

Reclamation Manual

Directives and Standards

TEMPORARY RELEASE
(Expires 06/18/2021)



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

APR 27 2018

Memorandum

To: Assistant Secretaries
Heads of Bureaus and Offices
NEPA Practitioners

From: Deputy Secretary 

Subject: Additional Direction for Implementing Secretary's Order 3355

Purpose:

On August 31, 2017, I issued Secretary's Order 3355 (Order) with the intent of immediately improving the Department's National Environmental Policy Act (NEPA) review. Specifically, the Order instructs each Bureau and Office serving as a NEPA lead agency to prepare Environmental Impact Statements (EIS) that are no longer than 150 pages (300 pages for unusually complex projects)¹ and to complete each Final EIS within 365 calendar days of publishing the associated Notice of Intent (NOI), unless otherwise approved by the Department.² The following guidance provides additional directives for implementation and compliance with the Order, 43 C.F.R. Part 46, Subpart E,³ and 40 C.F.R. 1500-1508.

Further Direction:

Within 30 days of the effective date of this Memorandum, each Bureau or Office EIS Project Team⁴ shall submit the following to the Office of the Deputy Secretary and the Director of the Office of Environmental Policy and Compliance (OEPC) by uploading it to the NEPA and Permit Tracking Database (Database):⁵

1. EIS Project Schedule:
 - a. For each outstanding EIS with a NOI published on or before August 31, 2017, provide a project schedule with a Final EIS completion and Record of Decision

¹ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, Council on Environmental Quality 40 C.F.R. § 1502.7.

² See Secretary's Order 3355 - Streamlining National Environmental Policy Reviews and Implementation of Executive Order 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects".

³ Implementation of the National Environmental Policy Act of 1969, Department of the Interior, 43 C.F.R. § 46.405.

⁴ EIS project teams include but are not limited to Departmental NEPA staff, Senior Executive Service members, subject matter experts, contractors, planners, an attorney from the Office of the Solicitor, and others who work on EISs at the field level (EIS Project Team).

⁵ OEPC will provide each Bureau with access to the Database.

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- (ROD) issuance date of no later than 365 calendar days from the effective date of this Memorandum. The submission should include confirmation that the EIS will be completed in under 150 pages.⁶
- b. For each outstanding EIS with a NOI published after August 31, 2017, provide a project schedule with a Final EIS completion and ROD issuance date within 365 days of the NOI's publication date. The submission should include confirmation that the EIS will be completed in under 150 pages.
2. Projects With A Draft EIS In Progress Prior to the Issuance of This Memorandum:
- a. Projects with a published Draft EIS are exempt from the Order's page count requirements and do not require a waiver. However, these projects are still subject to the Order's timelines, which is to be documented in the project's schedule and uploaded into the Database.
- b. Projects with a Draft EIS in the drafting phase that have not been published are subject to the Order's page count and timelines.⁷ A waiver may be considered if the Draft EIS has been widely circulated or communicated to cooperating agencies and stakeholders in its current and noncompliant length.⁸
3. EIS Team and Solicitor Assignments:
- a. For each EIS, regardless of its current phase in the EIS process, provide the name, title, and contact information for the first line Senior Executive Service (SES) member with line authority over the proposed action, and the other members of the EIS Project Team, by uploading the information into the Database. Contact information shall include a telephone number and an email address.⁹
- b. An attorney in the Office of the Solicitor, based either in the field, regionally, or in Washington, DC, shall be incorporated into each new and existing EIS Project Team, regardless of the project's phase. Bureaus shall identify the solicitor and include his/her contact information in the Database.

Waiver Guidance:

1. Timeliness or Page Limit Waiver Requests:

⁶ This project schedule requires concurrent compilation and completion of an Administrative Record and Decision File within the 365 day time limit set forth in the Order.

⁷ Order 3355 4(a)(1-2); §1502.7.

⁸ See the 'Waiver Guidance' section below for waiver procedures.

