



Department of Energy
Washington, DC 20585

**STATE ENERGY PROGRAM NOTICE (10-001) AND ENERGY EFFICIENCY
CONSERVATION BLOCK GRANT PROGRAM NOTICE (10-003)**

EFFECTIVE DATE: December 17, 2009

**SUBJECT: NATIONAL ENVIRONMENTAL POLICY ACT GUIDE FOR STATE
ENERGY PROGRAM AND ENERGY EFFICIENCY AND CONSERVATION BLOCK
GRANT PROJECTS**

PURPOSE: This guidance is designed to help applicants for or recipients of funds from DOE's State Energy Program (SEP) and Energy Efficiency and Conservation Block Grant (EECBG) program (Grantees). Grantees may not spend funds on SEP or EECBG projects before DOE has completed its review under the National Environmental Policy Act (NEPA). This guidance should help Grantees to better understand DOE's environmental review process and provide information to assist DOE in that review. DOE hopes that this guidance will help make the NEPA review process more efficient.¹

LEGAL AUTHORITY: This guidance is based on the National Environmental Policy Act of 1969 (NEPA), as amended; the Council on Environmental Quality's NEPA regulations at 40 C.F.R. Parts 1500–1508, and DOE's NEPA regulations at 10 C.F.R. Part 1021. The responsibilities and obligations imposed by NEPA rest exclusively with DOE, and DOE may not delegate these responsibilities to the states or any other entity.

Section 1.0 Introduction — The DOE NEPA Environmental Review Process

1.1 Who should use this Guidance?

Grantees under either the SEP or EECBG program should use this guidance.

1.2 Does NEPA Apply to SEP and EECBG?

Yes, NEPA applies to proposals to fund individual projects, as well as proposals for revolving loan funds and subgrant programs under both the SEP and EECBG programs. In this guidance, project

¹ Note: Much of the guidance included herein was provided in the past through a number of DOE sources. The intention of this guidance is to clarify previously provided information and package it in one document. DOE has created a central location for all SEP and EECBG NEPA Guidance at:

http://apps1.eere.energy.gov/state_energy_program/doe_guidelines_nepa.cfm. This will be the central location for SEP and EECBG-related NEPA information/guidance and will be updated as new information is available.

refers to any of these types of proposals, unless otherwise specified. The appropriate level of NEPA review depends on the proposed project.

1.3 What is meant by environmental review under NEPA?

NEPA requires that all Federal agencies consider the potential environmental impacts of their proposed actions before making decisions. This is called a NEPA review. There are three levels of NEPA review, each involving a different degree of information and detail of analysis. Many of the types of projects proposed under SEP and EECBG qualify for categorical exclusion (CX) determinations. This is the simplest and quickest method for complying with NEPA. See section 2 for a discussion of CXs.

In cases where the proposed project may have a significant impact on the human environment, DOE must prepare an environmental impact statement (EIS). If DOE is unsure whether a proposed action will have significant impacts, it may conduct a briefer environmental assessment (EA) to determine if significant impacts would occur. If it finds that there is a potential for significant impacts, DOE must then prepare an EIS. If it finds that there are no significant impacts, DOE may issue a Finding of No Significant Impact (FONSI) and go forward with the project. Preparing EAs/FONSIs and EISs can take from a few months to more than a year and can be costly.

1.4 What is the Grantee's role in the NEPA environmental review process?

The Grantee needs to provide information to DOE about each proposed project and its potential environmental effects. It is most helpful to provide as much information as is available with the application. DOE will contact a Grantee when additional information is needed to complete the NEPA review process. If the Grantee provides sufficient environmental information at the beginning of the process, DOE can complete NEPA review more quickly. DOE may then be able to avoid placing NEPA conditions (also known as "prohibitions") on the use of funding. If DOE contacts a Grantee for further information, please provide that information in the format and timeframe requested by the DOE official.

Depending on the particular proposal, project details needed by DOE could include such things as size and type of technology to be used, description of the proposed project location, and description of any expected land disturbance, identification of potentially affected historic properties or sensitive resources, and assurance that any waste will be properly recycled or disposed. See http://apps1.eere.energy.gov/state_energy_program/doe_guidelines_nepa.cfm for examples of SEP/EECBG project descriptions.

