



# Guidance on NTIA National Environmental Policy Act Compliance

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# I. PURPOSE, APPLICABILITY, AND POLICY

## I.1. PURPOSE

- (a) The purpose of these procedures is to integrate the National Environmental Policy Act (NEPA) into the National Telecommunications and Information Administration's (NTIA) decision-making processes. Specifically, the procedures: describe the process by which determines what actions are subject to NEPA's procedural requirements and the applicable level of NEPA review; ensure that relevant environmental information is identified and considered early in the process in order to ensure informed decision making; enable NTIA to conduct coordinated, consistent, predictable and timely environmental reviews; reduce unnecessary burdens and delays; and implement NEPA's mandates regarding lead and cooperating agency roles, page and time limits, and sponsor preparation of environmental documents.
- (b) *Procedural and Interpretive Rule.* This document sets forth NTIA's procedures and practices for implementing NEPA. It further explains NTIA's interpretation of certain key terms in NEPA. It does not, nor does it intend to, govern the rights and obligations of any party outside the Federal government. It does, however, establish the procedures under which NTIA will typically fulfill its requirements under NEPA.
- (c) *Consultation with the Council on Environmental Quality ("CEQ").* In addition to the process for establishing or revising categorical exclusions set forth in these procedures, NTIA will consult with CEQ while developing or revising their proposed NEPA implementing procedures, in accord with NEPA § 102(2)(B), 42 U.S.C. § 4332(B).

## I.2. APPLICABILITY

- (a) *Applicability.* This document is applicable to all relevant offices and units within NTIA, including but not limited to: the Office of Internet Connectivity and Growth; the Office of Policy Analysis and Development; and the Institute for Telecommunication Sciences.



- (b) *Authority.* NEPA imposes certain procedural requirements on the exercise of NTIA's existing legal authority in relevant circumstances. Nothing contained in these procedures is intended or should be construed to limit NTIA's other authorities or legal responsibilities.

### I.3. POLICY

NTIA activities shall be planned, developed, and implemented to achieve the purposes and to follow the procedures outlined by NEPA and other related authorities. Accordingly, NTIA shall adhere to the following actions to ensure compliance with NEPA:

- (a) NTIA shall:
1. Report and coordinate its policies and procedures with the Department of Commerce (DOC) Office of the General Counsel, as appropriate.
  2. Ensure activities and planning regarding major federal actions that NTIA undertakes consider the environmental consequences of the proposed actions in conjunction with mission requirements and objectives.
  3. Consult, coordinate, cooperate, and partner with other federal agencies and state, territorial, local, and Tribal governments, as appropriate, in the development and implementation of NTIA's plans and programs affecting environmental quality and, in turn, consider those activities that succeed in best addressing federal, state, territorial, local, and Tribal concerns.
  4. Identify and invite, as appropriate, federal, state, territorial, local, and Tribal governments to participate as joint lead or cooperating agencies during the NEPA scoping process.
  5. Participate as a lead, joint lead, or cooperating agency, as appropriate, with other federal agencies where NTIA is involved in the same action as other agencies, or is involved in an action related to another agency's action because of the functional interdependence or geographical proximity of the agency; and
  6. As requested, and where resources allow, review, and provide comments on NEPA documents submitted by other federal agencies where the action relates to NTIA's mission or operations.
- (b) NTIA shall ensure appropriate action is taken to comply with NEPA, in accordance with this policy, when actions are planned by applicants by ensuring that:

1. NTIA environmental policies are accessible on the NTIA website and designated personnel are available to advise potential applicants of environmental studies or other information.
  2. NTIA works with applicants to initiate consultation early with appropriate state, territorial, local, and Tribal governments and with interested private persons and organizations when its own involvement is reasonably foreseeable; and
  3. NTIA works with applicants to begin the NEPA process at the earliest possible time.
- (c) While it is the policy of NTIA to evaluate its actions in accordance with the requirements of NEPA and other related authorities, certain actions may result from statutory requirements or an applicant's actions, which are beyond NTIA's control or outside its jurisdiction. In such cases, the NTIA NEPA Delegated Authority, based on recommendations from NTIA's Office of Chief Counsel and the NEPA Coordinator shall make a determination of NEPA applicability.

## II. DEFINITIONS

These definitions incorporate by reference all terminology and definitions contained in NEPA (42 U.S.C. § 4336e). For ease of reference, the following is a glossary of definitions from NEPA and NTIA terminology used in this guidance.

- (a) **Applicant.** A non-federal entity, person, state, territory, or Tribe, including a project sponsor, that seeks an action by NTIA such as granting a permit, license or financial assistance.
- (b) **Authorization** means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to implement a proposed action.
- (c) **Categorical Exclusion Determination.** The decision for when an agency applies a CE to a proposed action.
- (d) **Connected action** means a separate Federal action within the authority of NTIA that is closely related to the proposed agency action and should be addressed in a single environmental document because the proposed agency action:

- Automatically triggers the separate Federal action, which independently would require the preparation of additional environmental documents;
  - Cannot proceed unless the separate Federal action is taken previously or simultaneously; or
  - Is an interdependent part of a larger Federal action that includes a separate Federal action, which mutually depend on the larger Federal action for their justification.
- (e) **Council on Environmental Quality (CEQ).** The organization within the Executive Office of the President charged, as relevant here, with consulting with agencies as they develop procedures for environmental analysis.
- (f) **Determination of NEPA Adequacy.** A written document (e.g., Memorandum to File, approved checklist) prepared, as appropriate, by the NEPA Coordinator or delegated entity detailing the rationale for relying on another agency's environmental analysis or documentation when that analysis or documentation is used to address NTIA's NEPA requirements.
- (g) **Effects or Impacts** means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.
- Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects. Effects appropriate for analysis under NEPA may be either beneficial or adverse, or both, with respect to these values.
  - A "but for" causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to the limits of its regulatory authority, or that would occur regardless of the proposed action, or that would need to be initiated by a third party.

- (h) **Environmental Review or NEPA process.** All measures and steps necessary for NEPA compliance. The NEPA process is led by the agency, in coordination with, as applicable, a joint lead agency, cooperating agencies, or an applicant, and includes: 1) identifying and scoping issues related to the proposed action; 2) determining the necessary steps for NEPA compliance and preparing environmental documents; and 3) making decisions that are based on understanding the environmental consequences of the proposed action.
- (i) **Human environment** means comprehensively the natural and physical environment and the relationship of Americans with that environment. (See also the definition of “effects” in paragraph (g) of this section.)
- (j) **Jurisdiction** by law means agency authority to approve, veto, or finance all or part of the proposal.
- (k) **Mitigation.** Measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those effects. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation includes:
- Avoiding the impact altogether by not taking a certain action or parts of an action.
  - Minimizing effects by limiting the degree or magnitude of the action and its implementation.
  - Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
  - Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
  - Compensating for the impact by replacing or providing substitute resources or environments.
- (l) **NEPA** means the National Environmental Policy Act, as amended (42 U.S.C. § 4321, et seq.).

- (m) **NEPA process** means all measures necessary for compliance with the requirements of section 2 and title I of NEPA § 102(2), 42 U.S.C. § 4332(2).
- (n) **NEPA Coordinator.** Individual responsible for coordinating and overseeing NTIA's compliance with NEPA.
- (o) **NEPA Document.** An EA, FONSI, EIS, Record of Decision (ROD), Determination of NEPA Adequacy, or other memorandum documenting compliance with NEPA.
- (p) **Notice of intent** means a public notice that an agency will prepare and consider for an environmental document.
- (q) **Participating agency** means a Federal, State, Tribal, or local agency participating in an environmental review or authorization of an action.
- (r) **Publish** and **publication** refer to methods found by NTIA to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication.
- (s) **Record of Decision (ROD).** A public document signed by the agency decision maker, which may be signed concurrently with or at any time after the environmental impact statement is made publicly available (i.e., there is no required waiting period in between finalization of EIS and ROD). The ROD states the decision, alternatives considered (including the no action alternative and the environmentally preferable alternative(s)), factors considered in the agency decision, mitigation measures that will be implemented, and whether all practicable means to avoid or minimize environmental harm have been adopted.
- (t) **Reasonable alternatives** means a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.
- (u) **Reasonably foreseeable** means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

- (v) **Related Action** means an action undertaken by an agency, e.g., a permitting action, some other type of authorization action, an analysis required by statute, or the like, that bears a relationship to other actions undertaken by other agencies relevant to NEPA, e.g., that a set of related actions are all related to one overarching project.
- (w) **Scope** consists of the range of actions, alternatives, and effects to be considered in an environmental document. The scope of an individual statement may depend on its relationships to other statements.
- (x) **Supplemental Environmental Documents.** A document prepared to amend an original environmental document when there is a substantial change in the action proposed beyond the scope of the original environmental review or when substantial new circumstances or information arise that could affect the proposed action and its environmental impacts.
- (y) **Tiering** refers to the coverage of general matters in broader environmental impact statements or environmental assessments (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin-wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.

