

ROLES AND RESPONSIBILITIES FOR NEPA Section 102(2)(C) and CAA § 309 REVIEWERS

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1. PURPOSE

This guide describes EPA’s process under Section 309 of the Clean Air Act (CAA § 309) and National Environmental Policy Act (NEPA) Section 102(2)(C) to review and comment on the environmental impacts of major Federal actions (the “environmental review process”). It outlines the environmental review process, clarifies roles and responsibilities, and describes mechanisms for issue resolution.

2. GENERAL RESPONSIBILITIES

The EPA Administrator delegated authority for carrying out the environmental review process¹ to the Associate Administrator for the Office of Policy and Regulatory Management (OPRMAA)² and Regional Administrators (RAs). The EPA Administrator retains the authority to refer matters to the Council on Environmental Quality (CEQ).

The OPRM AA has, in turn, delegated environmental review program management to the Director of the Federal Activity Division (FAD), except concurrence on regional written comments with an unsatisfactory finding. The OPRM AA retains authority to make recommendations to the Administrator to refer matters to CEQ when finding that a proposed action is unsatisfactory from the standpoint of public health, welfare, or environmental quality.³

3. THE FEDERAL ACTIVITIES DIVISION

The FAD Director has been designated as the National Program Manager (NPM) for the environmental review process. FAD is responsible for policy development, coordination, and management oversight of EPA’s NEPA / CAA § 309 environmental review process. To carry out these responsibilities, FAD manages and supports the Federal Agency Liaisons in the NEPA Compliance Branch (NCB).

Working through the FAD Director, the NCB Chief has policy development and management oversight authority for the environmental review process. The NCB Chief appoints and designates Federal Agency Liaisons, who then coordinate with the headquarters offices of all federal agencies and oversee and guide regional reviews as appropriate.

A. NEPA COMPLIANCE BRANCH

1. NCB operates the Environmental Impact Statement (EIS) Database for its environmental review process of EISs prepared by other federal agencies and makes its comments publicly available pursuant to CAA § 309(a).

¹ See EPA Delegations Manual, Clean Air Act Section 309 Review Process, 1200 TN 350, at 7-57.

² The OPRM AA is also designated as EPA’s NEPA Official, who is responsible for EPA’s NEPA compliance. 40 CFR 6.102(b)(8).

³ CAA § 309(b); 42 U.S.C § 7609(b).

2. NCB manages the official filings of all EISs per a memorandum of agreement (MOA) with CEQ⁴. *e-NEPA* is EPA's electronic tool for the filing of EISs prepared by other federal agencies. NCB is also responsible for publishing the weekly CEQ Notice of Availability (NOA) of EISs and maintaining the EIS Database to inform EPA officials and the public of EISs received by EPA for review and comment. This is accomplished through the management and/or tracking of the following:

EIS Database⁵. The database contains information regarding all EISs filed with EPA. It includes the EIS title, EIS number, EIS document type, Unique Identification Number, Federal Register publication date, date when comments are due, state or territory for the project, lead agency,⁶ and lead agency contact information.

CEQ Notice of Availability (NOA) of EISs. An NOA is published in the Federal Register weekly for EISs filed during the previous week, per the MOA with CEQ.⁷

3. NCB coordinates internal and external reports required for the NEPA/CAA § 309 program.

B. FEDERAL AGENCY LIAISONS

Working through the NCB Chief and other appropriate elements within FAD, each Federal Agency Liaison has the following responsibilities:

1. Liaise with headquarters counterparts for assigned federal agencies to identify and promote opportunities to improve nationwide working relationships and procedures;
2. Update NCB Chief on issues of interest or concern regarding the Agency Liaison's assigned federal agencies to share with EPA regional reviewers;
3. Seek EPA regional staff feedback to share with federal agency headquarters counterparts on trends that reflect opportunities to improve the federal agency's NEPA program;
4. Assist with the regional review of actions, on a case-by-case basis, carried out in accordance with this guidance to promote consistency across EPA, and provide environmental review policy guidance to EPA headquarters program offices and regions;
5. Support actions elevated to EPA headquarters under these procedures; and

⁴ Memorandum of Agreement No. 1 Between the Council on Environmental Quality and the Environmental Protection Agency (1977).

