

Economic Development Administration Directives System

**Directive No. 17.02-2**  
**Effective Date: 10-14-92**

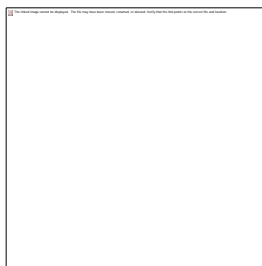
## Transmittal

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**EDA PROGRAM TO IMPLEMENT THE NATIONAL ENVIRONMENTAL  
POLICY ACT OF 1969 AND OTHER FEDERAL  
ENVIRONMENTAL MANDATES AS REQUIRED**

The attached Directive sets forth procedures for processing EDA projects to comply with environmental requirements. It also identifies the functions and responsibilities of the Senior Environmental Specialist and the Regional Environmental Officers. It has been amended to reflect the following changes: the former title Associate Director for Environment has been eliminated and the duties are now being performed by the Senior Environmental Specialist; a more inclusive list of environmental laws; changes due to the increased responsibility of Regional Environmental Officers; and execution of FONSI's by the Regional Directors for projects in their respective regions.

Holders of the EDA Directives System are to remove and destroy Directive 17.02-2 of 8/9/85 (SN-580) and substitute the attached in its place.



Economic Development Administration Directives System

**Directive No. 17.02-2**  
**Effective Date: 10-14-92**

**GENERAL  
ADMINISTRATION  
& STAFF SERVICES**

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**U.S. DEPARTMENT OF COMMERCE**

## ECONOMIC DEVELOPMENT ADMINISTRATION

### EDA PROGRAM TO IMPLEMENT THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 AND OTHER FEDERAL ENVIRONMENTAL MANDATES AS REQUIRED

#### TABLE OF CONTENTS

##### 17.02-2.01. GENERAL

1. The National Environmental Policy Act of 1969 (NEPA).....	1
2. Other Federal Environmental Mandates.....	1
3. The Council on Environmental Quality (CEQ) Regulations.....	3
4. Department of Commerce (DOC) Administrative Orders.....	3
5. EDA Policy on Implementation of the NEPA Process.....	3
6. Use of NEPA Documents by Decision Makers.....	4
7. Applicability.....	4
8. Responsibilities.....	4
8.1 Assistant Secretary for Economic Development.	4
8.2 Deputy Assistant Secretary for Economic Development.....	4
8.3 Director, Compliance Review Division.....	4
8.4 Senior Environmental Specialist.....	4
8.5 All Other Deputy Assistant Secretaries in EDA	6
8.6 Chief Counsel.....	6
8.7 Regional Director.....	6
8.8 Regional Environmental Officer.....	7
8.9 Division Chiefs.....	8
8.10 Regional Counsel.....	9
8.11 Economic Development Representative.....	9
8.12 Applicant.....	9
8.13 EIS Coordinator.....	10
9. Environmental File.....	10

##### 17.02-2.02 CLASSES OF EDA ACTIONS

1. Introduction.....	11
2. Class I, Actions That Normally Do Not Require Either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA).....	12
3. Class II, Actions That Normally Require EAs.....	13
4. Class III, Actions That Normally Require an EIS.....	14
5. Indicators of Significance.....	14

##### 17.02-2.03 ENVIRONMENTAL ANALYSES

1. Information Gathering and Environmental Analysis.....	16
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2. Documentation of Environmental Analysis.....	16
a. Class I, Statement of Exclusion.....	17
b. Class II, Environmental Assessment.....	17
c. Class III, Environmental Impact Statement.....	17
3. Timing.....	18
4. Reevaluation.....	18

17.02-2.04 THE FINDING OF NO SIGNIFICANT IMPACT (FONSI)

1. Definition.....	18
2. Distribution.....	18

17.02-2.05 PLANNING AND PROCESSING ENVIRONMENTAL IMPACT STATEMENTS (EIS)

1. Types of EISs.....	19
2. Stages of EIS Development.....	19
2.1 Preliminary Draft EIS.....	19
2.2 Draft EIS.....	19
2.3 Preliminary Final EIS.....	20
2.4 Final EIS.....	20
2.5 Supplemental EIS.....	20
2.6 Additional Information.....	20
3. Timing and Planning of the EIS.....	21
3.1 Sequence of Timing.....	21
3.2 Timing.....	21
3.3 Early Planning.....	21
3.4 Notice of Intent.....	22
3.5 Initiating the Scoping Process.....	22
3.6 How to Hold a Scoping Meeting.....	22
3.7 Completing the Scoping Process.....	23
4. Content of EISs.....	23
4.1 Preliminary Draft EIS and Preliminary Final EIS.....	23
4.2 The Final EIS.....	23
4.3 Preparation of Supplemental Draft or Final EIS.....	24
5. Processing an EIS.....	25
5.1 EIS Coordinator Review of Preliminary Draft EIS.....	25
5.2 Program Area Review of Preliminary Draft EIS..	25
5.3 Senior Environmental Specialist Review of Preliminary Draft EIS.....	25
5.4 Draft EIS.....	25
5.5 Preliminary Final EIS and Final EIS.....	25
5.6 Limits on Administrative Actions.....	26
5.7 Record of Decision.....	26

## 17.02-2.06 PUBLIC INFORMATION AND INVOLVEMENT

1. Requirement.....	27
2. Input to the Environmental Assessment (EA).....	27
3. Review of the Finding of No Significant Impact (FONSI).	27
4. Notice of Intent.....	27
5. List of Interested Groups.....	27
6. Distribution and Review of the Draft Environmental Impact Statement (EIS).....	27
7. EIS Availability.....	28
8. Distribution and Review of Final EIS.....	29
9. Record of Decision.....	29
10. Public Hearings.....	29
11. Public Contact.....	31
12. Other Public Notice.....	31
13. Effect on Other Directives.....	31

### LIST OF EXHIBITS

1. Environmental Checklist.....	EXHIBIT A
2. NEPA in EDA Planning Process.....	EXHIBIT B
<a href="#">3. Sample Finding of No Significant Impact.....</a>	<a href="#">EXHIBIT C</a>
4. Sequence of Actions Related to EIS Preparation...	EXHIBIT D
5. Economic Development Representative's Assurance..	EXHIBIT E