### III. DETERMINING WHEN NEPA APPLIES

NTIA will determine that NEPA does not apply to a proposed agency action when:

- (a) The activities or decision do not result in final agency action under the Administrative Procedure Act, see 5 U.S.C. § 704, or other relevant statute that also includes a finality requirement;
- (b) The proposed activity or decision is exempted from NEPA by law;

- (c) Compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of law;
- (d) In circumstances where Congress by statute has prescribed decisional criteria with sufficient completeness and precision such that NTIA retains no residual discretion to alter its action based on the consideration of environmental factors, then that function of NTIA is nondiscretionary within the meaning of NEPA § 106(a)(4) and/or § 111(10)(B)(vii) (42 U.S.C. § 4336(a)(4) and § 4336e(10)(B)(vii), respectively), and NEPA does not apply to the action in question;
- (e) The proposed action is an action for which another statute's requirements serve the function of agency compliance with the Act; or
- (f) The proposed action is not a "major Federal action."
  1. A decision maker may determine—on a case-by-case or program-specific basis—that a non-Federal action receives "minimal Federal funding" and is thus not a "major Federal action," as outlined in Section 111(10) of NEPA, 42 U.S.C. § 4336e(10)(B)(i)(I). "Minimal," under this section, can be determined in two ways: (1) A percent threshold of the overall costs of the project; or (2) A specific dollar amount. A determination of "minimal Federal funding" will be a fact-specific inquiry.
  2. There are several other general categories of exemptions set forth in Section 111(10) of NEPA, 42 U.S.C. § 4336e(10), including:
    - (i) Non-Federal actions with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project;
    - (ii) Loans, loan guarantees, or other forms of financial assistance where the Federal agency does not exercise sufficient control and responsibility over the effects of such assistance;
    - (iii) Judicial or administrative civil or criminal enforcement actions;
    - (iv) Extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States; and
    - (v) Activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority.

The issuance or update of NTIA's NEPA procedures is not subject to NEPA review.

For questions on applicability of NEPA to an action, Applicants and staff should consult with the NTIA Office of Chief Counsel and/or NTIA NEPA Coordinator.

## IV. NTIA ROLES AND RESPONSIBILITIES

NTIA's roles and responsibilities relating to the implementation of and compliance with NEPA are as follows:

- (a) **Assistant Secretary for Communications and Information.** The Assistant Secretary for Communications and Information has the ultimate responsibility to ensure NTIA's compliance with NEPA. The Assistant Secretary has discretion to delegate NEPA responsibility for NTIA programs.
- (b) **NTIA NEPA Delegated Authorities.** The Assistant Secretary has delegated responsibility to oversee the NTIA NEPA program to the Associate Administrator for Internet Connectivity and Growth, Office of Internet Connectivity and Growth, for applicable federal assistance projects; the Associate Administrator for Telecommunication Sciences and Director, Institute for Telecommunication Sciences (ITS) for real property managed by ITS; the Director of Public Wireless Supply Chain Innovation Fund for applicable federal assistance projects, and the Chief Financial Officer and Director of Administration, NTIA, for all other actions (hereinafter "NTIA NEPA Delegated Authorities").

The NTIA NEPA Delegated Authorities are responsible for administering the NTIA NEPA program for their respective actions. These duties include:

1. Assisting their staff in a cooperative manner in applying NEPA;
2. Developing, maintaining, and revising agency wide NEPA policy and procedures;
3. Collecting and sharing NEPA best practices;
4. Providing NEPA tools and training offices, as necessary; and
5. Serving as the interface on NEPA issues with CEQ, DOC, and other federal agencies.



- (c) **NTIA NEPA Coordinator.** The NEPA Coordinator is the head of the Environmental and Historic Preservation (EHP) team, overseeing the Environmental Program Officers and reporting to the Director of Grants and Compliance. The NEPA Coordinator assists Delegated Authorities in ensuring that actions comply with NTIA's NEPA procedures; in coordinating agency wide NEPA reporting; and in preparing comments on NEPA documents prepared by other agencies.
- (d) **Environmental Program Officers.** Environmental Program Officers (EPOs) work with applicants under the direction of the NEPA Coordinator to ensure NEPA compliance at the project level.
- (e) **NTIA Chief Counsel.** The NTIA Chief Counsel, or an authorized designee, provides legal services regarding NEPA compliance to include:
  - 1. Providing legal sufficiency reviews of NEPA documents, as appropriate;
  - 2. Assisting the NEPA Delegated Authorities and NEPA Coordinator in determining the applicability of NEPA and the level of review for a proposed action, as appropriate; and
  - 3. Assisting the NEPA Delegated Authorities and NEPA Coordinator in establishing or revising this policy and the NTIA NEPA program, as necessary.

## V. ACTIONS DEVELOPED BY NON-FEDERAL ENTITIES (APPLICANTS)

V.I. In accordance with NEPA § 107(f), 42 U.S.C. § 4336a(f), NTIA has established procedures allowing applicants, or contractors hired by applicants, to prepare NEPA documents under NTIA's supervision.

- (a) NTIA will independently evaluate the environmental document and will take responsibility for its contents.
- (b) NTIA will assist applicants and applicant-hired contractors by providing guidance and outlining the types of information required for the preparation of the environmental document. NTIA may also provide appropriate guidance and assist in environmental document preparation, to the extent that NTIA's resources and policy priorities admit. NTIA will work with the applicant to define the purpose

and need, and, when appropriate, to develop a reasonable range of alternatives to meet that purpose and need.

- (c) NTIA will develop and modify, as appropriate, a schedule for preparation of the environmental document. Major changes to the schedule or related matters will be documented through written correspondence.
- (d) NTIA may request from an applicant environmental information for use by NTIA in preparing or evaluating an environmental document. This may include a decision file consisting of any factual, scientific, or technical information used, developed, or considered by the applicant or applicant-hired contractor in the course of preparing the environmental document, including any correspondence with NTIA or with third parties.

V.2. For proposed actions that are initially developed by applicants or other non-Federal entities, NTIA NEPA Delegated Authority, NEPA Coordinator, Environmental Program Officer, or other assigned NTIA personnel shall:

- (a) Advise the Applicant of NTIA's policies and procedures for NEPA compliance and make available or direct the Applicant to resources within NTIA, the Department, or elsewhere in the federal government to facilitate the Applicant's consideration of, and explanation of, environmental impacts and alternatives; and
- (b) Begin the NEPA process at the earliest practicable time by determining whether NEPA applies, as described in Section III above, and if it does, determine the appropriate level of NEPA review, as described in Section VI, as soon as practicable after the applicant accepts the terms and conditions of a grant award; and
- (c) Coordinate with the non-Federal entity at the earliest reasonable time in the planning process to inform the entity what information NTIA might need to comply with NEPA and establish a schedule for completing steps in the NEPA review process, consistent with NEPA's statutory deadlines and any internal agency NEPA schedule requirements; and
- (d) Consult with appropriate state, territorial, local, and Tribal governments, and other relevant organizations on environmental impacts of, and alternatives to, a proposed action as appropriate; and
- (e) May appoint a state, Tribal, or local agency as joint lead agency.

V.3. An applicant or a contractor hired by the applicant may prepare an environmental assessment or environmental impact statement under NTIA's supervision.

V.4. If NTIA is considering an application from a non-Federal entity and becomes aware that the applicant is about to take an action within NTIA's jurisdiction that would meet either of the criteria addressed as limitations on the NEPA process in Section VII, NTIA will promptly notify the applicant that NTIA will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. This section does not preclude development by applicants of plans or designs or performance of other activities necessary to support an application for Federal, State, Tribal, or local permits or assistance. When considering a proposed action for Federal funding, NTIA may authorize limited activities to proceed prior to NEPA completion, including, but not limited to, acquisition of interests in land (e.g., fee simple, rights-of-way, and conservation easements), purchase of long lead-time equipment, limited preliminary site evaluation activities<sup>1</sup>, and purchase options made by applicants.

## VI. DETERMINE THE APPROPRIATE LEVEL OF NEPA REVIEW

If NTIA determines that NEPA applies to a proposed activity or decision, NTIA will then determine the appropriate level of NEPA review in the following sequence and manner. At all steps in the following process, NTIA will consider the proposed action or project at hand and its effects.

