

EDA National Environmental Policy Act Implementing Directive 17.02-2

17.02-2.01—PURPOSE AND POLICY

Sec.

17.02-2.01.1 Purpose and policy.

17.02-2.01.2 Applicability.

§ 17.02-2.01.1 Purpose and policy.

- (a) The purpose of this Directive is to integrate the National Environmental Policy Act (NEPA) into the Economic Development Administration's (EDA) decision-making processes. Specifically, the Directive is intended to: describe the process by which EDA 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 EDA 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 EDA's procedures and practices for implementing NEPA. It further explains EDA'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 EDA 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 § 1702-2.02.4(b), EDA will consult with CEQ while developing or revising their proposed NEPA implementing procedures, in accordance with NEPA § 102(2)(B), 42 U.S.C. § 4332(B).

§ 17.02-2.01.2 Applicability.

- (a) *Applicability.* This Directive is applicable to all EDA actions at both Headquarters and Regional Offices and implements NEPA consistent with Department Administrative Order 216-6, "Implementing the National Environmental Policy Act".
- (b) *Authority.* NEPA imposes certain procedural requirements on the exercise of EDA's existing legal authority in relevant circumstances. Nothing contained in this Directive is intended or should be construed to limit EDA's other authorities or legal responsibilities.
- (c) *Effect on Other Directives.* This Directive supersedes EDA Directive 17.02-2, "EDA Program to Implement the National Environmental Policy Act of 1969 and Other Federal Environmental Mandates as Required" dated October 14, 1992.

17.02-2.02—NEPA AND AGENCY PLANNING

Sec.

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§ 17.02-2.02.1 Determining when NEPA applies.

(a) EDA will determine that NEPA does not apply to a proposed agency action when:

(1) 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;

(2) The proposed activity or decision is exempted from NEPA by law;

(3) Compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of law;

(4) In circumstances where Congress by statute has prescribed decisional criteria with sufficient completeness and precision such that EDA retains no residual discretion to alter its action based on the consideration of environmental factors, then that function of EDA 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;

(5) The proposed action is an action for which another statute's requirements serve the function of agency compliance with the Act;

(6) The proposed action is not a "major Federal action."

(i) 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 and decision makers should consult with EDA Headquarters for case-specific assistance.

(ii) There are several other general categories of exemptions set forth in Section 111(10) of NEPA, 42 U.S.C. § 4336e(10), including:

(A) Non-Federal actions with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project;

(B) 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;

(C) Judicial or administrative civil or criminal enforcement actions;

(D) Extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States; and

(E) Activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority; or

(7) The issuance or update of EDA's NEPA procedures is not subject to NEPA review.

(b) In determining whether NEPA applies to a proposed agency action, EDA will consider only the action or project at hand.

§ 17.02-2.02.2 Determine the appropriate level of NEPA review.

(a) If EDA determines under § 17.02-2.02.1 that NEPA applies to a proposed activity or decision, EDA will then determine the appropriate level of NEPA review in the following sequence and manner.

(1) If EDA has established, or adopted pursuant to NEPA § 109 (42 U.S.C. § 4336c) a categorical

exclusion that covers the proposed action, EDA will analyze whether to apply the categorical exclusion to the proposed action and apply the categorical exclusion, if appropriate, pursuant to § 17.02-2.02.4(e).

(2) If another agency has already established a categorical exclusion that covers the proposed action, EDA will consider whether to adopt that exclusion pursuant to § 17.02-2.02.4(c) so that it can be applied to the proposed action at issue, and to future activities or decisions of that type.

(3) If the proposed action warrants the establishment of a new categorical exclusion, or the revision of an existing categorical exclusion, pursuant to § 17.02-2.02.4(b), EDA will consider whether to so establish or revise, and then apply the categorical exclusion to the proposed action pursuant to § 17.02-2.02.4(e).

(4) If EDA cannot apply a categorical exclusion to the proposed action consistent with paragraphs (a)(1)-(a)(3), EDA will consider the proposed action's reasonably foreseeable effects consistent with paragraph (b), and then will:

(i) if the proposed action is not likely to have reasonably foreseeable significant effects or the significance of the effects is unknown, develop an environmental assessment, as described in § 17.02-2.02.5; or

(ii) if the proposed action is likely to have reasonably foreseeable significant effects, develop an environmental impact statement, as described in part 17.02-2.03 of this Directive.

