

Reclamation Manual

Directives and Standards

TEMPORARY RELEASE
(Expires 06/18/2020)



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

AUG 06 2018

Memorandum

To: Assistant Secretaries
Heads of Bureaus and Offices
NEPA Practitioners

From: Deputy Secretary 

Subject: Additional Direction for Implementing Secretary's Order 3355 Regarding Environmental Assessments

Purpose:

On August 31, 2017, I issued Secretary's Order 3355 (Order) to improve the Department of the Interior's (Department) environmental review processes under the National Environmental Policy Act (NEPA). Section 4b of the Order directed the Department's Bureau and Office (Bureau) heads to recommend target page and time goals for the preparation of Environmental Assessments (EA) where a Bureau is the Lead Agency. The following guidance considers and incorporates each Bureau's feedback for the thorough and timely consideration of environmental impacts analyzed within an EA document.

EA Guidance:

1. EA Page and Time Guidelines:
 - a. Bureaus should strive to produce EAs that are consistent with both the Council on Environmental Quality's (CEQ) guidance and the Department's normal practice. The CEQ recommends that EAs be approximately 10-15 pages and be completed in 3 months or less.¹ The Department generally produces EAs that are approximately 30-40 pages.
 - b. In certain circumstances, EAs may need to exceed CEQ's guidance and the Department's normal practice. In these instances, Bureaus should strive to complete EAs in 75 pages or less, excluding appendices, and to conclude the EA

¹ Council on Environmental Quality: Memorandum to Agencies – *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18026 (March 23, 1981).

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review within 180 calendar days of the commencement² date, pursuant to 43 CFR § 46.325.³

- c. If a proposed action presents particular environmental challenges that make it unlikely for an EA to be completed in less than 75 pages or 180 days, the EA Project Teams should consult with the Office of the Solicitor, Bureau Director, and first-line Senior Executive Service (SES) member with line authority over the proposed action to determine the best course of action.

2. EA Tracking and Management:

- a. Within 30 calendar days of the effective date of this Memorandum:
 - i. Bureaus shall upload⁴ EA project information and schedules to the NEPA and Permit Tracking Database (Database) for EAs that were initiated before the effective date of this Memorandum and that are not yet complete, if the total time to complete the EA is likely to exceed 180 calendar days from the effective date of this Memorandum or is unlikely to be completed in 75 pages or less.
 - ii. Bureaus are not required to upload existing EA project information and schedules if the EA will be completed within 180 calendar days of the date of this Memorandum.
 - iii. Bureaus shall upload EA project information and schedules to the Database for EAs that are initiated after the effective date of this Memorandum if the total time to complete the EA is likely to exceed 180 calendar days or is not likely to be completed in 75 pages or less.
- b. EA documents should continue to be approved and/or cleared according to each Bureau's current program, and with the expectation that the first-line SES member with line authority over the proposed action will bear ultimate responsibility for each EA.

3. EA Team and Solicitor Assignments:

- a. For each EA to be uploaded into the Database, provide the name, title, and contact information for the first-line SES member with line authority over the proposed action and the other members of the EA Project Team, by uploading the

² EAs commence once a Bureau receives a completed application from a project proponent, receives or obtains sufficient information to analyze the proposed action, publishes a Notice of Proposed Rulemaking in the Federal Register, or internally determines to pursue action planning.

³ EAs conclude upon the issuance of a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS), the signing of a Finding of No Significant Impact (FONSI) or mitigated FONSI, or written determination of no further action.

⁴ The task of uploading EA project information and schedules to the Database may be assigned to any Bureau employee, however, that person should have first-hand knowledge of the project and the status of the EA document.

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information into the Database. Contact information shall include a telephone number and an email address.⁵

- b. An attorney in the Office of the Solicitor, based either regionally or in Washington, DC, shall be incorporated into all new and existing EA Project Teams⁶ if the EA is expected to be controversial, complex, or is perceived to possess a greater-than-average risk of litigation.⁷ Bureaus and their EA Project Teams shall present EAs that may meet this criteria to the Office of the Solicitor, which will then determine whether an attorney needs to be assigned to the EA Project Team. The assigned attorney is responsible for ensuring that the EA is legally sufficient prior to the conclusion of the EA analysis.
- c. Where required, Bureaus shall provide the assigned attorney's name and contact information in the Database.