⁵ Public EIS Database may be viewed at <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search/>.

⁶ Lead Agency means with respect to a proposed agency action, "(A) the agency that proposed such action; or (B) if there are 2 or more involved Federal agencies with respect to such action, the agency designated under section 107(a)(1)." (NEPA § 111(9); see also NEPA § 107(a)(1).)

⁷ Memorandum of Agreement No. 1 Between the Council on Environmental Quality and the Environmental Protection Agency (1977).

6. Coordinate EPA review of proposed regulations, EISs that are national in scope (see [Table 1](#)), and other national-level activities and actions.

C. LEGISLATION AND REGULATION REVIEWS

LEGISLATION REVIEWS

The Office of Congressional and Intergovernmental Relations (OCIR) leads reviews on proposed legislation unaccompanied by an EIS. OCIR is responsible for coordinating with other EPA program and regional offices, and for preparing EPA's comments on all legislation. An Environmental Review Coordinator who receives proposed legislation from another federal agency should forward it to OCIR for action. If OCIR seeks review of language they drafted, FAD would be the lead.

REGULATION REVIEWS

The Regulatory Policy and Management Division (RPMD) within OPRM manages EPA's review of and comments on other agency and department regulations (e.g., notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking) and policies following the Office of Management and Budget (OMB) EO 12866 interagency review process. OMB establishes a process to enhance planning and coordination with respect to both new and existing regulations among Federal agencies. OMB coordinates an internal interagency review process of the proposed regulations and policies similar to early engagement processes under NEPA. As the interagency review process is pre-decisional, it is not made public. Following early engagement principles, EPA strives to identify and resolve concerns through the OMB interagency review process. If EPA comments on regulations under its CAA § 309 authority during a public comment period, those comments are posted to the public docket. For reviews of other federal agency NEPA regulations where FAD is likely the primary commenting office, NCB will take the lead on the review and may coordinate with regions as appropriate. The NCB Chief will coordinate with the FAD Director on obtaining OPRM concurrence before comments are shared with RPMD.

When another federal agency issues proposed regulations or policies that are not subject to the OMB interagency review process, FAD may conduct a review under CAA § 309 and provide comments during the public comment period. FAD may coordinate with the Regional Environmental Review Coordinators while drafting comments as appropriate. When EPA provides comments on regulations or policies during a public comment period, EPA will also post these comments to the lead agency's public docket as part of that agency's public comment process.

4. REGIONAL NEPA OFFICES

Each EPA regional NEPA office is responsible for carrying out the environmental review process for proposed major federal actions within its region in accordance with this guidance and applicable regulations. Each EPA regional NEPA office will designate a Regional Environmental Review Coordinator, who has overall management responsibility for the

environmental review process in that region and a regional senior manager who has overall responsibility for regional NEPA program management similar to the FAD Director on the national level. The Regional Environmental Review Coordinator:

1. Liaises with other federal agencies' regional representatives;
2. Leads the review of EISs for proposed major federal actions assigned to their region;
3. Leads actions described in [Section 6. A. - Headquarters and Regional Environmental Review Coordinators](#) of this guidance (NCB Chief and Regional Environmental Review Coordinator);
4. Maintains and follows the appropriate records management schedule for NEPA records;
5. Provides appropriate regional NEPA office representation, as resources allow, in cross-EPA work groups with objectives intersecting NEPA/CAA § 309 review responsibilities; and
6. Tracks and reports monthly on all NEPA-related performance measures established by the NCB Chief, highlighting performance trends and opportunities for improvement.

