

United States

Country: [United States of America](#) [1]

EIA Law: National Environmental Policy Act (NEPA) 42 U.S.C. 4321-4347

Law Link: [Link](#) [2]

EIA Regulations: Council on Environmental Quality Regulations (CEQ Regulations), 40 C.F.R. Part 1500

Regulations Link: [Link](#) [3]

EIA Guidelines or Other Guidance: CEQ Guidance

Guidance Link: [Link](#) [4]

Projects Requiring EIA: Government projects

Private Projects

Abridged Assessments: Yes

Assessment Detail: "An agency shall prepare an environmental assessment for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown[.]" 40 C.F.R. §1501.5(a). An environmental assessment (EA) briefly provides information and analysis for determining whether to proceed with a full environmental impact statement. See generally 40 C.F.R. §1501.5

Best Practices in Lieu of EIA: No

Who Conducts Screening: Government

Who Conducts Screening Detail: Federal agencies assess the appropriate level of NEPA review. 40 C.F.R. § 1501.3

Criteria for Screening: Proposed project or activity may cause significant environmental impact

Criteria for Screening Detail: An environmental impact statement must be prepared for any major Federal action "significantly affecting the quality of the human environment." 42 U.S.C. sec. 4332(C). Environmental impact statements must be included in "every Federal agency recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." 40 C.F.R. §1502.3; see also 40 C.F.R. §1501.1 (NEPA thresholds)

Who Prepares EIA: Government (with or without contractor)

Who Prepares EIA Detail: "Agencies shall prepare environmental impact statements using an interdisciplinary approach that will ensure the integrated use of natural and social science and the environmental design arts." 40 C.F.R. §1502.6.

Who Pays for EIA: Government

EIA Contractor Qualifications: No

EIA Contractor Qualification Detail: Although the CEQ regulations do not establish minimum qualifications for contributors to the EIS, the document "shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement." 40 C.F.R. §1502.18

Conflict of Interest: Yes

Conflict of Interest Detail: "Contractors or applicants preparing environmental assessments or environmental impact statements shall submit a disclosure statement to the lead agency that specifies any financial or other interest in the outcome of the action." 40 C.F.R. 1506.5(b)(4)

Terms of Reference: No

Days for Decision Maker Review: 30

Automatic Approval: No

Written Decision: Yes

Written Decision Detail: An agency must prepare and publish a record of decision. 40 C.F.R. § 1505.2(a)

Authority to Impose Conditions: Yes

Authority to Impose Conditions Details: 40 C.F.R. §1505.3(a),(b)

Expiry of Decision: Variable

Expiry of Decision Detail: The law and regulations do not specify the length of time that a record of decision is to remain valid. There are court decisions on the matter, but no consistent rule has been laid down.

Financial Assurances or Bond: Sometimes

Financial Assurances Detail: Bonds are not mandatory under NEPA and implementing regulations. In certain circumstances, other laws or regulations require financial assurances to be provided prior to commencing a project (e.g. mining projects).

Interdisciplinary Team: Yes

Interdisciplinary Team Detail: Agencies "shall prepare environmental impact statements using an interdisciplinary

approach" and ensure that the "disciplines of the preparers" are aligned with the scope of the project. 40 C.F.R. §1502.6

Range of Alternatives: Yes

Range of Alternatives Detail: The EIS must "[e]valuate reasonable alternatives to the proposed action, and, for alternatives eliminated from detailed study, briefly discuss the reasons for elimination" 40 C.F.R. 1502.14

No Action Alternative: Yes

No Action Alternative Detail: An EIS must include a no-action alternative. 40 C.F.R. §1502.14(c)

Type(s) of Impact Analysis: Direct environmental impacts

Cumulative environmental impacts

Social impacts

Cultural impacts

Health impacts

Economic impacts

Mitigation: Yes

Mitigation Detail: The discussion of alternatives must include appropriate mitigation measures. 40 C.F.R. §1502.14(e). See also 40 C.F.R. §1502.16 (discussion of environmental consequences); 40 C.F.R. §1508.1(s)(defining "mitigation")

Monitoring Plans: Sometimes

Monitoring Plans Detail: There is no requirement for an EIS to include a monitoring plan.

Public Notice of Draft EIA: Yes

Draft EIA Available: Yes

Draft EIA Available Detail: Agencies shall "publish" entire draft and final environmental impact statements, and provide either an electronic or paper copy of the statement to any person, organization, or agency that makes a request. 40 C.F.R. §1502.20. "Publish" is defined to mean "methods found by the agency to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication[.]" 40 C.F.R. §1508.1(y).