### **17.02-2.01**

#### **GENERAL**

1. The National Environmental Policy Act of 1969 (NEPA)  
(PL 91-190) 42 USC § 4321 et seq.

Section 102 of NEPA directs all Federal agencies to the fullest extent possible: (1) to use a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making which may have an impact on man's environment; (2) to identify and develop methods and procedures which will ensure that presently unqualified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations; and (3) to include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official which includes:

- a. The environmental impact of the proposed action;
- b. Any adverse environmental effects which cannot be avoided should the proposal be implemented;
- c. Alternatives to the proposed action;

d. The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

e. Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

2. Other Federal Environmental Mandates to be considered include, but are not limited to:

a. American Indian Religious Freedom Act (PL 96-341)  
42 USC § 1996

b. Archeological and Historic Preservation Act (PL 93-291)  
16 USC § 469

c. Clean Air Act (PL 88-206, as amended) 42 USC § 7401 et seq

d. Clean Water Act (Federal Water Pollution Control Act) (PL 92-500, as amended) 35 USC § 1251 et seq

e. Coastal Barrier Resources Act (PL 97-348)  
16 USC § 3501 et seq

f. Coastal Zone Management Act (PL 92-583, as amended)  
16 USC § 1451 et seq

g. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (PL 96-510, as amended)  
42 USC § 9601 et seq

h. Endangered Species Act (PL 93-205, as amended)  
16 USC § 1531 et seq

i. Environmental Quality Improvement Act of 1970  
(PL 91-224, as amended) 42 USC § 4371-4374

j. Executive Order 12088, Federal Compliance with Pollution Control Standards

k. Executive Order 12372, Intergovernmental Review of Federal Programs, as amended

l. Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended

m. Executive Order 11593, Protection and Enhancement of the Cultural Environment

n. Executive Order 11988, Floodplain Management

o. Executive Order 11990, Protection of Wetlands

- p. Farmland Protection Policy Act (PL 97-98)
- q. Fish and Wildlife Coordination Act (PL 92-522, as amended) 16 USC § 661 et seq
- r. Marine Protection, Research, and Sanctuaries Act of 1972 (92 PL-532, as amended) 16 USC 1437 et seq
- s. Marine Sanctuaries Amendments of 1984 (PL 98-498, as amended) 16 USC 1431 et seq
- t. National Historic Preservation Act of 1966 (PL 89-665, as amended) and the Advisory Council on Historic Preservation Guidelines 16 USC § 470 et seq
- u. Noise Control Act (PL 92-574, as amended)  
42 USC § 4911 et seq
- v. Pollution Prevention Act of 1990 (PL 101-508)  
42 USC § 13101, 13101 note, 13102 to 13109
- w. Resource Conservation and Recovery Act of 1976 (PL 94-580, as amended) 42 USC § 6901 et seq
- x. Safe Drinking Water Act (PL 93-523, as amended)  
42 USC § 300f
- y. Superfund Amendments and Reauthorization Act of 1986 (PL 99-499)
- z. Toxic Substances Control Act (PL 94-469)  
15 USC § 2601 et seq
- aa. Wild and Scenic Rivers Act (PL 90-542, as amended)

### 3. The Council on Environmental Quality (CEQ) Regulations.

CEQ issued regulations at 40 CFR Parts 1500-1508 under the authority of NEPA and Executive Order 11514 as amended by Executive Order 11991. The CEQ Regulations, which apply to all Federal agencies, further describe how Federal agencies shall comply with NEPA.

### 4. Department of Commerce (DOC) Administrative Orders.

a. DOC Administrative Order 216-6 mandates how the DOC shall comply with NEPA and the CEQ Regulations.

b. DOC Administrative Order 216-17 mandates how DOC will comply with environmental pollution standards.

### 5. EDA Policy on Implementation of the NEPA Process.

It is the policy of EDA to assure, through the procedures set forth in this Directive, that proper environmental review of program activities takes place, that there is a proper balance between the goals of economic development and environmental enhancement, and that adverse environmental impacts are mitigated or avoided to the extent possible.

This Directive shall be implemented in conjunction with EDA's Directive 17.04, the EDA Program to Implement Executive Orders 11988 and 11990, "Floodplain Management" and "Protection of Wetlands," and EDA Directive 17.01, the EDA Program to Reduce the Risk of Hazardous Waste Liability.

#### 6. Use of NEPA Documents by Decision Makers.

a. Environmental documents (environmental assessments, categorical exclusions, notices of intent, findings of no significant impact and environmental impact statements) and the comments and responses that have been made on the documents shall accompany the proposed action through Agency review.

b. Responsible officials (see Section 7) shall use the environmental documents when deciding whether to offer assistance and when weighing the proposed action against alternatives to the proposed action. Those alternatives considered by the responsible officials shall be discussed in the environmental documents.

c. The responsible official shall consider all alternatives covered in the environmental documents.

#### 7. Applicability.

This Directive is applicable to all EDA actions at both headquarters and regional offices, and implements NEPA including the CEQ Regulations, DAO 216-6, and DAO 216-17.

#### 8. Responsibilities.

##### 8.1 Assistant Secretary for Economic Development.

a. Ensures the proper balance between economic development and environmental protection;

b. Ensures that EDA policies and programs reflect appropriate consideration of environmental values; and

c. Issues Records of Decisions for environmental impact statements.

##### 8.2 Deputy Assistant Secretary for Economic Development.

Acts in absence of Assistant Secretary for Economic Development.

##### 8.3 Director, Compliance Review Division.

a. Serves as mediator on conflicts between program missions and the attainment of environmental goals; and

b. Provides policy direction to the EDA environmental program.

