not have

significant effects by using CEs or, for actions that are not likely to have significant effects, by preparing EAs. By using CEs and EAs whenever appropriate, agencies then can focus their limited resources on those actions that are likely to have significant effects and require an EIS.

Categorical Exclusions (CEs) (Number 3 in Figure 1)

A CE is a category of actions that the agency has determined does not normally have a significant effect on the human environment.¹⁹ Examples include issuing 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 their NEPA implementing procedures in accordance with CEQ's NEPA regulations.²⁰

A CE is based on an agency's experience with a particular kind of action and its environmental effects. The agency may have studied the action in previous EAs, found no significant impact on the environment based on the analyses, and validated the lack of significant impacts after the implementation. If this is a type of action that will be repeated over time, the agency may decide to amend their implementing regulations to include the action as a CE. In these cases, the draft agency procedures are published in the *Federal Register*, and a public comment period is required. Members of the public may comment on draft agency procedures that are proposing new CEs or amending existing CEs to ensure the agency takes into consideration relevant information and views.

An agency may comply with NEPA by determining that a CE applies to a proposed action and verifying that no extraordinary circumstances exist that may cause the proposed action to have a significant effect. Extraordinary circumstances typically include such matters as effects to endangered species, protected cultural sites, and wetlands (Number 4 in Figure 1). If there are no extraordinary circumstances indicating that the effects of the action may be significant, or there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects, then the agency can proceed with the action.

If the proposed action is not included in the description provided in the CE established by the agency, or there are extraordinary circumstances, the agency must prepare an EA or an EIS, or develop a new proposal that may qualify for application of a CE. When the agency does not know or is uncertain whether significant impacts are expected, the agency should prepare an EA to determine if there are significant environmental effects.

Environmental Assessments (EA) (Number 6 in Figure 1)

The purpose of an EA is to determine the significance of the potential environmental effects of a proposed Federal action and to look at alternative means to achieve the agency's objectives. The EA is a concise public document to aid an agency's compliance with NEPA and support its determination whether to prepare an EIS (Number 6 in Figure 1) or a finding of no significant impact (FONSI) (Number 7 in Figure 1).²¹

Agencies must complete EAs 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.²²

An EA should include brief discussions of:

- The purpose and need for the proposal;
- Alternative courses of action for any proposal that involves unresolved conflicts concerning alternative uses of available resources;
- The environmental impacts of the proposed action and alternatives; and
- A listing of agencies and persons consulted.²³

Because the EA serves to evaluate the significance of a proposal for agency action, it should focus on the potentially affected environment and degree of the effects of the action.²⁴ Often the EA will identify ways in which the agency can revise the action to minimize environmental effects.

When preparing an EA, the agency has discretion as to the level of public involvement (Number 6 in Figure 1). The CEQ regulations state that the agency must involve, to the extent practicable, the public, State, Tribal, and local governments, other relevant agencies, and applicants in preparing EAs.²⁵ Sometimes agencies will choose to use the scoping and public comment periods that are found in the EIS process. In other situations, agencies make the EA and a draft FONSI available to interested members of the public.

Some agencies require that interested parties be notified of the decision to prepare an EA. Some agencies keep a notification list of parties interested in a particular kind of action or in all agency actions. Other agencies simply prepare the EA. It is important that you read the specific NEPA procedures of the proposing agency or ask the local NEPA point of contact working on the project about the process and let the appropriate agency representative know if you are interested in being notified of all NEPA documents or NEPA processes related to a particular type of action.

The EA process concludes with either a FONSI (Number 7 in Figure 1) or a determination to proceed to preparation of an EIS. A FONSI is a document that presents the reasons why the agency has concluded that there are no significant environmental impacts projected to occur upon implementation of the action.²⁶ The FONSI either includes the EA or incorporates the EA by reference.

In two circumstances, the CEQ NEPA regulations require agencies to make the proposed FONSI available for public review for 30 days.²⁷ Those situations are:

- If the type of proposed action has not been done before by the particular agency, or
- If the action is something that typically would require an EIS under the agency NEPA procedures.

If this is the case, the agency usually publishes a notice of availability of the FONSI with information on how and where to provide your comments. The agency may post it on its website, publish it in local newspapers, publish it in the *Federal Register*, or make available in some other manner. If you are interested in a particular action that is the subject of an EA, you should find out from the agency how it will make the FONSI available.

Environmental Impact Statements (EIS) (Number 8 in Figure 1)

A Federal agency must prepare an EIS if it is proposing a major Federal action significantly affecting the quality of the human environment.²⁸ The regulatory requirements for an EIS are more detailed than the requirements for an EA or a CE. The EIS process consists of four main stages, which are explained below: scoping with a public notice of intent (NOI) to prepare an EIS, the draft EIS and public comment period, the final EIS, and the record of decision (ROD).

To the extent practicable, if a proposal will require action by more than one Federal agency, the lead and cooperating agencies will evaluate the proposal in a single EIS and issue a joint ROD. Agencies must complete EISs within two years from the date of the NOI unless a senior agency official of the lead agency approves a longer period in writing and establishes a new time limit.²⁹

Scoping and Public Notice of Intent (Number 10 in Figure 1)

When a proposed action is sufficiently developed for agency consideration, the agency may begin the process of determining the scope of issues for analysis in an EIS. Scoping generally 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.³⁰

A cornerstone of the scoping process is the publication of a NOI to prepare an EIS in the *Federal Register*, which provides information on the proposed action (Number 10 in Figure 1).³¹ The lead agency publishes the NOI as soon as practicable after the agency determines that the proposal is sufficiently developed to allow for meaningful public comment on alternatives, information, and issues for analysis in the EIS. The NOI briefly summarizes the proposal, including the purpose and need, expected impacts, and possible alternatives. Under the updated CEQ regulations, agencies must request in the NOI public comment specifically on potential alternatives, information, and analyses relevant to the proposed action. The NOI also provides a schedule for the decision-making process including anticipated permits and other authorizations, and describes the agency's proposed scoping process, including any meetings and how the public can get involved. The NOI also contains an agency point of contact who can answer questions about the proposed action and the NEPA process. Scoping also may include pre-application communication with potential cooperating agencies, an applicant, and survey work conducted before or after the publication of the NOI. The scoping process is the best time to identify issues, determine points of contact, establish project schedules, and provide recommendations to the agency. The overall goal is to define the scope of issues to be addressed in depth in the analyses that will be included in the EIS. Specifically, the scoping process will:

