

**INDIAN AFFAIRS  
DIRECTIVES TRANSMITTAL SHEET**

(modified DI-416)

DOCUMENT IDENTIFICATION NUMBER 59 IAM 3	SUBJECT <b>National Environmental Policy Act</b>	RELEASE NUMBER # 10-33
FOR FURTHER INFORMATION Division of Environmental and Cultural Resources Management		DATE <b>OCT 20 2011</b>

**EXPLANATION OF MATERIAL TRANSMITTED:**

This chapter establishes policy, requirements and responsibilities for Indian Affairs (IA) headquarters and field staff for compliance with the National Environmental Policy Act (NEPA). Complying with NEPA requires IA to complete appropriate environmental documents to demonstrate IA has considered the effects its actions may cause on the human environment.

  
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Acting Deputy Assistant Secretary – Indian Affairs (Management)

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**FILING INSTRUCTIONS:**

Remove: 59 IAM 3 Environmental Analysis and Review, 10/25/99

Insert: 59 IAM 3 National Environmental Policy Act

- 1.1 Purpose.** This chapter establishes policy, requirements and responsibilities for Indian Affairs (IA) headquarters and field staff for compliance with the National Environmental Policy Act (NEPA). Complying with NEPA requires IA to complete appropriate environmental documents to demonstrate IA has considered the effects its actions may cause on the human environment.
- 1.2 Scope.** The policy and standards apply to all IA Offices who have control and responsibility for actions affecting Indian trust lands or any adjacent lands. These include all actions that IA offices directly initiate, fund or approve. The NEPA requires that IA consider the environmental effects and properly document this consideration prior to initiating the actions.
- 1.3 Policy.** It is the policy of IA to:
- A.** Consider the environmental effects of its actions by conducting the appropriate environmental review.
  - B.** Account for this review by preparing the appropriate environmental documents.
  - C.** Take the appropriate steps to ensure negative environmental effects are prevented, minimized or mitigated whenever possible.
  - D.** Monitor for and assess the effectiveness of mitigation measures identified to mitigate adverse environmental impacts in EAs and EISs.
  - E.** Periodically, review the IA list of categorically excluded actions and determine their continuing applicability.
  - F.** Categorically exclude purchase and consolidation of fractionated interests of Indian land, under 516 DM 10.5(I) and apply a single nation-wide Categorical Exclusion Exception Review (CEER). A separate CEER Checklist of each purchase is not required, but to document the nation-wide CEER, the following statement will be included with each deed:  

“In compliance with the National Environmental Policy Act (NEPA), the Bureau of Indian Affairs (BIA) has determined that the purchase of fractionated interests under this deed is categorically excluded under 516 DM 10.5(I). BIA has evaluated the purchase to determine whether it meets any of the extraordinary circumstances in 43 C.F.R. 46.215, and has determined that any extraordinary circumstances would not be affected because the land use of the purchased interests would not change. Any future change in land use that requires a major federal action would require further NEPA review.”
- 1.4 Authority.** The following statute, regulations, and Executive Order impose requirements on IA regarding compliance with NEPA:
- A. Statutes.**
    - (1) National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 – et seq. as amended.

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**B. Regulations.**

- (1) 40 CFR Parts 1500 - 1508, Regulations of the Council on Environmental Quality (CEQ).
- (2) 43 CFR Part 46, Implementation of the National Environmental Policy Act (NEPA) of 1969.

**C. Executive Orders**

- (1) Executive Order 11514 Protection and Enhancement of Environmental Quality, Section 2, March 5, 1970, as amended by Executive Order 11991, Relating to Protection and Enhancement of Environmental Quality, May 24, 1977.
- (2) Executive Order 11988, Floodplain Management, May 24, 1977.
- (3) Executive Order 11990, Protection of Wetlands, May 24, 1977.
- (4) Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.

**D. Guidance.**

- (1) 516 DM 10 Managing the NEPA Process – Bureau of Indian Affairs
- (2) IA NEPA Guidebook.
- (3) CEQ Forty Most Asked Questions Concerning CEQ's National Environmental
- (4) Policy Act Regulations (46 FR 18026).
- (5) CEQ Guidance Regarding NEPA Regulations (48 FR 34236)
- (6) CEQ Environmental Justice Guidance under the National Environmental Policy Act, December 1997.
- (7) CEQ Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Use of Findings of No Significant Impact (76 FR 3843).
- (8) CEQ Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act (75 FR 75628).