#### 8.4 Senior Environmental Specialist.

a. Acts as principal advisor and decision maker on environmental affairs to the Assistant Secretary;

b. Serves as the responsible Agency official under the CEQ Regulations (40 CFR § 1507.2(a));

c. Serves as the responsible Agency official under the Advisory Council on Historic Preservation's "Regulations for the Protection of Historic and Cultural Properties," hereafter referred to as the "Advisory Council's Regulations";

d. Advises the Assistant Secretary for Economic Development on the adequacy of EAs, EISs and all other environmental documents;

e. Develops and recommends to the Assistant Secretary Agency procedures for complying with other environmental legislation, Executive Orders, and regulations;

f. Reviews EDA's activities and program involvements, and recommends approval, disapproval, or modification by the Assistant Secretary based upon the balancing of anticipated beneficial or adverse environmental impacts against the anticipated economic benefits of the project, and upon the fulfillment of the requirements of this Directive;

g. Develops controls for avoiding or mitigating adverse environmental impacts and monitors and ensures their implementation;

h. Coordinates EDA's environmental program with the environmental programs of local, state and other Federal agencies that become involved with EDA activities;

i. Represents the Assistant Secretary at conferences, meetings, and public hearings, and on interagency committees dealing with environmental matters;

j. Maintains liaison on environmental matters with interested public groups and local, state and other Federal agencies;

k. Reviews and evaluates legislative and administrative proposals for environmental concerns;

l. Assists in resolving questions of lead agency determinations;

m. Provides guidance in addressing environmental issues which surface after project approval;

n. Provides policy guidance and training for the regional office staff;



- o. Monitors and audits EDA's performance in carrying out its responsibilities under this Directive;
- p. Performs such other assignments of a policy, administrative, or operational nature as requested by the Assistant Secretary for Economic Development;
- q. Acts as Environmental Coordinator for programmatic and legislative issues and EIS's prepared at the Headquarters office;
- r. Coordinates EDA review of EISs prepared by other agencies in accordance with DAO 216-6;
- s. Files draft, final and supplemental EISs prepared by EDA with EPA and other public and private parties in accordance with CEQ regulations and DAO 216-6; and
- t. Serves as the responsible official for EDA activities which adversely affect National Register-eligible properties and signs Memoranda of Agreement in accordance with the Advisory Council's Regulations.

#### 8.5 All Other Deputy Assistant Secretaries in EDA.

- a. Ensure that programs under their direction reflect the proper balance between economic development and environmental enhancement as determined by the Assistant Secretary; and
- b. Ensure that their programs reflect positive and appropriate considerations of environmental values.

#### 8.6 Chief Counsel.

- a. Determines legal adequacy of environmental documentation and compliance; and
- b. Assists the Senior Environmental Specialist in the review of special conditions for the mitigation of adverse environmental impacts.

#### 8.7 Regional Director.

- a. Executes findings of no significant impact (FONSI) after consideration of an environmental assessment and the recommendation of EDA's Regional Environmental Officer (REO);
- b. Refers conflicts with the REO to the Director, Compliance Review Division, through the Senior Environmental Specialist, for resolution; and
- c. Reports to the Assistant Secretary for Economic Development instances where someone other than the REO, or someone on the REO's staff, exercises duties of the REO. The reports shall specifically state the circumstances requiring such substitutions.

#### 8.8 Regional Environmental Officer.

- a. Acts as principal advisor on environmental matters to the Regional Director and assists the Regional Director in the development of a regional strategy that is consistent with EDA's environmental program;
- b. For all regional office actions, is responsible for environmental impact determinations, the necessity for environmental impact statements, and the preparation of all other environmental documentation;
- c. Reviews environmental documentation and EISs prepared by other agencies and transmits comments to the Senior Environmental Specialist;
- d. Reviews on a project-by-project basis the regional office's program activities, and recommends project approval, modification, or disapproval by the Regional Director based upon the balancing of anticipated beneficial or adverse environmental impacts against the anticipated economic benefits of the project, and in fulfilling of this Directive's requirements;
- e. Represents the Regional Director at conferences and meetings dealing with environmental matters of a regional office nature;
- f. Maintains liaison on regional office environmental matters with interested public groups and local, state, and other Federal agencies;
- g. Reviews and evaluates proposals in terms of their environmental impact at the request of the Regional Director;
- h. Develops and recommends controls for avoiding or mitigating adverse environmental impacts and monitors their implementation;
- i. Provides assistance in resolving post-approval environmental matters at the regional office level;
- j. Maintains records management system for those actions required by this Directive;
- k. Provides guidance and training to regional office staff, including Economic Development Representatives, on the requirements of this Directive;
- l. Performs other assignments of an administrative or operational nature that may be requested by the Regional Director or the Senior Environmental Specialist;
- m. Coordinates with the State Historic Preservation Officer (SHPO) all actions that may have a potential effect on cultural resources;
- n. For actions affecting cultural resources, formulates mitigation measures in consultation with the SHPO and submits a request to the Advisory Council on Historic Preservation (ACHP) for its review and comment;

o. Consults with the Senior Environmental Specialist concerning mitigation measures if there is disagreement with the SHPO, the ACHP, the applicant, or another affected Federal agency;

p. For projects adversely affecting cultural resources, submits information to the Senior Environmental Specialist for further coordination with the ACHP;

q. Submits requests to the Keeper of the National Register of Historic Places for determinations of eligibility;

r. Reviews all initial Overall Economic Development Plans (OEDP) for new district designations to ensure environmental compliance with OEDP Guidelines and makes recommendations on annual OEDP long range environmental planning.

#### 8.9 Division Chiefs.

a. Assure timely submission of initial and follow-up information to REO;

b. Notify REO of preapplication conferences;

c. Identify and consider alternatives to proposed actions;

d. Assure timely compliance with NEPA requirements in project processing;

e. Assure that mitigation measures are implemented; and

f. Inform REO of any substantive changes in the proposed action of significant new information that becomes available concerning potential environmental impacts.

#### 8.10 Regional Counsel.

a. Determines legal adequacy of environmental documentation and compliance; and

b. Assists the REO in the review of special conditions for the mitigation of adverse environmental impacts.

#### 8.11 Economic Development Representative.

a. Informs applicants of EDA environmental requirements;

b. Assists applicants in properly responding to environmental questions in the application before it is submitted to EDA;

c. Assists REO by providing requested information;

d. Assures that the environmental portion of the application has been completed; and

e. Submits written verification of site visits, the nature of environmental issues or controversies, and the accuracy of applicant's environmental assessments.

#### 8.12 Applicant.

a. Provides environmental information requested in the application and needed for Agency review, at the earliest possible time;

b. Shall pay particular attention to the need to assess the cumulative impacts of the total proposal (40 C.F.R. 1508.7);

c. For public works projects, meets requirements of Executive Order 12372 and submits comments to regional office;

d. Initiates compliance with Section 106 of the National Historic Preservation Act of 1966, by submitting appropriate information to the SHPO, at the earliest possible time.

