

SBA

SOP 90 57

**National Environmental
Policy Act**

Office of Administration

U.S. Small Business Administration

**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE**



National

SUBJECT: NATIONAL ENVIRONMENTAL POLICY ACT	S.O.P.		REV
	SECTION 90	NO. 57	

INTRODUCTION

1. Purpose. To set forth Agency procedures in accordance with the National Environmental Policy Act.
2. Personnel Concerned. Technical personnel in F&I, MA, PA, MSB/COD and Administration.
3. Distribution. Standard.
4. Originator. Associate Administrator for Finance and Investment.

AUTHORIZED BY: A. Vernon Weaver Administrator		EFFECTIVE DATE 2/1/80
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COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

1. GENERAL

These procedures apply the National Environmental Policy Act (NEPA) to SBA programs and activities. They include the designation of officials who would act as focal points within the decision-making process, consideration and identification by SBA of the environmental effects and possible alternatives to mitigate adverse environmental impacts, and preparation and circulation of draft and final environmental impact statements to interested persons and agencies. Certain types of SBA actions are indicated as not ordinarily considered to significantly affect the quality of the environment. In all cases, however, where a proposed SBA action could potentially have a significant effect on the environment, an environmental assessment will be made and an environmental impact statement prepared when appropriate.

2. AUTHORITY

The National Environmental Policy Act (NEPA) of 1969 (P. L. 91-190) and the regulations issued by the Council of Environmental Quality on November 18, 1978 (43 FR 55978-56007; revised 40 C.F.R. Parts 1500-1508) require each Federal Agency to describe and promulgate procedures which will carry out the requirements of NEPA.

NEPA authorizes and directs that, to the fullest extent possible, the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies for the protection of the environment set forth in NEPA; and that procedures be developed to insure that environmental values are given appropriate consideration in decision-making along with economic and technical considerations. It also requires that Federal agencies include in recommendations or reports on proposals for legislation, and other Federal actions having individually or cumulatively a significant effect on the quality of the human environment, a statement on environmental considerations. Executive Order 11514, as amended by Executive Order 11991, further specifies that Federal agencies develop their policies, plans and programs so as to help meet national environmental goals, and comply with CEQ NEPA regulations, except as inconsistent with statutory requirements.

3. GENERAL RESPONSIBILITIES

The responsible SBA official (either in the Central Office or in a field office) will when necessary:

- a. Assess the potential environmental impact of recommendations or favorable reports on proposals for
 - (1) legislation significantly affecting the quality of the human environment ("legislative actions") and
 - (2) all other SBA actions which individually or cumulatively significantly affect the quality of the human environment

("administrative actions") as early as possible and in all cases prior to agency decision.

- b. Consult with other appropriate Federal, State and local agencies and with the public in making environmental assessments.
- c. Identify the issues involved in specific environmental assessments or impact statements.
- d. Undertake or provide for initial environmental assessments, when required, with initial technical, economic and other studies.
- e. Prepare and circulate, where required, a draft environmental impact statement in time to accompany the proposal through the SBA review process for the action in question. (CEQ §1502.9(a))
- f. Invite and consider the comments of other Federal agencies and the public. (CEQ §1503.1 -1503.4)
- g. Prepare and circulate final environmental impact statements where required, taking into account the comments received. (CEQ §1502.9(b))

4. CENTRAL OFFICE RESPONSIBILITIES

- a. The Administrator has designated the Director, Office of Financing to develop guidelines and information to enable applicants for SBA financial assistance to provide environmental impact information early in the application process, and to be responsible for review of SBA NEPA compliance. This official shall also provide technical assistance to other SBA offices on such compliance.

Particular attention will be given to consultation with Council for Environmental Quality (CEQ), the Environmental Protection Agency, and State and local environmental agencies.

This official will be involved in the decision process for proposed major SBA program changes and for review of other Central Office actions having environmental effects.

(CEQ §1501.2(d))

- b. The official should be consulted as early in the development of the action as possible. This consultative role of the SBA official may also be necessary in Inter-Agency activities. For example, if the SBA is involved in the development phase of a construction project, the SBA should participate in the evaluation of environmental

impact. If however, SBA's involvement begins only after environmental assessments are completed and accepted, then SBA will not require any additional environmental evaluation. The objective of the review will be to evaluate whether the environmental impact of the proposed action would be likely to be significant. If such impact is considered likely to be significant the evaluation would recommend the preparation of an environmental assessment, or if appropriate, an environmental impact statement. Such evaluations (and any resulting environmental assessments or environmental impact statements) shall accompany the proposal through existing agency review processes (CEQ §1505.1). The Associate Deputy Administrator for Programs or his designee shall determine whether an environmental assessment or environmental impact statement is necessary on such Central Office actions. If an environmental assessment is determined to be necessary, the procedures of subparagraphs 5b and d below shall be followed to the extent applicable.