(b) When considering whether the reasonably foreseeable effects of the proposed action are significant, EDA will analyze the potentially affected environment and degree of the effects of the action. EDA 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.

(1) In considering the potentially affected environment, EDA may consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources.

(2) In considering the degree of the effects, EDA may consider the following, as appropriate to the specific action:

(i) Both short- and long-term effects.

(ii) Both beneficial and adverse effects.

(iii) Effects on public health and safety.

(iv) Economic effects.

(v) Effects on the quality of life of the American people.

§ 17.02-2.02.3 NEPA and agency decision-making.

(a) EDA has the authority to provide grants to meet the full range of communities' and regions' economic development needs from planning and technical assistance to construction of infrastructure. These grants are made through publications currently called Notices of Funding Opportunity (NOFOs) and are designed to support the economic development activities most useful to a community based on its needs and circumstances. NOFOs (or a subsequent equivalent) detail an evaluation and selection process resulting in tentatively selected projects subject to a final EDA decision. Entities responsible for the tentatively selected project often must provide requested missing and/or additional information needed to award the grant and complete the NEPA process. Experts on the NEPA process within EDA are integrated into the initial evaluation process for construction projects and potentially environmentally complex non-construction projects to help assess risk and feasibility prior to tentative selection. The NEPA scoping process commences after this initial tentative selection of a project and submittal of any additional required documentation. The final agency action of awarding a grant is only taken at the conclusion of this process.

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

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

If EDA is considering an application from a non-Federal entity and becomes aware that the applicant is about to take an action within EDA's jurisdiction that would meet either of the criteria in § 17.02-2.02.3(b), EDA will promptly notify the applicant that EDA will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. Examples of activities that would not likely have an adverse environmental effect or limit the choice of reasonable alternatives: preliminary planning and design, cultural resource surveys, biological assessments and surveys, geotechnical and hydrological studies, phase I and phase II environmental assessments, tasks associated with administrative expenses including project management, survey and title work for a proposed site, other informational gathering activities, preparing or applying for Federal, state or local permits, agreement(s) for purchase of properties by applicants necessary for completion of a proposed EDA funded project, acquisition of interests in land (*e.g.*, fee simple, rights-of-way, and conservation easements), purchase of long lead-time equipment, and purchase options made by applicants.

(c) *Actions developed by non-Federal entities.* For proposed actions that are initially developed by applicants or other non-Federal entities, EDA will:

- (1) coordinate with the non-Federal entity at the earliest reasonable time in the planning process to inform the entity what information EDA 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
- (2) begin the NEPA process by determining whether NEPA applies, as described in § 17.02-2.02.1, and if it does, determine the appropriate level of NEPA review, as described in § 17.02-2.02.2, as soon as practicable after receiving the complete application.

An applicant or a contractor hired by the applicant may prepare an environmental assessment or environmental impact statement under EDA's supervision. EDA's procedures for applicant-prepared environmental assessments and environmental impact statement are included in part 17.02-2.06 of this Directive.

(d) *Rulemaking* For informal rulemaking conducted pursuant to the Administrative Procedure Act, 5 U.S.C. § 553, the environmental document will normally accompany the proposed rule.

§ 17.02-2.02.4 Categorical exclusions.

(a) *Generally.* This section describes the process EDA uses for establishing and revising categorical exclusions, for adopting other agencies' categorical exclusions, and for applying categorical exclusions to a proposed agency action. EDA's categorical exclusions, including categorical exclusions EDA established and substantiated consistent with its NEPA procedures, legislative categorical exclusions, and categorical exclusions adopted from other agencies, are listed in Appendix A.

(b) *Establishing and revising categorical exclusions.* To establish or revise a categorical exclusion, EDA will determine that the category of actions normally does not significantly affect the quality of the human environment. In making this determination, EDA 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 EDA'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) EDA may adopt a categorical exclusion listed in another agency's NEPA procedures. When adopting a categorical exclusion, EDA 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 EDA is adopting, including a brief description of the proposed action or category of proposed actions to which EDA intends to apply the adopted categorical exclusion.

When adopting categorical exclusions from other Federal agencies that EDA intends to apply to grant awards to implement projects in a local or regional area, public notice may be provided either: (1) for three consecutive days in the newspaper with the greatest local circulation or in areas where only a weekly or bi-weekly publication is available, one posting is sufficient; or (2) in remote areas with no general circulation newspaper, posting in a community center, local governmental office open to the public, or a post office.