Draft EIA Locations: Internet

Agency or ministry office

Public Notice of Final EIA: Yes

Public Notice of Final EIA Detail: The Environmental Protection Agency publishes a notice in the Federal Register of EISs that have been filed. The time periods for public comments are calculated from the date of publication of this notice. 40 C.F.R. §1506.11(a), (b). See also 40 C.F.R. §1506.6(b) (agencies must provide public notice of hearings, meetings, and other opportunities for public involvement).

Final EIA Available: Yes

Final EIA Available Detail: Agencies shall "publish" entire draft and final environmental impact statements, and provide either an electronic or paper copy of the statement to any person, organization, or agency that makes a request. 40 C.F.R. §1502.20. "Publish" is defined to mean "methods found by the agency to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication[.]" 40 C.F.R. §1508.1(y).

Final EIA Locations: Internet

Agency or ministry office

Fee to View EIA Documents: No

Fee to Obtain EIA Documents: No

Availability of Reference Studies: Yes

Availability of Reference Studies Detail: Agencies shall "make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act, as amended (5 U.S.C. 552)." 40 C.F.R. §1506.6(f). "Agencies may not incorporate material by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Agencies shall not incorporate by reference material based on proprietary data that is not available for review and comment." 40 C.F.R. §1501.12

Public Notice of Final Decision: Yes

Public Notice of Final Decision Detail: An agency must timely publish a "concise public record of decision[.]" 40 C.F.R. § 1505.2

Public Scoping: Yes

Public Scoping Detail: "Agencies shall use an early and open process to determine the scope of issues for analysis in an environmental impact statement[.]" 40 C.F.R. § 1501.9(a). Procedures are outlined in 40 C.F.R. § 1501.9

Public Review of TOR: No

Public Participation Opportunities: Scoping

Review of draft EIA

Public Meetings and/or public hearings

Review of final EIA

Public Meetings: Sometimes

Public Meetings Detail: Public meetings are held at the discretion of the agency overseeing the EIS process. Agencies shall "[h]old or sponsor public hearings, public meetings, or other opportunities for public involvement whenever appropriate" or if required by statute. 40 C.F.R. §1506.6(c)

Public Input at Meeting: Yes

Public Input at Meeting Detail: 40 C.F.R. §1506.6(c), (d). See also 40 C.F.R. § 1503.1 (duty to invite public comment and provide for submission of comments electronically)

Criteria to Hold Public Meeting: Ministry or agency has discretion to decide whether to hold a meeting and/or hearing

Days for Public to Review Final EIA: 30 days

Public Comments on Draft EIA: Yes

Public Comments on Draft EIA Detail: An agency shall request comments from the public, specifically targeting those individuals impacted by the proposed project. 40 C.F.R. §1503.1(a)(2)(v)

Public Comments on Final EIA: Yes

Public Comments on Final EIA Detail: An agency "may request comments on a final environmental impact statement before the final decision and set a deadline for providing such comments." 40 C.F.R. §1503.2(b)

Response to Public Comments: Yes

Response to Public Comments Detail: An agency is required to consider "substantive comments timely submitted during the public comment period." 40 C.F.R. § 1503.4(a). A summary of information and analyses submitted by other agencies, government, and the public shall be included in the draft and final statements. 40 C.F.R. §1500.3(b)(2)

Facilitation of Public Participation: No

Citizen Administrative Review: Yes

Citizen Administrative Review Detail: Administrative review mechanisms (if available) are established through statute and/or regulations governing the agency decisionmaker. In some cases, exhaustion of administrative remedies is required before seeking judicial review.

Citizen Judicial Review: Yes

Citizen Judicial Review Detail: "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . is entitled to judicial review thereof." 5 U.S.C. §702

Project Monitoring: Sometimes

Project Monitoring Detail: In the record of decision, an agency "shall adopt and summarize, where applicable, a monitoring and enforcement program for any enforceable mitigation requirements or commitments." 40 C.F.R. §1502.2(a)(3)

Enforceability of EIA: No

Enforceability of Permit: No

Days for Public to Review Draft EIA: 45 days (may be extended)

Modified: July 19th, 2021

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Links

[1] <https://elaw.org/countries-and-regions/united-states-america>

[2] <https://www.energy.gov/nepa/downloads/national-environmental-policy-act-1969>

[3] <https://www.ecfr.gov/cgi-bin/text-idx?gp=&SID=db64895fc7b45bd409245796186abb6d&mc=true&tp=/ecfrbrowse/Title40/40CVsubchapA.tpl>

[4] <https://www.energy.gov/nepa/ceq-guidance-documents>