⁹ This directive is not asking for the list of preparers pursuant to 40 C.F.R. § 1502.17, but those responsible for project oversight, management, and compliance with the Order.

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- a. The need for a waiver may arise if an EIS presents challenges that make it unlikely to be completed in under 150 pages or within 365 days of either the Order or the project's NOI date.¹⁰
- b. If an EIS Project Team identifies the need for a waiver, it shall provide a detailed description of the need and justification for a "timeliness" and/or "page count" waiver on the template provided in Attachment 1.¹¹
- c. To better ensure Departmental consistency, waiver requests shall be submitted to the Office of the Deputy Secretary for review at nepa.depsec@ios.doi.gov.¹² Waiver requests will be processed within 20 days of receipt.¹³ This instruction modifies the Order's waiver approval process by shifting approval from the Assistant Secretaries to the Office of the Deputy Secretary.
- d. Projects that qualify under the Fixing America's Surface Transportation Act¹⁴ or the One Federal Decision (OFD) Memorandum of Understanding automatically qualify for a 2 year timeline that allows for 1 year and 9 months to complete the project's EIS, and 3 months to complete permitting.¹⁵ Qualifying projects should note this qualifying status in the Database and project timeline. Such projects are subject to the Order's page limits but do not otherwise require a timeliness waiver if consistent with the OFD timeline.

2. Unusually Complex EIS:

- a. An EIS may be considered unusually complex based upon the action's circumstances, and an EIS Project Team may seek a "timeliness" and/or "page count" waiver to address these circumstances.¹⁶
- b. The following considerations, among other factors, may be weighed when determining whether an action rises to the level of unusually complex and merits a waiver. To be considered unusually complex, each factor, taken singly or as a whole, must result in unusual complexity that a reasonable person with knowledge of the facts and the law would discern:

- i. Nature of Potential Impacts:

1. Whether the type of action is new to a geographic area;

¹⁰ Order 4(a)(1-2); § 1502.7.

¹¹ This provision applies to all EISs, both current and future.

¹² Unless otherwise stated, all notices, waiver requests, and communications with the Office of the Deputy Secretary referenced in this Memorandum shall be directed to nepa.depsec@ios.doi.gov.

¹³ Waiver requests should be rare, are granted at the discretion of the Deputy Secretary, and are only to be submitted after ensuring that a waiver is truly merited.

¹⁴ Pub. L. No. 114-94.

¹⁵ Additional guidance for complying with the Fixing America's Surface Transportation Act and the One Federal Decision Memorandum of Understanding is forthcoming.

¹⁶ Order 4(a)(1-2); §1502.7.

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2. The subjective nature of the methodology or unavailability of data;
3. Newly established land designations, *i.e.* Areas of Critical Environmental Concern and Wilderness Areas;
4. The presence of endangered species or special status species;
5. Environmentally sensitive areas;
6. High likelihood of substantial weather impacts on the proposed project; or
7. High likelihood of substantial harm in the event of an incident.

ii. Projects That Are Large In Scope or Are Multi-Jurisdictional:

1. Linear projects;
2. Water systems;¹⁷
3. Multiple actions within the scope of the EIS;
4. For offshore activities, distance to shorelines, designated use zones, and depth; or
5. Projects crossing State lines requiring multiple amendments to land use plans.

Page Limit and Timeline Guidance:

The following guidance will help EIS Project Teams plan with the goal of completing an EIS in under 365 days and 150 pages, absent unusual scope or complexity:

1. Upon receiving demonstrated interest from a project proponent, and pre-NOI, it is considered best practice to appraise proponent applications to ensure that they are complete and properly prepared by the proponent. An appraisal may be comprised of a meeting, teleconference, follow-up discussion, or an application review with the proponent prior to accepting an application. An appraisal is not a decisional step, but is intended to confirm that proponents are ready to proceed;
2. Pursuant to 40 C.F.R. § 1501.6, Bureaus shall include other Federal Agencies with jurisdiction by law or special expertise in the project subject matter as cooperating Agencies, and Bureaus must cooperate at the request of another Bureau; and
3. Two guidance documents are attached to this Memorandum that should help promote Order compliance. The first is titled, "DOI EIS Page Length Considerations and Guide"¹⁸ and the other is entitled "DOI Guidance on the Environment Review Process for a 365-Day Timeline"¹⁹. Note that these documents are simply meant to guide compliance with the Order, and Bureaus should utilize their experience and expertise to find solutions that address unique circumstances as they arise.