When adopting categorical exclusions from other Federal agencies that EDA intends to apply to Agency actions, potentially including grant awards, that are national in scope or extend beyond a regional area, public notice may be provided through either: (1) an EDA website for a period of one week; or (2) through a *Federal Register* notification.

When adopting categorical exclusions from other Federal agencies, EDA will determine, at its discretion, which publication process is appropriate to reach potentially impacted population(s). In either event, publication will specify that EDA will consider any extraordinary circumstances when applying the adopted categorical exclusion.

- (4) Document the adoption of the categorical exclusion in EDA's implementing procedures as described in Appendix A below.

(d) *Removal of categorical exclusions.* To remove a categorical exclusion from Appendix A, EDA 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 EDA's removal of the categorical exclusion and the written justification in the *Federal Register*.

(e) *Applying categorical exclusions.* If EDA determines that a categorical exclusion covers a proposed agency action, EDA will evaluate the action for extraordinary circumstances that indicate a normally excluded agency action is likely to have a reasonably foreseeable significant adverse effect.

- (1) The following situations may be considered extraordinary circumstances.
 - (i) Ten (10) percent increase in average daily traffic volume on the access roads to the site or the major arteries in the affected area, and peak-hour congestion occurs daily on the access road to the site or on the major arteries in the affected area.
 - (ii) The action may lead to a violation of Federal, state or local law or requirements imposed for the protection of the environment; for example, if air quality standards have been violated within the past year and the project is expected to increase emissions, or construction traffic or project

noise will definitely be in violation of noise standards and one or more types of sensitive receptors would definitely be at risk.

- (iii) The proposed project, its contractors, or final solid waste disposal site(s) will not be in compliance with any Environmental Protection Agency guidelines for thermal processing and land disposal, storage and collection, source separation, and resource recovery facilities; or with any other Federal, state, or local regulations, standards, or health codes or the final disposal site(s) will not have adequate capacity for the solid waste from the proposed project.
- (iv) Public utilities which do not have and will not have in the near future sufficient capacity to provide reliable service to the project and cannot ensure delivery of required flow for average and peak periods.
- (v) The action is located on or near an active geological fault or unique geological features.
- (vi) Wastewater generated by the applicant's facility will represent more than three (3) percent of the unused capacity (considering pending applications) of the available treatment facilities and the level of treatment does not meet the Clean Water Act compliance schedule.
- (vii) The proposed project will not be compatible with the present land use character of the specific site or affected area.
- (viii) The proposed action may adversely affect an endangered or threatened species or its habitat.
- (ix) The proposed action may adversely affect or be located in parklands, floodplains, wetlands, wild and scenic rivers, or other ecologically critical areas.
- (x) The proposed action will result in the handling of a significant amount of toxic, hazardous, or radioactive materials.
- (xi) Archeological or cultural resources on or potentially eligible for listing on the National Register will be adversely affected by the proposed action.
- (xii) Local community service agencies indicate that one or more community services will be inadequate to serve the project.
- (xiii) The proposed project will permanently alter or severely affect an area that has been formally recommended for protection by Federal, state, regional, or local government agencies as part of a land use or development plan.
- (xiv) The proposed project lies on or adjacent to groundwater recharge areas, significant groundwater aquifers, domestic wells or well fields, or watersheds of significant surface water supplies.
- (xv) The proposed project has previously generated scientific controversy about the environmental effects of the proposed project on a local, state, or national level.
- (xvi) The proposed project will be located on or adjacent to an active or abandoned toxic, hazardous or radioactive site or waste disposal facility.
- (xvii) The proposed action will result in the displacement or relocation of numerous businesses, residences, or farm operations.

If an extraordinary circumstance is not present, EDA will determine that the categorical exclusion applies to the proposed agency action and conclude review.

(2) EDA will also determine that the categorical exclusion applies to the proposed agency action and conclude review if EDA 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.

If EDA determines that it cannot apply the categorical exclusion to the proposed action, EDA will prepare an environmental assessment or environmental impact statement, as appropriate.

(f) *Documentation of categorical exclusion determinations.* EDA will document its evaluation of the applicability of a categorical exclusion in a Project Review and Findings and, when applicable, a

Record of Consideration. A Record of Consideration will be prepared to support selection of a categorical exclusion for construction projects and may be used for documenting a categorical exclusion for complex non-construction projects on a very limited case-by-case basis.