5. EPA PROGRAM OFFICES

EPA Headquarters and EPA Regions are organized into several program offices that work to ensure access to clean air, land, and water. These EPA program offices are also responsible for providing technical assistance and policy guidance on NEPA review actions related to their areas of responsibility. EPA's Office of General Counsel and Offices of Regional Counsel should be included as associate reviewers. The subject matter experts (SME) and representatives of the program offices will be referred to in this document as associate reviewers. Associate reviewers will follow the policies and procedures in this guidance in accordance with [Section 6 - Review Management Responsibilities](#).

6. REVIEW MANAGEMENT RESPONSIBILITIES

A. HEADQUARTERS AND REGIONAL ENVIRONMENTAL REVIEW COORDINATORS

The term "Environmental Review Coordinator" is used in this guidance to mean either a Regional Environmental Review Coordinator or the NCB Chief managing the Federal Agency Liaisons. It is the Environmental Review Coordinator's responsibility to manage the environmental review process and to ensure EPA follows the procedures in this guidance. The Environmental Review Coordinator:

1. Determines the level of EPA participation in EIS scoping efforts, assigns EPA staff to review EISs, and manages EPA staff assigned to those efforts;
2. Designates a lead reviewer for each proposed action assigned to their region;
3. Determines the scope of EPA's early engagement as a cooperating agency⁸ under Sec. 107 (3) (42 U.S.C. 4336a(3)) of the NEPA statute, as well as other levels of engagement (e.g., EPA's review and comment on administrative drafts of an EIS and other draft technical documents supporting the NEPA analysis);
4. Provides timely written EPA comments to lead agencies on EISs regarding EIS adequacy and the federal action's reasonably foreseeable environmental impact(s);
5. Determines whether to prepare comments on final EISs and, as needed, prepares, and provides such comments to lead agencies;
6. Determines whether to prepare comments on non-EIS actions such as environmental assessments (EAs), notice of intents (NOIs), and other actions ([Section 3. C. - Legislation and Regulations Reviews](#));
7. Reviews comment letters for consistency with applicable EPA policies and the memo on Clean Air Act (CAA) 309 and National Environmental Policy Act Section 102(2)(C) Implementation;
8. Initiates and manages follow-up on EPA comment letters with lead agencies and other parties to identify and resolve significant issues; and
9. Completes project close-out consistent with NCB's reporting procedures.

B. LEAD REVIEWER

To coordinate the review and preparation of EPA's comment letter, the Environmental Review Coordinator designates a lead reviewer for each major federal action. The lead reviewer must ensure the comment letter represents the views of other EPA offices, is consistent with agency policy, and reflects applicable EPA environmental statutory responsibilities per the Clean Air Act (CAA) 309 and National Environmental Policy Act Section 102(2)(C) Implementation. In general, for reviews led by headquarters, the lead reviewer will be an NCB Federal Agency Liaison on the team assigned to the lead agency. The lead reviewer:

1. Identifies associate reviewers, including staff associated with related permit actions, to provide an opportunity for all appropriate regional and headquarters EPA offices to

⁸ Cooperating agency means any Federal, State, Tribal, or local agency with jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal that has been designated by the lead agency. See Section 111(2) of NEPA.

participate in the review;

2. Establishes due dates for associate reviewers' comments and coordinates timely receipt of comments, timely resolution of disagreements or inconsistencies among reviewers, and provides the person signing the comment letter ("the signing official"⁹) with adequate time for review, as described further in this document;
3. Reviews and confirms the validity of comments in EPA's finalized letter(s);
4. Resolves and records the disposition of any disagreements with or between associate reviewers' comments in accordance with [Section 6. D. - Consolidation of Comments](#);
5. Ensures consistency between EPA's comment letters and EPA's prior comments on similar proposed actions;
6. Ensures the distribution of copies of the signed comment letter to associate reviewers and other parties; and
7. Documents project close-out and applicable NCB reporting procedures (e.g., tracking and reporting program performance measures).¹⁰

C. ASSOCIATE REVIEWERS

The lead reviewer may contact/consult EPA program offices to request one or more associate reviewers to provide technical and policy advice and the views of their program office. As resources allow the associate reviewers:

1. Review assigned NEPA documents and underlying proposed actions within their areas of responsibility and expertise, guided by this document;
2. Submit timely comments to the lead reviewer;
3. Obtain their program office's concurrence on comments submitted;
4. Provide technical assistance, at the lead reviewer's request, to respond to lead agency questions on associate reviewer comments; and
5. Seek their program office's approval to provide technical assistance in their area of expertise when EPA is a cooperating agency.

