

National Environmental Policy Act (NEPA) Guidance

Overview

The National Environmental Policy Act (NEPA) of 1969 (Public Law 90-190; 42 U.S.C. § 4371, et seq.) established a national policy to promote the protection and enhancement of the environment. This policy was in response to the growing concerns about the ecological balance and preservation of wildlife in America while meeting the demands of a growing population. This national policy encourages productive harmony between human beings and their environment, promotes efforts to prevent or eliminate damage to the environment and biosphere, stimulates the health and welfare of human beings, and enriches the understanding of ecological systems. NEPA is the basic national charter for protection of the environment. It establishes policy, sets goals, and provides the means for carrying out the policy. NEPA requirements apply to any federal project, decision, or action, including grants, that might have a significant impact on the quality of the human environment.

Authorizing Legislation

National Environmental Policy Act of 1969, as amended at: www.epa.gov/nepa.

Applicable NEPA Regulations

The Department of Justice, Office of Justice Program procedures for the implementation of NEPA can be viewed at [28 CFR, Part 61, including Appendix D](#).

Who is required to act to ensure compliance with NEPA?

There are two major areas where NEPA requires action by BJA grantees:

1. Any BJA grantee with a project involving construction, expansion, renovation, facility planning, site selection, site preparation, and security or facility upgrades. The grantee must be in compliance with NEPA requirements during the initiation of the project-as part of planning, site selection, and site preparation. The BJA grantee must complete the NEPA process prior to actual construction, expansion, renovation, or remodeling (including security upgrades).
2. Any BJA grantee with a project involving the use of chemicals, including clandestine methamphetamine laboratory operations (such as clean up) and the use of chemicals in processing forensic evidence. For projects involving clean up of clandestine methamphetamine labs, BJA has already obtained a program-wide Environmental Assessment (EA). As a result, the grantee must only provide and get approval of a mitigation plan prior to moving forward with the project.

What steps must be taken to be compliant with NEPA?

1. Review your award package and especially any special conditions that provide specific instructions for NEPA compliance.
2. If BJA provides a categorical exclusion, you do not have to take any further action to be in compliance with NEPA.
3. If a categorical exclusion does not apply, prepare a preliminary Environmental Assessment (EA) and submit to the BJA NEPA Coordinator for approval. Provide additional information or clarification as requested.
4. BJA will review and determine whether a draft Finding of No Significant Impact (FONSI) is merited. If issued, provide 30 day public notice.
5. Respond to comments and submit to BJA NEPA Coordinator.
6. BJA will review and issue final FONSI and will issue approval to proceed.
7. If BJA determines that there will be significant impact, an Environmental Impact Statement (EIS) may be needed. BJA will work with the grantee to issue an EIS.

What is a Categorical Exclusion?

Categorical Exclusions may be available for some projects where the NEPA impact is minimal. They are defined by the DOJ regulations to include:

- training programs, research, and gathering statistical data
- minor renovation or remodeling projects that: (1) do not change the basic prior use of the facility; and (2) do not significantly change the size of the facility.

Although these activities are excluded from environmental reviews under NEPA, they are not excluded from compliance with other applicable local, state, or federal environmental laws. In addition, an otherwise excluded activity loses its exclusion and is subject to environmental review if it either would be located within or potentially affect any of the following: a 100-year flood plain, a wetland, important farmland, a proposed or listed endangered or threatened species, a proposed or listed critical habitat, a property that is listed or eligible for listing on the National Register of Historic Places, an area within an approved State Coastal Zone Management Program, a coastal barrier or a portion of a barrier within the Coastal Barrier Resources System, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, a designated or proposed Wilderness Area, or a sole source aquifer recharge area designated by the Environmental Protection Agency (EPA). The resulting environmental review for those activities that lose their exclusion status shall focus on the factor or factors that caused the loss of the exclusion.

What is a Draft Environmental Assessment (EA)?

An EA is an assessment of the need for a project, or proposed action, alternatives to the project/action and the environmental impacts of the proposed and alternative action. The EA is designed to help public officials to make decisions that are based on an understanding of the human and physical environmental consequences of the proposed project and to take actions in the location and design of the project that protect, restore, and enhance the environment. The assessment becomes a concise public document that provides sufficient evidence and analysis for BJA to determine whether to issue a Finding of No Significant Impact (FONSI) or determines the need for an Environmental Impact Statement (EIS). Major renovation or expansion of an existing facility or construction of a new facility would require an environmental assessment, as well as projects involving the use of chemicals.