- (a) If NTIA has established, or adopted pursuant to NEPA § 109, 42 U.S.C. § 4336c, a categorical exclusion that covers the proposed action, NTIA will analyze whether to apply the categorical exclusion to the proposed action and apply the categorical exclusion, if appropriate, pursuant to the procedures below.
- (b) If NTIA does not have categorical exclusion(s) available to cover the proposed action and another agency has already established a categorical exclusion that covers the proposed action, NTIA will consider whether to adopt that exclusion

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<sup>1</sup> See Appendix D: *NTIA Guidance on Limited Preliminary Site Testing Involving Ground Disturbance*.

so that it can be applied to the proposed action at issue, and to future activities or decisions of that type.

- (c) If the proposed action warrants the establishment of a new categorical exclusion, or the revision of an existing categorical exclusion, NTIA will consider whether to so establish or revise and then apply the categorical exclusion to the proposed action.
- (d) If NTIA cannot apply a categorical exclusion to the proposed action consistent with paragraphs (a)-(c), NTIA will consider the proposed action's reasonably foreseeable effects and develop an environmental assessment or an environmental impact statement, as appropriate, tiering reviews off applicable programmatic NEPA reviews to eliminate duplicative analysis to the greatest extent possible.

## VII. NEPA AND AGENCY PLANNING AND DECISION-MAKING

The environmental review process describes the applicable CE, EA, or EIS for a proposed NTIA action to comply with NEPA. The process involves the following actions accomplished under the authority of the NTIA NEPA Delegated Authorities and executed by authorized NTIA personnel with specific roles and responsibilities described in this policy.

NTIA shall integrate the NEPA process with program and project planning at the earliest possible time to ensure that decisions reflect environmental considerations to avoid delays or potential conflicts. Accordingly, NTIA shall:

- Identify environmental impacts and resources in adequate detail so they can be considered and evaluated along with economic and technical considerations. Wherever practicable, environmental documents with appropriate analyses should be circulated and reviewed at the same time as other planning documents.
- Study, develop, and analyze reasonable alternatives to recommended courses of action.
- Consider mitigation measures that could avoid, ameliorate, lessen, or provide compensation for identified impacts of the proposed action.

Limitations on actions during the NEPA process. Except as provided in paragraph V.4. of Section V of this section, until NTIA issues a record of decision or finding of no significant impact, or makes a categorical exclusion determination, as applicable, NTIA will take no action concerning a proposal that would:

- (1) have an adverse environmental effect; or
- (2) limit the choice of reasonable alternatives.

## A. CATEGORICAL EXCLUSIONS

CEs are categories of actions that NTIA has determined normally, based on experience with similar actions, do not significantly affect the quality of the human environment and do not require any further NEPA review. NTIA actions, including granting permits, licenses, or financial assistance to Applicants, that fit the description of actions in Appendix B, Categorical Exclusions, and where no extraordinary circumstances are present, are categorically excluded from further environmental review. If an extraordinary circumstance is present, NTIA nevertheless may categorically exclude the proposed action if it determines that there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects. NTIA may apply a CE to a proposed action in accordance with the following requirements.

- (a) Generally. This section describes the process NTIA uses for establishing and revising categorical exclusions, for adopting other agencies' categorical exclusions under Section 109 of NEPA, and for applying categorical exclusions to a proposed agency action. NTIA's categorical exclusions, including CEs NTIA established and substantiated consistent with its NEPA procedures, legislative CEs, and CEs adopted from other agencies, are listed in Appendix B.
- (b) Establishing and revising categorical exclusions. To establish or revise a categorical exclusion, NTIA will determine that the category of actions normally does not significantly affect the quality of the human environment. In making this determination, NTIA will:
  - 1. Develop a written record containing information to substantiate its determination;
  - 2. Consult with CEQ on its proposed categorical exclusion, including the written record, for a period not to exceed 30 days prior to providing public notice as described in subparagraph (3); and

3. Provide public notice in the Federal Register of NTIA's establishment or revisions of the categorical exclusion and the location (e.g., website) of availability of the written record.
- (c) Adopting categorical exclusions from other Federal agencies. Consistent with NEPA §109, 42 U.S.C. § 4336c, NTIA may adopt a categorical exclusion listed in another agency's NEPA procedures. When adopting a categorical exclusion, NTIA will:
1. Identify the categorical exclusion listed in another agency's NEPA procedures that covers its category of proposed or related actions;
  2. Consult with the agency that established the categorical exclusion to ensure that the proposed adoption of the categorical exclusion is appropriate;
  3. Provide public notification of the categorical exclusion that NTIA is adopting, including a brief description of the proposed action or category of proposed actions to which NTIA intends to apply the adopted categorical exclusion, in the Federal Register and on NTIA's website.
  4. Document the adoption of the categorical exclusion in NTIA's implementing procedures and through addition of the categorical exclusion to the list in Appendix B.
- (d) Removal of categorical exclusions. To remove a categorical exclusion from Appendix B, NTIA will:
1. Develop a written justification for the removal;
  2. Consult with CEQ on its proposed removal of the categorical exclusion, including the written justification, for a period not to exceed 30 days prior to providing public notice as described in subparagraph (3); and
  3. Provide public notice of NTIA's removal of the categorical exclusion and the written justification in the Federal Register.
- (e) Applying categorical exclusions. If NTIA determines that a categorical exclusion covers a proposed agency action, NTIA will evaluate the action for extraordinary circumstances (Appendix C) that indicate a normally excluded agency action is likely to have a reasonably foreseeable significant adverse effect.

1. If an extraordinary circumstance is not present, NTIA will determine that the categorical exclusion applies to the proposed agency action and conclude review.
  2. If an extraordinary circumstance is present, NTIA will determine that the categorical exclusion applies to the proposed agency action and conclude review if NTIA either:
    - (i) Determines that, notwithstanding the extraordinary circumstance, the proposed agency action is not likely to result in reasonably foreseeable adverse significant effects; or
    - (ii) Modifies the proposed agency action to avoid those effects.
  3. If NTIA determines that it cannot apply the categorical exclusion to the proposed action, NTIA will prepare an environmental assessment or environmental impact statement, as appropriate.
- (f) NTIA shall not be required to, but may at its discretion, document its determination that a CE applies to a proposed action.
- (g) Reliance on categorical exclusion determinations of other agencies. NTIA may also rely on another agency's determination that a categorical exclusion applies to a particular proposed agency action if the agency action covered by that determination and the NTIA's proposed action are substantially the same, or if NTIA's proposed action is a subset of the type of agency action covered by that determination. NTIA will document its reliance on another agency's categorical exclusion determination through a NEPA Decision Memo.
- (h) Applying legislative categorical exclusions. If NTIA determines that a categorical exclusion established through legislation, or a categorical exclusion that Congress through legislation has directed NTIA to establish, covers a proposed agency action, NTIA will conclude review consistent with applicable law. If appropriate, NTIA may examine extraordinary circumstances, modify the proposed agency action, or document the determination that the legislative categorical exclusion applies, consistent with paragraph (d) of this section and the legal authority for the establishment of the legislative categorical exclusion.
- (i) The use of a CE does not relieve NTIA or an Applicant of obligations to comply with other statutes or required consultations, such as under the Endangered

Species Act of 1973 (16 U.S.C. §§ 1531 et seq.) or the National Historic Preservation Act of 1966 (16 U.S.C. §§ 470 et seq.) (see Appendix A).

## B. ENVIRONMENTAL ASSESSMENTS

- (a) *Generally.* If an action is subject to NEPA, as determined following the procedures in § III, and unless NTIA finds that the proposed action is excluded from having to prepare an environmental assessment or environmental impact statement pursuant to a categorical exclusion as determined following the procedures in § IV.A(e), or by another provision of law, NTIA will prepare an environmental assessment with respect to a proposed agency action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown. NTIA is mindful of Congress' direction that environmental assessments are to be "concise." NEPA § 106(b)(2); 42 U.S.C. § 4336(b)(2).
- (b) *Tiering.* Rather than preparing a single EA (or EIS) as a basis for approving an entire project, NTIA, as necessary, may conduct one or more rounds or "tiers" of environmental reviews. These tiered reviews may cover general matters in a broader EA or EIS (e.g., contracts or policy statements) with subsequent narrower statements or environmental analyses (e.g., site-specific analyses), incorporating by reference the general discussion and concentrating solely on the issues specific to the statement subsequently prepared.
- (c) *Elements.* For the purpose of providing evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact, environmental assessments will:
  - 1. Briefly discuss the:
    - (i) Purpose and need for the proposed agency action based on the NTIA's statutory authority and mission. NTIA is principally responsible by law for advising the President on telecommunications and information policy issues. When the proposed agency action concerns NTIA's duty to act on an application for authorization, the purpose and need for the proposed agency action will also be informed by the goals of the applicant; and
    - (ii) Alternatives to the extent required by NEPA § 102(2)(H), 42 U.S.C. § 4332(2)(H); and



- (iii) The reasonably foreseeable effects of the proposed agency action and the alternatives considered.