⁹ The EPA comment letter will be signed by the appropriate regional or headquarters official in accordance with the Delegation of Authority 7-57 CAA § 309 Review Process and applicable redelegations.

¹⁰ Roles and responsibilities for project close-out may vary in regions depending on office organization.

D. CONSOLIDATION OF COMMENTS

The lead reviewer will consider all associate reviewer comments and must concur before including them in EPA’s comment letter. When the lead reviewer makes substantive changes to associate reviewer comments, the lead reviewer will provide the associate reviewer an opportunity to discuss the changes. If the lead reviewer disagrees with substantive associate reviewer comments, the lead reviewer will attempt to resolve the differences with the associate reviewer. If this is not possible, the lead reviewer will inform the Environmental Review Coordinator and elevate the issue to senior leadership for resolution. The signing official shall be the final arbiter of differing opinions. If major policy issues are involved, the lead reviewer shall inform the Environmental Review Coordinator and strive to obtain policy level concurrence with the associate reviewer’s office. Pursuant to the relevant EPA records management schedule, the Environmental Review Coordinator will ensure associate reviewers’ comments are retained in the official project file along with the lead reviewer’s notes on the issue and its disposition.

7. EPA LEAD OFFICE RESPONSIBILITY FOR EISs AND OTHER MAJOR FEDERAL ACTIONS

Consistent with EPA’s MOA with CEQ, lead agencies shall file statements with EPA no earlier than they are also transmitted to participating agencies and made available to the public. The EIS filed in *e-NEPA* shall serve as the transmitted EIS to EPA.

Table 1 includes EPA review actions and the lead offices responsible for those reviews.

TABLE 1: Review Actions and Responsible EPA Lead Offices¹¹

Action	Directed to
Policy statements, regulations, procedures, and legislation accompanied by an EIS	FAD-NCB
Actions that are national in scope	FAD-NCB
Actions that: 1) Result in a high degree of national controversy or have national significance; 2) Raise novel policy considerations or precedent; and/or 3) Are required to maintain or promote national consistency.	On a case-by-case basis, the OPRM AA and the Regional Administrator (or their designee) will consult to determine if a comment letter (at any stage of the process), in whole or in part, warrants OPRM AA coordination or concurrence. ¹² Refer to delegation of authority as needed.

¹¹ See EPA Delegations Manual, CAA § 309 Review Process, 1200 TN 350, at 7-57.

¹² FAD and Regional management will consult to present necessary information to inform the OPRM AA and the Regional Administrator (or their designee) for these discussions.

Actions crossing multiple regions	FAD-NCB in consultation/agreement with affected Regions, will designate a lead Region or assign to NCB.
All other actions	Appropriate regional office.

Regional offices are generally responsible for leading reviews of EISs, other major federal actions, and selected EAs within their respective region. The following categories of projects may require coordination between the NCB Chief and the Regional Environmental Review Coordinator to determine which region will have lead review responsibility:

- a. The proposed action under review relates to a NEPA Review that occurs in a different region;
- b. The proposed action under review relates to more than one region;
- c. The regional office does not have adequate expertise or capacity to review the proposed action; or
- d. The proposed action under review relates primarily to national EPA policy, regulations, or procedures, or has broad geographic reach, (e.g., overlapping several regions). See [Table 1](#).

If the Regional Environmental Review Coordinator proposes that an EIS may warrant reassignment to a different region or the designation of multiple regional offices as leads, the Regional Environmental Review Coordinator will notify the NCB Chief. The NCB Chief will provide direction after consulting with affected region(s), the Federal Agency Liaison and the *e-NEPA* Team.