

# Proposed and Recently Implemented Agency NEPA Procedures\*

## Proposed Agency NEPA Procedures

- **National Indian Gaming Commission, Department of the Interior (NGIC):** NGIC published proposed procedures for implementing NEPA and Executive Order 11514, *Protection and Enhancement of Environmental Quality*. Published December 4, 2009 with comments due January 18, 2010. ([74 FR 63765](#)).
- **Nuclear Regulatory Commission (NRC):** NRC published a proposed rule amending its environmental regulations at 10 CFR Part 51 and its Generic Environmental Impact Statement (GEIS) for License Renewals of Nuclear Plants. The amendments to 10 CFR Part 51 redefine the number and scope of environmental impact issues that must be addressed by NRC on a site-specific basis for nuclear power facility license renewals. The GEIS is analyzing several environmental issues programmatically because they are universally applicable to these actions. NRC is soliciting comments for both documents concurrently. Originally published on July 31, 2009 ([74 FR 38117](#)), NRC published a second notice October 7, 2009, extending the public comment period with comments due January 12, 2010. ([74 FR 51522](#)).
- **Armed Forces Retirement Home (AFRH):** AFRH published proposed procedures for implementing NEPA and other environmental laws, regulations, and Executive Orders related to AFRH decisionmaking. Published August 27, 2009 with comments due October 1, 2009. ([74 FR 43649](#)).
- **Department of Housing and Urban Development:** Amendments to HUD's Environmental Regulations – published for comment September 12, 2007 ([72 Federal Register 52264](#)).
- **Office of Justice Programs, Department of Justice:** Correction Program Office's Interim Final Rule for Environmental Impact Review Procedures for the Violent Offender Incarceration/Truth-In-Sentencing Incentive Grants Program – published for comment on August 8, 2000 ([65 Federal Register 48592](#)).

**\*NOTE: To access the Federal Register, go to: <http://www.gpoaccess.gov/fr/index.html>**

## Recently Implemented Agency NEPA Procedures (within the last 12 months)

- **Department of Energy (DOE):** DOE published a policy statement regarding online posting of certain categorical exclusion determinations. To further transparency and openness in its implementation of NEPA, all categorical exclusion determinations covered by Appendix B, Subpart D of DOE's NEPA Regulations at 10 CFR Part 1021

will be available at <http://www.gc.energy.gov/nepa> on a regular basis. Categorical exclusions of a classified, confidential, or otherwise sensitive nature will not be posted. Published October 9, 2009 ([74 FR 52129](#)).

- **U.S. Agency for International Development (USAID):** USAID published a directive for new Categorical Exclusions covering certain internal, domestic activities funded their Operating Expense (OE) account. These activities include routine internal administrative actions, routine maintenance of domestic facilities, and procurement and deployment of information technology software and systems in existing facilities. USAID is planning on incorporating these CEs into a NEPA regulation for all USAID OE-funded actions later this year. The CEs and NEPA regulation will not apply to activities funded by appropriations through the USAID's program accounts or affect the NEPA procedures for those activities in 22 CFR 216, *Environmental Procedures*. Published September 9, 2009. ([74 FR 46413](#)).
- **Armed Forces Retirement Home (AFRH):** AFRH published proposed procedures for implementing NEPA and other environmental laws, regulations, and Executive Orders related to AFRH decisionmaking. Published August 27, 2009 ([74 FR 43649](#)). Comments were due October 1, 2009. ([74 FR 43649](#)).
- **Department of Energy (DOE):** DOE published two variances from certain requirements of their NEPA procedures for American Recovery and Reinvestment Act grant activities.
  - a. One variance applies to \$156 Million in American Recovery and Reinvestment Act grant activities and the funding decisions for combined heat and power systems, district energy systems, waste energy recovery systems, and efficient industrial equipment. Funding decisions will be made without the DOE-prepared environmental critiques, environmental synopses, and supplemental reviews called for in 10 CFR 1021.216(c) through (h). Instead, DOE NEPA Compliance Officers will participate in a Merit Review Board that evaluates environmental questionnaires prepared by prospective grantees. The Merit Review Board will consider environmental effects when selecting potential projects, and continue to prepare EAs and EISs before commencement of activities that could affect the environment. In accordance with 10 CFR 1021.343(c), DOE asserts that this variance is in the interest of public welfare by enabling expeditious completion of Recovery Act projects. Published August 18, 2009 ([74 FR 41693](#)).
  - b. The second variance applies to the \$2 Billion in American Recovery and Reinvestment Act grant activities and the funding decisions for the Electric Drive Vehicle Battery and Component Manufacturing Initiative. Funding decisions will be made without the DOE-prepared environmental critiques, environmental synopses, and supplemental reviews called for in 10 CFR 1021.216(c) through (h). Instead, DOE NEPA Compliance Officers will participate in a Merit Review Board which will consider environmental effects when selecting potential projects, and continue to prepare EAs and EISs before commencement of activities that could affect the environment. In accordance with 10 CFR 1021.343(c), DOE asserts that this variance will

