



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
POLICY

OCT 22 2018

MEMORANDUM

SUBJECT: Changes to EPA's Environmental Review Rating Process

FROM: Brittany Bolen
Associate Administrator

A handwritten signature in blue ink, reading "Brittany Bolen", is written over the printed name and title of the sender.

TO: Regional Administrators

The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, generally requires federal agencies to draft and publish for public comment an Environmental Impact Statement (EIS) when they propose to take a major federal action that has the potential to significantly affect the quality of the human environment.¹ Pursuant to Section 309 of the Clean Air Act (CAA), 42 U.S.C. § 7609, the U.S. Environmental Protection Agency (EPA) reviews and provides written comments on all draft EISs.² This responsibility is implemented through EPA's NEPA/309 program.

Over the past year, the NEPA/309 program has undertaken several efforts to improve its efficiency and effectiveness consistent with the goals outlined in Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.³ These efforts have included soliciting feedback from our partner federal agencies, providing letter-writing guidance to EPA regions to improve the quality and consistency of our NEPA/309 comment letters, and increasing our focus on early engagement with lead agencies, as contemplated by the White House Council on Environmental Quality's (CEQ) Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807.⁴ EPA also established performance measures that were tracked throughout fiscal year 2018, and reported a 99% timeliness and consistency rate across the EPA's NEPA/309 program. Additionally, the Office of Federal Activities, which, among other functions, administers the NEPA/309 program, was moved to the Office of Policy within the

¹ This memorandum refers to a federal agency that drafts an EIS as a "lead agency." See 40 C.F.R. § 1501.5.

² Although this responsibility is assigned to EPA by the Clean Air Act, its subject-matter scope is general and is not limited to review of EISs for their analysis of air quality effects.

³ 82 Fed. Reg. 40463 (Aug. 15, 2017).

⁴ Available at <https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf>.

Administrator's Office in furtherance of an Agency-wide approach to streamlining environmental review and permitting processes.

During the early stages of EPA's NEPA/309 program, the Agency instituted a policy of issuing an alphanumeric rating in addition to its written comments on draft EISs. *See* Policy and Procedures for the Review of Federal Actions Impacting the Environment, chapter 4 (Oct. 3, 1984) (1984 policy).⁵ This rating system is a discretionary policy that is not required by NEPA, CAA 309, or any other statute, nor by any regulation. The 1984 policy established these ratings to categorize EPA's level of concern regarding the adequacy of a draft EIS, and to indicate whether a proposed action may be appropriate for referral to CEQ under CAA Section 309(b), and CEQ's NEPA implementing regulations. *See* 40 C.F.R. Part 1504.

As EPA's NEPA/309 program has evolved, the Agency has increased focus on early engagement efforts with lead agencies as a means to improve proposed actions and associated EISs prior to publication of draft EISs. Increasing lead agency sophistication in the development of EISs, coupled with our efforts to improve the quality of proposed actions and draft EISs, obviates the need for the 1984 rating system. Therefore, EPA will discontinue assigning alphanumeric ratings in our NEPA/309 comment letters. Where EPA has concerns with the adequacy of a draft EIS, the Agency will continue to provide robust written comments as required by CAA Section 309.

The discontinuation of the 1984 rating system follows a comprehensive evaluation by both Headquarters and Region NEPA/309 staff members, and external federal agency partners. As part of our review of the NEPA/309 program, EPA asked for input from our federal partners. In response, federal agencies indicated EPA's written comments are more useful than the ratings and lead agencies accordingly focus their attention on those comments.

EPA believes that discontinuing use of the 1984 rating system will not lessen environmental protections, but will help to focus attention on resolving issues, eliminate perceptions that ratings are inconsistently applied across the Agency, and minimize any confusion on the part of our partner agencies and the public. We anticipate that this change will also strengthen constructive interagency engagement and collaboration. The discontinuance of the rating system will not change the substance of EPA's review of draft EISs. Identification of potential issues and associated recommendations to ensure compliance with NEPA and CEQ's implementing regulations—from having no concerns, to raising concerns with an EIS's assessment of environmental impacts, to identifying reasonable alternatives and opportunities for mitigation—will remain unchanged. In the rare instance where we believe a proposed action may involve unsatisfactory environmental impacts, our comment letters will continue to specifically indicate that the action as proposed may be appropriate for referral to CEQ. *See* CAA Section 309(b); 40 C.F.R. Part 1504; 1984 policy, chapter 9.

Moving forward, I ask that you continue to look for opportunities to strengthen our early engagement efforts during development of draft EISs. Reinforcing early engagement supports a more collaborative, efficient, and effective environmental review process that has the potential to improve environmental outcomes and avoid project delays.

⁵ Available at https://www.epa.gov/sites/production/files/2014-08/documents/policy_and_procedures_for_the_review_of_federal_actions_impacting_the_environment.pdf.

I have asked staff within the Office of Federal Activities to implement this policy change as outlined in the Attachment, including by revising the 1984 policy to ensure consistency with this memorandum. This memorandum supersedes all conflicting sections of previous EPA guidance of any form that specifically addresses application of the NEPA/309 rating system and is effective immediately. EPA will continue to review its implementation of the NEPA/309 program to ensure it fulfills our statutory role, consistent with NEPA and CEQ's implementing regulations, and constructively assists our federal partners in protecting the quality of our environment.

cc: Robert Tomiak, Director, Office of Federal Activities, Office of Policy

ATTACHMENT

Implementation and Outreach for Changes to the NEPA/309 Rating Process

The Office of Federal Activities will institute the following actions:

1. Provide training for NEPA lead reviewers and regional managers in the review chain to ensure consistency in implementation;
2. Communicate to the federal NEPA practitioner community during the next scheduled White House Council on Environmental Quality NEPA contact meeting/webinar that use of the 1984 rating system has been discontinued;
3. Reach out to counterparts at federal agencies to answer any follow-up questions or provide requested assistance;
4. Include information to explain these changes in EPA comment letters for the first year following the issuance of the NEPA/309 program memorandum;
5. Provide information to the public on EPA's NEPA/309 program changes with an explanation of how the changes support the Administration's goals;
6. Update the *Policy and Procedures for The Review of Federal Actions Impacting The Environment*;⁶
7. Update the EPA website to reflect the discontinued use of the 1984 rating system, including a message that would be provided to lead agencies at the time they electronically file their EISs with EPA; and
8. Follow-up with federal agencies six to twelve months after the implemented program change to solicit feedback and evaluate effectiveness.

⁶ Available at https://www.epa.gov/sites/production/files/2014-08/documents/policy_and_procedures_for_the_review_of_federal_actions_impacting_the_environment.pdf.