- (1) Project Review and Findings will be used in each of the following cases:
 - (i) A grant award proposed for non-construction.
 - (ii) For any case in which EDA determines that applying a categorical exclusion is appropriate consistent with paragraph (e)(2).
 - (iii) For awards under institutional programs, such as Planning Partnerships and University Centers, where the purpose of the program and each award falls within the categorical exclusion for EDA-09, one Project Review and Findings completed by Headquarters or a Regional Office may be used each year for the entire program at a national or Regional level.
- (2) All projects are evaluated through a Project Review and Findings and in some cases a Record of Consideration. Extraordinary circumstances will be considered and any identified extraordinary circumstances will be documented in the Record of Consideration or in the Project Review and Findings when no Record of Consideration is prepared.
- (g) *Applying legislative categorical exclusions.* If EDA determines that a categorical exclusion established through legislation, or a categorical exclusion that Congress through legislation has directed EDA to establish, covers a proposed agency action, EDA will conclude review consistent with applicable law. If appropriate, EDA may examine extraordinary circumstances, modify the proposed agency action, or document the determination that the legislative categorical exclusion applies, consistent with paragraph (e) of this section and the legal authority for the establishment of the legislative categorical exclusion.
- (h) *Reliance on categorical exclusion determinations of other agencies.* EDA 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 EDA's proposed action are substantially the same, or if EDA's proposed action is a subset of the type of agency action covered by that determination. EDA will document its reliance on another agency's categorical exclusion determination consistent with paragraph (e) and include in the file key file correspondence or documents demonstrating EDA's coordination with the other agency.
- (i) *List of categorical exclusions.* EDA has established categorical exclusions which are listed in Appendix A.
- (3) The Department of Commerce's categorical exclusions are not part of EDA's NEPA Directive, but are also available for use by EDA and EDA will document use of those exclusion consistent with EDA's procedures for categorical exclusions described in paragraph (e) including EDA's review of extraordinary circumstances.

§ 17.02-2.02.5 Environmental assessments.

- (a) *Generally.* If an action is subject to NEPA, as determined following the procedures in § 17.02-2.02.1, and unless EDA 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 § 17.02-2.02.4, or by another provision of law, EDA 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. EDA is mindful of Congress' direction that environmental statements are to be "concise." NEPA § 106(b)(2) (42 U.S.C. § 4336(b)(2)).

(b) *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 EDA's statutory authority. When the proposed agency action concerns EDA'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;
- (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.

(c) *Agency actions normally requiring an environmental assessment.* The following classes of actions normally require environmental assessments, but likely do not require an environmental impact statement:

- (1) Any action potentially adversely affecting the values and functions of a floodplain or wetland;
- (2) New infrastructure such as roads, waterlines, or sewer lines on land that has not previously been disturbed and is outside existing rights of way; and
- (3) Actions that result in changes to the land use character, for example projects that may require a change to the local zoning.

(d) *Scope of analysis.*

- (1) In preparing the environmental assessment, EDA will focus its analysis on whether the environmental effects of the action or project *at hand* are significant.
- (2) Similarly, EDA 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.
- (3) To the extent it assists in reasoned decision-making, EDA 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 EDA regulatory authority, or that would have to be initiated by a third party. If EDA 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.

(e) *Page limits.*

- (1) The text of an environmental assessment is 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 the statutory 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 EDA has considered the factors mandated by NEPA; that the environmental assessment represents EDA'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 EDA's expert judgment; and that any considerations addressed briefly or left unaddressed were, in EDA's judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed.

(f) *Deadlines.*

(1) 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) of NEPA (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, EDA will complete the environmental assessment not later than the date that is one year after EDA has issued a Further Consideration Letter for a grant award (or the functional equivalent) and received a complete reply to all identified matters in the letter.

The purpose of a Further Consideration Letter is to notify the applicant that its application meets certain eligibility criteria and the concept of the project has been deemed meritorious enough to be worthy of award consideration subject to the submittal of additional information and resolution of any issue(s) noted in the letter. EDA may need to request additional documentation such as biological assessment(s), cultural survey(s), and zoning details necessary to evaluate factors of significance and to determine whether an environmental assessment or environmental impact statement is required. The receipt of a Further Consideration Letter does not guarantee that an applicant will ultimately receive an award. All applications are required to undergo additional pre-award reviews and clearances.