#### 8.13 EIS Coordinator.

For EIS's prepared by EDA as either the lead or the joint-lead NEPA agency, or in cooperation with another agency (cooperating agency), the Senior Environmental Specialist (or a delegated REO) shall assume the role of the EIS Coordinator. The responsibilities of the EIS Coordinator are to:

a. Act as EDA point of contact for all sections relating to the EIS;

b. Arrange for the preparation and publication of all notices;

c. Develop the scope of work for the EIS;

d. Arrange with the funding program (technical assistance, public works for step one grants, etc.) officer for the preparation and distribution of requests for proposals for EISs to be prepared under contracts;

e. Review the contractors' proposals and make the selection of a contractor;

f. Supervise the contractor on the day-to-day development of the EIS;

g. Review and comment on the contractor's EIS work;

h. Coordinate with any interested or affected parties;

i. Chair public meetings and hearings; and

j. Assure that EIS requirements of NEPA, the CEQ Regulations, DAO 216-6 and this Directive are met.

For EISs in which EDA is a cooperating agency, the EIS coordinator responsibilities may include all of the above responsibilities, but shall as a minimum include items a, c, e, g, and j above. In addition, the EIS Coordinator shall attend all meetings and hearings relating to the EIS.

#### 9. Environmental File.

EDA shall prepare an environmental file for each project as part of the official project file which shall contain the following, as appropriate:

- a. The Economic Development Representative's signed assurance as required in paragraph 8.11e (see Exhibit E);
- b. Comments per Executive Order 12372 from the appropriate state and area wide clearinghouses, including all supplemental comments made by reviewing agencies;
- c. Comments, permits and documents of an environmental nature from Federal agencies, nonFederal or private organizations, or interested individuals;
- d. The completed environmental assessment and impact determination;
- e. Where required, draft, final or supplemental environmental impact statement, and the record of decision;
- f. For projects requiring an environmental impact statement and the Assistant Secretary's approval, the Senior Environmental Specialist's review and certification that the requirements of this Directive have been met and a recommendation for approval or disapproval to the Assistant Secretary based on a balancing between the goals of economic development and environmental enhancement;
- g. Copies of minutes, recordings or transcripts of any public meetings or hearings;
- h. Copies of any environmental notices;
- i. Findings required under EDA Directive 17.04 for actions affecting floodplains or wetlands;
- j. Other documents as referenced or incorporated in the EDA environmental assessment; and
- k. Other findings as may be required by those mandates listed in Chapter 1, Section 1.

#### **17.02-2.02**

#### **CLASSES OF EDA ACTIONS**

##### **1. Introduction.**

All EDA actions shall receive appropriate environmental review. The extent of the environmental review will depend upon the conditions present in each case. All reviews shall

consider, in addition to the primary impacts resulting from a proposed action, secondary and cumulative impacts. The classes of EDA actions (Sections 2 through 4) and indicators of significance (Section 5) are listed below. The indicators shall be used as a part of the review process to help determine the level of review that is necessary. Except for those actions that are categorically excluded from the requirement to prepare an EIS or EA (paragraph 2) the range of appropriate review runs from completion of an Environmental Checklist to preparation of a final EIS and record of decision.

## 2. Class I, Actions That Normally Do Not Require Either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA).

The actions in subparagraphs a through l below are categorically excluded from the requirement to prepare an EIS or an EA under normal circumstances. During the application review process the REO shall document the file to reflect the fact that the action qualifies for the exclusion and shall be alert to unusual conditions that would require an EIS or an EA. A project categorically excluded from compliance with NEPA under this section may still require full compliance with EDA

Directive 17.04. The following economic assistance actions are categorically excluded because Agency experience has shown that they do not significantly affect the quality of the human environment.

- a. Loans or loan guarantees for working capital (the purpose of which is to provide for the continuation of existing operations).
- b. Interest subsidy for existing loans and/or actions covered in this exclusion.
- c. Loans and loan guarantees to restructure debt.
- d. Acquisition of machinery and equipment (M&E) unless these require applications for or amendments to existing air, water or solid waste permits.
- e. Additional funds to cover cost overruns for previously EDA-funded and environmentally-assessed activity.
- f. Weatherization of nonhistoric activity.
- g. Repairs to plant and equipment, or replacement-in-kind of utilities and infrastructure on facilities currently operating under permit compliance.
- h. Environmental monitoring.
- i. 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.

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

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

l. Procurement contracts for EISs, EAs, office space, supplies, etc.

### 3. Class II, Actions That Normally Require EAs.

An EA shall normally be prepared for these actions to determine if an EIS is necessary:

a. Any action located in or potentially affecting the values and functions of a floodplain or wetland;

b. Any action affecting cultural resources either listed on or eligible for the National Register of Historic Places, unless excluded by this Directive or a programmatic Memorandum of Agreement with the ACHP;

c. New infrastructure such as roads, waterlines, or sewer lines;

d. Actions that may affect prime farmlands;

e. Actions that result in changes in land use;

f. Activities related to development of tourism or recreational facilities;

g. Any action which involves the generation, development, manufacture, transportation, storage, disposal, procurement, reprocessing, recycling, or use of toxic or hazardous materials;

h. Feasibility studies for the development of energy facilities or depletable natural resources; or

i. All other Agency program actions not otherwise excluded (Class I) or normally requiring an EIS (Class III).

### 4. Class III, Actions That Normally Require an EIS.

The actions in a through c, normally require the preparation of an EIS because they either meet the indicators of significance, they are required by other Agency Directives, or experience has shown that significant impacts are normally associated with such actions.

a. Construction of a critical action within the boundaries of a critical action floodplain, as defined by EDA Directive 17.04.

b. Construction of nonfunctionally dependent activities located in wetlands (a functionally-dependent use is one which

cannot perform its intended purpose unless it is located or carried out in close proximity to water).

c. Regional or multicounty water or sewer systems.

