

Chapter 23.1 Environmental Reviews

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23.1.1 Introduction.

23.1.1.1 Purpose. The purpose of this chapter is to assist Indian Health Service (IHS) and Tribal staff in the preparation of environmental documentation for IHS health care facilities and quarters, and Tribal health care facilities. Environmental concerns that are addressed by the agency early in the planning and budgeting stages usually do not result in costly time and/or financial penalties later in the construction process.

23.1.1.2 Applicability. The information found herein is applicable to all IHS new construction, major renovation, joint venture, small ambulatory, maintenance and improvement projects, and facility operations, unless otherwise noted.

Categorical exclusions may be used if there are not extraordinary or exceptional circumstances (please note that you will not be able to know of any extraordinary circumstances unless you perform an environmental review). IHS is responsible for reviewing all proposed construction actions for environmental effects; the size or cost of a project do not necessarily matter, e.g., a small project could have significant or major effect on the environment. The agency categorical exclusion regulations should be carefully reviewed during the environmental review of construction actions to see if they may be applicable.

Generally, the agency should prepare an environmental assessment for each proposed action not categorically excluded and, as a result, prepare a Finding Of No Significant Impact (FONSI) or an Environmental Impact Statement (EIS).

The IHS OEHE, Environmental Review Manual dated January 2007, was prepared to assist IHS program manager in ensuring that IHS construction programs, activities, actions, or undertakings comply with the National Environmental Policy Act (NEPA), and the requirements of other related environmental statutes and subsequent regulations and administrative policies and procedures.

Under Title V Regulations, the Tribe is required to accept all of the Federal Responsibilities under NEPA of 1969 and NHPA that are directly related to the construction project being assumed.

23.1.1.3 Background. The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321), as amended, establishes policy and requirements governing all Federal Departments and agencies with respect to protecting the environment. Also, the Department of Health and Human Services

(HHS) General Administration Manual (GAM), Part 30 “Environmental Protection,” supplements specific requirements established by NEPA and by the associated implementing regulations promulgated by the Council on Environmental Quality (CEQ) (40 CFR 1500-1508). NEPA requires all Federal Departments and agencies to take into account all potential environmental consequences of their activities prior to initiation of these activities. Specifically, Section 102(2)(c) of NEPA requires all agencies of the Federal Government to include an environmental impact statement (EIS) “in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.”

23.1.2 Definitions. The controlling definitions for terms under CEQ's NEPA regulations are contained in 40 CFR 1508 (noted in parentheses). Some of these definitions are provided as a supplement to those regulatory The controlling definitions for terms under CEQ's NEPA regulations are contained in 40 CFR 1508 (noted in parentheses). Some of these definitions are provided as a supplement to those regulatory definitions.

Definitions

- (1) **Categorical exclusion (CATEX).** (40 CFR 1508.4) Actions which do not individually or cumulatively have a significant effect on the human environment and which are described in one of the categorical exclusion lists in Appendix A, and for which, no exceptional circumstances exist, and therefore, neither an environmental assessment nor an environmental impact statement is required.
- (2) **Environmental planning and impact assessment.** Within IHS, this process is synonymous with the NEPA process.
- (3) **Cooperating agency.** (1508.5) A Federal agency other than the one preparing the NEPA document (lead agency) that has jurisdiction over the proposal by virtue of law or special expertise and that has been invited to be a cooperating agency by the lead agency. State or local governments, and/or Indian tribes, may be Part I - Guidance designated cooperating agencies as appropriate (see 1508.5 and 1502.6).
- (4) **Cumulative actions.** (1508.25) Actions that, when viewed with other actions in the past, the present, or the reasonably foreseeable future, regardless of who has undertaken or will undertake them, have an additive effect on the resource the proposal would affect.
- (5) **Cumulative effect.** (1508.7) The effects of cumulative actions.
- (6) **Direct effect.** (1508.8) An effect that occurs as a result of the proposal or alternative in the same place and at the same time as the action.
- (7) **Environmental Assessment.** (1508.9) A brief NEPA document that is prepared to (a) help determine whether the impact of a proposal or alternatives could be significant; (b) aid IHS in compliance with NEPA by evaluating a proposal that will have no significant impacts, but that may have measurable adverse impacts; or (c)