1.5 How should Grantees provide environmental information to DOE?

Grantees initially provide environmental information to DOE primarily by completing either a:

- A. DOE Environmental Checklist, Form EF-1, used by DOE's Golden Field Office: which has the link to the EF-1 can be found at:
http://apps1.eere.energy.gov/state_energy_program/doe_guidelines_nepa.cfm, or

B. DOE Environmental Questionnaire, Form ES-1, used by DOE's National Energy Technology Laboratory: reference to the NETL webpage, which has a link to the ES-1 can be found at:

http://apps1.eere.energy.gov/state_energy_program/doe_guidelines_nepa.cfm

C. Related instructions are included in the funding opportunity announcements for SEP and EECBG. Grantees may complete these forms for a single project or for multiple projects, as long as the projects are so similar that the answer for one can stand as the answer for all. After Grantees submit these forms, DOE may have follow-up questions that will help DOE make a CX determination or otherwise complete the NEPA review process.

TIP: Grantees may consider whether to structure their funding programs (e.g., revolving loan funds, subgrant programs) to limit funding to only projects that would be eligible for a categorical exclusion. By limiting a program in this way, the Grantee increases the likelihood that DOE can apply a CX to the Grantee's entire program without having to review each project application. See Section 2 for a discussion of Categorical Exclusions.

TIP: Under both the SEP and EECBG programs, a large project (e.g., wind farm, solar array, refinery) on a green field site would probably require an EA or EIS.

TIP: Many Grantees included long lists of projects they might fund under their loan or grant programs, or prefaced their lists of potential projects with phrases such as "including but not limited to." In these cases, DOE has had to impose conditions – restrictions on the Grantees' ability to spend money – on such potentially broad programs until Grantees selected the specific projects they intend to fund and provided additional environmental information for those projects. DOE will release its prohibition on those projects once NEPA review is completed on a project specific basis.

1.6 Who to contact at DOE for SEP and EECBG NEPA questions.

Typically, the Grantee should contact the DOE Project Officer. The project officer is responsible for working with Grantees to ensure that their applications and projects comply with all requirements applicable to SEP and EECBG. In particular, project officers ensure that Grantees' intended uses of SEP and EECBG funds are consistent with the statutory purposes of those programs. See http://apps1.eere.energy.gov/state_energy_program/doe_guidelines_nepa.cfm for contact information for the DOE Project Officer who works with each state.

In addition to DOE Project Officers, there are other individuals that are involved in NEPA review for the SEP and EECBG programs. In the case of SEP DOE identified NEPA advisors to assist the DOE Project Officers. The NEPA Advisors would assist on calls with the state offices in explaining NEPA related issues. There are NEPA Compliance Officer (NCOs), who are responsible for making CX determinations and recommending when an EA or EIS should be prepared. See

http://apps1.eere.energy.gov/state_energy_program/doe_guidelines_nepa.cfm for NCO contact information.

1.7 How does a NEPA review affect a Grantees' ability to use funds?

Grantees may spend awarded funds only on projects for which DOE has completed its NEPA review. To understand how DOE's NEPA review of Grantees' applications plays out in practice, it is first necessary to understand some basic terms of art relating to how DOE makes an award. Under both the EECBG and SEP programs, Grantees apply for funding under broad "topic" areas. These topic areas are known as "Activities" under the EECBG program and "Market Titles" under the SEP program; throughout this Guidance, both are referred to as Market Titles for the sake of simplicity. An example of a Market Title is "building retrofits." An example of a specific project within that Market Title is a Grantee's "grant program for installing insulation."

DOE often makes NEPA determinations that apply to an entire Market Title. A single award often includes many market titles. For many of the SEP and EECBG projects, a CX will be appropriate and mark the end of NEPA review for the entire Market Title. However, for some projects in a Market Title, DOE may need more information before it can make a CX determination (or it may determine that an EA/FONSI or EIS is needed to complete the NEPA process). When DOE has not completed the NEPA review process for all of the projects proposed by a Grantee within a Market Title, DOE typically places a NEPA "condition" (also known as a "prohibition") on some types of projects within the Market Title. The condition prohibits the Grantee from spending funds on *any* project within the Market Title that DOE has not exempted from the prohibition (discussed below). Less frequently, DOE may conclude that it cannot make NEPA determinations for any projects in a Market Title. In that case, all projects are prohibited until the Grantee provides more information.