## 5. Indicators of Significance.

Classes I and III were established in part on the indicators of significance. The determination of whether Class II actions require an EIS or a lesser form of environmental review shall be made based on the following indicators and be consistent with the definition of significant as promulgated in Section 1508.27, Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA. This Directive does not arbitrarily establish the number of indicators of significance that must be exceeded before an EIS is required on an action, because each proposed action must be evaluated on a case-by-case basis. However, normally if two or more of the indicators are exceeded, an EIS is required. It is possible that exceeding any one of the following single indicators may trigger the necessity for an EIS.

a. Traffic generated by the action would represent a 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.

b. 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.

c. The proposed project, its contractors, or final solid waste disposal site(s) will not be in compliance with the EPA's "Solid Waste Management 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.

d. 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.

e. The action is located on or near an active geological fault or unique geological features.

f. 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.

g. The proposed project will not be compatible with the present land use character of the specific site or affected area.



- h. The proposed action may adversely affect an endangered or threatened species or its habitat.
- i. The proposed action may adversely affect or be located in parklands, floodplains, wetlands, wild and scenic rivers, or other ecologically critical areas.
- j. The proposed action will result in the handling of a significant amount of toxic, hazardous, or radioactive materials.
- k. Archeological or cultural resources on or potentially eligible for listing on the National Register will be adversely affected by the proposed action.
- l. Local community service agencies indicate that one or more community services will be inadequate to serve the project.
- m. 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.
- n. 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.
- o. The proposed project has generated an environmental controversy on a local, state, or national level, whether due to factors mentioned in a through n above, or for other reasons of an environmental nature.
- p. The proposed project will be located on or adjacent to an active or abandoned toxic, hazardous or radioactive site or waste disposal facility.
- q. The proposed action will result in the displacement or relocation of numerous businesses, residences, or farm operations.

### **17.02-2.03**

#### **ENVIRONMENTAL ANALYSES**

##### **1. Information Gathering and Environmental Analysis.**

The type and amount of information gathered and the level of environmental analysis to be conducted will vary depending upon the type and scope of the proposed action, its alternatives, and the environmental setting. The methodologies used for this process vary from the general, nonquantitative to specific and quantitative. The responsible official must be sensitive to the advantages and shortcomings of each methodology as well as the level of analysis required for each proposed action. For these reasons, no one methodology is required.

##### **2. Documentation of Environmental Analysis.**

The type and amount of documentation necessary for environmental analysis will vary with each individual action. Chapter II identifies EDA actions that require environmental analysis and classifies them according to the level of analysis required. EDA environmental analysis is normally documented in one of the following formats:

a. Class I, Statement of Exclusion.

For those projects identified as Class I actions, Categorical Exclusions, a finding will be made by the Agency environmental official and entered in the project folder. Such findings will include other environmental findings as appropriate (i.e., EDA Directive 17.04). All documentation is to be maintained in the environmental file.

b. Class II, Environmental Assessment (EA).

(1) The EA is an important document in the decision making process because it is used with other technical and economic studies as a basis for decisions by the responsible Agency officials. It is a public document and it may be entered as evidence to support decisions in hearings and court actions. Therefore, the EA shall disclose all pertinent information. It shall discuss the need for a proposal and the environmental impacts that may result from the proposal and any alternatives being considered. An EA is prepared for all Class II actions and may be prepared for Class I or Class III actions (Chapter 2.2). EA's vary in scope, length and content in accordance to the severity of potential environmental impacts.

(2) The first step in the environmental analysis shall be the completion of the Environmental Checklist (ED-538), Exhibit A. The checklist directs and organizes areas of study in the initial stages of the NEPA process.

The checklist shall be completed in consultation with appropriate technical specialists and the applicant or their representatives, as necessary. All background information shall be attached to the checklist or referenced in an attachment to the checklist to support the findings.

Upon completion of the checklist, the Agency environmental official will determine the need for more advanced environmental analysis or the preparation of a Finding of No Significant Impact (FONSI).

When the checklist accompanied by a FONSI is utilized as the final documentation of Agency NEPA compliance, all documents, reports, materials, etc., used in completing the checklist become part of the environmental project file.

(3) The EA is intended to be a brief analysis that provides sufficient evidence for determining whether to prepare an EIS or a FONSI. It is up to the discretion of the Agency environmental official to determine the extent of documentation needed beyond the ED-538. The EA may also be used as evidence of compliance with NEPA when no EIS is necessary, and to facilitate preparation of an EIS when one is necessary.

c. Class III, Environmental Impact Statement (EIS).

The EIS shall be prepared to meet the requirements of the CEQ Regulations, DAO 216-6 and this Directive. It shall meet the requirements of Chapter 5.5 of this Directive.

### 3. Timing.

Preparation of the documentation of environmental impacts shall begin immediately after the initial indication that assistance may be requested from EDA. Exhibit B illustrates how NEPA compliance fits into the EDA process.

### 4. Reevaluation.

a. As the project develops through the various Agency decision points, all environmental considerations shall be periodically reevaluated by the appropriate Agency environmental official. Reevaluations are necessary because new relevant information may be developed or becomes available as an action proceeds. Other reevaluations shall be made as deemed necessary by the responsible official.

b. A reevaluation can be documented by anything from a new signature and date on an EA to the preparation of a new EA or an EIS.

## **17.02-2.04**

### **THE FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

#### 1. Definition.

A Finding of No Significant Impact (FONSI), Exhibit C, is a document briefly presenting the reasons why an administrative decision is being made based upon the EA that the proposed action is not considered a major Federal action having a significant impact on the quality of human environment and, therefore, not requiring the preparation of an EIS. As necessary, other findings such as those required by EDA Directive 17.04, shall be incorporated into the FONSI to reduce paperwork.

#### 2. Distribution.

The FONSI shall be made available to the public in accordance with CEQ Regulations [1501.4(e)(1) and (2)] and DAO 216-6. The FONSI shall be placed in the official project file.

## **17.02-2.05**

### **PLANNING AND PROCESSING ENVIRONMENTAL IMPACT STATEMENTS (EISs)**

#### 1. Types of EISs.

There are three types of EISs that are likely to be prepared by EDA. They are:

##### a. Project.

Most EISs are prepared to assess the impacts from a single action proposed for funding by EDA.

## b. Program.

Programmatic EISs cover actions which have relevant similarities, such as common timing, impacts, alterations, methods of implementation, or subject matter. They may evaluate new or existing programs or actions which have few known specifics and scopes which are difficult to determine. An example of this in EDA would be applications to support actions which result in the same types of environmental impact such as small scale alcohol plants.