- evaluate a proposal that either is not described on the list of categorically excluded actions, or is on the list but exceptional circumstances apply.
- (8) **Environmental Impact Statement.** (1508.11) A detailed NEPA document that is prepared when a proposal or alternatives have the potential for significant impact on the human environment.
 - (9) **Environmentally preferred alternative.** (1505.2) Of the alternatives analyzed, the one that would best promote the policies in NEPA Section 101. This is usually selected by the interdisciplinary team members. It is presented in the NEPA document (draft and final EIS or EA) for public review and comment.
 - (10) **Exceptional circumstances.** Circumstances that, if they apply to a project described in the IHS categorical exclusion lists, mean a CATEX is inappropriate and an EA or an EIS must be prepared because the action may have measurable or significant impacts.
 - (11) **Finding of No Significant Impact (FONSI).** (1508.13) A determination based on an EA and other factors in the public planning record for a proposal that, if implemented, would have 1/18/07 27 Overview no significant impact on the human environment.
 - (12) **Historic Properties.** As defined at 36 CFR 800.16(l) as ". . . any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria."
 - (13) **Human environment.** (1508.14) Defined by CEQ as the natural and physical environment, and the relationship of people with that environment (1508.14).
 - (14) **Impact topics.** Specific natural, cultural, or socioeconomic resources that would be affected by the proposed action or alternatives (including no action). The magnitude, duration, and timing of the effect to each of these resources is evaluated in the impact section of an EA or an EIS.
 - (15) **Indirect effect.** (1508.8) Reasonably foreseeable impacts that occur removed in time or space from the proposed action. These are "downstream" impacts, future impacts, or the impacts of reasonably expected connected actions (e.g., growth of an area after a new water system is complete).
 - (16) **Issues.** Issues are environmental, social, and economic effects that may occur if the proposed action or alternatives (including no action) are implemented or continue to be implemented.
 - (17) **Lead agency.** (1508.16) The agency either preparing or taking primary responsibility for preparing the NEPA document.
 - (18) **Major Federal action.** (1508.18) Actions that have a large Federal presence and that have the potential for significant impacts to the human environment. They

- include adopting policy, implementing rules or regulations; adopting plans, programs, or projects; ongoing activities; issuing permits; or financing projects completed by another entity.
- (19) **Mitigated EA.** An EA that has been written to incorporate mitigation into a proposal or to change a proposal to reduce impacts to below significance.
 - (20) **Mitigation.** (1508.20) Avoiding, minimizing, rectifying, reducing or eliminating, or compensating for the effects on the environment by the proposed action.
 - (21) **Notices of availability.** Separate notices submitted to the Federal Register that the draft EIS and the final EIS are ready for distribution.
 - (22) **Notice of intent.** (1508.22) The notice submitted to the Federal Register that an EIS will be prepared. It describes the proposed action and alternatives, identifies a contact person in IHS, and gives time, place, and descriptive details of the agency's proposed scoping process.
 - (23) **Preferred alternative.** (1502.14 (e)) The alternative an IHS decision-maker has identified as preferred at the draft EIS stage or in the EA. Identification of the preferred alternative helps the public focus its comments during review of the NEPA document.
 - (24) **Proposal.** (1508.23) The stage at which IHS has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal. The goal can be a project, plan, policy, program, and so forth. NEPA begins when the effects can be meaningfully evaluated.
 - (25) **Record of Decision (ROD).** (1505.2) The decision document for an EIS. It includes a statement of the decision made, a detailed discussion of decision rationale, and the reasons for not adopting all mitigation measures analyzed, if applicable.
 - (26) **Scoping.** (1508.25) Internal IHS decision making on issues, alternatives, mitigation measures, the analysis boundary, appropriate level of documentation, lead and cooperating agency roles, available references and guidance, defining purpose and need, and so forth. External scoping is the early involvement of the interested and affected public, especially in an EIS process.
 - (27) **Tiering.** (1508.28) The use of broader, programmatic NEPA documents to discuss and analyze cumulative regional impacts and define policy direction, and the incorporation by reference of this material in subsequent narrower NEPA documents to avoid duplication and focus on issues “ripe for decision” in each case. Tiering can occur to either an EA or an EIS.

Acronyms

- (1) **CATEX:** Categorical exclusion
- (2) **CEQ:** President's Council on Environmental Quality
- (3) **EA:** Environmental Assessment
- (4) **EIS:** Environmental Impact Statement
- (5) **EO:** Executive Order

- (6) **EPA:** Environmental Protection Agency
- (7) **ESA:** Endangered Species Act
- (8) **FONSI:** Finding of No Significant Impact
- (9) **HHS:** Health and Human Services
- (10) **IDT:** Interdisciplinary team
- (11) **NEPA:** National Environmental Policy Act
- (12) **NHPA:** National Historic Preservation Act
- (13) **NMFS:** National Marine Fisheries Service
- (14) **NOA:** Notice of Availability
- (15) **NOI:** Notice of Intent
- (16) **ROD:** Record of Decision
- (17) **SOF:** Statement of Findings definitions