2. Scope of analysis.

- (i) In preparing the environmental assessment, NTIA will focus its analysis on whether the environmental effects of the action or project at hand are significant.
- (ii) Similarly, NTIA will document in the environmental assessment where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.
- (iii) To the extent it assists in reasoned decision-making, NTIA may, but is not required to by NEPA, analyze environmental effects from other projects separate in time, or separate in place, or that fall outside of NTIA regulatory authority, or that would have to be initiated by a third party. If NTIA determines that such analysis would assist it in reasoned decision-making, it will document this determination in the environmental assessment and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate projects.

(d) *Page limits.*

1. The text of an environmental assessment are strictly prohibited from exceeding 75 pages, not including citations or appendices.
2. Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.
3. Environmental assessments will be formatted for an 8.5"x11" page with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10- point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing

such material do count towards the page limit. When an item of graphical material is larger than 8.5"x11", each such item will count as one page.

4. *Certification Related to Page Limits.* The breadth and depth of analysis in an environmental assessment will be tailored to ensure that the environmental analysis does not exceed this page limit. In this regard, as part of the finalization of the environmental assessment, a responsible official will certify (and the certification will be incorporated into the environmental assessment) that NTIA has considered the factors mandated by NEPA; that the environmental assessment represents NTIA's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects NTIA's expert judgment; and that any considerations addressed briefly or left unaddressed were, in NTIA's judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed.
- (e) *Deadlines.* As the Supreme Court has repeatedly held, NEPA is governed by a "rule of reason." Congress supplied the measure of that reason in the 2023 revision of NEPA by setting the deadlines in NEPA § 107(g), 42 U.S.C. § 4336a(g). These deadlines indicate Congress's determination that an agency has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such circumstances, an extension will be given only for such time as is necessary to complete the analysis. Thus:
1. NTIA will complete the environmental assessment by issuing a Finding of No Significant Impact (FONSI) or initiating scoping for an environmental impact statement not later than the date that is one year after NTIA has determined and notified an applicant, if applicable, that a categorical exclusion cannot be applied.
  2. The environmental assessment will publish (unless the deadline is extended pursuant to the provision below), at the latest, on the day the deadline elapses, in as substantially complete form as is possible.
  3. *Deadline extensions.* If NTIA determines it is not able to meet the deadline prescribed by NEPA § 107(g)(1)(B), 42 U.S.C. § 4336a(g)(1)(B), it must consult with the applicant, if any, pursuant to NEPA § 107(g)(2), 42 U.S.C. §

4336a(g)(2). After such consultation, if needed, and for cause stated, it may establish a new deadline. Cause for establishing a new deadline is only established if the environmental assessment is so incomplete, at the time at which NTIA determines it is not able to meet the statutory deadline, that issuance pursuant to subsection (4) above would, in NTIA's view, result in an inadequate analysis. Such new deadline must provide only so much additional time as is necessary to complete such environmental assessment. The announcement of the new deadline will specify the reason why the environmental assessment was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline.

4. *Certification Related to Deadline.* When the environmental assessment is published, a responsible official will certify (and the certification will be incorporated into the environmental assessment) that the resulting environmental assessment represents NTIA's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; that, in NTIA's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in NTIA's judgment, the analysis contained therein is adequate to inform and reasonably explain NTIA's final decision regarding the proposed federal action.

## C. FINDINGS OF NO SIGNIFICANT IMPACT

- (a) NTIA will prepare a finding of no significant impact (FONSI) if NTIA determines, based on an independent review of the environmental assessment (EA) that the proposed action or project at hand will not have significant effects. If, after reviewing the EA, NTIA determines that the proposed action may have a significant environmental impact, NTIA, in coordination with the Applicant, may amend the action described in the EA to avoid, minimize, or mitigate the potential environmental impacts and issue a FONSI on the amended action.
- (b) The finding of no significant impact will:
  1. Incorporate by reference the environmental assessment;
  2. Document the reasons why NTIA has determined that the selected alternative will not have a significant effect on the quality of the human environment;

3. State the authority for any mitigation that NTIA has adopted and any applicable monitoring or enforcement provisions. If NTIA finds no significant effects based on mitigation, the mitigated finding of no significant impact will state any mitigation requirements enforceable by the agency or voluntary mitigation commitments that will be undertaken to avoid significant effects. For applicant-driven actions, mitigation and monitoring provisions included in a FONSI constitute enforceable compliance requirements for NTIA grants;
  4. Identify any other documents related to the finding of no significant impact;
  5. State that an environmental impact statement will not be prepared, concluding the NEPA process for that action; and
  6. Be made available for public review through, at minimum, posting on NTIA's website.
- (c) If, after an independent review of the EA, the NTIA NEPA Delegated Authority determines, at the recommendation of the NEPA Coordinator, EPO, or other assigned NTIA personnel, that the proposed action will have a significant environmental impact, NTIA shall proceed with the preparation of an environmental impact statement or decide to restructure or terminate the action.

## D. LEAD AND COOPERATING AGENCIES

In many instances, a proposed activity or decision is undertaken in the context which entails activities or decisions undertaken by other federal agencies (e.g., where multiple federal authorizations or analyses are required with respect to a project sponsor's overall purpose and goal). These activities and decisions are "related actions," in that they are each the responsibility of a particular agency, but they are all related in a matter relevant to NEPA, e.g., by their relationship with one overarching project. In such instances, Congress has provided that the multiple agencies involved shall determine which of them will be the lead agency pursuant to the criteria identified in NEPA § 107(a)(1)(A), 42 U.S.C. § 4336a(a)(1)(A). When serving as the lead agency, NTIA is ultimately responsible for completing the NEPA process; when serving as the lead agency, NTIA will also determine and document the scope of the project at hand. When a joint lead relationship is established pursuant to NEPA § 107(a)(1)(B), 42 U.S.C. § 4336a(a)(1)(B), NTIA and the other joint lead agency or agencies are collectively responsible for completing the NEPA process.

## E. SCOPING AND NOTICES OF INTENT

- (a) As a preliminary step to determining whether, in connection with a proposal that is not excluded pursuant to a categorical exclusion, NTIA will prepare an environmental assessment or an environmental impact, NTIA will determine and document the scope of the project at hand.
- (b) *Scoping.* NTIA may use an early and open process to determine the scope of issues for analysis in an environmental document, including identifying substantive issues that meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, eliminating from further study non-substantive issues, and determining whether connected actions should be addressed in the same environmental document. Scoping may begin as soon as practicable after the proposal for action is sufficiently developed for consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intent.
  - 1. When evaluating whether to prepare an environmental assessment or an environmental impact statement, NTIA shall:
    - (i) Define the purpose and need of a proposed action, drawing a manageable line to define the project at hand, and focusing effects analysis on the effects of that project.
    - (ii) Identify reasonably foreseeable impacts of the action to determine if consultation with other federal, state, territorial, local, or Tribal entities is needed.
    - (iii) Determine if other federal agency actions are part of a proposed action and establish lead and coordinating agencies for the action, as appropriate.
    - (iv) Identify or develop reasonable alternatives to a proposed action.

- (v) Consider the environmental effects of a proposed action(s) and any reasonable or appropriate alternatives.<sup>2</sup>
  - (vi) Consider mitigation measures or strategies to minimize, reduce, or eliminate the environmental impacts of a proposed action(s).
2. In limited circumstances and at the discretion of the NEPA Delegated Authority and the NEPA Coordinator, in consultation with the Applicant, if applicable, scoping may also be conducted on an Environmental Assessment.
- (c) *Notice of intent.* As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an environmental impact statement, NTIA will publish a notice of intent to prepare an environmental impact statement. If NTIA determines that it will prepare an environmental assessment for a proposed action, NTIA may publish notice of intent to publish an environmental assessment.
- 1. The notice of intent for an environmental impact statement will include a request for public comment on alternatives or effects and on relevant information, studies, or analyses with respect to the proposed agency action. NEPA § 107(c); 42 U.S.C. § 4336a(c).
  - 2. In addition to a request for comment required for notices of intent for environmental impact statements, notice of intent for any environmental document may include:
    - (i) The purpose and need for the proposed action;
    - (ii) A preliminary description of the proposed action and alternatives the environmental impact statement will consider;
    - (iii) A brief summary of expected effects;

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<sup>2</sup> When considering whether the reasonably foreseeable effects of the proposed action are significant, NTIA will analyze the potentially affected environment and degree of the effects of the action. NTIA may use any reliable data source and will not undertake new research unless it is essential to evaluating alternatives and the cost and time of obtaining it are not unreasonable. In considering the potentially affected environment, NTIA may consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources. In considering the degree of the effects, NTIA may consider the following, as appropriate to the specific action: both short- and long-term effects; both beneficial and adverse effects; effects on public health and safety; economic effects; and effects on the quality of life of the American people.