## c. Legislation.

EISs on legislative proposals are required when EDA develops or provides significant cooperation or support to any proposed legislation which would result in significant impacts on the human environment. Legislative EISs shall meet the requirements of DAO 216-6.

## 2. Stages of EIS Development.

An EIS is developed in several stages. They follow the following sequence.

### 2.1 Preliminary Draft EIS.

The preliminary draft EIS is a working draft circulated for internal EDA review and, as appropriate, to cooperating agencies. It meets, subject to review, all the requirements of a draft EIS.

### 2.2 Draft EIS (DEIS).

The DEIS is prepared in accordance with the scope decided upon in the scoping process. It identifies and analyzes the anticipated environmental impacts of a proposed action and its alternatives and discusses how the adverse impacts will be mitigated. It includes comments of cooperating agencies as appropriate. The DEIS must fulfill and satisfy to the extent possible the requirements of a final environmental impact statement (FEIS). It is filed with EPA and circulated to appropriate parties in accordance with CEQ Regulations.

### 2.3 Preliminary Final EIS.

The preliminary final EIS is a working document circulated for internal EDA review and, as appropriate, to cooperating agencies. It meets, subject to review, all the requirements of an FEIS. It also includes comments received during review of the DEIS.

### 2.4 Final EIS.

The FEIS is based on the DEIS and contains the Agency's response to comments received on the DEIS. The FEIS is circulated for public review and comment in accordance with CEQ Regulations.

### 2.5 Supplemental EIS.

A supplemental EIS is subject to the same requirements as a draft or final EIS. Supplements to draft or final EISs shall be prepared if:

"(i) There are substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (1502.9 (c) (1))."

## 2.6 Additional Information.

Additional information addressing environmental concerns pertinent to a particular project (updated noise, air quality, historic, public or employee health studies or data, etc.) may be made available to the public at any time during the EIS process. Such information may have a direct bearing on project impacts and would fulfill EDA's duty to disclose relevant project information. It does not result in a substantial change in the scope of the project or reveal new information which would result in substantial changes in environmental impacts resulting from the project as proposed. Should the information or data result in either condition referenced above, see supplemental EIS section.

Additional information shall be:

- a. Sent to the EPA regional office;
- b. Filed with the Office of Environmental Review as the official repository for NEPA documents;
- c. Filed with the REO for appropriate distribution;
- d. Filed with the Senior Environmental Specialist;
- e. Mailed to all recipients of the draft or final EIS;
- f. Included in the public record used by the decision maker; and
- g. Made available in selected locations with the draft and final EIS for public inspection.

## 3. Timing and Planning of the EIS.

### 3.1 Sequence of timing.

Exhibit D presents the timing-sequence of action related to EIS preparation. It indicates the sequence of appropriate actions that must be taken in order to facilitate preparation of the EIS.

### 3.2 Timing.

40 CFR Section 1502.5 of the CEQ Regulations requires:

"An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (Sec. 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decision making process and will not be used to rationalize or justify decisions already made. . ."

### 3.3 Early Planning.

Immediately after an environmental assessment has been prepared on an action and a determination has been made that the action is a major Federal action significantly affecting the quality of human environment, the Regional Environmental Officer shall contact the Senior Environmental Specialist, who will designate the EIS coordinator.

### 3.4 Notice of Intent.

a. A Notice of Intent to prepare an EIS shall be prepared for publication in the Federal Register. For actions subject to EO 12372, notification under this procedure will include the statement that an EIS will be prepared.

b. The notice shall:

(1) Briefly describe the proposed action and alternatives;

(2) Include the name and address of the responsible Agency official, and

(3) Request written comments regarding the scope of the EIS, if a scoping meeting is not planned (see paragraph 4.6 below).

c. The Notice of Intent will be submitted to the Federal Register by the Senior Environmental Specialist.

### 3.5 Initiating the Scoping Process.

Scoping is a process by which other Federal agencies, the public and the applicant are invited, through meetings or correspondence, to identify the significant issues to be addressed in assessing the proposed action and alternatives. Conversely this process also identifies those issues or impact areas to be given nominal attention in the EIS.

a. As soon as possible after, or concurrent with, the publication of the Notice of Intent in the Federal Register, the EIS Coordinator shall begin the scoping process. The scoping process shall be accomplished in accordance with the CEQ Regulations and EO 12372.

b. The public involvement requirements listed in 40 CFR Section 1506.6(b) of the Regulations shall be considered by the EIS Coordinator as the means to inform the public about the scoping process.

c. The Environmental Protection Agency, the EO 12372 single point of contact, the local planning authority, the SHPO, the applicant, and other interested parties with identified interests in the project shall always be informed about the scoping meeting.

### 3.6 How to Hold a Scoping Meeting.

Scoping meetings shall conform to the following conditions:

a. The meeting shall be opened by the EIS Coordinator or appropriate EDA official who will act as moderator with a brief presentation on the proposed action.

b. The meeting shall not be used as a forum to debate the merits of the proposed action.

c. The interested participants shall be asked to register by mail or in person for an opportunity to make a presentation at the meeting. They shall be allowed to speak in the order of registration and shall be followed by those who have not registered.

d. A time limit, not to exceed ten minutes, shall be established for each oral presentation. (This condition may be modified by the moderator of the meeting.)

e. Written comments shall be accepted for incorporation into the record at the meeting and for ten workdays following the meeting.

f. A verbatim transcript or recording of the meeting shall be made a part of the administrative record and be available to the public for review or purchase at cost.

### 3.7 Completing the Scoping Process.

The scoping process shall be considered complete when the provisions of 40 CFR Section 1501.7(a) (2) through 1501.7(a) (7) of the CEQ Regulations have been accomplished.

## 4. Content of EISs.

### 4.1 Preliminary Draft EIS and Preliminary Final EIS.

A detailed document which identifies and analyzes the anticipated environmental impacts of a proposed action and its alternatives and discusses how the adverse effects will be mitigated, are internal working documents which after review result in draft or final EISs.

## 4.2 The Final EIS.

The FEIS shall reflect the data and substantive comments submitted on the DEIS by other Federal agencies, state and local officials, individuals and groups and the EDA responses to those comments.

a. If changes in response to comments are minor and are confined to factual corrections and explanations as to why the comments do not require further Agency response, the FEIS circulated to the EPA regional offices and the public shall be composed of:

- (1) A new cover sheet;
- (2) Errata sheets;
- (3) Comments received on the DEIS; and
- (4) Responses to the comments.