- (2) The end date is a signed Finding of No Significant Impact (FONSI).
- (3) 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.
- (4) *Deadline extensions.* If EDA 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 EDA determines it is not able to meet the statutory deadline, that issuance pursuant to subsection (4) above would, in EDA'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.

The decision maker must document the deadline extension into the record for the action with a determination that establishes a new deadline and explains why the extension is necessary. Deadline extensions may be necessary to ensure EDA meets its public engagement obligations under other statutes, meets its consultation obligations, or has the requisite information to complete its EA.

(5) *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 EDA's good-faith effort to fulfill NEPA's requirements within the congressional timeline; that such effort is substantially complete; that, in EDA's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in EDA's judgment, the analysis contained therein is adequate to inform and reasonably explain EDA's final decision regarding the proposed federal action.

§ 17.02-2.02.6 Findings of no significant impact.

(a) EDA will prepare a finding of no significant impact if EDA determines, based on the environmental assessment, not to prepare an environmental impact statement because the proposed action or project at hand will not have significant effects. The finding of no significant impact will:

- (1) Reference the attached environmental assessment;
- (2) Document the reasons why EDA 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 EDA has adopted and any applicable monitoring or enforcement provisions. If EDA 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. This mitigation may be in the form of Specific Award Conditions attached to the FONSI and incorporated in the grant award. Identify any other documents related to the finding of no significant impact; and
- (4) State that an environmental impact statement will not be prepared, concluding the NEPA process for that action.

(b) Solicitation for Comments for an action that may result in an environmental assessment: EDA may solicit public comments by posting: (1) for three consecutive days in the newspaper with the greatest local circulation or in areas where only a weekly or bi-weekly publication is available, one posting is sufficient; or (2) in remote areas with no general circulation newspaper, posting in a community center, local governmental office open to the public, or a post office. When an applicant has already provided public notice for the proposed activity and/or hosted public engagement meetings, EDA may obtain and consider information from those notices and/or meetings and not issue an additional EDA specific notice for comments.

(c) EDA will make the environmental assessment and finding of no significant impact available to the public through an EDA website.

§ 17.02-2.02.7 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, EDA is ultimately responsible for completing the NEPA process; when serving as the lead agency, EDA 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)), EDA and the other joint lead agency or agencies are collectively responsible for completing the NEPA process.

§ 17.02-2.02.8 Notices of intent and scoping.

(a) As a preliminary step to determining whether, in connection with a proposal that is not excluded pursuant to a categorical exclusion, EDA will prepare an environmental assessment or an environmental impact, EDA will determine and document the scope of the project at hand.

(b) *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, EDA will publish a notice of intent to prepare an environmental impact statement. If EDA determines that it will prepare an environmental assessment for a proposed action, EDA 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;
- (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 EDA 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

(c) *Scoping.* EDA 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, and 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.

17.02-2.03—ENVIRONMENTAL IMPACT STATEMENTS

Sec.

17.02-2.03.1 Preparation of environmental impact statements.

17.02-2.03.2 Purpose and need.

17.02-2.03.3 Analysis within the environmental impact statement.

17.02-2.03.4 Page limits.

17.02-2.03.5 Deadlines.

17.02-2.03.6 Publication of the environmental impact statement.

§ 17.02-2.03.1 Preparation of environmental impact statements.

(a) EDA 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.

(b) § 4336(b)(1)). Whether an impact rises to the level of “significant” is a matter of EDA’s expert judgment. During the process of preparing an environmental impact statement, EDA:

(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 or is authorized to develop and enforce environmental standards that govern the action or project at hand; and
- (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 applicant, if any; and
- (iv) 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.

(c) This process of obtaining and requesting comments pursuant to (b) above may be undertaken at any time that is reasonable in the process of preparing the environmental impact statement. EDA will ensure that the process of obtaining and request comments pursuant to (b) above, and EDA’s analysis of and response to those comments, does not cause EDA to violate the congressionally mandated deadline for completion of an environmental impact statement.