- (iv) Anticipated permits and other authorizations (i.e., anticipated related actions);
- (v) A schedule for the decision-making process;
- (vi) A description of the public scoping process, including any scoping meeting(s);
- (vii) Contact information for a person within NTIA who can answer questions about the proposed action and the environmental impact statement; and
- (viii) Identification of any cooperating and participating agencies (i.e., agencies responsible for related actions), and any information that such agencies require in the notice to facilitate their decisions or authorizations.

## VIII. GENERAL REQUIREMENTS FOR AN ENVIRONMENTAL IMPACT STATEMENT

NTIA will prepare an environmental impact statement only with respect to proposed agency actions that otherwise require preparation of an environmental document and that have a reasonably foreseeable significant effect on the quality of the human environment. NEPA § 106(b)(1); 42 U.S.C. § 4336(b)(1). Whether an impact rises to the level of “significant” is a matter of NTIA’s expert judgment. NTIA will presume, on the basis of its experience, that the following types of action generally “significantly affect[] the quality of the human environment,” consistent with section NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C):

- Major federal actions found to cause significant effects on the human environment that cannot be mitigated to a level of insignificance (identifiable at the start of the NEPA process or through the preparation of an EA).
  - Actions for which NTIA is required by statute to develop an EIS.
- (a) During the process of preparing an environmental impact statement, NTIA:

1. Will obtain the comments of:
    - (i) Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact of the action or project at hand involved or is authorized to develop and enforce environmental standards that govern the action or project at hand. This may include, but is not limited to, seeking comments from the Environmental Protection Agency (EPA) as addressed in Section 309 of the Clean Air Act (CAA).
    - (ii) Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards.
  2. May request the comments of:
    - (i) State, Tribal, or local governments that may be affected by the proposed action;
    - (ii) Any agency that has requested it receive statements on actions of the kind proposed;
    - (iii) The public, including by affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action.
- (b) This process of obtaining and requesting comments pursuant to (a) above may be undertaken at any time that is reasonable in the process of preparing the environmental impact statement. NTIA will ensure that the process of obtaining and requesting comments pursuant to (a) above, and NTIA's analysis of and response to those comments, does not cause NTIA to violate the congressionally mandated deadline for completion of an environmental impact statement.
- (c) NTIA will ensure that:
1. The process and any requirements (or suggestions) for submitting comments are clearly described to the public.
  2. Any significant comments received consistent with paragraph (a) of this section are addressed in the Environmental Impact Statement.



# IX. ENVIRONMENTAL IMPACT STATEMENT PREPARATION

## A. PURPOSE AND NEED

The statement will include the purpose and need for the proposed agency action based on the NTIA's statutory authority. When the proposed agency action concerns NTIA's duty to act on an application for authorization, the purpose and need for the proposed agency action will also be informed by the goals of the applicant.

## B. ANALYSIS

(a) The environmental impact statement will include a detailed statement on:

1. reasonably foreseeable environmental effects of the proposed agency action;
2. any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;
3. a reasonable range of alternatives to the proposed agency action, including an analysis of any adverse environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are, in NTIA's expert judgment, technically and economically feasible, and meet the purpose and need of the proposal;
4. the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;
5. any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented; and
6. Any means identified to mitigate adverse environmental effects of the proposed action. NTIA is mindful in this respect that NEPA itself does not require or authorize NTIA to impose any mitigation measures.

(b) *Scope of analysis.*

1. In preparing the environmental impact statement, NTIA will focus its analysis on whether the environmental effects of the action or project at hand are significant.

2. Similarly, NTIA will document in the environmental impact statement where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.
  3. To the extent it assists in reasoned decision-making, NTIA may, but is not required to by NEPA, analyze environmental effects from other projects separate in time, or separate in place, or that fall outside of NTIA's regulatory authority, or that would have to be initiated by a third party. If NTIA determines that such analysis would assist it in reasoned decision-making, it will document this determination in the environmental impact statement and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate projects.
- (c) *Proportionate analysis.* Environmental impact statements will discuss effects in proportion to their significance. With respect to issues that are not of a substantive nature and do not meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, there will be no more than the briefest possible discussion to explain why those issues are not substantive and therefore not worthy of any further analysis. Environmental impact statements will be analytic, concise, and no longer than necessary to comply with NEPA in light of the congressionally mandated page limits and deadlines.

## C. PAGE LIMITS

- (a) Except as provided in paragraph (b), the text of an environmental impact statement will not exceed 150 pages, not including citations or appendices.
- (b) An environmental impact statement for a proposed agency action of extraordinary complexity is strictly prohibited from exceeding 300 pages, not including any citations or appendices. NTIA will determine at the earliest possible stage of preparation of an environmental impact statement whether the conditions for exceeding the page limit in paragraph (a) are present.
- (c) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be

used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.

- (d) Environmental impact statements will be prepared on 8.5"x11" paper with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5"x11", each such item will count as one page.
- (e) *Certification Related to Page Limits.* The breadth and depth of analysis in an environmental impact statement will be tailored to ensure that the environmental impact statement does not exceed these page limits. In this regard, as part of the finalization of the environmental impact statement, a responsible official will certify that NTIA has considered the factors mandated by NEPA; that the environmental impact statement represents NTIA's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects NTIA's expert judgment; and that any considerations addressed briefly or left unaddressed were, in NTIA's judgment, comparatively unimportant or frivolous.

## D. DEADLINES

As the Supreme Court has repeatedly held, NEPA is governed by a "rule of reason." Congress supplied the measure of that reason in the 2023 revision of NEPA by setting the deadlines in NEPA § 107(g), 42 U.S.C. § 4336a(g). These deadlines indicate Congress's determination that an agency has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such circumstances, an extension will be given only for such time as is necessary to complete the analysis. NTIA will complete the environmental impact statement not later than the date that is 2 years after the sooner of:

- The date on which NTIA determines that 42 U.S.C. § 4332(2)(C) requires the issuance of an environmental impact statement with respect to such action; or
- The date on which NTIA issues a notice of intent to prepare the environmental impact statement.

The environmental impact statement will publish (unless the deadline is extended pursuant to the provision below), at the latest, on the day the deadline elapses, in as substantially complete form as is possible.

**Deadline extensions.** If NTIA determines it is not able to meet the deadline prescribed by NEPA § 107(g)(1)(B), 42 U.S.C. § 4336a(g)(1)(B), it must consult with the applicant, if any, pursuant to NEPA § 107(g)(2), 42 U.S.C. § 4336a(g)(2). After such consultation, if needed, and for cause stated, it may establish a new deadline. Cause for establishing a new deadline is only established if the environmental impact statement is so incomplete, at the time at which NTIA determines it is not able to meet the statutory deadline, that issuance pursuant to subsection (4) above would, in NTIA's view, result in an inadequate analysis. Such new deadline must provide only so much additional time as is necessary to complete such environmental impact statement. The announcement of the new deadline will specify the reason why the environmental impact statement was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline.

*Certification Related to Deadline.* When the environmental impact statement is published, a responsible official will certify (and the certification will be incorporated into the environmental impact statement) that the resulting environmental impact statement represents NTIA's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; that, in NTIA's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in NTIA's judgment, the analysis contained therein is adequate to inform and reasonably explain NTIA's final decision regarding the proposed federal action.

## **E. PUBLICATION**

NTIA will publish the entire environmental impact statement on its public website and will evaluate the need for additional publication requirements on a project specific basis.

## **F. RECORD OF DECISION (ROD)**

NTIA shall prepare a concise public ROD for the approval and signature of the NTIA NEPA Delegated Authority to document the final decision made and the basis for that decision. The ROD may be made concurrently with or at any time after the environmental impact statement is made publicly available (i.e., there is no required

waiting period in between finalization of EIS and ROD). NTIA or an Applicant may begin implementing the proposed action immediately after the ROD is signed and all other applicable requirements are met.

## X. EFFICIENT ENVIRONMENTAL REVIEWS

### A. INTEGRATING NEPA WITH OTHER ENVIRONMENTAL REQUIREMENTS

- (a) To the fullest extent possible, NTIA will prepare environmental documents concurrently with and integrated with analyses and related surveys and studies required by other Federal statutes, including but not limited to: the Fish and Wildlife Coordination Act, 16 U.S.C. § 661 *et seq.*; the National Historic Preservation Act, 54 U.S.C. § 300101 *et seq.*; the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*; the Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*; the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 *et seq.*; EO 11990, Protection of Wetlands; and other applicable environmental laws and EOs.
- (b) NTIA will combine an environmental document prepared in compliance with NEPA with any other Federal agency document to reduce duplication and paperwork.
- (c) NTIA may cooperate with State, Tribal, and local agencies to the fullest extent practicable to reduce duplication between NEPA and State, Tribal and local requirements.
- (d) If comments on a notice of intent or other aspects of a scoping process identify consultations, permits, or licenses necessary under other environmental laws, the environmental document may contain a section briefly listing the applicable requirements and how NTIA has or will meet them (e.g., permits applied for or received, consultations initiated or concluded).