If the award does not contain any NEPA conditions, then there is no need for further NEPA review, and Grantees can spend funds on any of the projects included in the approved Market Titles.

Importantly, awards may identify "exemptions" (sometimes known as "exceptions") to a NEPA condition. These exemptions are projects for which DOE has completed NEPA review. Grantees can spend funds on these projects. Indeed, Grantees can use all of the funds for a particular Market Title on these projects even though spending funds on other projects within the Market Title is prohibited until NEPA reviews on them are completed for those projects.

If a Grantee wants DOE to release a NEPA condition, the Grantee should work with the DOE project officer and NCO. Most often, this would involve revising a Market Title or providing sufficient information for DOE to complete the NEPA review process. DOE will release a NEPA condition when it completes the NEPA review for a proposed project. This is true regardless of the nature of the proposed project or the funding sought, that is, whether the project is for one activity or multiple activities or the project seeks funding in the form of a revolving loan fund or a sub grant.

NEPA Condition Example: Under the EECBG program, some Grantees sought grants to conduct an energy audit of all of their government buildings in order to identify the retrofit activities that would provide the most energy savings. Where the range of buildings and potential retrofit activities were broad, DOE made a CX determination which allowed the Grantee to expend funds on the actual audit yet placed a condition on the grant funds pending NEPA determinations for any of the specific retrofit activities that they would provide. In order to remove or “clear” this condition, the Grantee needed to provide additional information to the DOE project officer upon completion of the audit and selection of the retrofit activities.

Grantees should be aware that prohibitions or conditions in an award could be imposed for reasons other than completion of the NEPA review (e.g., compliance with certain labor laws or financial conditions); those other factors are not discussed in this guidance, because they do not involve NEPA.

Grantees may move money from one Market Title to another. One market title might be a loan program; another market title might be a training program. Grantees have flexibility as to the number of proposed Market Titles they can include in their applications. Grantees will apply a funding level for each of the Market Titles. If they want to change those allocations after award, they need to submit an email to their designated DOE Project Officer that clearly states to what other Market Titles they intend to move the funds.

1.8 What NEPA review is necessary to add a new project to an application or market title?

A Grantee may identify new projects that were not included in its initial application. The Grantee should work with the DOE project officer and submit a revised application or market title. For example, if a market title describes a loan program for home retrofits, a Grantee cannot start giving loans to biorefineries or wind farms under that Market Title until DOE has reviewed the revisions and revised the award. As part of its consideration of the proposed revision, DOE will have to complete appropriate NEPA review for the newly proposed projects.

Section 2.0 Categorical Exclusions

2.1 What is a categorical exclusion?

DOE has concluded that many types (or classes) of actions *normally* do not have the potential to cause significant environmental impacts and, thus, are categorically excluded from the need to prepare an EA or EIS. CXs must be established by rulemaking, and the complete list of DOE’s CXs is contained in Appendices A and B to Subpart D of DOE’s NEPA regulations (10 CFR Part 1021). Reference to the link where this list can be found is located at:

http://apps1.eere.energy.gov/state_energy_program/doe_guidelines_nepa.cfm Appendix A mostly includes administrative actions that would cover proposals for hiring and contracting, energy audits, planning, and similar activities. Appendix B includes actions more likely to have a physical effect,

such as many weatherization actions to improve energy conservation and small-scale renewable energy projects such as installing solar panels on an existing roof.

2.2 What is a CX determination?

For each proposed action, such as the projects proposed in an SEP or EECBG application, DOE must first determine whether the proposed action fits in one or more of DOE's CXs. For a project to "fit," it must be the type of project listed in DOE's CXs, and, for Appendix B CXs, DOE must find that the project is consistent with the "integral elements" established at 10 C.F.R. Part 1021, Appendix B. The list of integral elements can be found at the following link::

http://apps1.eere.energy.gov/state_energy_program/doe_guidelines_nepa.cfm

DOE then determines whether there are any extraordinary circumstances or other reasons that the potential impacts of the particular proposed project might be different than normally expected. (The key elements, established by regulation, that DOE must consider are further discussed in Attachment 1.)

For example, a proposal to install a single, small wind turbine normally would get a CX determination (most likely under CX B5.1 "Actions to Conserve Energy"). However, if the proposal were to locate the small wind turbine near culturally or environmentally sensitive resources, then DOE might ask for additional information and conclude that an EA or EIS is required. The EA or EIS would help DOE better understand the potential impacts of the proposed project and might examine alternatives, such as a different location. The decision whether a CX determination or an EA or EIS is appropriate is made by a DOE NCO.