4. Meeting EA Page and Timeline Goals:

The following recommendations should help EA Project Teams plan with the goal of completing an EA in 180 calendar days and 75 pages or less. While each of these recommendations may prove helpful, Bureaus are expected to draw upon their expertise and experience to address individual issues as they arise:

- a. Departmental NEPA regulations state that an EA can be prepared in any format that is useful to facilitating planning, decision making, and informing the public.⁸ The attachment provides a suggested layout and page count for a fully developed, yet concise EA.⁹
- b. Upon receiving demonstrated interest from a project proponent, and prior to initiating an EA, it is considered best practice to assess or evaluate proponent applications to ensure that they are complete and properly prepared by the proponent. This assessment may be comprised of a meeting, teleconference, follow-up discussion, or an application review with the proponent prior to accepting an application. This assessment is not a decisional step, but is intended to confirm that proponents are ready to proceed.

⁵ This directive is not asking for the list of preparers pursuant to 40 CFR §1502.17, but those responsible for project oversight, management, and compliance with this Memorandum pursuant to 43 CFR § 46.310.

⁶ EA Project Teams may include, but are not limited to, Departmental NEPA staff, Senior Executive Service members, subject matter experts, contractors, planners, attorneys from the Office of the Solicitor, and others who work on EAs at the field level.

⁷ This term does not alleviate the Office of the Solicitor from reviewing EA documents prior to publication; it simply limits their required formal EA Project Team participation to projects that are controversial, unusually complex, or possess a greater-than-average litigation risk.

⁸ 43 CFR § 46.310, 46.315.

⁹ This template is simply meant as a guide to help EAs remain under 75 pages, in the event that page restraint becomes an issue, and Bureaus should utilize their experience and expertise to find solutions that address unique circumstances as they arise.

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- c. Pursuant to 40 CFR §1501.6, Bureaus shall include as cooperating Agencies other Federal agencies with jurisdiction by law or special expertise in the project subject matter,¹⁰ and Bureaus must cooperate at the request of another Bureau.

5. Public Involvement:

- a. Both CEQ¹¹ and the Department's¹² regulations require some form of public involvement – *to the extent practicable*¹³ – in the preparation of an EA. Each regulation gives Bureaus the discretion to determine how much and what kind of public involvement is most appropriate for an individual EA.
- b. Public involvement may include, but is not limited to, public notice prior to or during EA preparation, public scoping, public meetings, requests for information, or public comment on the completed EA and unsigned Finding of No Significant Impact.
- c. Bureaus should ensure that the selected level of public involvement is incorporated into the project's 180-calendar-day timeline.¹⁴

6. Contractor Guidance:

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

7. Bureau NEPA Handbooks:

- a. According to the Secretary's Order 3355 guidance documents issued on April 27, 2018, Bureau Directors and their NEPA staff are meeting with the Office of the Deputy Secretary and the Office of Environmental Policy and Compliance to identify whether changes are required to each Bureau's NEPA Handbook (Handbook). To avoid duplicating efforts, Bureaus shall update their Handbooks to reflect the EA guidance within this Memorandum in conjunction with Environmental Impact Statement (EIS) updates. Both the EIS and the EA NEPA Handbook update meetings shall now be completed by September 1, 2018, instead of the original date of July 2, 2018.

¹⁰ It shall be incumbent upon Bureaus acting as Lead Agencies to ensure that cooperating Federal Agencies outside of the Department adhere to the Department's page and timeliness guidelines as nearly as is practicable, subject to applicable law, statutory authority, and appropriations.

¹¹ 40 CFR 1500.2(d), 1501.4(e)(2), 1506.6.

¹² 43 CFR § 46.305.

¹³ *Id.*

¹⁴ Deviation from this guidance may be required if the EA is tied to a formal Agency rulemaking procedure that proscribes a certain level of public involvement – such as public comment.

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- b. Bureau Handbook changes should be implemented as soon as practicable through issuance of an updated Handbook or by using an established, Bureau-specific amendment processes, such as issuance of a Permanent Instruction Memorandum. If a Permanent Instruction Memorandum or other amendment process is utilized, the Bureau's Handbook shall be revised and amended as soon as practicable.

Additional Provisions:

8. Nothing contained in this Memorandum is intended to or should be construed to limit or affect the authority or legal responsibilities of the Department's Bureaus or other Federal- or State-level government entities, nor bind them to perform actions beyond their respective authorities.
9. This Memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.
10. Specific activities that involve the transfer of money, services, or property between or among the Bureaus may require execution of separate agreements or contracts that occur as a matter of course.
11. This Memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its Departments, Agencies, or entities, its officers, employees, or agents, or any other person.

Effective Date:

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

Attachment

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Attachment – DOI EA Page Allocation Guide

Chapter/Section	EA Page Count
Executive Summary	2
Purpose and Need for Action	4
Proposed Action	4
Alternatives	12
Affected Environment	20
Environmental Consequences	28
Mitigation (If applicable)	5
Total	75