## B. PROGRAMMATIC ENVIRONMENTAL DOCUMENTS AND TIERING

- (a) NTIA may prepare environmental documents for programmatic Federal actions, such as the adoption or initiation of new agency programs. NTIA may evaluate the proposal(s) in one of the following ways:
  - 1. Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.
  - 2. Generically, including actions that have relevant similarities, such as common timing, effects, alternatives, methods of implementation, media, or subject matter.
  - 3. By stage of technological development.
- (b) Consistent with NEPA § 108, 42 U.S.C. § 4336b and section X.C., after completing a programmatic environmental assessment or environmental impact statement, NTIA may rely on that document for 5 years if there are not substantial new circumstances or information about the significance of adverse effects that bear on the analysis. After 5 years, as long as NTIA reevaluates the analysis in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid and briefly documents its reevaluation and explains why the analysis remains valid considering any substantial new circumstances or information, NTIA may continue to rely on the document.
- (c) NTIA shall tier environmental documents to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review, as appropriate. When a programmatic environmental impact statement has been prepared, NTIA or an Applicant need only summarize the issues discussed in the broader environmental document, incorporate discussions from the broader environmental document by reference, and focus the tiered document on issues specific to the subsequent action.

## C. RELIANCE ON EXISTING ENVIRONMENTAL DOCUMENTS

- (a) NTIA may rely on an environmental impact statement, environmental assessment, or portion thereof, provided that the statement, assessment, or portion thereof

meets the standards for an adequate statement or assessment under these procedures. When relying on an environmental impact statement, environmental assessment, or portion thereof, NTIA will cite, briefly describe the content and relevance to the environmental document and may make modifications that are necessary to render the relied-upon document, or portion thereof, fit for fulfilling NEPA's analytic requirements for the action at hand.

1. If the actions covered by the original environmental impact statement or environmental assessment and the proposed action are substantially the same, the NTIA will republish the relied-upon statement or assessment.
2. If the actions are not substantially the same, NTIA may modify the statement or assessment as necessary to render the statement fit for fulfilling NEPA's analytic requirements for the action at hand, and publish the relied-upon statement or assessment, as modified. Where appropriate, NTIA may solicit comment to the extent that solicitation of comment will assist NTIA in expeditiously adapting the relied-upon statement or assessment so that it is fit for NTIA's purposes.

## **D. PUBLISHING PREDECISIONAL ENVIRONMENTAL DOCUMENTS**

During the process of preparing any environmental document provided for by these procedures, NTIA may publish such draft, predecisional materials as in its judgment may assist in fulfilling its responsibilities under NEPA and this guidance. Such materials will be posted to NTIA's public website with additional publication options evaluated a project specific basis

## **E. INCORPORATION**

NTIA may incorporate material, such as planning studies, analyses, or other relevant information, into environmental documents by reference when the effect will be to cut down on bulk without impeding NTIA and public review of the action. When incorporating material by reference, NTIA will cite, briefly describe the content and relevance to the environmental document and make the materials reasonably available for review by potentially interested parties. NTIA will not use incorporation as a means to evade the statutory page limits.

## F. SUPPLEMENTS TO ENVIRONMENTAL DOCUMENTS

NTIA will prepare supplements to environmental documents only if a major Federal action remains to occur, and:

- (i) NTIA makes substantial changes to the proposed action that are relevant to environmental concerns;
- (ii) NTIA decides, in its discretion, that there are substantial new circumstances or information about the significance of the adverse effects that bears on the proposed action or its effects; or
- (iii) NTIA supplements a programmatic document to support a tiered action or category of actions that were not fully addressed in the original programmatic review.

## G. INTEGRITY AND COMPLETENESS OF INFORMATION

NTIA will not undertake new scientific and technical research to inform its analyses unless that is essential to a reasoned choice among alternatives and the overall costs and time frame of such undertaking are not unreasonable. Rather, NTIA will make use of reliable existing data and resources.

When NTIA is evaluating an action's reasonably foreseeable effects on the human environment, and there is incomplete or unavailable information that cannot be obtained at a reasonable cost or the means to obtain it are unknown, NTIA will make clear in the relevant environmental document that such information is lacking.

## H. UNIQUE IDENTIFICATION NUMBERS

For all environmental documents, NTIA will provide a unique identification number for tracking purposes, which NTIA will reference on all associated environmental review documents prepared for the proposed agency action and in any database or tracking system for such documents. NTIA will coordinate with the CEQ and other federal agencies to ensure uniformity of such identification numbers across federal agencies



## XI. EMERGENCIES

Where emergency circumstances make it necessary to take an action with reasonably foreseeable significant environmental effects without observing the provisions of these procedures, NTIA will consult with the CEQ about alternative arrangements for compliance with NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C) at the soonest possible time. The following provisions apply in the event that the NTIA NEPA Delegated Authority deems it necessary to take urgently needed action before completing NEPA or consulting with the CEQ about alternative arrangements:

- (a) NTIA may take actions necessary to control the immediate impacts of the emergency and/or mitigate imminent harm to life, property, or important natural, cultural, or historic resources. When taking such actions, NTIA shall, to the extent allowed by the exigencies of the emergency, consider the probable environmental consequences of these actions and mitigate foreseeable adverse environmental effects to the extent practical.
- (b) The NTIA NEPA Delegated Authority shall document in writing the determination that an emergency exists and describe the responsive action(s) taken at the time the emergency exists. The form of that documentation is within the discretion of NTIA.
- (c) The NTIA NEPA Delegated Authority shall consult with CEQ about alternative arrangements as soon as possible.

## XII. AGENCY DECISION-MAKING

### A. DECISION DOCUMENTS

At the time of its decision on its proposed action, NTIA may prepare and timely publish a concise public decision document or joint decision document notifying the public that the decisionmaker has certified that NTIA has considered all relevant information raised in the NEPA process and that the NEPA process has closed.

## B. FILING REQUIREMENTS

NTIA will file environmental impact statements together with comments and any responses with the Environmental Protection Agency (EPA), Office of Federal Activities, consistent with EPA's filing procedures for publication in the *Federal Register*.

## XIII. SEVERABILITY

The sections and subsections of this Guidance are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is NTIA's intention that the validity of the remainder of those parts will not be affected, remaining sections or portions, and all other applications, therein shall continue in effect.

# APPENDIX A: LIST OF AUTHORITIES

## **Statutes and Regulations**

Statutes and regulations that should be considered during the development of a NEPA review include:

1. National Environmental Policy Act, 42 U.S.C. § 4321 et seq.
2. Endangered Species Act, 16 U.S.C. § 1531 et seq.
3. Fish and Wildlife Coordination Act, 16 U.S.C. § 661 et seq.
4. National Historic Preservation Act, 54 U.S.C. § 300101 et seq.
5. Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq.
6. Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 et seq.
7. Clean Air Act, 42 U.S.C. § 7401 et seq.
8. Clean Water Act, 33 U.S.C. § 1251 et seq.
9. Coastal Zone Management Act, 16 U.S.C. § 1451 et seq.
10. Wild and Scenic Rivers Act, 16 U.S.C. § 1271 et seq.
11. Marine Mammal Protection Act, 16 U.S.C. § 31 et seq.
12. River and Harbors Act, 33 U.S.C. § 401 and 403
13. Fiscal Responsibility Act, Public Law 118-5

## **Executive Orders**

EOs that should be considered during the development of a NEPA review include:

1. EO 11988, Floodplain Management
2. EO 12114, Environmental Effects Abroad of Major Federal Actions
3. EO 11990, Protection of Wetlands
4. EO 13175, Consultation and Coordination with Indian Tribal Governments
5. EO 13186, Responsibilities of Federal Agencies to Protect Migratory Birds

# APPENDIX B: CATEGORICAL EXCLUSIONS

*The Categorical Exclusions applicable to NTIA programs and listed in this appendix as available for NTIA actions include categorical exclusions established by the Department of Commerce (2009), those established by NTIA (2024), and six categorical exclusions established by the First Responder Network Authority in 2018 and adopted by NTIA in 2024.*

## **Department of Commerce Categorical Exclusions (2009)**

**A-1** Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities that do not result in a change in the functional use of the real property ( e.g. realigning interior spaces of an existing building, adding a small storage shed to an existing building, retrofitting for energy conservation, or installing a small antenna on an already existing antenna tower that does not cause the total height to exceed 200 feet and where the FCC would not require an environmental assessment or environmental impact statement for the installation). This CE does not apply in instances where the project must be submitted to the National Capital Planning Commission (NCPC) for review and NCPC determines that it does not have an applicable Categorical Exclusion.