5. FIELD OFFICE RESPONSIBILITIES

- a. The processing loan officer (L/O) will make the initial evaluation. If the loan is for a project which is categorically excluded by these procedures, then this should be so stated in the loan officer's report. If the project for which SBA financial assistance is sought is likely to have significant environmental impact, the L/O should refer the file to the district director for evaluation. Note that these reviews should be part of the initial screening process so that if an environmental assessment is deemed appropriate, it can be prepared during the early phase of processing.
- b. If the district director finds that the financial assistance application is for a project that is not categorically excluded by these procedures, an environmental assessment shall be prepared on the proposal before any SBA approval actions are taken (CEQ §1508.9). Applicants for assistance from SBA may be requested to provide: (1) an environmental assessment, or (2) analyses and information for use in preparing environmental assessments. SBA will provide guidelines to enable applicants for SBA financial assistance to submit any required environmental impact information early in the application process, to avoid delays in processing applications (CEQ §1501.2(d)). However, evaluation of the environmental issues will be the responsibility of SBA. To the extent practicable, information on environmental effects should be obtained from environmental agencies and from the public if an environmental assessment is made.
- c. Upon the receipt of an application for a surety bond guaranty, the reviewing officer shall make the determination whether the project involved is categorically excluded under these procedures. It should be noted that those projects which will improve the quality of the environment should be given the same evaluation as those which may affect the environment in a negative fashion.

- d. As set forth in CEQ §1508.9, environmental assessments, when required should identify reasonable alternative actions that will avoid or minimize adverse impacts and should include concise evaluations of both the long and short-range implications of the proposed actions. The environmental factors shall be considered along with the net economic, technical and other benefits of proposed actions, consistent with other essential considerations of national policy, to restore environmental quality as well as to avoid or minimize undesirable consequences. The assessments shall include a determination as to whether an Environmental Impact Statement (EIS) is required. If a significant environmental impact is found to exist then an EIS will be prepared as set forth in Part 1502 of the CEQ regulations: including a record of decision (CEQ §1505.2). If however, the assessment finds that the SBA action will not have a significant impact, a finding of "no significant impact" will be made and documented, as required by CEQ Regulations §1501.4 and 1508.1.3.

Further; an environmental assessment must also show that the proposed action is in compliance with other applicable environmental review requirements. Such requirements include Floodplain Management (E. O. 11990), Protection of Wetlands (E.O. 11988), National Historic Preservation Act of 1966 as amended, and others as are so designated.

(See appendix 1.)

6. APPLICABILITY TO SBA ACTIONS

All SBA actions which individually or cumulatively have significant effect on the quality of the human environment are to be reviewed for possible environmental impacts. The types of actions subject to review under this part include:

- a. recommendations or favorable reports relating to legislation;
- b. new and continuing projects and program activities directly undertaken by SBA or supported in whole in part through Federal contracts, guarantees, loans, or other forms of funding assistance;
- c. making, modification, or establishment of regulations, rules, procedures, and policy; and
- d. in those cases where other Federal Agencies or State or local governments have already required and have accepted an environmental assessment or impact statement, the SBA will not require any further environmental evaluation.

If requested, however, in connection with SBA assistance, the SBA will participate in the preparation of these evaluations.

An environmental assessment on an SBA form (to be published at a later date) will be made when it appears that the proposed SBA action is not categorically excluded by these procedures and could potentially have significant environmental effects.

7. CATEGORICAL EXCLUSIONS (CEQ §1508.4)

The following categories of SBA actions are not ordinarily considered to be Federal actions which significantly affect the quality of the environment. Therefore, generally, the SBA will not be preparing an environmental assessment or an EIS in these cases. It should be noted that the district director at the field level and the designated SBA official at the Central Office level can make the determination that a significant environmental impact exists when a case appears sufficiently likely to warrant an assessment. These determinations should be based on the official's evaluation of the specific circumstances in each situation and must be documented as to the factors causing such determination.

- a. Agency administrative action such as personnel actions.

Should these actions constitute the movement of large groups of people or the construction of building space, an assessment may have to be prepared.

- b. Legislative Reports.

In those cases where legislation is being enacted on SBA programs and could potentially have a significant environmental effect, an assessment may have to be prepared if the SBA report recommends legislation.

- c. Promulgation of rules, regulations, procedures, or interpretations.