The five copies filed with the EPA Office of Environmental Review shall be affixed to copies of the DEIS.

There exists a subtle but significant difference between "circulating" and "filing" an EIS. Statements are filed with the EPA Office of Environmental Review, as an official repository, and circulated to the public and EPA regional offices.

b. If changes in the DEIS exceed the conditions in Section 4.2a, above, the following requirements apply to the FEIS:

(1) Changes and additions to the text of the DEIS shall be marked by a vertical line in the margin, unless the FEIS differs substantially from the DEIS;

(2) Where opposing professional views and responsible opinions have been overlooked in the DEIS and are then brought to the Agency's attention, the action should be reviewed and a meaningful reference made in the FEIS to opposing views as well as EDA's position on the issues raised;

(3) All substantive comments received on the DEIS (or summaries thereof when comments have been exceptionally voluminous) shall be addressed in the FEIS. All comments whether or not they are considered to merit individual discussion in the text of the statement shall be attached to the FEIS; and

(4) Where appropriate, substantive comments on the DEIS should be correlated to the text of the FEIS by placing a page or section number in the margin of the comment designating the location of the proper response.

## 4.3 Preparation of Supplemental Draft or Final EISs.



a. Responsible EDA program officials shall be familiar with any substantive changes in the proposed action or significant new information that becomes available concerning potential environmental impacts. These circumstances shall be evaluated by the Senior Environmental Specialist to determine if a supplemental draft or final EIS is required.

b. If a supplemental EIS is required it shall be prepared, processed, and circulated for public review in the same manner as a draft or final EIS.

## 5. Processing an EIS.

### 5.1 EIS Coordinator Review of Preliminary DEIS.

The EIS Coordinator shall review Preliminary DEISs for content, scope, and accuracy of presentation. The EIS Coordinator shall forward the Preliminary DEIS to the Senior Environmental Specialist and any cooperating agencies for their review.

### 5.2 Program Area Review of Preliminary DEIS.

Responsible officials in the program area shall review the Preliminary DEIS with special attention to the validity and adequacy of project information.

### 5.3 Senior Environmental Specialist Review of Preliminary DEIS.

All comments made by the Senior Environmental Specialist shall be incorporated in the DEIS. Those not incorporated shall be resolved by the Senior Environmental Specialist prior to publication. If no comments are made within ten (10) work days of receipt, it can be assumed the Senior Environmental Specialist has no comments to make.

### 5.4 DEIS.

The EIS Coordinator assures that comments made on the Preliminary DEIS have been incorporated into the DEIS. If this has been done, the Senior Environmental Specialist shall proceed with publication in the Federal Register and circulation in accordance with this Directive.

### 5.5 Preliminary FEIS and FEIS.

Preliminary FEISs and FEISs shall be processed in the same manner as Preliminary DEISs and DEISs, respectively.

### 5.6 Limits on Administrative Actions.

No final decision shall be made on a project until the latter of the following dates:

(1) Ninety calendar days following publication of the notice of availability of the DEIS in the Federal Register;

(2) Thirty calendar days after publication of the notice of availability of the FEIS in the Federal Register; and

(3) The time when the record of decision has been prepared, signed and made available to the public.

#### 5.7 Record of Decision.

The record of decision shall:

a. Be signed by the Assistant Secretary only after the 30 day review period for the FEIS. The record of decision may be incorporated into the EDA Form ED-506 (Action Memorandum);

b. State what the decision was;

c. Identify all alternatives considered by the Agency in reaching its decision and specify the alternative or alternatives which were considered to be environmentally preferable. It may discuss preferences among alternatives based on relevant factors including environmental, economic and technical considerations and Agency statutory missions. The record of decision shall identify and discuss all such factors including any essential considerations of national policy which were considered by the Agency in making its decision and state how those considerations entered into its decision;

d. State whether all practicable means to avoid or minimize adverse environmental impacts from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation; and

e. Be accompanied by a copy of the final or supplemental EIS, as appropriate.

#### **17.02-2.06**

#### **PUBLIC INFORMATION AND INVOLVEMENT**

##### **1. Requirement.**

The National Environmental Policy Act and CEQ Regulations require that the public be offered an opportunity to be informed about and involved in Federal actions that may significantly affect the quality of the human environment before decisions are made to implement the actions.

##### **2. Input to the Environmental Assessment (EA).**

The public, Federal and state agencies shall be asked to provide, to the extent possible, input to the EA. Examples of acceptable methods of notification are through the EO 12372 single point of contact process or public notice in local newspapers with requests for written comments.

### 3. Review of the Finding of No Significant Impact (FONSI).

If the EA results in the preparation of a FONSI, public notice of the availability of the FONSI shall be made (pursuant to 40 CFR Section 1501.4(e)(1) and (2) of the Regulations) and the FONSI shall be available in the regional office for public review and comment prior to initiating the action.

### 4. Notice of Intent.

If the EA shows that an EIS is needed or the action is an action which normally requires an EIS, a Notice of Intent to prepare an EIS shall be prepared and published as described in Chapter V, paragraph 3.4.

### 5. List of Interested Groups.

The REO shall maintain a list of groups who are known to be interested in EDA activities and a list of individuals and groups who have requested an opportunity to comment on a project or action for subsequent distribution of the EA or EIS.

### 6. Distribution and Review of the DEIS

a. The EIS Coordinator shall be responsible for printing of the EIS and preparing the appropriate transmittal letters for its distribution.

b. The EIS Coordinator shall sign EIS transmittal letters to appropriate local officials, Federal, state and local agencies, special interest groups and the public for review and comment. Comments shall be solicited from appropriate state, regional or metropolitan clearinghouses in accordance with procedures prescribed by the EO 12372 unless the governor of the state involved has designated some other point of contact for obtaining the review.

c. Federal agencies which have jurisdiction by law or special expertise with respect to any environmental impact or which are authorized to develop and enforce environmental standards shall be asked to comment on DEISs.

d. The responsible official shall submit five copies each of all DEISs to the National Office of EPA and five copies to the appropriate regional office of EPA. One copy shall be submitted to the Chief, Ecology and Conservation Division, National Oceanic and Atmospheric Administration in accordance with DAO 216-6.