2.3 When would a project not qualify for a CX due to extraordinary circumstances?

Proposed projects may be of a type that normally fit within one or more of DOE's CXs but because of "extraordinary circumstances" may require further NEPA review (i.e., preparation of an EA or EIS). Grantees – particularly in developing and implementing loan and grant programs using SEP or EECBG – need to be aware of and guard against funding projects that present extraordinary circumstances that might affect the significance of the environmental effects of the proposal. These circumstances "include unique situations presented by specific proposals, such as scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; or unresolved conflicts concerning alternate uses of available resources" 10 C.F.R. § 1021.410(b)(2). For example, competing proposals for use of land proposed as the location for a renewable energy project might constitute an unresolved conflict concerning alternate uses of available resources and, thus, preclude DOE from making a CX determination for that proposed project. Grantees should review section 1021.410(b) of DOE's NEPA regulations and contact DOE if they identify projects that may present extraordinary circumstances and therefore might not be categorically excluded from further NEPA review.

2.4 Why else might a project not qualify for a CX determination?

In addition to extraordinary circumstances, a project may not qualify for a CX determination if it is “connected” to other projects with potentially significant impacts or is related to other projects with cumulatively significant impacts. 10 C.F.R. § 1021.410(b)(3).

2.5 What is the benefit of a CX determination?

Qualifying for a CX determination is the quickest and simplest way for a project to comply with NEPA because it relies on DOE’s prior decision that certain types of activities normally do not cause significant environmental impacts. When a CX does not apply to a project, then as stated above, DOE must prepare an EA and make a FONSI determination or prepare a detailed EIS, which can take from a few months to more than a year.

2.6 Can CX determinations be made for revolving loan and subgrant programs?

Yes. DOE already has made CX determinations for several revolving loan programs proposed in SEP applications. DOE reviewed the parameters of the revolving loan program and based its NEPA determination on the types of activities for which a Grantee proposed to make or award a loan or grant. More detailed and specific parameters (e.g., targeted at a particular type of activity such as solar hot water heaters for residences) are simpler for DOE to review than very general parameters (e.g., a very broad program to fund everything from retrofitting homes with energy efficient windows to creating large wind farms). Proposed programs with broad funding parameters (e.g., including long lists of potential project types or phrases such as “including but not limited to”) may implicate activities that do not fit within CXs. In such cases, DOE may not be able to make a CX determination and may, instead, impose conditions on the use of funds while Grantees select the projects they intend to fund and provide additional environmental information. DOE might need to prepare an EA/FONSI or EIS before funding can be provided for some or all of the proposed projects.

2.7 After DOE makes a CX determination, is NEPA review complete?

Yes. A CX determination completes the NEPA review process for the projects addressed in that CX determination. Many SEP and EECBG Market Titles include several types of projects, so the CX determination will not necessarily cover the entire Market Title. Also, new circumstances could affect a CX determination. For example, if a Grantee is considering using funds for a project that is not within the bounds that DOE reviewed in making the CX determination, then the Grantee should contact DOE to determine whether additional NEPA review is necessary. To illustrate, if the application described a loan program for installing solar panels, then that is what DOE based its CX determination upon. The CX determination would not apply to the Grantee financing wind turbines or other types of projects.

2.8 What other environmental laws must be complied with?

The completion of NEPA review, including the grant of a CX determination, and the release of Federal funds do not exempt the Grantee from complying with all applicable federal, state and local laws and other requirements. For example, a Grantee should comply with any waste management laws applicable to its projects, such as for the proper recycling or disposal of wastes generated by building retrofits or the installation of renewable energy systems. DOE makes a CX determination or completes an EA or EIS in order to comply with NEPA. This does not substitute for compliance with other applicable requirements by the Grantee.