**1.5 Responsibilities.**

- A. Assistant Secretary - Indian Affairs** discharges the duties of the Secretary of Interior with the authority to direct responsibility to protect and preserve Indian trust assets; provides program and budget support; oversees policies and programs for overall compliance with NEPA; and reviews and acts on any NEPA documents that are raised to the Assistant Secretary level.
- B. Deputy Assistant Secretary – Management** reviews and acts on any NEPA documents that are raised to the Deputy Assistant Secretary level; and reviews and acts upon IA policy to comply with NEPA.
- C. Director, Bureau of Indian Affairs** ensures appropriate organizational arrangements, resources and personnel are available to comply with NEPA for all actions of the BIA.
- D. Director, Office of Facilities, Environmental and Cultural Resources** ensures the interdisciplinary capabilities of the Division of Environmental and Cultural Resources

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Management as required by Section 102(A) of NEPA; and delegates responsibility to the Deputy Director, Office of Facilities Management and Construction for signing federal agency NEPA compliance documents for decisions that rest with the Office of Facilities Management and Construction.

- E. **Deputy Director, Office of Facilities Management and Construction** ensures compliance with NEPA for federal actions controlled by OFMC; and signs NEPA documents for decisions that rest with the Office of Facilities Management and Construction.
- F. **Chief, Division of Environmental and Cultural Resources Management** establishes IA's environmental management policies, guidance and standards for complying with environmental statutory and regulatory requirements and Environmental Executive Orders; oversees IA NEPA compliance activities; and appoints a Central Office NEPA Coordinator.
- G. **Central Office NEPA Coordinator** coordinates IA NEPA activities and serves as NEPA representative for IA with other Offices, Bureaus and Agencies; drafts policy and procedures for implementing NEPA actions; coordinates the Federal Register notifications and distribution of Environmental Impact Statements; conducts Internal Control Reviews of the NEPA program; manages IA's federal and Departmental NEPA reporting requirements; and coordinates NEPA training and meetings for BIA and IA staff.
- H. **Regional Directors** review and act on any NEPA documents, including Categorical Exclusions, Environmental Assessments and Environmental Impact Statements that are not otherwise delegated to the Agency level.
- I. **IA Program Managers** ensure that federal actions under their control comply with NEPA.
- J. **Regional NEPA Coordinators** serve as the Regions' professional environmental representatives for providing technical advice to Regional Directors regarding proper compliance with NEPA; take the lead for ensuring NEPA analysis is conducted in accordance with the authority and guidance referenced in this chapter for any BIA action originating in the Regions and requiring Regional Directors' approval; review environmental documents (Categorical Exclusion Exception Review, Environmental Assessments and Environmental Impact Statements) for actions occurring within the Regions, including documents prepared by BIA as well as documents prepared by other agencies for activities occurring on or affecting Indian trust lands; serve as the Regions' representatives for cooperating agencies on environmental analysis affecting Trust lands; and monitor and ensure that all required mitigation measures are carried out.
- K. **Agency Superintendents and Program Directors** carry out, at the Agency/ Program level, those NEPA responsibilities delegated by the Regional Director. Such delegation will only be made where the Agency or Program Office has appropriate expertise on staff or otherwise readily available.

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- L. **Agency and Program Environmental Specialists** perform those responsibilities of a Regional NEPA Coordinator that may be required to enable the Agency Superintendent or Program Representative to meet responsibilities that have been delegated to them relating NEPA.

## 1.6 Definitions

**A. Major federal action.** Indian Affairs adopts the 43 C.F.R §46.100 definition of federal action as synonymous with any reference to major federal action. The definition is as follows: “(a) A bureau proposed action is subject to the procedural requirements of NEPA if it would cause effects on the human environment (40 CFR 1508.14), and is subject to bureau control and responsibility (40 CFR 1508.18). The determination of whether a proposed action is subject to the procedural requirements of NEPA depends on the extent to which bureaus exercise control and responsibility over the proposed action and whether Federal funding or approval are necessary to implement it. If Federal funding is provided with no Federal agency control as to the expenditure of such funds by the recipient, NEPA compliance is not necessary. The proposed action is not subject to the procedural requirements of NEPA if it is exempt from the requirements of section 102(2) of NEPA. (b) A bureau shall apply the procedural requirements of NEPA when the proposal is developed to the point that: (1) The bureau has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal; and (2) The effects of the proposed action can be meaningfully evaluated (40 CFR 1508.23).”

**B. NEPA documents.** There are five NEPA documents IA may prepare they are: a Categorical Exclusion Exception Review (CEER) Checklist ; an Environmental Assessment; a Finding of No Significant Impact (FONSI); an Environmental Impact Statement (EIS); and a Record of Decision (ROD).