#### e. Commenting Period.

A minimum of 45 calendar days from the publication of availability in the Federal Register by EPA shall be provided for comment on the DEIS. The magnitude and complexity of the EIS and the extent of citizen interest in the proposed action shall be considered when the commenting period is established. Commenting periods may be extended an additional 15 calendar days at the

discretion of the responsible official. Comments not received within the allotted commenting period will not normally be responded to in the text of the FEIS.

#### 7. EIS Availability.

a. The EPA will publish in the Federal Register lists of EISs received during the preceding week which are available for public comment. The Federal Register date of the notice of availability establishes the availability date of the DEIS and the beginning date from which the 45-day minimum review period will be calculated.

b. In addition to the Federal Register, a notice for a DEIS shall be published in one or more local newspapers of general circulation in the project area by the office which prepared the EIS. The newspaper(s) may be issued weekly and may be local in nature, if appropriate. If a public hearing will be held for the proposed action, the notice of the public hearing and notice of the EIS shall be made available to the public without charge to the extent practicable or at a fee which is not more than the cost of reproduction. The DEIS will also be made available for public review in local regional offices and the applicant's facilities, if possible.

#### 8. Distribution and Review of FEIS.

a. See Section 6a-d

b. A minimum of 30 calendar days shall be provided for comment on the FEIS. The date the review period begins is determined in the same manner as for the DEIS in Section 6e.

#### 9. Record of Decision.

For actions requiring an EIS at the time of a decision to take an action or, if appropriate, make a recommendation to the Congress, a publicly available record of decision shall be prepared in compliance with 40 CFR Section 1505.2 of the CEQ Regulations. It shall be signed by the Assistant Secretary. The record of decision may be incorporated into EDA Form 506 and shall not be signed prior to the expiration of the 30-day review period for the FEIS.

#### 10. Public Hearings.

a. Prior to the distribution of a DEIS for an action, a determination shall be made by the EIS Coordinator regarding whether a public hearing should be held. This determination shall be documented and attached to the DEIS. The following factors shall be considered in determining whether a public hearing is appropriate:

(1) The magnitude of the proposal in terms of economic costs, geographic area involved, and the uniqueness or size of commitment of resources;

(2) The degree of interest in the proposal as indicated by requests from the public and Federal, state and local authorities that a hearing be held;

(3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the Agency in fulfilling its responsibilities under NEPA; and

(4) The extent to which public involvement already has been achieved with respect to environmental concerns through other means, such as earlier public hearings, meetings with citizen representatives, and/or written comments on the proposed action.

b. The DEIS shall be made available to the public at least 15 calendar days prior to the hearing.

c. The notice of public hearing shall be issued no later than five (5) workdays after distribution of the DEIS and shall be published in a local newspaper of general circulation at least 15 calendar days prior to the date of the hearing. The notice shall contain but is not necessarily limited to the following:

(1) The date, time, place and purpose of the hearing;

(2) A description of the proposal;

(3) A statement that any person or organization desiring to comment on the DEIS will be given an opportunity to be heard;

(4) The location and times where the DEIS will be available for review by the public;

(5) The Federal agency or agencies sponsoring the project; and

(6) The name, address and telephone number of the EIS Coordinator.

d. A verbatim transcript or recording of the hearing shall be kept.

e. Where necessary a reasonable time limit may be established for each speaker.

f. An open meeting to acquaint and inform the public about the actions or receive information from the public may be held anytime within the NEPA process if it is considered necessary.

## 11. Public Contact.

For general information or status reports on EISs and other elements of the NEPA process for EDA actions, members of the public should contact the Senior Environmental Specialist, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230.

## 12. Other Public Notice.

If it is decided that an EIS is not necessary for a proposed action which (1) normally would require an EIS as set out in Chapter II, Section 4, (2) is similar to actions for which a significant number of statements have been prepared, or (3) has previously been announced as the subject of a statement, the responsible Agency environmental official shall prepare a FONSI setting forth the decision and the reasons for the decision. The FONSI and the EA shall be made publicly available for thirty days prior to taking any action. The public shall be notified in the same manner in which a notification of intent is publicized (see Section 7b above).

Where a Notice of Intent has been issued and a decision subsequently made not to do an EIS, a second notice shall be published in the Federal Register officially withdrawing the decision to prepare the EIS.

### 13. Effect on Other Directives.

This Directive supersedes EDA Directive 17.02-2 of October 1, 1980 (SN-463), EDA Directive 17.02-2 of February 23, 1981 (SN-484) and EDA Directive 17.02-2 of August 9, 1985 (SN-580). EDA Directive 17.04 implementing Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands) remains in effect.

L. Joyce Hampers  
Assistant Secretary  
for Economic Development

### **Exhibit C. Sample Finding of No Significant Impact**

FINDING OF NO SIGNIFICANT IMPACT

MEMORANDUM FOR THE PROJECT FILE

FROM: (Insert Name)  
Responsible Official

SUBJECT: Environmental Impact Determination and Necessary  
Environmental Findings for (Insert name and number  
project).

An environmental assessment has been prepared for the subject project and is attached. After reviewing the assessment and the supporting materials, I find that for the following reasons the subject project is not a major Federal action and will not significantly affect the quality of the human environment. (Give reasons.)

Therefore, the preparation of an environmental impact statement is not necessary.

### **Exhibit E Economic Development Representative's Assurance**

Date:

Memorandum for: Regional Environmental Officer

From: Economic Development Representative

Subject: Environmental Assurance  
[Applicant and Project Title]

I have informed the applicant of EDA's environmental requirements. The Applicant has prepared the subject project's environmental information in accordance with the directions in Form ED-101P and/or ED-101A. The applicant will also sign the Assurances, Part V. Additional, comments have been requested concerning the project from the State Historic Preservation Officer and (if applicable) the State Archeologist.

I have reviewed the environmental information and it is complete. In my opinion the information accurately reflects the environmental conditions and impacts associated with the construction and operation of the subject project and the beneficiaries. There are no known controversies or objections concerning the project. I have ( ) not ( ) been to the project site. Any other significant issues are noted below.

Comments:

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Economic Development Representative