2.9 What are the SEP and EECBG Templates?

In October, DOE provided an SEP Template and an EECBG Template to the states. These Templates are optional tools that a Grantee may use to help DOE expedite NEPA review for certain SEP and EECBG projects or groups of projects. Through its experience with SEP and EECBG over the course of the last year, DOE has learned that many of the proposed projects, and even entire programs, may qualify for CX determinations. In the Templates, DOE has identified certain categories of projects that commonly qualify for CX determinations. Where the Grantee determines that projects they intend to fund fit within one or more of the categories listed in the Template, the Grantee may use the Template. The Templates provide instructions on how to submit information to DOE and what requirements must be met in order for a Grantee to use them. See http://apps1.eere.energy.gov/state_energy_program/doe_guidelines_nepa.cfm. The EECBG Template includes the following categories of projects:

1. Conducting residential and commercial building energy audits, which Projects include hiring technical consultants for such work.
2. Establishment of financial incentive programs for energy efficiency improvements.
3. Provision of grants to nonprofit organizations and governmental agencies for the purpose of performing energy efficiency retrofits, provided that:
 - Projects Are Limited To: installation of insulation; installation of efficient lighting; heating, venting, and air conditioning (HVAC) and high-efficiency shower/faucet upgrades; weather sealing; the purchase and installation of ENERGY STAR appliances; installation of solar powered appliances with improved efficiency; and replacement of windows and doors.
4. Development and implementation of energy efficiency and conservation programs for buildings and facilities within the jurisdiction of the entity, provided that:
 - Projects Are Limited To: design and operation of the programs; identifying the most effective methods for achieving the maximum participation and efficiency rates; public education, measurement and verification protocols; and identification of energy efficient technologies.

5. Development and implementation of programs to conserve energy used in transportation, provided that:

- Projects Are Limited To: use of flex time by employers; use of satellite work centers; development and promotion of zoning guidelines or requirements that promote energy efficient development; and synchronization of traffic signals.

6. Development and implementation of building codes and inspection services, training and enforcement associated with such codes in order to promote building energy efficiency.

7. Projects to increase participation and efficiency rates for material conservation programs.

8. Replacement of traffic signals and street lighting with energy efficient technologies, provided that:

Projects are Limited To: those that improve lighting efficiency.

9. Development, implementation, and installation on or in any government building of onsite renewable energy technology that generates electricity² from renewable resources, provided that:

- Projects Are Limited To:
 - Solar Electricity/Photovoltaics - appropriately-sized units on existing rooftops and parking shade structures; or 60 KW systems or smaller installed on the ground within the boundaries of an existing facility.
 - Wind Turbine - 20 KW or smaller.
 - Solar Thermal - system must be 20 KW or smaller.
 - Solar Thermal Hot Water - such as appropriately sized for small buildings.
 - Ground Source Heat Pumps - 5.5-ton capacity or smaller, horizontal/vertical, ground, closed-loop system.
 - Combined Heat and Power Systems - boilers sized appropriately for the buildings in which they are located.
 - Biomass Thermal - 3 MMBTUs per hour or smaller with appropriate Best Available Control Technologies (BACT) installed and operated.

The SEP Template includes the following categories of projects:

1. Funding energy efficiency retrofits, provided that:

- Projects Are Limited To: installation of insulation; installation of energy efficient lighting; HVAC upgrades; weather sealing; purchase and installation of ENERGY STAR appliances; replacement of windows and doors; high efficiency shower/faucet

² The following projects are not required to generate electricity: Solar Thermal, Solar Thermal Hot Water, Ground Source Heat Pumps, Biomass Thermal.

upgrades; and installation of solar powered appliances with improved efficiency.

2. Development, implementation, and installation of onsite renewable energy technology that generates electricity² from renewable resources, provided that:
 - Projects Are Limited To:
 - o Solar Electricity/Photovoltaic - appropriately sized system or unit on existing rooftops and parking shade structures; or a 60 KW system or smaller unit installed on the ground within the boundaries of an existing facility.
 - o Wind Turbine - 20 KW or smaller.
 - o Solar Thermal - system must be 20 KW or smaller.
 - o Solar Thermal Hot Water - appropriately sized for residences or small commercial buildings.
 - o Ground Source Heat Pump - 5.5 tons of capacity or smaller, horizontal/vertical, ground, closed-loop system.
 - o Combined Heat and Power System - boilers sized appropriately for the buildings in which they are located.
 - o Biomass Thermal - 3 MMBTUs per hour or smaller system with appropriate Best Available Control Technologies (BACT) installed and operated.
3. Development, implementation and installation of energy efficient or renewable energy-powered emergency systems (lighting, cooling, heat, shelter) installed in existing buildings and facilities.
4. Installation of alternative fueling pumps and systems (but not storage tanks) installed on existing facilities (other than a large biorefinery); purchase of alternative fuel vehicles.
5. Development and implementation of training programs.
6. Development and implementation of building codes and inspection services, and associated training and enforcement of such codes in order to support code compliance and promote building energy efficiency.
7. Implementing financial incentive programs such as rebates and energy savings performance contracts for existing facilities or for energy efficient equipment, provided that the incentives are not so large that they would be deemed to be grants that create projects that would not otherwise exist. (For example, giving a wind farm that cost \$100 million a sum of \$50 million and calling it a rebate would not fall within this Bounded Category).³