reduce the time needed to process grant applications and is consistent with the requirement for expeditious initiation of Recovery Act activities. Published June 26, 2009. ([74 FR 30558](#)).

- **Corporation for National and Community Service (CNCS):** CNCS published categorical exclusions for CNCS projects and activities that provide funding assistance to existing non-federal programs and projects such as educational programs, community volunteer programs, health care support, housing repair projects, and wildlife conservation programs (many funded under the American Recovery and Reinvestment Act of 2009) that do not have significant effects on the quality of the human environment and therefore should be categorically excluded from more intensive environmental reviews under NEPA. Published July 15, 2009 ([74 FR 34309](#)).
- **Department of Agriculture, Natural Resource Conservation Service (NRCS):** NRCS published categorical exclusions for conservation and watershed rehabilitation activities that address activities, many funded under the American Recovery and Reinvestment Act of 2009, that do not have significant effects on the quality of the human environment and therefore should be categorically excluded from more intensive environmental reviews under NEPA. Published July 13, 2009 ([74 FR 33319](#)).
- **Department of Commerce National Telecommunications and Information Administration (NTIA):** NTIA had no NEPA procedures in place for the Broadband Technology Opportunity Program and published categorical exclusions for broadband deployment activities funded under the American Recovery and Reinvestment Act. NTIA also provided a link to the administrative record for the new categorical exclusions. It is available at: <http://www.nepa.noaa.gov/procedures.html> under “NTIA Broadband Technology Opportunities Program Categorical Exclusions and Administrative Record.” Published for comment on July 9, 2009 ([74 FR 32876](#)) and final published October 13, 2009 ([74 FR 52456](#)).
- **Department of Commerce:** Proposed Categorical Exclusions published for comment May 26, 2009 ([74 FR 24782](#)) and final published July 10, 2009 ([74 FR 33204](#)).
- **National Endowment for the Arts:** Protocol for Categorical Exclusions Supplementing the CEQ NEPA Regulations for Certain American Recovery and Reinvestment Act Projects – published May 6, 2009 ([74 FR 21011](#)).
- **Federal Highway Administration:** Notice of Memorandum of Understanding Assigning Environmental Responsibilities to Alaska. Draft published October 14, 2008, with comments requested by November 28, 2008 ([73 FR 60750](#)). Final signed on September 22, 2009 <http://www.dot.state.ak.us/stwddes/desenviron/index.shtml>.

BACKGROUND: Transportation reauthorization authority at sections 6004 and 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59), allows some states to take the place of FHWA in meeting environmental responsibilities (e.g., coordination and consultation under other federal

environmental laws such as the Endangered Species Act, Clean Water Act, and National Historic Preservation Act) and obligations with regard to categorical exclusions (section 6004) and with regard to broader environmental analyses (section 6005). The Memoranda of Understanding outlining the states roles are at found at <http://www.environment.fhwa.dot.gov/strmlng/index.asp>. California, Utah, and Alaska have section 6004 categorical exclusion authority and California has section 6005 authority.

- **Federal Transit Administration-Federal Highway Administration, Department of Transportation:** Proposed Environmental Impact and Related Procedures – published for comment August 7, 2007 ([72 FR 44038](#)) and published as a final rule on March 24, 2009 ([74 FR 12517](#)).