¹⁷ Water Systems generally refers to water pipelines, canals, irrigation channels, dams, and any other form of water infrastructure or conveyance that impacts multiple stakeholders, jurisdictions, or water rights.

¹⁸ Attachment 2.

¹⁹ Attachment 3.

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Contractor Guidance:

When a Bureau is using a contractor to prepare an EIS, the Order's page and time limitations shall be included and adhered to as a material term in each Department solicitation for a Statement of Work, and the subsequent contract for EIS preparation services issued after the date of this Memorandum.

Utilizing Pre-NOI Time Effectively:

1. To facilitate the implementation of the Order, each Bureau shall review its NEPA policies and procedures to identify opportunities to accelerate the EIS process. In coordination with the Office of the Solicitor and OEPC, each Bureau shall identify best practices for gathering information, coordinating with stakeholders, and preliminary drafting before the publication of a NOI.
2. Within 30 days of the effective date of this Memorandum, each Bureau NEPA coordinator shall provide the Office of the Deputy Secretary and OEPC Director with its pre-NOI best practices via email. The OEPC Director shall aggregate and publish these best practices within 90 days of the effective date of this Memorandum. Attachment 4 contains sample best practices.

Bureau NEPA Handbooks:

1. Within 45 business days of the effective date of this Memorandum, Bureau Directors and their NEPA staff shall meet with the Office of the Deputy Secretary and OEPC to identify whether changes are required to each Bureau's NEPA Handbook to comply with the Order. All approved changes shall be made to Bureau Handbooks within 15 business days of approval.
2. Bureau Handbook changes shall be implemented as soon as practicable through issuance of an updated Handbook or by using an established, Bureau-specific amendment process (i.e. issuance of a Permanent Instruction Memorandum). If a Permanent Instruction Memorandum is utilized, the Bureau's Handbook shall be revised and amended as soon as practicable.

Judicial Review:

This guidance establishes internal Department guidelines only. It does not create any rights, substantive or procedural, enforceable at law by any party.

Effective Date:

Directives and guidance within this Memorandum are effective immediately upon distribution.

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Attachment 1 – Waiver Template

Request for Waiver of Time and Page limits under S.O. 3355

To: Office of the Deputy Secretary

Through: [Bureau Director]

From: [SES Supervisor Responsible for the Project]

Date:

1. Bureau or Office Name:

2. Title of Document: *Document Title*

3. Description of Action: *Description of the action or project that the NEPA document is analyzing, including the name of the project proponent and cooperating agencies, if applicable.*

4. Time waiver: 150 Page waiver: (*check all that apply*)

5. Description of Reason for Request:

For Example:

At this time, the project schedule cannot be expedited to meet the new time frames due to... Therefore, we are requesting a waiver of the schedule requirements and instead propose a Final EIS and ROD date of...

We are requesting a waiver of the 150 page limit, and seek an exception allowing for 300 pages. The project is unusually complex because... Therefore, we seek approval for a 300 page EIS.