³ This category is a little different than the others. As a result, in addition to the standard determinations NCOs need to make before issuing a CX determination, an NCO reviewing a project under this category also needs to determine SEP (10-001) and EECBG (10-003) Program Guidance: NEPA

TIP: Projects within the categories listed in the Templates may also be reviewed on an individual basis. A Grantee does not need to submit the Template for an individual, stand-alone project. The Template is primarily a tool for a Grantee to use if it has multiple projects that it wants to seek CX determinations for at one time.

TIP: Projects within the categories listed in the Templates are NOT the only types of projects that may be eligible for a CX determination. Other types of projects may also be eligible. A Grantee may present these proposed projects individually to DOE for NEPA review. Or, if the Grantee is using the Template for other projects, the Grantee may identify these additional projects and provide supporting documentation at the same time it submits the Template to DOE. See the Important Considerations section of the Templates for instructions. See http://apps1.eere.energy.gov/state_energy_program/doe_guidelines_nepa.cfm for the link to a complete list of DOE's CXs.

Section 3.0 Environmental Assessment

3.1 What is an environmental assessment?

An environmental assessment is a concise public document that provides sufficient evidence and analysis for DOE to determine whether to issue either a finding of no significant impact (FONSI) or to prepare an EIS before making a final decision on a proposed project. DOE's decision whether an EIS is required is based on whether the project may have significant environmental impacts.

3.2 Who is responsible for preparing an EA?

DOE is responsible for compliance with NEPA. In complying with NEPA, DOE may rely on information provided by the Grantee but must independently evaluate and verify the accuracy of that information. DOE may ask the Grantee to draft the EA in accordance with DOE's NEPA regulations (10 C.F.R. Part 1021). If the Grantee does so, DOE must complete its independent evaluation of that EA before rendering a final decision. Grant funds may be used to prepare the EA.

The basic components of an EA include a brief discussion of the purpose and need for the agency action, alternatives, environmental impacts of the proposed project, and a listing of agencies and persons consulted. DOE must distribute a draft EA to the host state or tribe with an opportunity for review and comment; and to the extent practicable, DOE should involve the public. DOE will work with Grantees on a project-specific basis to ensure that an adequate EA is completed in a timely manner. See Figure 3-1 below for additional information on preparation of an EA.

whether the level of federal involvement is so small that the project is not subject to NEPA, a rare occurrence that is determined on a case-by-case basis.

| | |
|--------------------------------|---|
| Figure 3-1. EA Overview | <ul style="list-style-type: none"> • An EA briefly provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact |
| Scope | <ul style="list-style-type: none"> • Analyzes potential environmental impacts, focusing on those most likely to be significant, and identifies alternatives considered |
| Content | <ul style="list-style-type: none"> • Describes and identifies: <ul style="list-style-type: none"> • Purpose and need for the agency action • Proposed project • Alternatives considered (including the no-action alternative) • Affected environment (including baseline conditions) • Environmental consequences of the proposed action and alternatives • Agencies and persons consulted • Any mechanism needed to ensure that mitigation is carried out |

Section 4.0 Environmental Impact Statement

4.1 What is the definition of an Environmental Impact Statement (EIS)?

An environmental impact statement is a detailed document that is required if proposed projects may have a significant impact on the environment. An EIS presents an analysis of the proposed project, alternatives, and its potential impacts in greater detail than an EA. The EIS also discusses reasonable mitigation measures that are necessary to reduce or eliminate adverse environmental impacts or possibly enhance the quality of the human environment. In addition, the EIS process provides more opportunities for public involvement than an EA. See Figure 4-1 for additional information on preparation of an EIS.