What is a Finding of No Significant Impact (FONSI)?

BJA reviews all documentation submitted as part of an Environmental Assessment and makes a determination of whether to issue a FONSI, which permits the project to begin. This confirms reasonable alternatives and mitigation measures been considered and implemented where possible, including the costs and resources to operate the facility and that the project as presently conceived will have only insignificant impacts on identified areas of environmental concern.

What is an Environmental Impact Statement (EIS)?

An environmental assessment with a finding of a "significant environmental impact" determines the need for an EIS. The EIS will address the significant impact, the proposed action, alternatives to the proposed action, stress the major conclusions of the action, and all issues to be resolved. An EIS is usually required for proposed construction of a new facility, or expansion of an existing facility. An EIS is usually required for any proposal that is large, complex or controversial because of the nature of the possible environmental impacts. Guidance on how to compile the statement can be viewed in [A Citizen's Guide to the NEPA](#).

What is a mitigation plan for projects involving Clandestine Methamphetamine Laboratory Operations?

Implementation of programs relating to clandestine methamphetamine laboratory operations, including their identification, seizure, or closure, require compliance with NEPA through the preparation of a detailed Mitigation Plan that outlines in detail plans to address the following terms and conditions:

1. The grantee shall ensure compliance by OJP-funded sub-grantees with federal, state, and local environmental, health, and safety laws and regulations applicable to meth lab operations, to include the disposal of the chemicals, equipment, and wastes resulting from those operations.

2. The grantee shall have a Mitigation Plan in place that identifies and documents the processes and points of accountability within its state. This plan will be used to ensure that the adverse environmental, health, and safety impacts delineated in the Assessment are mitigated in a manner consistent with the requirements of this condition.
3. The grantee shall monitor OJP funded meth lab operations to ensure that they comply with the following nine mitigation measures identified in the Assessment and whose implementation is addressed in the grantee's Mitigation Plan. These mitigation measures must be included as special conditions in all sub grants:
 1. Provide medical screening of personnel assigned or to be assigned by the grantee to the seizure or closure of clandestine methamphetamine laboratories;
 2. Provide Occupational Safety and Health Administration (OSHA) required initial and refresher training for law enforcement officials and all other personnel assigned to either the seizure or closure of clandestine methamphetamine laboratories;
 3. As determined by their specified duties, equip the personnel with OSHA required protective wear and other required safety equipment;
 4. Assign properly trained personnel to prepare a comprehensive contamination report on each seized/closed laboratory;
 5. Utilize qualified disposal personnel to remove all chemicals and associated glassware, equipment, and contaminated materials and wastes from the site(s) of each seized laboratory;
 6. Dispose of the chemicals, equipment, and contaminated materials and wastes at properly licensed disposal facilities or, when allowable, at properly licensed recycling facilities;
 7. Monitor the transport, disposal, and recycling components of subparagraphs numbered 5. and 6. immediately above in order to ensure proper compliance;
 8. Have in place and implement a written agreement with the responsible state environmental agency. This agreement must provide that the responsible state environmental agency agrees to
 - timely evaluate the environmental condition at and around the site of a closed clandestine laboratory and
 - coordinate with the responsible party, property owner, or others to ensure that any residual contamination is remediated, if determined necessary by the state environmental agency and in accordance with existing state and federal requirements; and
 9. Have in place and implement a written agreement with the responsible state or local service agencies to properly respond to any minor, as defined by state law, at the site. This agreement must ensure immediate response by qualified personnel who can (i) respond to the potential health needs of any minor at the site; (ii) take that minor into protective custody unless the minor is criminally involved in the meth lab activities or is subject to arrest for other criminal violations; (iii) ensure immediate medical testing for methamphetamine toxicity; and (iv) arrange for any follow-up medical tests, examinations, or health care made necessary as a result of methamphetamine toxicity.

Resources

A NEPA guidance manual is under development. For questions relating to NEPA, please contact the appropriate [BJA State Policy Advisor](#).

For additional information on the closure of Clandestine Methamphetamine Laboratory Operations, consult the Community Oriented Policing guide at <https://cops.usdoj.gov/>.

[The Citizen's Guide to the NEPA](#)

Contact Information

Regional or Local Office: Coordinating with your state can avoid duplication of efforts in complying with both the federal NEPA laws, and any state NEPA laws. Contact your [State Administering Agency](#).

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