(d) *Addressing comments contained in environmental impact statements.* EDA will address any significant comments received consistent with paragraph (b) of this section in the environmental impact statement. To facilitate streamlined responses to comments, EDA may consider the following to address and document action taken in response to any substantive issues raised and/or recommendations made in the comments received in the environmental impact statement:

- (1) Modifying alternatives, including the proposed action.
- (2) Developing and evaluating alternatives not previously given serious consideration.
- (3) Supplementing, improving, or modifying analyses, to include consideration of science or literature not previously considered.
- (4) Making factual corrections.
- (5) No action needed. The agency may provide brief rationale for taking no action, such as but not limited to:
 - (i) The comment is outside the scope of what is being proposed;
 - (ii) There is no cause-effect relationship between the actions the agency is proposing and the issue raised and/or recommendation made;
 - (iii) The commenter misinterpreted the information provided; or
 - (iv) The recommendation made does not comply with applicable laws or regulations and/or are not feasible to implement (technically or economically), etc.

(e) *Soliciting public comment.* When EDA solicits public comment, EDA welcomes comments that assist EDA in evaluating the environmental impacts of any proposed project, the merit of any proposed

alternatives, etc.

- (f) In the event EDA decides to publish any predecisional environmental documents in accordance with § 17.02-2.04.3, it will cause such documents to be published in the *Federal Register* for public comment.. The draft environmental impact statements will be available on an EDA website and also upon request.

In addition to the *Federal Register*, a notice for a draft environmental impact statement shall be published in one or more local newspapers of general circulation in the project area by the office which prepared the environmental impact statement. The newspaper(s) may be issued weekly and may be local in nature, if appropriate.

§ 17.02-2.03.2 Purpose and need.

The statement will include the purpose and need for the proposed agency action based on the EDA's statutory authority.

§ 17.02-2.03.3 Analysis within the environmental impact statement.

- (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 EDA'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 man's 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. EDA is mindful in this respect that NEPA itself does not require or authorize EDA to impose any mitigation measures.

- (b) *Scope of analysis.*

- (1) In preparing the environmental impact statement, EDA will focus its analysis on whether the environmental effects of the action or project at hand are significant.
- (2) Similarly, EDA 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, EDA 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 EDA's regulatory authority, or that would have to be initiated by a third party. If EDA 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.

§ 17.02-2.03.4 Page limits.

(a) *Page limits.* 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. EDA 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. 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 EDA has considered the factors mandated by NEPA; that the environmental impact statement represents EDA'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 EDA's expert judgment; and that any considerations addressed briefly or left unaddressed were, in EDA's judgment, comparatively unimportant or frivolous.

§ 17.02-2.03.5 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:

- (a) EDA will complete the environmental impact statement not later than the date that is 2 years after the sooner of:
 - (1) The date on which EDA determines that 42 U.S.C. § 4332(2)(C) requires the issuance of an environmental impact statement with respect to such action.
 - (2) The date on which EDA issues a Further Consideration Letter for a grant award (or the functional equivalent) and received a complete reply to all identified matters in the letter.
 - (3) The date on which EDA issues a notice of intent to prepare the environmental impact statement.
- (b) The end date is a signed Record of Decision.

- (c) The environmental impact statement will publish (unless the deadline is extended pursuant to the provision below) on the day the deadline elapses, in as substantially complete form as is possible.
- (d) If EDA determines it is not able to meet the deadline prescribed by NEPA § 107(g)(1)(A) (42 U.S.C. § 4336a(g)(1)(A)), 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 by obtaining permission from the Assistant Secretary of Commerce for Economic Development or his or her delegate. Cause for establishing a new deadline is only established if the environmental impact statement is so incomplete, at the time at which EDA determines it is not able to meet the statutory deadline, that issuance pursuant to subsection (c) above would, in EDA'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.
- (e) *Certification Related to Deadlines.* 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 EDA's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; and that, in the EDA's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the EDA's judgment, the analysis contained therein is adequate to inform and reasonably explain EDA's final decision regarding the proposed federal action.

§ 17.02-2.03.6 Publication of the environmental impact statement.

EDA will publish the entire environmental impact statement.

17.02-2.04—EFFICIENT ENVIRONMENTAL REVIEWS

Sec.

- 17.02-2.04.1 Programmatic environmental documents and tiering.
- 17.02-2.04.2 Adoption.
- 17.02-2.04.3 Publishing predecisional environmental documents.
- 17.02-2.04.4 Combining documents.
- 17.02-2.04.5 Incorporation by reference.
- 17.02-2.04.6 Supplemental environmental documents.
- 17.02-2.04.7 Integrity and completeness of information.
- 17.02-2.04.8 Integrating NEPA with other environmental requirements.
- 17.02-2.04.9 Elimination of duplication with state, Tribal, and local procedures.
- 17.02-2.04.10 Proposals for regulations.
- 17.02-2.04.11 Unique identification numbers.
- 17.02-2.04.12 Emergencies.

§ 17.02-2.04.1 Programmatic environmental documents and tiering.

(a) EDA may prepare environmental documents for programmatic Federal actions, such as the adoption of new agency programs. EDA 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 § 17.02-2.04.2, after completing a

programmatic environmental assessment or environmental impact statement, EDA 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 EDA 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 new and substantial information or circumstances, EDA may continue to rely on the document.

§ 17.02-2.04.2 Reliance on existing environmental documents.

(b) *Generally.* EDA 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 this Directive. When relying on an environmental impact statement, environmental assessment, or portion thereof, EDA 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.

(c) *Substantial Similarity.*

(1) If the actions covered by the original environmental impact statement or environmental assessment and the proposed action are substantially the same, the EDA will republish the relied-upon statement or assessment.

(2) If the actions are not substantially the same, EDA 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, EDA may solicit comment to the extent that solicitation of comment will assist EDA in expeditiously adapting the relied-upon statement or assessment so that it is fit for EDA's purposes.

§ 17.02-2.04.3 Publishing predecisional environmental documents.

During the process of preparing any environmental document provided for by these procedures, EDA may publish such draft, predecisional materials as in its judgment may assist in fulfilling its responsibilities under NEPA and this Directive.

§ 17.02-2.04.4 Combining documents.

EDA will combine, to the fullest extent practicable, any environmental document with any other agency document to reduce duplication and paperwork.

§ 17.02-2.04.5 Incorporation.

EDA 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 EDA and public review of the action. When incorporating material by reference, EDA will cite, briefly describe the content and relevance to the environmental document, and make the materials reasonably available for review by potentially interested parties. EDA will not use incorporation as a means to evade the statutory page limits.

§ 17.02-2.04.6 Supplements to environmental documents.

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

(1) EDA makes substantial changes to the proposed action that are relevant to environmental concerns; or

(2) EDA decides, in its discretion, that there are substantial new circumstances or information

about the significance of the adverse effects that bearing on the proposed action or its effects.

- (b) EDA will not prepare supplemental documents for a reduction in scope for a project where the reduction will not result in additional or new significant effects.

§ 17.02-2.04.7 Integrity and completeness of information.

(a) EDA 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, EDA will make use of reliable existing data and resources.

(b) When EDA 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, EDA will make clear in the relevant environmental document that such information is lacking.

§ 17.02-2.04.8 Integrating NEPA with other environmental requirements.

(a) To the fullest extent possible, EDA will prepare environmental documents concurrently with and integrated with analyses and related surveys and studies required by other Federal statutes.

(b) EDA will combine an environmental document prepared in compliance with NEPA with any other agency document to reduce duplication and paperwork. Thus, EDA may combine an environmental document with related plans, rules, or amendments as a single consolidated document.

(c) 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 EDA has or will meet them (*e.g.*, permits applied for or received, consultations initiated or concluded).

§ 17.02-2.04.9 Elimination of duplication with state, Tribal, and local procedures.

(a) EDA may cooperate with state, Tribal, and local agencies that are responsible for preparing environmental documents.

(b) To the fullest extent practicable unless specifically prohibited by law, EDA will cooperate with state, Tribal, and local agencies to reduce duplication between NEPA and state, Tribal, and local requirements, including through use of studies, analysis, and decisions developed by state, Tribal, or local agencies. Such cooperation may include:

- (1) Joint planning processes;
- (2) Joint environmental research and studies;
- (3) Joint public hearings (except where otherwise provided by statute); or
- (4) Joint environmental documents.

§ 17.02-2.04.10 Proposals for regulations.

Where the proposed action is the promulgation of a rule or regulation, procedures and documentation pursuant to other statutory or Executive order requirements may satisfy one or more requirements of this Directive. When a procedure or document satisfies one or more requirements of this Directive, EDA may substitute it for the corresponding requirements in this Directive and need not carry out duplicative procedures or documentation. Agencies will identify which corresponding requirements in this Directive are satisfied and consult with CEQ to confirm such determinations.

§ 17.02-2.04.11 Unique identification numbers.

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

§ 17.02-2.04.12 Emergencies.

Where emergency circumstances make it necessary to take an action with reasonably foreseeable significant environmental effects without observing the provisions of this Directive, EDA will consult with the CEQ about alternative arrangements for compliance with NEPA § 102(2)(C) (42 U.S.C. § 4332(2)(C)).