6. Need and deadline (if any) for issuance of waiver(s) decision:

7. Positions of affected stakeholders: *Who is affected by not meeting the timeframe?*

8. Other relevant considerations: *For Example: Schedule delays and paper length due to project complexity, budget, analysis needs arising from....*

9. Attachments: *If the request is for a waiver of the time requirement, attach a copy of the original and the new proposed project timeline with the waiver request.*

Granted: _____ Date: _____

Denied: _____ Date: _____

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Attachment 2 – DOI EIS Page Length Considerations and Guide

Chapter/Section	Standard EIS Number of Pages (150 Max)	Complex EIS Number of Pages (300 Max)
Executive Summary	5	10
Purpose and Need for Action	2	5
Proposed Action	2	4
Alternatives (Include Table)	10	20
Affected Environment	38	76
Environmental Consequences	85	167
Mitigation	5	10
Consultation and Coordination	3	8
Total	150	300
Appendix to include: Preparers, Index, References, Glossary, and Acronyms		

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Attachment 3 – DOI Guidance on the Environment Review Process for a 365-Day Timeline

[See Attached]

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Attachment 4 – Pre-Notice of Intent Guidance to Streamline the NEPA Process

A Notice of Intent must *briefly*:

Describe the proposed action and possible alternatives
Describe the Agency's proposed scoping process
Provide a point of contact (POC)

Prior to publishing a NOI to prepare an EIS pursuant to the Order, CEQ Regulations, and NEPA best practices, Bureaus should have achieved the following:

1. Identified an achievable goal, a clearly defined proposed action, and a purpose and need statement that can achieve that goal.
 - a. When the action involves a third party proponent, is the proposed project sufficiently defined to provide the facilitating or authorizing agency with the information it needs to prepare a clearly defined proposed action, purpose and need, and reasonable alternatives?
 - b. Is the project technically and/or financially feasible?
 - c. Is the application, as applicable, complete?
2. Identified and collected relevant known background information and data such as GIS layers, historical data, and other environmental documents and studies.
3. Identified what data is missing/needed or other skills needed for analysis.
4. Anticipated issues or concerns.
5. Identification of possible alternative ways to achieve the goal.
 - a. Is it possible to meaningfully evaluate the effects of the proposed action and reasonable alternatives?
6. Sufficient resources are available to begin and complete NEPA in keeping with the time requirements of OFD, FAST-41, E.O. 13807 or S.O. 3355 (as applicable).
 - a. Has the agency committed and made available the staffing or contracting resources need to begin NEPA?
 - b. Is the project sponsor ready to begin NEPA, and have they committed sufficient and appropriate staff, POCs, consulting services, and financial resources to complete NEPA? If a contractor is used, is there a signed disclosure statement to avoid conflict of interest?
 - c. Is there sufficient Agency and sponsor leadership attention to help prioritize tasks and assist in issue resolution?
7. Identified POCs for project proponent and Federal, State, and Tribal agencies that will need to be involved.
 - a. MOU/MOAs executed with cooperating agencies.
8. Coordinated Work Plan/EIS development plan including approved schedule, critical action dates, timelines for consultations, and communications strategy.
9. Determine place, date(s), time(s) for public scoping meetings with/without third-party contractor assistance.

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Department of the Interior Environmental Impact Statement (EIS) Process Timeline