**A-2** New construction upon or improvement of land where all of the following conditions are met:

- (a) The site is in a developed area and/or a previously disturbed site,
- (b) The structure and proposed use are compatible with applicable Federal, Tribal, State, and local planning and zoning standards and consistent with Federally approved State coastal management programs,
- (c) The proposed use will not substantially increase the number of motor vehicles at the facility or in the area,
- (d) The site and scale of construction or improvement are consistent with those of existing, adjacent, or nearby buildings, and

(e) The construction or improvement will not result in uses that exceed existing support infrastructure capacities (roads, sewer, water, parking, etc.).

This CE does not apply where the project must be submitted to the National Capital Planning Commission (NCPC) for review and NCPC determines that it does not have an applicable Categorical Exclusion.

**A-3** Software development, data analysis, or testing, including but not limited to computer modeling in existing facilities.

**A-4** Siting/construction/operation of microwave/radio communication towers less than 200 feet in height without guy wires on previously disturbed ground.

**A-5** Retrofit/upgrade existing microwave/radio communication towers that do not require ground disturbance.

**A-6** Adding fiber optic cable to transmission structures or burying fiber optic cable in existing transmission line rights-of-way.

**A-7** Acquisition, installation, operation, and removal of communications systems, data processing equipment, and similar electronic equipment.

**A-8** Planning activities and classroom-based training and classroom-based exercises using existing conference rooms and training facilities.

**A-9** Purchase of mobile and portable equipment and infrastructure which is stored in previously existing structures or facilities.

**A-10** Siting, construction (or modification), and operation of support buildings and support structures (including, but not limited to, trailers and prefabricated buildings) within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). This CE does not apply where the project must be submitted to the National Capital Planning Commission (NCPC) for review and NCPC determines that it does not have an applicable Categorical Exclusion.

**A-11** Personnel, fiscal, management, and administrative activities, such as recruiting, processing, paying, recordkeeping, resource management, budgeting, personnel actions, and travel.

## **NTIA Categorical Exclusions (2024)**

### ***Administrative Actions***

**A-1** Personnel, fiscal, management, and administrative activities, including recruiting, processing, paying, recordkeeping, budgeting, personnel actions, contract administration, and travel.

**A-2** Preparation, modification, and issuance of policy directives, rules, regulations, procedures, guidelines, guidance documents, bulletins, and informational publications that are of an administrative, financial, legal, technical, or procedural nature, for which the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be, in whole or part, subject later to the NEPA process, either collectively or on a case-by-case basis.

**A-3** Studies and engineering undertaken to define proposed actions or alternatives sufficiently so that environmental effects can be assessed.

**A-4** Planning, educational, informational, or advisory activities provided to other agencies, public and private entities, visitors, individuals, or the public, including training exercises and simulations conducted under appropriately controlled conditions and in accordance with all applicable laws, regulations, and requirements.

**A-5** Software development, data analysis, or testing that does not involve ground disturbing activities.

**A-6** Preparation and dissemination of scientific results, studies, surveys, audits, reports, plans, papers, recommendations, and technical advice.

**A-7** Technical assistance to other Federal, Tribal, State, and local agencies or the public.

**A-8** Routine procurement, use, storage, transportation, and disposal of non-hazardous goods and services in support of administrative, operational, or maintenance activities in accordance with Executive Orders and Federal procurement guidelines. Examples include office supplies and furniture; equipment; mobile assets (i.e., vehicles, vessels, aircraft); utility services; and deployable emergency response supplies and equipment.

**A-9** Purchase of deployable mobile and portable telecommunications equipment (e.g., radios, Cell on Wheels, Cell on Light Truck, System on Wheels) that will be housed in existing facilities when not deployed.

**A-10** Routine use of hazardous materials (including procurement, transportation, distribution, and storage of such materials) and reuse, recycling, and disposal of solid, medical, radiological, or hazardous waste in a manner that is consistent with all applicable laws, regulations, and requirements. Examples include use of chemicals for laboratory applications; refueling of storage tanks; temporary storage and disposal of solid waste; disposal of waste through manufacturer return and recycling programs; and hazardous waste minimization activities, including source reduction activities and recycling.

**A-11** Reductions, realignments, or relocation of personnel, equipment, or mobile assets that do not result in changing the use of NTIA facilities or space in such a way that could cause a change to existing environmental effects or exceed the infrastructure capacity outside of NTIA-managed property. An example of exceeding the infrastructure capacity would be an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase.

**A-12** Federal assistance, grants, and external funding for activities that do not concern environmental matters or where the environmental effects are negligible. Examples of relevant activities could include, but are not limited to, planning, studies, or programs such as the Digital TV transition, which provided rebates to consumers to subsidize the purchase of digital antennas, that have no potential to impact the environment. If an analysis determined that such activities had the potential to impact the environment, the CE could not be applied.

**A-13** Contracts, collaborative research agreements, cooperative research and development agreements, interagency agreements, and other agreements that do not concern environmental matters or where the environmental effects are negligible.

### ***Real Property/Facility Actions***

**B-1** Maintenance of facilities, equipment, and grounds. Examples include interior utility work, road maintenance, window washing, lawn mowing, landscaping, weed management/maintenance, trash collecting, facility cleaning, and snow removal.

**B-2** Internal modifications, renovations, or additions (e.g., computer facilities, relocating interior walls) to structures or buildings that do not result in a change in the functional use of the property.

**B-3** Exterior renovation, addition, repair, alteration, and demolition projects affecting buildings, roads, grounds, equipment, and other facilities, including subsequent disposal of debris, which may be contaminated with hazardous materials, lead, or asbestos. Hazardous materials must be disposed of at approved sites in accordance with all applicable laws, regulations, and requirements. Examples include the following:

- (i) Painting, roofing, siding, or alterations to an existing building;
- (ii) Adding a small storage shed to an existing building;
- (iii) Retrofitting for energy conservation, including weatherization, installation of timers on hot water heaters, installation of energy efficient lighting, and installation of low-flow plumbing fixtures; or
- (iv) Closing and demolishing a building not eligible for listing under the National Register for Historic Places.

**B-4** Abatement of hazardous materials from existing facilities, including asbestos and lead based paint, conducted in compliance with all applicable laws, regulations, and requirements established for the protection of human health and the environment. Examples include containment, removal, and disposal of lead-based paint or asbestos tiles and asbestos-containing materials from existing facilities, remediation of hazardous materials in accordance with all applicable laws, regulations, and requirements as part of facility and space management activities.



**B-5** Proposed new activities and operations conducted in an existing structure that would be consistent with previously established safety levels and would not result in a change in use of the facility. Examples include new types of research, development, testing, and evaluation activities, and laboratory operations conducted within existing enclosed facilities designed to support research and development activities.

**B-6** Acquisition or use of existing facilities or portion thereof by purchase, lease, or use agreement where use or operation will remain unchanged. Examples include acquiring office space through lease, purchase, or use agreement, and acquisition of laboratory space through lease, purchase, or use agreement.

**B-7** Transfer of administrative control over real property, including related personal property, between another Federal agency and NTIA that does not result in a change in the functional use of the property. Examples include transfer of facilities for use by NTIA, transfers of computer equipment, office equipment, and personal property, including laptops and cell phones.

**B-8** Decisions and actions to close facilities, decommission equipment, or temporarily discontinue use of facilities or equipment, where the facility or equipment, including office equipment, telecommunications equipment, and computer equipment, is not used to prevent or control environmental impacts.

**B-9** The determination and disposal of real property, such as excess office space, or personal property, including laptops and cell phones, that is excess to the needs of NTIA, when the real property or personal property is excessed in conformity with applicable General Services Administration procedures or is statutorily authorized to be excessed.

### ***Operational Actions***

**C-1** Research activities conducted in laboratories and facilities where research practices and safeguards prevent environmental impacts. Examples include types of research, development, testing, and evaluation activities, and laboratory operations conducted within existing enclosed facilities designed to support research and development activities.

**C-2** Outdoor research activities conducted in compliance with all applicable laws, regulations, and requirements. Examples include types of research, development, testing, and evaluation activities conducted outdoors where no new ground disturbance occurs and no sensitive resources (e.g., threatened or endangered species, archaeological sites, Tribal resources, wetlands, and waterbodies) are present, such as radar testing, radio noise measurements, and public safety communications research.

**C-3** Periodic flight activities for training and research and development, that are routine and comply with all applicable laws, Federal Aviation Administration regulations, and other requirements.

**C-4** New construction or improvement of land, operations, or support facilities, switching stations, maintenance facilities, and other non-tower structures supporting wired or wireless communications systems in a developed area and/or on previously disturbed ground, with no more than 1 acre (0.4 hectare) of ground disturbance, where the proposed facility use is generally compatible with the surrounding land use and applicable zoning standards, and will not require additional support infrastructure.

