

National Tribal Air Association

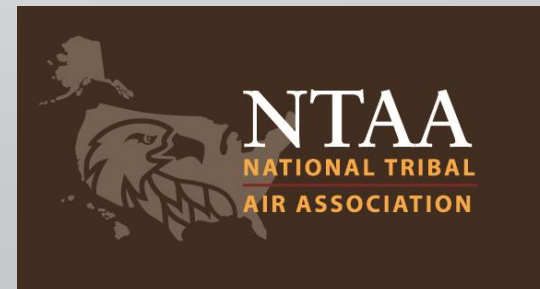
Informational Webinar on the
White House's Proposed Update to NEPA

February 25, 2020



Webinar Agenda

1. Welcome and Introductions
2. Overview of NEPA
3. Summary of the Proposed Rulemaking
4. Summary of NTAA's Comments
5. Questions and Answers



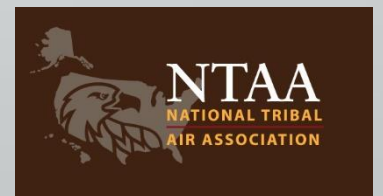
From yesterday's public hearing in Washington, DC.



The National Environmental Policy Act (NEPA)

President Nixon signed NEPA into law on January 1, 1970

Section 101 of NEPA sets forth a national policy "*to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.*" 42 U.S.C. 4331(a)



Section 102 of NEPA requires all federal agencies to prepare a detailed statement on:

- (1) the environmental impact of the proposed action;*
- (2) any adverse effects that cannot be avoided;*
- (3) alternatives to the proposed action;*
- (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and*
- (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action.* 42 U.S.C. 4332(2)(C)



History of NEPA Rulemaking:

- April 1971: Original guidelines
- May 1973: Proposed revisions to guidelines
- August 1973: Revisions to guidelines
- June 1978: Proposed regulations
- Nov. 1978: Final regulations
- August 1985: Proposed amendment to § 1502.22
- April 1986: Final amendment to § 1502.22
- July 2005: Final amendment to § 1506.9
- June 2018: Advance Notice of Proposed Rulemaking
- July 2018: Extension of Comment Period
- January 2020: Notice of Proposed Rulemaking

NEPA Requires Federal agencies to prepare one of three types of statements before moving forward on a project:

1. Categorical Exclusion (CE)
2. Environmental Assessment (EA)
3. Environmental Impact Statement (EIS)

1. Categorical Exclusion (CE)

A CE applies to actions that do not individually or cumulatively have an environmental impact.

For example, road maintenance in a national park.

2. Environmental Assessment (EA)

EAs address actions that are more complex, possibly “major”, than those addressed in CEs. Agency decides whether to prepare a Finding Of No Significant Impact (FONSI) and proceed, or prepare an EIS

- * Scoping - identify significant issues to be addressed in the EA
- * Consultation and coordination with agencies
- * Agency sends out news releases
- * Draft EA and FONSI to public for comment
- * Public meeting or open house on draft EA
- * Finalizing EA/FONSI or determination to prepare an EIS

Environmental Assessment (EA) (cont.)

Must include:

- * Purpose and Need (for action)
- * Alternatives (including No Action and the Proposed Action)
- * Affected Environment
- * Environmental Consequences
- * Consultation and Coordination

3. Environmental Impact Statement (EIS)

Process includes:

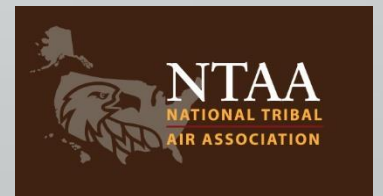
- * Notice of Intent in the Federal Register (with scoping period)
- * Draft EIS is published for public review and comment for a minimum of 45 days
- * A final EIS is then published, which provides responses to substantive comments
- * The EIS process ends with the issuance of the Record of Decision (ROD). The ROD:
 - explains the agency's decision,
 - describes the alternatives the agency considered,
 - and discusses the agency's plans for mitigation and monitoring, if necessary.



The EIS also includes:

A cover sheet, summary, table of contents including the purpose and need statement, alternatives, the affected environment, environmental consequences, a list of preparers, a list of agencies, organizations, and persons to whom the EIS was sent, an index, and appendices.

The agency might publish a supplement to a draft or final EIS if the agency makes a substantial change to the proposed action or new information is relevant to the environmental impacts.



The EIS analyzes a “range of alternatives” *Sec. 1505.1(e)*

- * ***No Action:*** *Either no change in plans or proposed action does not move forward.*
- * ***Preferred Alternative:*** *The alternative which the agency believes would fulfill its statutory mission and responsibilities.*
- * ***Environmentally Preferable Alternative(s) :*** *The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS*

An EA or EIS *requires consideration of the effects of a proposed action, including “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.*

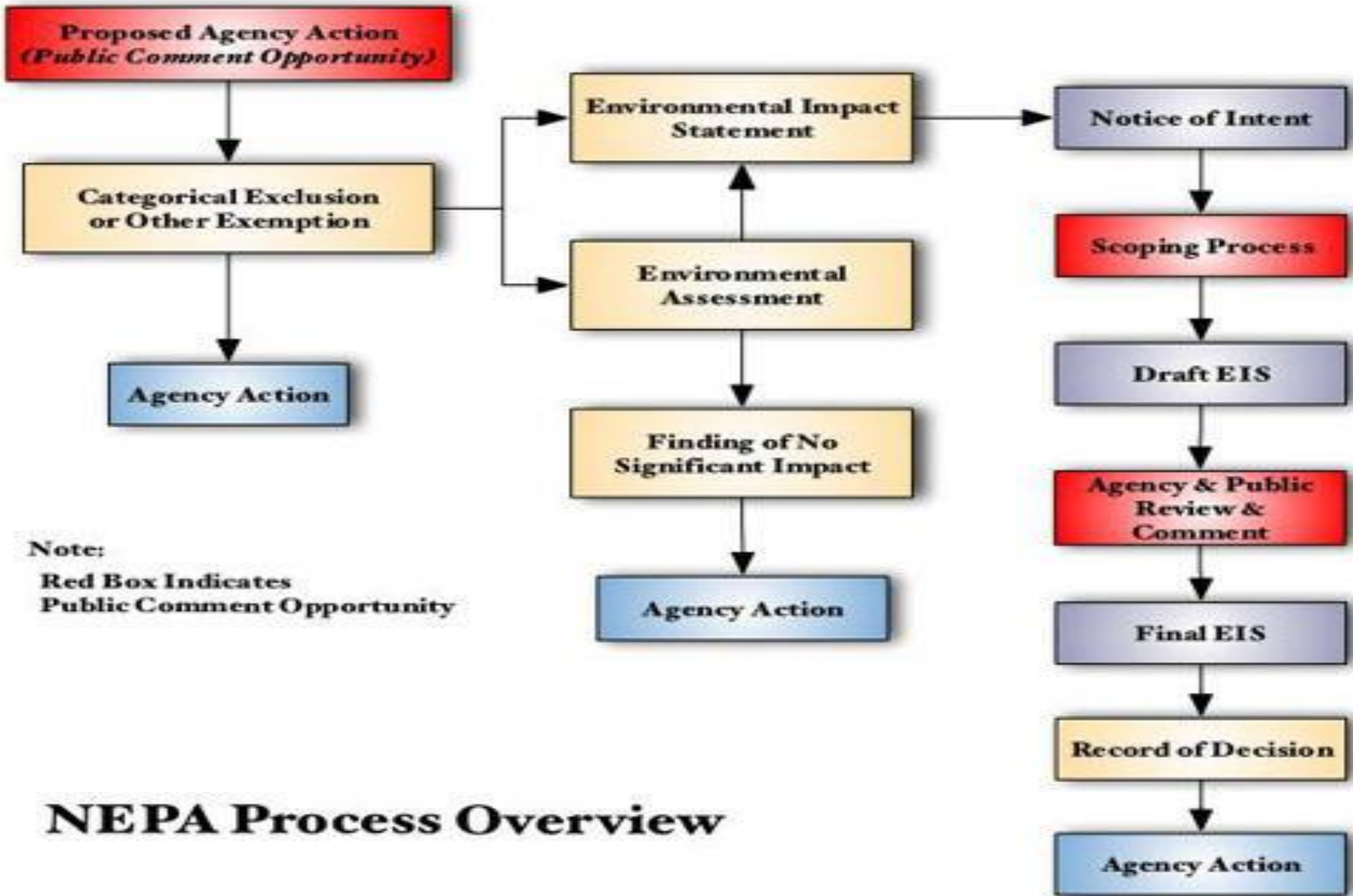
Section 309 of the Clean Air Act allows EPA to review proposed NEPA documents if EPA believes the action significantly affects the environment including air quality.



For example, the US Forest Service would prepare, as part of a NEPA review of prescribed fires, an air quality analysis that looks at the air quality effects of the action including the regulatory framework, analysis area, sensitive areas, including times of high public use, as well as existing meteorology and air quality.

Table 6. Direct and indirect effects of a burn and no-burn alternative

	Burn Alternative	No Burn Alternative
Direct Effects	- increased levels of particulates	- no immediate impact on air quality or human health
	- impact local, regional air quality	
	- impact human health	
	- reduced visibility	
Indirect Effects	Temporarily affect public use in sensitive areas	increase future potential for smoke generated from wildfire
	Impact human health	



NEPA Process Overview

NEPA established the Council on Environmental Quality (CEQ) within the White House to help Federal agencies meet their obligations under NEPA.

CEQ is proposing a rulemaking to implement changes on NEPA regulations.

NTAA has prepared comments to respond.



Proposed Changes and Comments

- Removes cumulative and indirect impacts
 - When determining significance (deciding whether an EA or EIS should be prepared)
 - When analyzing impacts in an EA or EIS
- ❖ NTAA's comment - harmful to ignore these impacts

Proposed Changes and Comments

- Limits the reasonable alternatives agencies consider
 - Preclude those outside agency jurisdiction
 - Proposes a reasonable range and asks about a presumptive maximum
 - Only technically and economically feasible

❖ NTAA's comment - Improperly narrows the alternatives

Proposed Changes and Comments

- Time and Page Limits
 - EA - 1 year and 75 pages
 - EIS - 2 years and 150 pages
- Senior agency official can approve longer limits

- ❖ NTAA's comment - harmful to Tribes in particular, need flexibility

Proposed Changes and Comments

- Who can prepare an EIS?
 - Allows applicants to prepare
 - No longer requires conflict of interest disclosure from contractors
- ❖ NTAA's comment – will cause biased EIS

Proposed Changes and Comments

- Participation changes
 - Comments must be specific
 - Those not timely submitted deemed exhausted and forfeited
- ❖ NTAA's comment – could discourage Tribal participation

Proposed Changes and Comments

- Adds references to Tribes with state and local governments
- Changes provision for notice to affected Tribal government rather than when effects may occur on reservations

❖ NTAA's comment - approve

Impact

- Lots of comments
- Will take time to finalize – says would apply to all NEPA processes begun after the effective date, but agencies can apply it to ongoing reviews
- Proposal says agencies will have to change their regulations within 12 months
- Nullifies guidance
- Legal confusion

Additional Resources

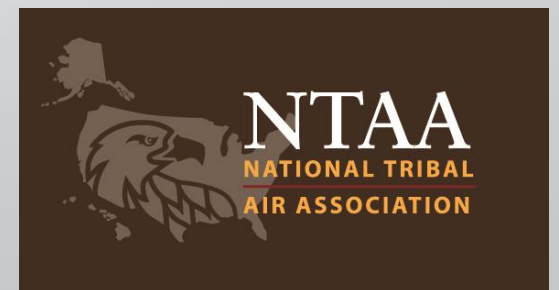
The MSU Indian Law Clinic is collaborating with Earthjustice to create a general comment letter to submit regarding how the proposed rules impact tribal interests. Please contact Stephanie Tsosie stsosie@earthjustice.org at Earthjustice if you have questions or would like further assistance drafting a comment letter.



Additional Resources

NTAA's Policy Resource Kit includes:

- * [NTAA Tribal Template Letter](#)
- * [Attachment for Tribal Template Letter](#) (Use this pdf if you wish to reference the 2019 NTAA letter mentioned in the first paragraph of the template letter).
- * [NTAA Fact Sheet on CEQ's Proposal to Update its NEPA Implementing Regulations](#)
- * A recording of today's informational webinar
- * The NTAA comment letter will be submitted on March 10, 2020.



Additional Resources

A Citizen's Guide to the NEPA: *Having Your Voice Heard*, by The White House Council on the Environment

https://ceq.doe.gov/docs/get-involved/Citizens_Guide_Dec07.pdf

Get updates on NEPA by Earthjustice here:

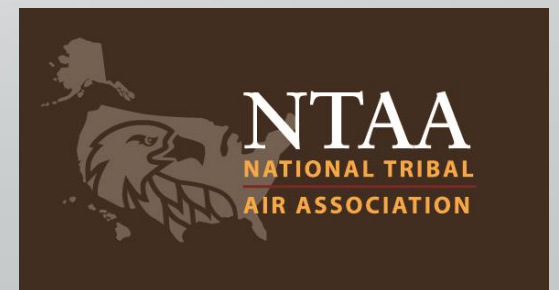
<https://earthjustice.org/tags/national-environmental-policy-act>

EPA's website on NEPA: <https://www.epa.gov/nepa>

Environmental Law Institute Guide:

<https://www.eli.org/research-report/practitioners-guide-proposed-nepa-regulations>

[Book on NEPA by Gillian Mittelstaedt](#)



ANY QUESTIONS?