DURATION	Timeline Years	1 YEAR						90 days	
		Public comment for NOI and Scoping - 30 days	Drafting and publication of DEIS	Public comment period for DEIS - min. 45 days (40 CFR 1506.10(c))	Minimum 90 days between publication of Draft EIS and Final EIS (40 CFR 1506.10(b)(1))	Review Period for Final EIS - minimum 30 days (40 CFR 1506.10 (b)(2))	Agency signs Record of Decision (ROD) no earlier than 31st day after notice		All Authorizations issued
NEPA Process	<ol style="list-style-type: none"> 1. Receive Application (if applicable); 2. Review application to determine if complete; 3. Ensure sufficient staffing or contracting resources available to complete NEPA; 4. Put together project management, writing, review and production teams; 5. Develop project schedule and coordination plan; 6. Develop page budget; 7. Develop draft Purpose and Need; 8. Screen and identify preliminary proposed project alternatives, eliminating unreasonable alternatives or other alternatives considered, but dismissed; 9. Identify and begin writing of Affected Environment; 10. Determine methodologies for analysis; 11. Identify potential environmental impacts - could include planning studies and resource surveys; 12. Identify and collect relevant existing current data; 13. Identify data needs; 14. Identify issues and concerns that will need to be addressed; 15. Identify points of contact for cooperating agencies and stakeholders, coordinate with government and non-government stakeholder groups, and develop memoranda of agreement as feasible; 16. Determine data, data(s), time(s) for scoping meetings; 17. Prepare NOI and complete approval process. 	<ol style="list-style-type: none"> 1. Complete analysis of data (including information received during public comment period); 2. Continue drafting previous sections and begin writing Environmental Impact Document - prepared concurrently in sections/parts, whenever possible; 3. Identify preferred Alternative and share with cooperating agencies, as applicable; and 4. Complete internal DOI approval process. <p>BLM Draft EIS for some programs may need to be completed in less than 4 months to allow for 90 day regulatory public comment period.</p>	<ol style="list-style-type: none"> 1. Address and respond to DEIS comments; 2. Prepare FEIS; 3. Coordinate with cooperating agencies and applicable stakeholders; 4. Complete approval process; 	<ol style="list-style-type: none"> 1. Address and respond to DEIS comments; 2. Prepare FEIS; 3. Coordinate with cooperating agencies and applicable stakeholders; 4. Complete approval process; 	<ol style="list-style-type: none"> 1. Address and respond to DEIS comments; 2. Prepare FEIS; 3. Coordinate with cooperating agencies and applicable stakeholders; 4. Complete approval process; 	<ol style="list-style-type: none"> 1. Address and respond to DEIS comments; 2. Prepare FEIS; 3. Coordinate with cooperating agencies and applicable stakeholders; 4. Complete approval process; 	<ol style="list-style-type: none"> 1. Address and respond to DEIS comments; 2. Prepare FEIS; 3. Coordinate with cooperating agencies and applicable stakeholders; 4. Complete approval process; 	<ol style="list-style-type: none"> 1. Address and respond to DEIS comments; 2. Prepare FEIS; 3. Coordinate with cooperating agencies and applicable stakeholders; 4. Complete approval process; 	<ol style="list-style-type: none"> 1. Address and respond to DEIS comments; 2. Prepare FEIS; 3. Coordinate with cooperating agencies and applicable stakeholders; 4. Complete approval process;
ESA	<p>Define Action Area</p> <ul style="list-style-type: none"> - Obtain FWS concurrence with preliminary species list - Conduct any required species surveys/habitat assessments - Some surveys may need to be conducted at specific times of year 	Develop Biological Assessment	Submit Biological Assessment and FWS prepares Biological Opinion (135 days maximum) (50 CFR § 402.14(c))	Submit Biological Assessment and FWS prepares Biological Opinion (135 days maximum) (50 CFR § 402.14(c))	FWS issues final BO/ concurrence letter				
Section 106	<p>Identify consulting parties</p> <ul style="list-style-type: none"> - Work with THPO/ SHPO on areas of potential effect - Early investigations to identifying Section 106 properties - Early engagement with stakeholders 	Invite consulting parties	Define Area of Potential Effect and assess adverse effects Identify historic properties / Conduct archaeological surveys (fieldwork may be seasonal)	Consultation to resolve adverse effects	Sign Programmatic Agreement/Memorandum of Agreement				
Section 404 Permit	Determine project impact areas Conduct wetland delineations (note that fieldwork is seasonal), and submit permit application	Use EIS NOI to inform public of comment period and notice of permit application/public hearing	Preliminary additional determinations with public hearing	USACE least environmentally damaging practicable alternative (LEDA) Determination--if needed, develop draft mitigation plan	Agency determination				
Other Determinations**	Pre-application Exchange of preliminary information	Develop Preliminary Mitigation	Submit permit application (if applicable) or include other information within the NEPA document for public review	Public review	Address comments Mitigation commitments are incorporated into the project	Agency determination			