**C-5** Installing, operating, maintaining, retrofitting, upgrading, repairing, removing, and/or replacement of existing microwave or radio communication towers, instruments, structures, or buildings that do not require ground disturbance outside of the original footprint, including installing or collocating equipment such as antennas, microwave dishes, or power units. For communications towers at or below 199 feet, renovations and equipment additions must not cause the total height of the tower to exceed 199 feet. Existing structures must not be eligible for listing in the National Register of Historic Places.<sup>3</sup>

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<sup>3</sup> In response to comments expressing support for existing Departmental CEs including those of FirstNet, NTIA notes that establishment of these new CEs does not preclude the use of Departmental or other CEs that may be otherwise available to NTIA where they apply to a proposed action. Note that two existing Department of Commerce CEs (the Department's A-4 and FirstNet's B-7) may be applicable to related actions. A-4 allows *Siting, construction, operation, and maintenance of microwave/radio communication towers less than 200 feet in height without guy wires on previously disturbed ground*. FirstNet's B-7 provides that: *Changes or additions, including retrofit and upgrade, to telecommunications sites, towers under 200 feet,*

**C-6** New construction or improvement of temporary buildings or experimental equipment (e.g., trailers, prefabricated buildings, and test slabs) on previously disturbed ground, with no more than 1 acre (0.4 hectare) of ground disturbance, where the proposed facility use is generally compatible with the surrounding land use and applicable zoning standards and will not require additional support infrastructure.

**C-7** New construction of self-supporting (e.g., monopole or lattice) wireless communication towers at or below 199 feet with no guy wires that require less than 1 acre (0.4 hectare) of ground disturbance, and where another Federal agency would not require an EA or EIS for its acquisition, installation, operations, or maintenance.

**C-8** Acquisition, installation, reconstruction, repair by replacement, and operation of aerial or buried utility (e.g., water, sewer, electrical), communication (e.g., fiber optic cable, data processing cable and similar electronic equipment), and security systems that use existing rights-of-way, easements, grants of license, distribution systems, facilities, or similar arrangements.<sup>4</sup>

### **First Responder Network Authority Categorical Exclusions (Adopted 2024)**

In assessing whether one of these proposed actions has the potential to result in significant effects, NTIA will consider the extraordinary circumstances established in the FirstNet Authority's NEPA procedures<sup>5</sup> in addition to the NTIA extraordinary circumstances established in Appendix C of this guidance.

**[B.3.]** Construction of buried and aerial telecommunications lines, cables, and related facilities.

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*substations, switching stations, telecommunications switching or multiplexing centers, buildings, or small structures requiring new physical disturbance or fencing of less than one acre (0.4 hectare).*

<sup>4</sup> In response to comments expressing support for existing Departmental CEs including those of FirstNet, NTIA notes that establishment of these new CEs does not preclude the use of Departmental or other CEs that may be otherwise available to NTIA where they apply to proposed actions involving buried and aerial lines, cables, and related facilities.

<sup>5</sup> See Appendix C, <https://www.firstnet.gov/newsroom/resources/policy/revised-firstnet-authority-nepa-implementing-procedures>.

**[B.4.]** Changes to existing transmission lines that involve less than 20 percent pole replacement, or the complete rebuilding of existing distribution lines within the same right-of-way. Changes to existing transmission lines that require 20 percent or greater pole replacement will be considered the same as new construction.

**[B.7.]** Changes or additions to telecommunication sites, substations, switching stations, telecommunications switching or multiplexing centers, buildings, or small structures requiring new physical disturbance or fencing of less than one acre (0.4 hectare).

**[B.12.]** Rebuilding of power lines or telecommunications cables where road or highway reconstruction requires the Applicant to relocate the lines either within or adjacent to the new road or highway easement or right-of-way.

**[B.13.]** Phase or voltage conversions, reconductoring, or upgrading of existing electric distribution lines or telecommunications facilities.

**[B.15.]** Deployment of Cells on Wheels, Systems on Wheels, or another deployable architecture intended for temporary placement (no more than two years) on an impervious surface.

# APPENDIX C: EXTRAORDINARY CIRCUMSTANCES

Extraordinary circumstances that may preclude the use of a CE include:

1. Proposed action occurs within an environmentally sensitive or unique<sup>6</sup> geographic area of notable recreational, ecological, scientific, cultural, scenic, or aesthetic importance.
2. Proposed action may adversely impact species listed or proposed to be listed as Endangered or Threatened Species or have adverse effects on designated Critical Habitat for these species.
3. Proposed action may adversely impact protected migratory birds or their habitats.
4. Proposed action may adversely affect historic, archeological, or cultural sites, including Native American Traditional Cultural Properties, properties listed or eligible for listing on the National Register of Historic Places.
5. Proposed action that restricts access to and ceremonial use of Indian sacred sites by Indian practitioners or adversely affects the physical integrity of such religious sacred sites.
6. Proposed action occurring in floodplains or involving significant changes to or effects on waterbodies, wetlands, floodplains, water quality, sole source aquifers, public water supply systems, or state, local, or tribal water quality standards established under the Clean Water Act or the Safe Drinking Water Act.
7. (revoked)
8. Proposed action involving construction impacts on or near an active, inactive, or abandoned contaminated or hazardous waste site, or involving non-permitted generation, transportation, treatment, storage, or disposal of substances hazardous to human health or the environment, unless NTIA determines the action is consistent with an approved remediation plan for the site.

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<sup>6</sup> “Environmentally sensitive or unique” resources and areas may include: federal lands; areas having special designation or recognition such as prime or unique or agricultural lands; designated wilderness or wilderness study areas; wild and scenic rivers; coastal zones; National Wildlife Refuges; National Parks; areas of critical environmental concern; or other areas of high environmental sensitivity.

9. Proposed action would involve human exposure to ionizing or non-ionizing radiation or use of any radiation in excess of the Federal Communications Commission's established Maximum Permissible Exposure limits for human exposure to Radiofrequency Electromagnetic Energy fields.
10. Proposed action would involve highly scientifically unknown or uncertain effects because of the introduction or employment of unproven technology, substantial disagreement over the possible size, nature, or effect on the environment, or likelihood of degrading already existing poor environmental conditions.
11. Proposed action may violate a Federal, Tribal, state, or local law, regulation, policy, or requirement imposed for the protection of the environment.
12. Proposed size or scope of action is greater than is normal for an action of its type.
13. Proposed action may cause other significant effects on human health or the environment that have not been otherwise addressed.

# APPENDIX D: NTIA GUIDANCE ON LIMITED PRELIMINARY SITE TESTING INVOLVING GROUND DISTURBANCE

The National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) are statutes requiring federal agencies to identify environmental resources and consider the potential impact of a proposed federal action prior to any construction that may affect such resources. To evaluate the impact of a project on environmental and historic resources, project proponents may need to undertake preliminary site evaluation before environmental review is complete.

What is the NTIA's policy regarding which project activities may take place prior to a NEPA decision?

- (a) Applicants may perform limited, preliminary site evaluation activities prior to a NEPA decision.
- (b) Applicants must complete the NEPA process, however, before initiating ground disturbing construction activities, such as constructing new access roads, or installing utilities, foundations, or any other parts of a facility.

What types of activities, for example, are considered preliminary site evaluation activities?

- (a) Wetland delineation.
- (b) Archaeological investigation or cultural resource surveys.
- (c) Biological assessments and surveys.
- (d) Geotechnical exploration.
- (e) Hydrological studies.

What safeguards should applicants take to ensure site evaluation activities qualify as limited and preliminary?

- (a) Minimize impact. Applicants should limit any testing conducted prior to the completion of environmental review to the minimum size (volume), depth, and number of soil cores or test pits necessary to adequately assess the project site.
- (b) Limit site access. Creating a road or trail is not a site evaluation activity. Accordingly, if applicants need to use machinery and vehicles for soil boring or other preliminary site evaluation, they should use existing roads and trails to access the project site.
- (c) Biological review. Before conducting soil boring, a qualified biologist or the United States Fish and Wildlife Service (USFWS), or National Marine Fisheries Service, should review online databases, such as the USFWS, Information for Planning and Consultation (IPaC) site and IPaC results, to determine if protected species may be present in project areas and to determine the potential for adverse effects to protected species and designated critical habitats from the scope and manner of the proposed soil boring. See 50 C.F.R. § 402.13. Applicants should proceed with soil boring only after an applicant's biologist, the USFWS, or NMFS determines that adverse effects are unlikely.
- (d) Archaeological review. Applicants should retain a qualified archaeologist, see 36 CFR Part 61, to complete a desk review and initial assessment of the archaeological sensitivity of the site prior to any ground disturbing activity. Activities should proceed only in areas that have been reviewed and cleared by the archaeologist as having low or no potential to affect historic properties.