- Identify the significant issues to be analyzed in the EIS and eliminate from detailed study non-significant issues;
- Identify people or organizations who are interested in the proposed action and invite them to participate;
- Determine the roles and responsibilities of lead and cooperating agencies;
- Identify any related EAs or EISs;
- Identify gaps in data and informational needs;
- Identify other environmental review and consultation requirements so they can be integrated with the EIS; and

- Indicate the relationship between the development of the environmental analysis and the agency's tentative decision-making schedule.³²

As part of the process, agencies must identify and invite the participation of interested persons. The agency should choose whatever communications methods are best for effective involvement of communities, whether local, regional, or national, that are interested in the proposed action, and the agency must consider the ability of affected persons to access electronic media. Video conferencing, public meetings, conference calls, formal hearings, or informal workshops are among the legitimate ways to conduct scoping. It is in your interest to become involved as soon as the EIS process begins and to use the scoping opportunity to make thoughtful, rational presentations on impacts and alternatives. Some of the most constructive and beneficial interaction between the public and an agency occurs when citizens identify or develop reasonable alternatives that the agency can evaluate in the EIS.

NEPA is About People and Places

Draft EIS (Number 11 in Figure 1)

The next major step in the EIS process that provides an opportunity for your input is when the agency publishes a draft EIS for public comment. The agency publishes its EIS on an agency website and the EPA publishes a Notice of Availability in the *Federal Register* informing you and other members of the public that the draft is available for comment (Number 11 in Figure 1). Based on the communication plan established by the agency, websites, local papers, or other means of public notice may also be used. The comment period is at least 45 days long. During this time, the agency may conduct webinars, public meetings, or hearings as a way to solicit comments.³³ The agency will also request comments from other Federal, State, Tribal, and local agencies that may have jurisdiction or interest in the matter.

One key aspect of a draft EIS is the statement of the underlying purpose and need.³⁴ Agencies draft a "Purpose and Need" statement to describe what they are trying to achieve by proposing an action. The purpose and need statement explains to the reader why an agency action is necessary, and serves as the basis for identifying the reasonable alternatives that meet the purpose and need.

Another fundamental part of the draft EIS is the identification and evaluation of alternative ways of meeting the purpose and need of the proposed action. The lead agency or agencies must, "evaluate reasonable alternatives, and for alternatives that were eliminated from detailed study, briefly discuss the reasons for their elimination."³⁵ Reasonable alternatives are those that are technically and economically feasible, meet the proposal's purpose and need, and, where applicable, meet the goals of the applicant.³⁶ If the agency is considering an application for a permit or other Federal approval, the agency must still consider all reasonable alternatives. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint, rather than simply desirable from the standpoint of the applicant. Agencies are obligated to evaluate a reasonable range of feasible alternatives in enough detail so that a reader can compare and contrast the environmental effects of the various alternatives.

If an agency has a preferred alternative when it publishes a draft EIS, the draft must identify which alternative the agency prefers. All agencies must identify a preferred alternative in the final EIS, unless another law prohibits it from doing so.³⁷

Agencies must always describe and analyze a “no action” alternative. The “no action” alternative is simply what would happen if the agency did not act upon the proposal for agency action. For example, in the case of an application to the U.S. Army Corps of Engineers for a permit to place fill material from a dredging project in a particular area, the “no action” alternative is no permit. But in the case of a proposed new management plan for the National Park Service’s management of a national park, the “no action” alternative is the continuation of the current management plan. The “no action” alternative describes reasonably foreseeable environmental trends or planned actions in the area that would be affected by the proposed action.³⁸

Definition of Effects

CEQ NEPA Regulation, 40 CFR 1508.1(g)

Effects or impacts means 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, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.

- (1) 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 may also include those resulting from actions that may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.
- (2) A “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. 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.
- (3) An agency’s analysis of effects shall be consistent with this paragraph (g). Cumulative impact, defined in 40 CFR 1508.7 (1978), is repealed.

The environmental consequences section discusses the effects of the proposed action, no action, and reasonable alternatives. It also forms the scientific and analytic basis for the comparisons of the proposed action and reasonable alternatives made under the alternatives section. For purposes of NEPA, “effects” and “impacts” mean the same thing—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. This includes those effects that occur at the same time and place as the proposed action or alternatives and may include effects that occur later or are farther removed in distance from the proposed action or alternatives.³⁹ Impacts include ecological, aesthetic, historic, cultural, economic, social, or health impacts, whether adverse or beneficial.⁴⁰ It is important to note that human beings are part of the environment (indeed, that is why Congress used the phrase “human environment” in NEPA), so when an EIS is prepared and economic or social and natural or physical environmental effects are interrelated, the EIS should discuss all of these effects.⁴¹

In addition to the environmental impacts of the proposed action and alternatives, the environmental consequences section will discuss:

- Any potential unavoidable adverse environmental effects;
- The relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity;
- Any potential irreversible or irretrievable commitments of resources;
- Possible conflicts with land use plans, policies, and controls for the area;
- Energy and natural or depletable resource requirements and conservation potential of alternatives and mitigation measures;
- Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures;
- Mitigation of adverse environmental impacts; and
- Applicable economic and technical considerations, including the economic benefits of the proposed action.

The draft EIS will also contain a summary of alternatives, information, and analysis submitted by commenters during the scoping process.⁴² The agency will specifically invite comment on this summary.

