

Supplemental Q&A Document for “NEPA 102: GAP Grants and More” RTOC Session

- ***What are the types of National Environmental Policy Act (NEPA) review documents?***

EA: Environmental Assessment (EA). The EA determines whether a federal action has the potential to cause significant environmental effects.

EIS: Environmental Impact Statement (EIS). An EIS is prepared if a proposed major federal action is determined to significantly affect the quality of the human environment. The regulatory requirements for an EIS are more detailed and rigorous than the requirements for an EA.

EID: An Environmental Information Document (EID) is a written analysis prepared by an applicant¹ that provides sufficient information for EPA to undertake an environmental review and prepare either an EA or an EIS for the proposed action.

- ***Who can conduct the NEPA review for EPA funded projects?***

Only certain EPA assistance programs require compliance with NEPA. Actions under the Clean Air Act are statutorily exempt from complying with NEPA. Most activities under the Clean Water Act area also exempt. However, the federal cross-cutting authorities may still apply (e.g. NHPA, ESA). GAP is subject to NEPA. If NEPA does apply- for example, a construction project that was approved for GAP funding by AIEO- then a grantee is required to provide environmental information to EPA.

If EPA is preparing an EA, then a grantee can either 1) submit an EID, 2) submit a draft EA and supporting documents, or 3) enter into a third-party agreement (without using EPA financial assistance) to prepare these documents. Note—an EID is not required if EPA is preparing a categorical exclusion.

There are four options EPA has for preparing an EA: 1. EPA prepares the EA with the EID input; 2. EPA prepares the EA by incorporating information from an existing State or Tribal NEPA-like review (SEPA/TEPA); 3. the recipient may contract with a third party to prepare the draft EA; or 4. EPA may adopt an existing EA that was prepared by another federal agency. The actions evaluated during the other federal agencies EA must be substantially the same as the actions evaluated during EPA’s environmental review.

EPA grant funds cannot be used to prepare the draft EA or EIS because the EA or EIS is for EPA’s direct use in performing a federal responsibility. That would violate the Federal Grants and Cooperative Agreement Act as interpreted by EPA Order 5700.1. A grantee may use their own funds to prepare the draft EA or EIS or enter a third-party contract without using EPA financial assistance to prepare these documents.

EPA grant funds can be used to prepare an environmental information document (EID).

Only EPA can sign the EA/FONSI. An applicant is not authorized to sign the EPA NEPA decision document as this document is produced by EPA in performing an exclusive Federal

¹ Applicant means any individual, agency, or other entity that has:

- (i) Filed an application for federal assistance;
- (ii) Applied to EPA for a permit; or
- (iii) Requested other EPA approval

responsibility. EPA does not have statutory authority that allows EPA to assign and for Tribes to assume EPA's responsibilities under NEPA.

- ***Can EPA adopt categorical exclusion determinations from other Federal agencies?***
 - Yes
 - Categorical exclusions are categories of actions that do not individually or cumulatively have a significant effect on the quality of the human environment. CATEXs applicable to EPA actions are listed at 40 C.F.R. § 6.204(a).
 - Under [40 CFR 1506.3\(d\)](#), a federal agency may adopt another agency's determination that a categorical exclusion applies to a proposed action if the action covered by the original categorical exclusion determination and the adopting agency's proposed action are substantially the same.
- ***Can EPA adopt and apply a categorical exclusion listed in another agency's NEPA procedures to a proposed action?***
 - Under Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, a Federal agency may “adopt” and use another agency's categorical exclusion (CATEX) for a category of proposed agency actions.
- ***What categorical exclusions has EPA adopted?***
 - You can find the adoptions of categorical exclusion determinations and environmental assessments by using the EPA NEPA Compliance search engine:
<https://cdxapps.epa.gov/cdx-enepa-II/public/action/nepa/search>
 - Adoption of CATEXs under Section 109 of NEPA. : <https://www.epa.gov/nepa/epa-compliance-national-environmental-policy-act>

There are two CATEXs under section 109 of NEPA that may be applicable to GAP funded projects. One is for drop-off, collection, and transfer facilities for recyclable materials and the other is for installation or relocation of machinery and equipment. AIEO is looking to adopt other CATEXs under Section 109 of NEPA for use with GAP projects.
- ***Can GAP be used to fund preparation of EPA NEPA documents?***
 - GAP funds may be used to prepare an EID for a GAP-funded action that requires the preparation of an EA.
 - EPA grant funds cannot be used to prepare EAs and EISs because those documents are for EPA's direct use in performing a federal responsibility. That would violate the Federal Grants and Cooperative Agreement Act as interpreted by EPA Order 5700.1.
- ***Can GAP funds be used to review and comment on NEPA documents prepared by other federal agencies?***
 - A Tribe can use GAP funds to review and comment on NEPA documents for an action that impacts the Tribe or the Tribe's interests.
- ***Who would I work with to determine if a CATEX would apply, if I can use EPA funding for a NEPA review activity, or what environmental information is required?***

- Please reach out to your Project Officer. They will work with EPA's AIEO and Office of Policy to answer your project specific question.
- ***Can a Tribe use GAP funds to develop a TEPA or TEPA document?***
 - If the TEPA relates to either capacity building or developing and implementing a solid or hazardous waste program, then using GAP funds to develop a TEPA is permissible.
- ***Can a TEPA document be used to satisfy the NEPA review requirements?***
 - TEPA environmental review documentation cannot completely replace the NEPA review required for GAP projects, but the TEPA environmental documents and the corresponding crosscutter reviews can inform EPA's NEPA analysis.
 - TEPA is a NEPA-like process. If a TEPA environmental review document was prepared for a project and subsequently funded by an EPA grant program subject to NEPA, EPA will incorporate by reference any pertinent information from the TEPA document into EPA's own NEPA document after an independent review of the information. 40 CFR 6.200(d)(4).
 - EPA cannot adopt the TEPA document. In other words, EPA cannot treat the TEPA document as a Final EA and proceed directly to issuing a FONSI.
- ***My Tribe has been delegated the approval to draft NEPA-related documents by BIA under our PL 93-638 compact; how does this impact the tribe's participation with NEPA at EPA?***
 - Whether a Tribe has been delegated the approval to draft NEPA-related documents by BIA under the PL 93-638 compact does not impact the Tribe's participation with NEPA at EPA.
- ***Can I use GAP to participate in the NEPA process as a cooperating agency?***
 - GAP funding can be used to participate in the NEPA process as a cooperating agency if the activity relates to capacity building or developing and implementing a hazardous waste program.