For SEP and EECBG projects, if an EIS is required, it most likely would be for a large project involving new construction on an undeveloped (green field) site. Also, the potential to adversely impact a sensitive ecological resource (e.g., habitat for a threatened or endangered species) could trigger the requirement to prepare an EA or EIS. Any actual decision would be based on the specific circumstances surrounding a particular proposed project.

4.2 Who is responsible for preparing an EIS?

DOE is responsible for preparing an EIS. The Grantee’s role primarily involves providing complete information to DOE in a timely manner. Delays in data availability have a demonstrable affect on the time it takes to prepare an EIS. DOE may engage a contractor directly to prepare an EIS or enter into a third-party agreement with the Grantee to hire and compensate a contractor to prepare the EIS. In either circumstance, DOE retains ultimate responsibility for completing the EIS, and for making a final decision, which will be announced in a record of decision (ROD).

| Figure 4-1. EIS Overview | |
|---------------------------------|--|
| Purpose | <ul style="list-style-type: none"> • Provides detailed environmental information to decision makers and the public about the proposed project and reasonable alternatives • Examines potential to mitigate adverse environmental impacts |
| Scope | <ul style="list-style-type: none"> • Provides a detailed review of potential environmental impacts of the proposed project and alternatives |
| Content | <ul style="list-style-type: none"> • Includes the following: • Cover sheet • Summary • Table of Contents • Purpose and need for agency action • Proposed project description • Alternatives considered (including the no action alternative) • Affected environment (including baseline conditions) • Environmental consequences of the proposed project and alternatives • Coordination with agencies, organizations, interested parties and the public, as appropriate, through either distribution lists or “consultation and coordination” • List of preparers • Index • Appendices |

5.0 Conclusion

The guidance provided herein is intended to provide Grantees with an overview of important aspects of DOE's NEPA review process for SEP and EECBG projects. As DOE's NEPA reviews continue under these programs, it may determine that this guidance should be updated or revised or that additional guidance should be prepared. The NEPA EECBG and SEP website link at http://apps1.eere.energy.gov/state_energy_program/doe_guidelines_nepa.cfm will be updated with the most recent NEPA SEP and EECBG information.



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Energy Efficiency and Renewable Energy

Attachment 1: Considerations for Making CX Determinations

After determining that a project proposed in an SEP or EECBG application is of the same type as described in one of DOE's established categorical exclusions, DOE must determine whether the proposed project meets the conditions of a CX determination. DOE's NEPA regulations identify several factors DOE must consider (10 CFR § 1021.410 and Appendix B). These factors embody NEPA concepts that your Project Officer can discuss with you. Grantees can help speed DOE's NEPA review by providing information related to these factors as early as possible.

1. "There are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal. Extraordinary circumstances are unique situations presented by specific proposals, such as scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; or unresolved conflicts concerning alternate uses of available resources within the meaning of section 102(2)(E) of NEPA;"
2. "The proposal is not 'connected' (40 CFR 1508.25(a)(1)) to other actions with potentially significant impacts";
3. The proposal "is not related to other proposed actions with cumulatively significant impacts (40 CFR 1508.25(a)(2)), and is not precluded by 40 CFR 1506.1 or §1021.211 of this part."

In addition to the forgoing, the following is a list of factors set forth in Appendix B. If any one of these is present in your proposed action, it will be barred from obtaining a CX.

A. To fit within any of the CXs listed in Appendix B of DOE's NEPA regulations, a proposal must be one that would not:

- (1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE and/or Executive Orders.
- (2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions.
- (3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases; or
- (4) Adversely affect environmentally sensitive resources. An action may be categorically excluded if, although sensitive resources are present on a site, the action would not adversely affect those resources (e.g., construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

(i) Property (e.g., sites, buildings, structures, objects) of historic, archeological, or architectural significance designated by Federal, state, or local governments or property eligible for listing on the National Register of Historic Places;

(ii) Federally-listed threatened or endangered species or their habitat (including critical habitat), Federally-proposed or candidate species or their habitat, or state-listed endangered or threatened species or their habitat;

(iii) Wetlands regulated under the Clean Water Act (33 U.S.C. 1344) and floodplains;

(iv) Areas having a special designation such as Federally- and state-designated wilderness areas, national parks, national natural landmarks, wild and scenic rivers, state and Federal wildlife refuges, and marine sanctuaries;

(v) Prime agricultural lands;

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests.