

Questions and Answers about NEPA Compliance

1. Can State environmental regulations (e.g., New York's State Environmental Quality Review Act) be used in place of NEPA? Or, can DOE delegate NEPA authority to States with their own governmental bodies designed to conduct their own environmental impact assessments?

Answer: NEPA is a federal statute and a federal obligation. State processes cannot substitute for the Federal NEPA process, and the Energy Policy and Conservation Act of 1975 does not authorize DOE to delegate the preparation of environmental impact statements (EISs) or environmental assessments (EAs) to the States. However, for projects that require an EA or an EIS, and given appropriate quality assurance review, DOE may be able to use qualifying analyses developed for existing State environmental reviews or permitting processes in lieu of DOE performing separate analyses. Also, DOE and the State can cooperate to satisfy both NEPA and State environmental review processes simultaneously (e.g., as joint lead agencies for preparation of a single environmental review document).

2. Has DOE looked at contracting as a possibility for expediting NEPA review for the SEP program? Is contracting a possible means of expediting the NEPA review process?

Answer: DOE uses contractors in a number of areas to support its NEPA reviews and can bring on additional contractor support as needed. During the application review process, contractors assist some DOE NEPA Compliance Officers (NCOs) in organizing and reviewing information provided in applications. Much of the analysis for, and writing of, environmental assessments (EAs) and environmental impact statements (EISs) is done by contractors. In these and other examples, contractors facilitate timely completion of the NEPA review process while recognizing that the ultimate responsibility for complying with NEPA and making decisions rests with DOE. The time to complete NEPA review is dependent upon several factors, including sufficient staffing, the clarity of the proposal, and the timely availability of sufficient information.

3. Because NEPA responsibilities must remain with DOE staff, can an MOU be signed laying out the process for NEPA review to expedite the release of Recovery Act funds and create jobs?

Answer: DOE has already taken a number of steps to expedite NEPA reviews and determinations. DOE has assembled a group of NEPA experts to work with individual States on NEPA issues arising under SEP. These experts and others have participated in numerous calls with States and with NASEO to resolve NEPA issues. The Department will soon issue both written guidance on NEPA for the SEP and EECBG programs

and a new form that States can use in their revolving loan programs to expedite NEPA determinations. The new guidance lists a number of activities that are categorically excluded from detailed NEPA review.

4. Are energy efficiency projects categorically excluded from NEPA review?

Answer: Many energy efficiency projects fit within DOE's categorical exclusions (CXs) (Appendices A and B of Subpart D of DOE's NEPA regulations, 10 C.F.R. Part 1021), absent any extraordinary circumstances. *See, e.g.*, 10 C.F.R. § 1021, App. B5.1 (2009). Once DOE determines that an activity qualifies for a CX, further NEPA review is not required for that project. The determination is made on a case-by-case basis. Applicants can facilitate DOE determining whether a CX applies by clearly defining the proposed activity, particularly its scale or scope.

5. If a State has two market titles that involve commercial and industrial building retrofit HVAC projects in existing structures that were not approved, should they be considered for categorical exclusions?

Answer: Depending on the nature of the retrofit, and absent any extraordinary circumstances, they may be categorically excluded from detailed NEPA review; but they may not have been approved for other reasons. Contact the DOE SEP project manager responsible for review of the application in question.

6. For States that have not yet received approval, could working through the NEPA process help to alleviate issues? Are there resources showing what documentation is necessary for NEPA compliance and how to complete it?

Answer: There are NEPA requirements, but there could also be accounting and financial delays. DOE will soon issue guidance and a new questionnaire that should expedite the resolution of NEPA issues.

7. Is there any general guidance regarding biomass or biofuels projects?

Answer: Biomass projects that are small in scale and located at existing facilities likely are eligible for SEP funds. From a NEPA standpoint, small biorefineries in a previously developed location (e.g., a retrofit to an existing structure), and absent any extraordinary circumstances, may fit within a categorical exclusion and not require further NEPA review. DOE would be unable to determine whether a categorical exclusion applies to a proposed biorefinery without a defined size or production limit.

Size and production limits may indicate whether DOE considers a project to be "small." Although there is no definition of "small," DOE will attempt to identify

sizes of facilities below which categorical exclusions may be appropriate. Building at a brownfield or existing facility may help obtain a categorical exclusion.

8. Can one NEPA questionnaire be submitted for lighting on a number of buildings, so the State can get projects started, then can another NEPA questionnaire be submitted on the same buildings once the audits are completed and additional work has been determined?

Answer: Yes, states can submit information on a lighting program for a number of buildings and may be able to obtain a categorical exclusion for that program and then follow that initial application by providing information on additional projects once audits are completed.

9. Would solar installations on a rooftop require an EA or EIS? What about solar installations on the ground?

Answer: Absent extraordinary circumstances, solar installations on existing rooftops and parking shade structures normally would not require an EA or an EIS. Small installations on the ground within the boundaries of existing facilities may not require an EA or EIS, but reference the new guidance for further information.

10. If a State conducts a program for utility incentives for solar thermal and photovoltaic installations and combined heat and power, would the utilities be required to submit a NEPA questionnaire to DOE for each incentive that is awarded?

Answer: Such programs might entirely fit within a categorical exclusion if there are appropriate limits on the size of the incentives and the size of the equipment installed, and there are no extraordinary circumstances. For example, paying an incentive of 100% of the cost of a system is not an incentive, it is a grant. Grant programs are acceptable, but the level of NEPA review could be different. Incentive programs often pay no more than 10-25% of the costs of a system. DOE will evaluate the appropriate level of NEPA review required for financial incentive programs on a case-by-case basis.

11. If a State administers a revolving loan program, would it need to submit a NEPA questionnaire for each loan made?

Answer: Loan programs limited to small and well-defined activities (e.g., loans limited to replacement of home heating systems, or limited heating systems) could be categorically excluded from further NEPA review in their entirety. Groups of

identical activities in a loan program could be categorical excluded as a group. A more complex NEPA review process (involving review of individual loan applications) would be required for revolving loan programs with unclear boundaries.

12. In the event that a project discovers an issue or incurs an indirect impact that is unknown at the conception of the project but triggers an additional environmental requirement once the project is in process, how should a State approach this additional environmental requirement under NEPA?

Answer: The State should contact DOE immediately upon such a discovery.