In those cases where the new or changed rules, regulations, procedures or interpretations deal with construction projects or land purchases of a value greater than \$300,000, then an assessment may have to be prepared.

- d. Procurement Assistance Actions.

No environmental assessments are necessary in the Agency's activities to assure that small business receives its share of existing procurements of other Agencies.

- e. Management and technical assistance actions.

In those cases where management or technical assistance is being provided in support of a construction project in the developmental stage (either funded through the SBA or another government Agency) the SBA may be required to participate in support of a lead agency in the preparation of an environmental assessment.

- f. Small Business Investment Company Program Actions.

In those cases where the SBA is approving an SBIC action of financing construction of facilities or purchase of land, then the SBA may be required to prepare an environmental assessment.

g. Physical Disaster Loans and guarantees.

In those cases where the SBA may be providing funds in excess of \$300, 000 to businesses or individuals to restore their property to its original state and restoration work may potentially have significant environmental effects, the district director may require the preparation of an environmental assessment.

h. Business Loans and guarantees (including EOL loans, HAL, Energy, and disaster loans for economic injury).

In those cases where loan proceeds for:

(1) Construction and/or purchase of land exceeds \$300, 000 or

(2) the loan is in response to a government regulation which pertains to the environmental impact of the business operation.

An environmental assessment may be required.

i. Surety Bond Guarantees.

Since the SBA becomes involved with the guaranteeing of a small, business' ability to satisfy an existing contract, no environmental assessments are necessary. In those cases where the SBA does become involved in the development of a construction project under the Surety Bond Guaranty Program, then the SBA will support an environmental evaluation.

j. Pollution Control Financing Guaranty Program actions.

In these cases where an individual business is being financed in excess of \$500, 000, an environmental assessment may be required.

k. Local and Community Development loan and guarantee actions.

In those cases where the loan is being utilized for construction in excess of \$300,000, then an environmental assessment may be required.

l. Portfolio Management and Review actions.

No assessments will be required.

m. Advocacy Program actions.

No assessments will be required.

n. Property Sales or Lease Assistance actions.

However, in cases of construction exceeding \$300,000 an environmental assessment may be required.

EFFECTIVE DATE

APPENDIX 1

(Paragraph 5.)

NATIONAL HISTORIC PRESERVATION ACT OF 1966

As amended, 16 U. S. C. §§ 470 et seq.

ADMINISTERING AGENCY:

Advisory Council on Historic Preservation;

Heritage Conservation and Recreation Service, Department of the Interior.

ENVIRONMENTAL REVIEW REQUIREMENT:

Section 106, 16 U. S. C. § 470f.

REGULATIONS:

Procedures for the protection of Historic and Cultural properties, 36 CFR Part 800 (Advisory Council Procedures);

36 CFR Part 60 - National Register of Historic Places.

36 CFR Part 61 - Criteria for Comprehensive Statewide Historic Surveys and Plans.

36 CFR Part 63 - Determination of Eligibility for Inclusion in the National Register. Executive Order No. 11593, May 13, 1971.

36 CFR 8921, Protection and Enhancement of the Cultural Environment.

PROGRAM:

The National Historic Preservation Act of 1966 establishes a comprehensive program to protect cultural resources from the adverse effects of Federal activities. The Act creates a National Register of Historic Places to which places of historic, architectural or archaeological significance can be named. Properties listed in or eligible for listing in the National Register are subject to special protections of the Act.

The Act also creates an Advisory Council on Historic Preservation and establishes grant and technical assistance programs to benefit the preservation of cultural properties.

EFFECTIVE DATE

ENVIRONMENTAL REVIEW:

Section 106 of the Act requires that:

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Sections 470i to 470n of this title, a reasonable opportunity to comment with regard to such undertaking.

The Advisory Council on Historic Preservation has promulgated a regulation to implement Section 106 (36 CFR Part 800).

The Advisory Council procedures require Federal agencies to identify cultural properties which may be affected by their programs or projects, to determine whether such properties are included in or eligible for inclusion in the National Register and to determine whether the project's effect on such properties will be adverse. These determinations are to be made in consultation with the State Historic Preservation Officer (SHPO) of the state where the properties are located.

If a federal agency determines that its project will have an adverse impact on a National Register property, the comments of the Advisory Council must be obtained before the project can proceed. The Advisory Council must be consulted, given additional information and afforded an opportunity to conduct an on-site inspection and a public hearing. A Memorandum of Agreement between the Advisory Council, the SHPO and the federal agency on means to eliminate or mitigate the effects of the project on the cultural property may be adopted at this time. If not, the review and comments of the full Board of the Advisory Council must be completed before any further action may be taken on the Federal project.