23.1.3 Environmental Laws and Executive Orders. Listed below are the major environmental laws that deal with potential environmental effects from the IHS construction program including health care facilities and quarters construction projects. A partial list of applicable laws and executive orders is contained in HHS, GAM Chapter 30-00-20 (refer to the latest revisions or editions) and the Environmental Review Manual:

23.1.3.1 The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321).

- (1) Establishes a comprehensive policy for protection and enhancement of the environmental by the Federal government,
- (2) Creates the CEQ, and
- (3) Directs Federal agencies to carry out the policies and procedures of the Act.

23.1.3.2 The Safe Drinking Water Act (42 U.S.C. 300f et seq.). Authorizes Environmental Protection Agency (EPA) to determine if an action which will have and environmental effect on a sole or principal drinking water source would also contribute a significant hazard to a human population and, if so, to prohibit such action.

23.1.3.3 The Clean Air Act (42 U.S.C. 1857 h-7). Requires EPA to review and comment on a Federal agency action which would create a significant environmental Impact.

23.1.3.4 The Endangered Species Act (16 U.S.C. 1536). Directs Federal agencies to conserve endangered and threatened species and their critical habitats.

23.1.3.5 The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.). Directs heads of Federal agencies to preserve cultural heritage, particularly with respect to sites on/or eligible for listing on the National Register of Historic Places.

23.1.3.6 The Archeological and Historic Preservation Act (16 U.S.C. 469 a-1 et seq.). Directs Federal agencies to preserve significant scientific, prehistorical, historical and archeological data.

23.1.3.7 The Coastal Zone Management Act (16 U.S.C. 1456 et seq.). Directs Federal agencies to conduct activities consistent with an approved State coastal zone management program.

23.1.3.8 The Wild and Scenic Rivers Act (16 U.S.C. 1278). Directs Federal agencies to consider and preserve the values of wild and scenic areas in the use and development of water and land resources.

23.1.3.9 Toxic Substance Control Act (15 U.S.C. 2601). Requires Federal agencies to develop plans to insure ultimate safe disposal of toxic substances.

23.1.3.10 Solid Waste Disposal Act (42 U.S.C. 4901, et seq.). Sets responsibilities with the originator for proper handling and disposal of solid wastes.

23.1.3.11 Executive Order 11990, May 24, 1977. Directs heads of Federal agencies to avoid; a.) the long and short term adverse impacts associated with the destruction or modification of wetlands, and b.) direct or indirect support of new construction in wetlands whenever there is a practical alternative.

23.1.3.12 Executive Order 11988, May 24, 1977. Directs Federal agencies to take action to avoid; a.) the occupancy or modification of floodplains, and b.) direct or indirect support of development in floodplain areas whenever there is a practical alternative.

23.1.3.13 Executive Order 12088, October 13, 1978. Directs Federal agencies to comply with local, state, and Federal pollution control standards for facilities operation. This means that IHS facilities and sites are subject to numerous State and other environmental laws.

23.1.4 Reference Standards

23.1.4.1 HHS General Administration Manual (GAM) Section 30-50-40. In determining whether a proposed construction action will or will not “significantly affect the quality of the human environment,” IHS should evaluate the expected environmental consequences of a proposed action by means of the steps (steps one, two, three, and four) contained in GAM Section 30-50-40 D.

23.1.4.2 Finding Of No Significant Impact (FONSI). For the purposes of National Environmental Policy Act (NEPA), a FONSI documents IHS decision that a proposed construction action will not significantly affect the quality of the human environment. A FONSI should meet the criteria described in GAM Section 30-50-45 and, in addition include a list of agencies and persons to whom distributed, briefly present why the proposed action will not significantly affect the human environment, and be made available to the public and other interested parties.

23.1.4.3 Environmental Impact Statement (EIS). The Area Office or the Division of Engineering Services (DES) is responsible for carrying out a specific action is charged with preparation of the

EIS associated with the construction action described in GAM Section 30-50-60. Subsequent to preparing an EIS, and prior to undertaking project construction, the Area Office or DES shall prepare a public record of decision including synopsis of the following:

- (1) The decision,
- (2) Alternative considered,
- (3) A discussion of salient factors which were involved in the decision,
- (4) A discussion of measures or safeguards to be adopted to minimize potential environmental harm, and
- (5) A public record of decision pursuant to 40 CFR 1502.2.

End of Chapter 23.1 Environmental Reviews

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