17.02-2.05—AGENCY DECISION-MAKING

Sec.

17.02-2.05.1 Decision documents.

17.02-2.05.2 Filing requirements.

§ 17.02-2.05.1 Decision documents.

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

This document would be a record of decision (ROD) for environmental impact statements or a finding of no significant impact (FONSI) for environmental assessments.

§ 17.02-2.05.2 Filing requirements.

EDA will file environmental impact statements together with comments and any responses with the Environmental Protection Agency, Office of Federal Activities for publication in the *Federal Register*.

17.02-2.06—PROCEDURES FOR APPLICANT-PREPARED NEPA DOCUMENTS

§ 17.02-2.06.1 Procedures for applicant-prepared environmental documents.

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

(a) EDA will independently evaluate the environmental document and will take responsibility for its contents.

(b) EDA will assist applicants and applicant-hired contractors by providing guidance and outlining the types of information required for the preparation of the environmental document. EDA may also provide appropriate guidance and assist in environmental document preparation, to the extent that EDA's resources and policy priorities admit. EDA 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) EDA 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) EDA may request from an applicant environmental information for use by EDA 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 EDA or with third parties.

17.02-2.07—DEFINITIONS

§ 17.02-2.07.1 Definitions.

As used in this Directive, the following terms have the meanings provided in NEPA § 111 (42 U.S.C. § 4336e). In addition:

- (a) *NEPA* means the National Environmental Policy Act, as amended (42 U.S.C. § 4321, *et seq.*).
- (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) *Connected action* means a separate Federal action within the authority of EDA that is closely related to the proposed agency action and should be addressed in a single environmental document because the proposed agency action:
 - (1) Automatically triggers the separate Federal action, which independently would require the preparation of additional environmental documents;
 - (2) Cannot proceed unless the separate Federal action is taken previously or simultaneously; or
 - (3) Is an interdependent part of a larger Federal action that includes a separate Federal action, which mutually depends on the larger Federal action for their justification.
- (d) *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.
 - (1) 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.
 - (2) 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.
- (e) *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 (c) of this section.)
- (f) *Jurisdiction by law* means agency authority to approve, veto, or finance all or part of the proposal.
- (g) *Mitigation* means 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:
 - (1) Avoiding the impact altogether by not taking a certain action or parts of an action.
 - (2) Minimizing effects by limiting the degree or magnitude of the action and its implementation.
 - (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(5) Compensating for the impact by replacing or providing substitute resources or environments.

(h) *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)).

(i) *Notice of intent* means a public notice that an agency will prepare and consider an environmental document.

(j) *Participating agency* means a Federal, state, Tribal, or local agency participating in an environmental review or authorization of an action.

(k) *Publish* and *publication* mean methods found by the agency to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication.

(l) *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.

(m) *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.

(n) *Reasonably foreseeable* means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

(o) *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.

(p) *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.

17.02-2.08—Severability.

§ 17.02-2.08.1 Severability.

The sections of this Directive 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 EDA's intention that the validity of the remainder of those parts will not be affected and the remaining sections, or portions therein, and all other applications, shall continue in effect.

Appendix A: Categorical Exclusions

EDA-01 Loans or loan guarantees for working capital (the purpose of which is to provide for the continuation of existing operations).

EDA-02 Interest subsidy for existing loans and/or actions covered in exclusion EDA-01.

EDA-03 Loans and loan guarantees to restructure debt.

EDA-04 Acquisition of machinery and equipment (M&E) unless these require applications for or amendments to existing air, water or solid waste permits.

EDA-05 Additional funds to cover cost overruns for previously EDA-funded and environmentally-assessed activity.

EDA-06 Weatherization of non-historic activity.

EDA-07 Repairs to plant and equipment, or replacement-in-kind of utilities and infrastructure on facilities currently operating under permit compliance.

EDA-08 Environmental monitoring.

EDA-09 Research, planning grants and technical assistance projects that are not reasonably expected to commit the Federal Government to a course of action, or to result in legislative proposals, or to result in direct development.

EDA-10 Title IX Revolving Loan Fund grants with no identified loan recipients, SSED and LTED strategies.

EDA-11 EDA administrative actions in support of maintaining normal day-to-day operations such as personnel actions, travel, procurement of supplies, etc.

EDA-12 Procurement contracts for Environment Impact Statements, Environmental Assessments, office space, supplies, etc.