The EIS also will have a list of the individuals who prepared the document and their qualifications⁴³ and a table of contents.⁴⁴ The agency may choose to append the EIS with additional material relevant to the decision, including material prepared in connection with the EIS or that substantiates its analysis.⁴⁵

Final EIS (Number 13 in Figure 1)

When the public comment period is finished, the agency analyzes comments, conducts further analysis as necessary, and prepares the final EIS. The agency may respond to individual comments or groups of comments by making changes to the proposed action or alternatives, developing new alternatives, modifying its analyses, making factual corrections, or explaining why a comment does not require the agency’s response.⁴⁶ Often the agency will meet with other agencies that may be affected by the proposed action in an effort to resolve an issue or mitigate project effects. The final EIS also will include a summary that identifies all relevant alternatives, information, and analyses submitted by commenters for consideration by the lead and cooperating agencies.⁴⁷

When it is ready, the agency will publish the final EIS and EPA will publish a Notice of Availability in the *Federal Register*. The Notice of Availability can mark the start of a waiting period (Number 14 in Figure 1), during which a minimum of 30 days must pass before the agency can make a decision on its proposed action, unless the agency couples the 30 days with a formal internal appeals process or is authorized to issue a combined final EIS and ROD.⁴⁸ A waiting period provides time for the agency decision maker to consider public comments, the purpose and need for agency action, weigh the alternatives, balance the objectives and policy considerations, and make a decision.

There is an additional (but rarely used) procedure worth noting: pre-decisional referrals to CEQ.⁴⁹ This referral process takes place when EPA or another Federal agency determines that proceeding with the proposed action is environmentally unacceptable. If an agency reaches that conclusion, the agency can refer the issue to CEQ within 25 days after the Notice of Availability for the final EIS is issued. CEQ then works to resolve the issue with the agencies concerned. CEQ might also refer the agencies to the NCECR to try to address the matter before formal elevation.⁵⁰ There is no provision for citizens to formally refer an action to CEQ; however, CEQ typically provides an opportunity for public involvement in a referral.

Record of Decision (ROD) (Number 15 in Figure 1)

The ROD is the final step for agencies in the EIS process. The ROD is a document that states what the decision is; identifies the alternatives considered, including the environmentally preferred alternative; and discusses mitigation plans, including any enforcement and monitoring commitments.⁵¹ In the ROD, the agency discusses all the factors, including any considerations of national policy that were contemplated when it reached its decision on whether to, and if so how to, proceed with the proposed action. The ROD will also discuss if all practical means to avoid or minimize environmental harm have been adopted, and if not, why they were not. The ROD will summarize any monitoring and enforcement program that it has adopted for any enforceable mitigation requirements or commitments.⁵² The ROD also 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.⁵³ The ROD is a publicly available document. Sometimes RODs are published in the *Federal Register* or on the agency's website, but if you are interested in receiving the ROD, you should ask the agency's point of contact for the EIS how to obtain a copy of the ROD.

Supplemental EIS

Sometimes a Federal agency is obligated to prepare a supplement to an existing EIS. An agency must prepare a supplement to either a draft or final EIS if the proposed action has not been completed and the agency makes substantial changes in the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. An agency may also prepare a supplemental EIS if it determines that doing so will further the purposes of NEPA.⁵⁴ An agency prepares a supplemental EIS in the same way as a draft or final EIS, except that scoping is not required. If a supplement is prepared following a draft EIS, the final EIS will address both the draft EIS and supplemental EIS. An agency may find that substantial changes

in a proposed action or new circumstances or information do not result in significant environmental concerns. In such cases, the agency will document the finding consistent with its procedures, or, if necessary, in a FONSI supported by an EA.

EPA's Review

EPA plays a critical role in other agencies' NEPA processes. EPA must review and provide comments on the adequacy of the analysis and the impact to the environment.⁵⁵ EPA must refer a matter to CEQ if it determines that the action is environmentally unsatisfactory.

The Office of Federal Activities in EPA is the official recipient of all EISs prepared by Federal agencies, and publishes the notices of availability in the *Federal Register* for all draft, final, and supplemental EISs. The publication of these notices start the official clock for public review and comment periods and wait periods.⁵⁶ In addition to the *Federal Register*, EISs are available in the EIS database at <https://www.epa.gov/nepa>.

When and How to Get Involved

It Depends on the Agency

To determine the specific steps in the process where public involvement will be the most effective, it is very important to review the agency's NEPA procedures and the agency's NEPA website.⁵⁷ As previously mentioned, NEPA procedures may differ among agencies.

In addition, new legislation and presidential directives can change the way NEPA is implemented in agencies. Congress has enacted a number of statutes to improve coordination among agencies, integrate NEPA with other environmental reviews, and bring more transparency to the NEPA process. Presidents also have directed agencies, through Executive orders and Presidential memoranda, to undertake various initiatives that improve the timeliness and efficiency of the NEPA process.

Infrastructure Projects under FAST-41

In 2015, Congress enacted Title 41 of the Fast Act (FAST-41) to provide for a more efficient environmental review and permitting process for "covered projects."⁵⁸ These are projects that require Federal environmental review under NEPA, are expected to exceed \$200 million, and involve the construction of infrastructure for renewable or conventional energy production, electricity transmission, water resource projects, broadband, pipelines, manufacturing, and other sectors.

FAST-41 created the Federal Permitting Improvement Steering Council (FPISC or Permitting Council), composed of agency Deputy Secretary-level members and chaired by an Executive Director appointed by the President. FAST-41 establishes new procedures that standardize interagency consultation and coordination practices. FAST-41 also codifies into law the use of a Permitting Dashboard to track project timelines (www.permits.performance.gov). The Permitting Dashboard is an online tool for Federal agencies, project developers, and interested members of the public to track the Federal Government's environmental review and

authorization processes for large or complex infrastructure projects. Project sponsor participation in FAST-41 is voluntarily.

FAST-41 codified certain roles and responsibilities required by the NEPA regulations, such as the concepts of lead and cooperating agencies, and the different levels of NEPA analysis—EISs, EAs, and CEs—and the requirement for CEQ to resolve any dispute over designation of a facilitating or lead agency for a covered project.⁵⁹ Additionally, Congress addressed interagency coordination on key aspects of the NEPA process, including scoping, identification of the range of reasonable alternatives for study in an EIS, and the public comment process. Finally, Congress established a two-year statute of limitations for covered projects.⁶⁰ The Permitting Council has more resources on FAST-41 posted on the Permitting Dashboard.

Be Informed of Actions

Sometimes citizens generally are interested in actions taking place in a particular area (for example, in your community or in an ecosystem or a facility that affects you). If this is the case, you can inform the appropriate agency or agencies that you would like to be notified of any proposed action or any environmental impact analysis that might be prepared in that area. In addition, CEQ now requires agencies to have websites where they post environmental documents, relevant notices, and other relevant information for use by interested persons.⁶¹

Active Involvement

Being active in the NEPA process requires you to dedicate some of your resources to the effort. Environmental impact analyses can be technical and lengthy. Agencies can be expected to provide general responses to general comments on a NEPA document, so active involvement in the NEPA process requires a commitment of time and a willingness to share information with the decision-making agency and other citizens. For example, during the scoping process for an EIS, you are encouraged to identify alternatives, information, and analyses relevant to the proposed action for consideration by the agency.⁶² The agency will summarize that information in the draft EIS and invite further comment on that information.⁶³ However, you must submit your comments during the comment periods in order for the agency to consider the information and to ensure informed decision making.⁶⁴

You may participate as an individual, get involved by working with other interested individuals or organizations, or by working through your State, Tribal, or local government. For example, if an agency is taking an action for which your State, Tribal, or local government has special expertise or approval authority, the appropriate State, Tribal, or local agency can become a “cooperating agency” with the Federal agency.⁶⁵ This formal status does not increase their role in decision making, but it does allow the governments to use their knowledge and authorities to help shape the Federal decision-making process.

Another way to participate is to check with local experts such as biologists or economists at a university to assist with your review of the NEPA analyses and documents. You can also form study groups to review environmental impact analyses and enlist experts to review your comments on the documents.

Your involvement in the NEPA process does not have to be confined to commenting on the analysis. If the agency adopts monitoring and mitigation in the ROD, upon request, it must make available to the public the results of relevant monitoring.⁶⁶ Upon request, it also must inform cooperating or participating agencies on progress in carrying out mitigation measures that they have proposed and that were adopted by the agency making the decision.⁶⁷ Community groups also can be involved in monitoring.

In summary, there are several opportunities to get involved in the NEPA process:

- When the agency prepares its NEPA procedure;
- Prior to and during preparation of a NEPA analysis;
- When a NEPA document is published for public review and comment;
- When a final decision is pending before the agency decision-maker; and
- When monitoring the implementation of the proposed action and the effectiveness of any associated mitigation.

Other Processes that Require Public Involvement

When a proposed action is part of a permitting process, the statute or regulations for that permitting process also may provide opportunities to comment in addition to the NEPA public involvement opportunities discussed above. For example, most Federal agency land use planning regulations require public involvement. While this guide does not explore all of those additional possibilities for comment, the NEPA team working on a particular proposal will be familiar with the various comment periods and will be able to inform you of those opportunities. Note that the permitting and NEPA processes should be integrated or run concurrently in order to have an effective and efficient decision-making process.

Public Comment Periods

Agencies must make diligent efforts to involve the public in development and implementation of their NEPA procedures.¹ In requesting comments on a draft EIS, Federal agencies must affirmatively solicit comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action.¹ Citizens involved in the process should ensure that they know how agencies will inform the public that an action is proposed and the NEPA process is beginning (via the *Federal Register*, websites, newspapers, direct mailing, etc.); that certain documents are available; and that preliminary determinations have been made on the possible environmental effects of the proposal (e.g., what level of analysis the agency will initially undertake).

Agencies solicit different levels of involvement when they prepare an EA versus an EIS. In preparing an EIS, agencies must invite the identification of alternatives, information, and analyses relevant to the proposed action during the scoping process. Agencies must summarize that information in the draft EIS and have a 45-day comment period after the draft EIS is made available. In the case of an agency preparing an EA, the CEQ regulations require the agency to involve the public to the extent practicable, but each agency has its own guidelines about how to involve the public for EAs. In any case, citizens are entitled to receive “environmental documents,” such as EAs, involved in the NEPA process.¹

In terms of a specific agency, required public comment periods associated with an EA or an EIS can be found in its NEPA procedures. An agency may grant requests to extend the comment period to ensure enough time for the public and other agencies to review and comment.

Citizens who want to raise issues with the agency should do so as specifically as possible and at the earliest possible stage in the process. Agencies are much more likely to evaluate a new alternative or address a concern if it is raised in a clear and timely manner.

How to Comment

Comments may be the most important contribution from citizens because they promote informed decision making. Comments should provide sufficient detail for the agency to understand the commenter’s position and why the issues raised are important to the decision. Accordingly, comments should be clear, concise, relevant to the analysis of the proposed action, and submitted during the public comment periods. Take the time to organize thoughts and edit the document submitted.⁶⁸ As a general rule, the tone of the comments should be polite and respectful. Those reviewing comments are public servants tasked with a job, and they deserve the same respect and professional treatment that you and other citizens expect in return. Comments that are solution-oriented and provide specific examples will be more effective than those that simply oppose the proposed project. Comments that contribute to developing alternatives that address the purpose and need for the action also are effective. Agencies must invite the submission of alternatives

during the scoping process to facilitate timely submission of comments that contribute to developing alternatives.

Commenting is not a form of “voting” on an alternative. The number of negative comments an agency receives does not prevent an action from moving forward. Agencies typically respond collectively to numerous comments that repeat the same basic message of support or opposition. In addition, general comments that state an action will have “significant environmental effects” will not help an agency make a better decision unless the comment explains the relevant causes and environmental effects. If you think the proposed action will have a significant environmental effect, explain why the issues you raise are significant to the consideration of potential environmental impacts and alternatives to the proposed action. In drafting comments, try to focus on the purpose and need of the proposed action, the proposed alternatives, the assessment of the environmental impacts of those alternatives, and the proposed mitigation.

Finally, remember that decision makers also receive other information and data, such as operational and technical information related to implementing an action, which they will have to consider when making a final decision.

What If Involvement Is Not Going Well?

For the purposes of this discussion, “not going well” means that you or your organization believes that the lead agency is not giving the public sufficient opportunity to get involved or is not using that involvement effectively. Perhaps you think that the agency should hold a public meeting. Or you or your community or group has developed an alternative that you think meets the purpose and need of the proposed action and reflects the policies set forth in NEPA. Maybe you want an extension of the comment period because the document’s appendix is very lengthy, and you simply need more time to review it. Or maybe you feel that communications between your organization and the lead agency have, for some reason, not been constructive.

The most appropriate steps to take if you find yourself in these kinds of situations always depend, of course, on the particular people, timing, and proposal at hand. Nonetheless, here are some possible factors and courses of action to consider.

Do Not Wait Too Long

First, do not wait too long to raise your concerns; raise them as soon as practicable, and be mindful of the comment period and when it ends. If you just sit back and hope that things will get “better” or that your comments will have greater effect later, you may hear that “you should have raised this sooner.” At times, waiting can be detrimental to your interests as well as to the rest of the public and the agency involved. For example, if you feel strongly that a particular alternative should be addressed and do not raise it during the scoping process, then it will not get the benefit of comparative analysis with the other alternatives. In addition, it could result in a more expensive and lengthy process (costing taxpayers, including yourself, more) if your delayed suggestion results in the agency deciding to issue a supplemental EIS analyzing that alternative. Or, if you or your organization later go to court to argue that a certain alternative should have been analyzed in the NEPA document, the judge may find that the court will not

consider that information because you should have raised your concern earlier during the NEPA process.⁶⁹

Contact the Agency

Your first line of recourse should be with the individual that the agency has identified as being in charge of this particular process. See if you can sit down with him or her to discuss your concern(s). You may be pleasantly surprised at the response.

Collaboration and Conflict Resolution Support

Some decisions necessarily involve conflicting views, so Federal agencies may choose to engage an impartial third-party to support stakeholder engagement and conflict resolution in a NEPA process. Impartial third-party support may include facilitation, mediation, stakeholder engagement process design, and other services to enhance collaboration between the lead agency and its partners, stakeholders, and citizens. These approaches, referred to as environmental collaboration and conflict resolution (ECCR), are often beneficial if the process ahead may be particularly contentious or challenging and include a past history of deeply divided interests. If you believe the process that you are involved with has a high-level of conflict or contention, consider raising with the lead agency the possibility of enhancing collaborative opportunities within the NEPA process using outside assistance.

In recent years, the Federal Government has used ECCR due to its numerous benefits. The Office of Management and Budget (OMB) and CEQ underscored ECCR's utility by jointly issuing memoranda that directed Federal agencies to increase the effective use of environmental conflict resolution and build institutional capacity for collaborative problem solving.⁷⁰ These memoranda highlighted basic principles for agency engagement in ECCR processes, including informed commitment, balanced and voluntary representation, group autonomy, informed process, accountability, openness, timeliness, and implementation.

ECCR offers many advantages over adversarial approaches to resolve environmental challenges, such as litigation. A 2018 report examining the use of ECCR in Federal processes over the previous decade found that these approaches lead to a savings in time and financial resources, an improvement in relationships between government and stakeholders, and improved outcomes.⁷¹ For example, between 2011 and 2014, the EPA reported that ECCR took 45 percent less time to reach a decision, 30 percent fewer staff, and 79 percent fewer lead attorney hours.⁷² And in a 2009 study, those involved in ECCR reported improved relationships, ability to work together, and level of trust.⁷³ Other benefits to ECCR include:

- Better information, diverse expertise, better-informed decisions;
- Fairer process, especially for traditionally disadvantaged/under-represented parties;
- Better integration, enhanced coordination, and streamlining;
- Conflict prevention and resolution of differences;
- Improved fact-finding and common understanding of the facts;
- Increased social capital through the promotion of trust and partnership;
- Easier implementation “vesting” stakeholders in decision implementation;
- Enhanced stewardship promoted through cooperation; and

- Reduced litigation by solving problems at lowest possible level and narrowing issues.

The NCECR is a Federal agency⁷⁴ that provides collaboration, consensus-building, and conflict resolution services on a range of environmental, natural and cultural resources, Tribal, and public lands issues involving the Federal Government. Citizens can work with lead agencies to express their interest in a collaborative approach and may recommend the involvement of the NCECR.⁷⁵ There may also be an environmental conflict resolution office in your state that can provide assistance, and there are also many other individuals and organizations in the private sector that provide various types of conflict resolution services.

NEPA's Requirements

Perhaps your concern involves understanding a legal requirement. There are, of course, many ways to obtain the advice of lawyers knowledgeable about the NEPA process: the lead agency, private attorneys, and public interest attorneys. Build your own understanding by reading information on the [NEPA.gov](http://www.nepa.gov) website. You may also call the General Counsel's office or the Associate Director for NEPA at the Council on Environmental Quality for assistance in understanding NEPA's legal requirements or for advice and assistance if you have tried to work with the lead agency but feel those efforts have been unsuccessful (see Appendix A for contact information).

Remedies Available

Finally, of course, there are both administrative and judicial remedies available. A few Federal agencies, such as the Bureau of Land Management and the Forest Service, have an administrative appeals process. Each process is specific to that agency. If an appeal is available, you may find it beneficial to invoke it to try to resolve your concerns with the agency's decisions without the need for a legal challenge. Moreover, a statute or agency regulation may require you to exhaust such an appeal procedure before seeking judicial review. Citizens who believe that a Federal agency's actions violate NEPA may seek judicial review (after any required administrative appeals) in Federal court under the Administrative Procedure Act. If you are represented by a lawyer, you should consult with him or her about appropriate options and about communicating with the Federal agencies.

Final Thoughts

This guide was developed to explain NEPA, how it is implemented, and how people outside the Federal Government—individual citizens, private sector applicants, members of organized groups, or representatives of Tribal, State, or local government agencies—can better participate in the assessment of environmental impacts conducted by Federal agencies. To learn more about CEQ and NEPA, visit our web sites at <http://www.whitehouse.gov/ceq> and [NEPA.gov](http://www.nepa.gov) or contact the CEQ Associate Director for NEPA at (202) 395-5750. Your thoughts and comments on improving this Guide for future editions are always welcome.

Appendix A: About the Council on Environmental Quality

The National Environmental Policy Act (NEPA) established the Council on Environmental Quality (CEQ) in 1970 within the Executive Office of the President. CEQ oversees Federal agency NEPA implementation and develops and recommends national policies to the President that promote the improvement of environmental quality and meet the Nation's goals. In addition, CEQ is assigned various duties and responsibilities under other statutes, Executive Orders, and Presidential Memoranda, including with regard to Federal ocean policy, Federal sustainability, and timely environmental review and permitting processes for infrastructure development, and other matters.

The Council on Environmental Quality is housed within the Executive Office of the President. CEQ has offices within the Eisenhower Executive Office Building (EEOB) and within the Jackson Place townhouses on Lafayette Square.

Mailing Address

Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

Main Line: (202) 395-5750

Fax: (202) 456-6546

Appendix B: Useful Websites

NEPA.gov

[NEPA.gov](https://www.nepa.gov) is the Council on Environmental Quality's NEPA website that is supported by the U.S. Department of Energy. It contains a wealth of information related to NEPA. The site contains CEQ guidance as well as studies and reports and information on NEPA training.

Under the "Laws & Regulations" section, there are several useful links including:

- The NEPA Statute
- Executive Orders
- CEQ Regulations for Implementing NEPA
- State NEPA Information
- The Legislative History of NEPA
- Individual Federal Agency Procedures for Implementing NEPA⁷⁶

The other sections provide information about:

- Guidance
- How to get involved
- Resources on NEPA Practice
- CEQ Publications
- CEQ Reports

The *Federal Register* and How to Use It

<https://www.federalregister.gov/>

The *Federal Register* is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents. It is updated daily by 6 a.m. and is published Monday through Friday, except Federal holidays.

This is where you will find notices from Federal agencies regarding their NEPA actions. Information on the availability of documents, schedule of meetings, and notices of intent to prepare EISs are also published in the *Federal Register*. In addition, EPA publishes a list of EISs that they have received from agencies each week, and a summary of ratings on EISs that they have reviewed.

The easiest way to pull up notices is to have as much information as possible. Key words such as the name of the agency, location of the action, date or date ranges of the publication are all helpful in the search.

The Electronic Code of Federal Regulations (e-CFR)

www.ecfr.gov

The Electronic Code of Federal Regulations (e-CFR) is a currently updated version of the Code of Federal Regulations (CFR). It is not an official legal edition of the CFR. The e-CFR is an editorial compilation of CFR material and *Federal Register* amendments produced by the National Archives and Records Administration's Office of the Federal Register (OFR) and the Government Publishing Office. The OFR updates the material in the e-CFR on a daily basis. The current update status appears at the top of all e-CFR web pages.

The United States Code

The United States Code is a compilation of most public laws currently in force, organized by subject matter. When a law has been amended by another law, the U.S. Code reflects this change. The U.S. Code collates the original law with subsequent amendments, and it deletes language that has later been repealed or superseded.

The full text of the official version of the U.S. Code is provided on www.govinfo.gov at www.govinfo.gov/app/collection/uscode. You can do fielded searches to look for Code material by popular name of the law, the public law number, U.S. Code citation, Statutes at Large citation, or word or phrase. You can also browse the U.S. Code by individual Code titles, down to the section level, for the latest available update.

The U.S. House Office of the Law Revision Counsel also provides the full text of the official version of the U.S. Code at uscode.house.gov/. You can do fielded searches or download entire titles or chapters. This site also provides classification tables that show where recently enacted laws will appear in the United States Code and which sections of the Code have been amended by those laws.

The Federal Infrastructure Permitting Dashboard

www.permits.performance.gov

The Permitting Dashboard is an online tool for Federal agencies, project developers, and interested members of the public to track the Federal Government's environmental review and authorization processes for large or complex infrastructure projects, part of a government-wide effort to improve coordination, transparency, and accountability.

A major function of this Dashboard is to track infrastructure projects designated as "Covered Projects" under Title 41 of the Fixing America's Surface Transportation Act (FAST-41). The Dashboard also provides information on most DOT projects, as well as other infrastructure projects. Follow the "Projects" link for project-specific information.

Appendix C: Agency NEPA Contacts

The list of Federal NEPA Contacts is maintained on [NEPA.gov](https://www.nepa.gov) under the heading “NEPA Practice” and is periodically updated.

The complete list is available via the link entitled “Federal NEPA Contacts” or available directly at <https://ceq.doe.gov/nepa-practice/agency-nepa-contacts.html>. If you do not have computer access, call CEQ at (202) 395-5750 for assistance.

Appendix D: Statutory References

The National Environmental Policy Act of 1969

42 U.S.C. 4321. Congressional declaration of purpose [Sec. 2]

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

(Pub. L. 91–190, § 2, Jan. 1, 1970, 83 Stat. 852)

SUBCHAPTER I—POLICIES AND GOALS [TITLE I]

42 U.S.C. 4331. Congressional declaration of national environmental policy [Sec. 101]

(a) The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with state and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
- (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities; and
- (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(Pub. L. 91-190, title I, § 101, Jan. 1, 1970, 83 Stat. 852)

42 U.S.C. 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts [Sec. 102]

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision- making along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a state agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

- (ii) the responsible Federal official furnishes guidance and participates in such preparation,
- (iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and
- (iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other state or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such state or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

(Pub. L. 91-190, title I, § 102, Jan. 1, 1970, 83 Stat. 853; Pub. L. 94-83, Aug. 9, 1975, 89 Stat. 424)

42 U.S.C. 4333. Conformity of administrative procedures to national environmental policy [Sec. 103]

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this chapter.

(Pub. L. 91-190, title I, § 103, Jan. 1, 1970, 83 Stat. 854)

42 U.S.C. 4334. Other statutory obligations of agencies [Sec. 104]

Nothing in section 4332 [Sec. 102] or 4333 [Sec. 103] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3)

to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

(Pub. L. 91–190, title I, § 104, Jan. 1, 1970, 83 Stat. 854)

42 U.S.C. 4335. Efforts supplemental to existing authorizations [Sec. 105]

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.

(Pub. L. 91–190, title I, § 105, Jan. 1, 1970, 83 Stat. 854)

SUBCHAPTER II – COUNCIL ON ENVIRONMENTAL QUALITY [TITLE II]

42 U.S.C. 4341. [Sec. 201] Omitted

Section 201 which required the President to transmit to Congress annually an Environmental Quality Report, was terminated by Congress, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

(Pub. L. 91–190, title II, § 201, Jan. 1, 1970, 83 Stat. 854; Pub. L. 104–66, title III, § 3003, Dec. 21, 1995 of as amended, 31 U.S.C. 1113)

42 U.S.C. 4342. Establishment; membership; Chairman; appointments [Sec. 202]

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the “Council”). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

(Pub. L. 91–190, title II, § 202, Jan. 1, 1970, 83 Stat. 854)

Provisions stating that notwithstanding this section, the Council was to consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council, were contained in the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Pub. L. 109–54, title III, Aug. 2, 2005, 119 Stat. 543, and were repeated in provisions of subsequent appropriations acts which are not set out in the Code.

42 U.S.C. 4343. Employment of personnel, experts and consultants [Sec. 203]

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

(Pub. L. 91–190, title II, § 203, Jan. 1, 1970, 83 Stat. 855; Pub. L. 94–52, § 2, July 3, 1975, 89 Stat. 258)

42 U.S.C. 4344. Duties and functions [Sec. 204]

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 4341[Sec. 201] of this title;¹

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in subchapter I of this chapter, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

(Pub. L. 91–190, title II, § 204, Jan. 1, 1970, 83 Stat. 855)

42 U.S.C. 4345. Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives [Sec. 205]

In exercising its powers, functions, and duties under this Act, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

¹ CEQ notes that Congress amended 42 U.S.C. 4341 to remove the Environmental Quality Report requirement.

(2) utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

(Pub. L. 91–190, title II, § 205, Jan. 1, 1970, 83 Stat. 855)

42 U.S.C. 4346. Tenure and compensation of members [Sec. 206]

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV of [f] the Executive Schedule Pay Rates (5 U.S.C. 5315).

(Pub. L. 91–190, title II, § 206, Jan. 1, 1970, 83 Stat. 856)

42 U.S.C. 4346a. Travel reimbursement by private organizations and Federal, State, and local governments [Sec. 207]

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

(Pub. L. 91–190, title II, § 207, as added Pub. L. 94–52, § 3, July 3, 1975, 89 Stat. 258)

42 U.S.C. 4346b. Expenditures in support of international activities [Sec. 208]

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

(Pub. L. 91–190, title II, § 208, as added Pub. L. 94–52, § 3, July 3, 1975, 89 Stat. 258)

42 U.S.C. 4347. Authorization of appropriations [Sec. 209]

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

(Pub. L. 91–190, title II, § 209, formerly § 207, Jan. 1, 1970, 83 Stat. 856, renumbered § 209, Pub. L. 94–52, § 3, July 3, 1975, 89 Stat. 258)

The Clean Air Act—Section 309

42 U.S.C. 7609. Policy review [Sec. 309]

(a) Environmental impact

The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administration, contained in any (1) legislation proposed by any Federal

department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 4332(2)(C) of the title applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) Unsatisfactory legislation, action, or regulation

In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

(July 14, 1955, ch. 360, title III, § 309, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1709)

¹ National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. 4321–4347 provided in Appendix D.

² Section 102 of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

³ CEQ NEPA Regulations, 40 CFR parts 1500–1508, available at NEPA.gov.

⁴ Council on Environmental Quality, “Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act,” 40 CFR 1508.1(k) available at NEPA.gov.

⁵ 40 CFR 1507.2(a) and 1508.1(dd).

⁶ 40 CFR 1507.2.

⁷ 40 CFR 1507.4.

⁸ Agencies publish their draft NEPA procedures in the *Federal Register*, and the CEQ NEPA regulations require a public comment period prior to CEQ approval. 40 CFR 1507.3. Members of the public may participate in the development of agency NEPA procedures by providing comments. Most agencies already have NEPA procedures; however, when they are changed, the agency will again provide for public comment on the proposed changes.

⁹ See Appendix C for information on how to access agency points of contact and agency websites.

¹⁰ 40 CFR 1508.1(q)(2). Note that this section applies only to legislation drafted and submitted to Congress by Federal agencies. NEPA does not apply to legislation initiated by members of Congress or by the President of the United States.

¹¹ 40 CFR 1508.1(x).

¹² 40 CFR 1501.1.

¹³ 40 CFR 1502.24.

¹⁴ 40 CFR 1506.2.

¹⁵ 40 CFR 1507.3.

¹⁶ Clean Air Act, 42 U.S.C. 7609.

¹⁷ For additional information see www.epa.gov/nepa.

¹⁸ About a quarter of the States have such laws; for example, New York, Montana, Washington, and California all have such laws. New York City also has such a law. A list with references is available at NEPA.gov by clicking on “Laws & Regulations,” the “State NEPA Information” or directly at <https://ceq.doe.gov/laws-regulations/states.html>.

¹⁹ 40 CFR 1508.1(d).

²⁰ CEQ has developed a comprehensive list of the Federal agencies’ CEs, which is available at <https://ceq.doe.gov/nepa-practice/categorical-exclusions.html>. Citizens may consult this resource but also should review the relevant agency’s NEPA procedures to ensure that a CE is currently available for use.

²¹ 40 CFR 1508.1(h).

²² 40 CFR 1501.10(b)(1).

²³ 40 CFR 1501.5(c)(2).

²⁴ 40 CFR 1501.3(b).

²⁵ 40 CFR 1501.5(e).

²⁶ 40 CFR 1508.1(l).

²⁷ 40 CFR 1501.6(a)(2).

²⁸ 40 CFR 1502.3.

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- ²⁹ 40 CFR 1501.10(b)(2).
- ³⁰ 40 CFR 1508.1(cc).
- ³¹ 40 CFR 1501.9(d).
- ³² 40 CFR 1501.9.
- ³³ Public hearings are run in a formal manner, with a recording or minutes taken of speakers' comments. Public meetings may be held in a variety of formats, and may be much more informal than hearings.
- ³⁴ 40 CFR 1502.13.
- ³⁵ 40 CFR 1502.14.
- ³⁶ 40 CFR 1508.1(z).
- ³⁷ 40 CFR 1502.14(d).
- ³⁸ 40 CFR 1502.14(c).
- ³⁹ 40 CFR 1508.1(g).
- ⁴⁰ 40 CFR 1508.1(g)(1).
- ⁴¹ 40 CFR 1502.16(b).
- ⁴² 40 CFR 1502.17(a).
- ⁴³ 40 CFR 1502.18.
- ⁴⁴ 40 CFR 1502.10.
- ⁴⁵ 40 CFR 1502.19.
- ⁴⁶ 40 CFR 1503.4.
- ⁴⁷ 40 CFR 1502.17(b).
- ⁴⁸ 40 CFR 1506.11(b) references statutory provisions for combining a final EIS and ROD. If the end of the 30 day wait period is less than 90 days after the notice of availability of the Draft EIS, was published in the *Federal Register*, then the decision must await the expiration of the 90 days.
- ⁴⁹ 40 CFR part 1504.
- ⁵⁰ The NCECR reports disputes it is involved with to CEQ and requests concurrence from CEQ to engage in those disputes involving two or more Federal agencies.
- ⁵¹ 40 CFR 1505.2.
- ⁵² 40 CFR 1505.2(a)(3).
- ⁵³ 40 CFR 1505.2(b).
- ⁵⁴ 40 CFR 1502.9(d).
- ⁵⁵ Clean Air Act, 42 U.S.C. 7609.
- ⁵⁶ 40 CFR 1506.11.
- ⁵⁷ 40 CFR 1507.4(a).
- ⁵⁸ Public Law 114-94, sec. 41001-41014, 129 Stat. 1312, 1741 (42 U.S.C. 4370m-4370m-12).
- ⁵⁹ 42 U.S.C. 4370m-2(a)(6)(B).
- ⁶⁰ 42 U.S.C. 4370m-6.
- ⁶¹ CEQ NEPA Regulations, 40 CFR 1507.4.
- ⁶² CEQ NEPA Regulations, 40 CFR 1501.9(d).
- ⁶³ CEQ NEPA Regulations, 40 CFR 1502.17, 1503.1(a)(3).
- ⁶⁴ 40 CFR 1500.3(b).
- ⁶⁵ 40 CFR 1501.8, 1508.1(e).
- ⁶⁶ 40 CFR 1505.3(d).
- ⁶⁷ 40 CFR 1505.3(c).
- ⁶⁸ There are many reference books for how to research issues, review documents, and write comments. One in particular is "The Art of Commenting" by Elizabeth Mullin from the Environmental Law Institute (Mullin, Elizabeth D. 2000. *The Art of Commenting: How to Influence Environmental Decisionmaking with Effective Comments*, Environmental Law Institute, Washington, DC). Another useful reference for those involved in commenting on transportation projects is the American Association of State Highway and Transportation Official's (AASHTO) Practitioner's Handbook 05-Utilizing Community Advisory Committees for NEPA Studies, December, 2006, <http://environment.transportation.org> or available through AASHTO's Center for Environmental Excellence by calling (202) 624-3635.
- ⁶⁹ 40 CFR 1500.3(b), 1503.3(b).

⁷⁰ Memorandum on Environmental Conflict Resolution (Nov. 28, 2005), as expanded by Memorandum on Environmental Collaboration and Conflict Resolution (Sept. 7, 2012), <https://ceq.doe.gov/nepa-practice/environmental-collaboration-and-conflict-resolution.html>.

⁷¹ Federal Forum on Environmental Collaboration and Conflict Resolution, Environmental Collaboration and Conflict Resolution (ECCR): Enhancing Agency Efficiency and Making Government Accountable to the People (May 2, 2018), https://ceq.doe.gov/docs/nepa-practice/ECCR_Benefits_Recommendations_Report_%205-02-018.pdf.

⁷² Hall, W.E. (2016, June). “Assessing the value of environmental collaboration and conflict resolution: A census of litigation related cases to estimate comparative process costs at the U.S. Environmental Protection Agency.” Concurrent session presentation, the 29th Annual Conference of the International Association for Conflict Management, Columbia University, New York, NY.

⁷³ Emerson, K., Orr, P.J., Keyes, D.L., & McKnight, K.M. (2009). Environmental conflict resolution: Evaluating performance outcomes and contributing factors. *Conflict Resolution Quarterly*, 27(1), 27–64.

⁷⁴ The McCain Center is a program of Udall Foundation, is an independent, nonpartisan Federal agency. Environmental Policy and Conflict Resolution Act of 1998, 20 U.S.C. 5601–5609, as amended.

⁷⁵ The McCain Center can be contacted via www.ecr.gov; mailing address: John S. McCain III National Center for Environmental Conflict Resolution, 130 S. Scott Ave. Tucson, AZ 85701; phone: (520) 901-8501; or electronic mail: usiecr@ecr.gov.

⁷⁶ The agency implementing procedures can be accessed at https://ceq.doe.gov/laws-regulations/agency_implementing_procedures.html and are mentioned throughout the Citizen’s Guide as an important part of the process.