

# Compliance with NEPA

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## NEPA's Applicability

NEPA requires federal agencies to prepare an EIS for "proposals for legislation and other major federal actions significantly affecting the quality of the human environment."

- ◆ Proposals
- ◆ Legislation
- ◆ Major Federal Action
- ◆ Significantly
- ◆ Affecting
- ◆ Quality of human environment

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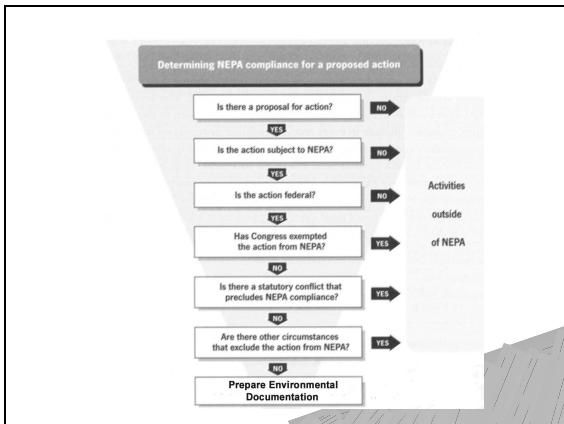
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### “Proposals”

A proposal exists when a federal agency is actively proposing one or more alternatives

Does not include:

- ◆ Discussing ideas
- ◆ Planning studies for need
- ◆ Planning studies for feasibility
- ◆ Giving advice

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### “Legislation”

Any bill or legislative proposal submitted to Congress developed or supported by a federal agency

Does not include:

- ◆ Bills initiated by Congress
- ◆ Requests for appropriations

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### “Major Federal Action”

Major refers to environmental effect not size of action

Include:

- ◆ Federal activities proposed, financed, assisted or conducted by federal agency
- ◆ Nonfederal activities financed, assisted, permitted or approved by a federal agency
- ◆ New or revised federal agency rules, regulations, plans, policies, procedures or projects
- ◆ Proposals for legislation

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## “Major Federal Action”

Does not include:

- ◆ Ministerial actions
- ◆ Condemnation of Land
- ◆ Inaction
- ◆ Budgets or appropriation requests
- ◆ Reports to Congress
- ◆ Law enforcement/investigation

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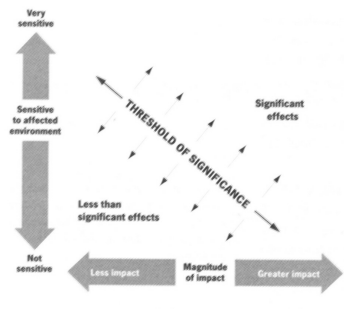
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## “Significantly”



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## “Affecting the quality of the human environment”

- ◆ Affect – will or may have an effect
- ◆ Quality of the human environment – natural and physical environment and relationship of people with the environment

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### Government Entities not Considered Federal Agencies

- ◆ The President
- ◆ The Executive Office of the President
- ◆ The Federal Judges

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### Connected Actions

Federal agency cannot segment proposed action into small pieces to avoid NEPA

- Connected Actions to be Considered Together:
- ◆ Interrelated segments of same action
  - ◆ Dependent actions
  - ◆ Foreseeable future phase
  - ◆ Irrational/Unwise separation of activities

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### Separate Actions

- ◆ Independent utility
- ◆ Independent justification of actions
- ◆ Too speculative
- ◆ Defeats good planning

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**Nonfederal Actions Requiring NEPA**

Action Need Federal:

- ◆ Permit
- ◆ Regulatory Decision
- ◆ Funding
- ◆ Other Assistance

"Small federal handle" rule excludes nonfederal portion of action

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**Exemptions from NEPA**

- ◆ Statutory
- ◆ Statutory Conflicts (usually over time)
- ◆ Endangered Species Act
- ◆ Emergencies
- ◆ Functional Equivalency
- ◆ Federal Activities Outside US

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**Application of NEPA**

- ◆ NEPA does not require that every environmental issue be totally resolved.
- ◆ NEPA does not require that the environment be the primary factor in decision-making.
- ◆ NEPA does require that the environment be included in the decision process.
- ◆ The preferred alternative may have significant impacts.
- ◆ If environmental impacts are fully analyzed and disclosed and weighed with other factors (cost, feasibility, purpose of project) and mitigation is committed to, the agency has fulfilled its NEPA obligation.

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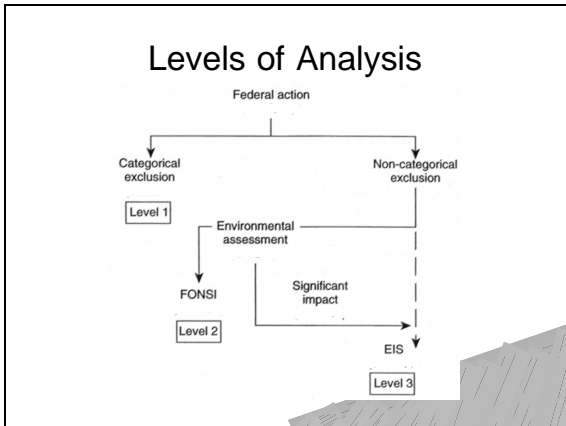
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- ### Categorical Exclusion
- ◆ No Individual or Cumulative Significant Effect
  - ◆ List of Types of Projects Pre-Approved by CEQ
  - ◆ Published in Federal Register
  - ◆ Documentation required by some federal agencies
  - ◆ Exceptions for extraordinary circumstances

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- ### Exceptions to Categorical Exclusions
- ◆ Extraordinary circumstances which may potential to have significant impacts:
    - Wetlands
    - Endangered species
    - Historic resources
    - Cumulative effects

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### US Army Corps of Engineers CEs

- ◆ Routine Maintenance
- ◆ Minor maintenance dredging
- ◆ Technical studies
- ◆ Real estate grants for excess property
- ◆ Exchange of property
- ◆ Real estate grants for minor disturbances
- ◆ Real estate grants for archaeological studies
- ◆ Disposal of existing buildings for removal
- ◆ Return of public domain lands to DOI
- ◆ Transfer of lands to other Federal Agencies

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### CE for New Jersey Road Improvement

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### Actions Where an EIS Should be Prepared

- ◆ Causes Exceedence of Standards
- ◆ Likely to Have Significantly Adverse Impacts on:
  - Natural Ecosystems
  - Cultural Resources
  - Scenic Resources
- ◆ Likely to Require Controversial Relocations
- ◆ Divide/Disrupt Established Neighborhoods
- ◆ Significant Secondary Growth
- ◆ Inconsistent with Accepted Community Plans

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### EIS Actions (continued)

- ◆ Causes Contamination of Public Water Supply
- ◆ Affects Endangered or Threatened Species
- ◆ Likely to Have Significantly Adverse Impacts on:
  - Groundwater
  - Flooding
  - Erosion
  - Sedimentation
- ◆ Likely to Cause Significant Cumulative Adverse Impacts
- ◆ Likely to be Environmentally Controversial

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### Significantly Defined

#### Context

- ◆ National
- ◆ Affected Region
- ◆ Affected Interests
- ◆ Locality

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### Significantly Defined

#### Intensity (Severity of Impact)

- ◆ Beneficial and Adverse
- ◆ Public Health/Safety
- ◆ Unique Characteristics
- ◆ Highly Controversial
- ◆ Highly Uncertain/Unknown Risks
- ◆ Precedent for Future Actions
- ◆ Cumulative Impacts
- ◆ National Register of Historic Places
- ◆ Endangered/Threatened Species
- ◆ Violation of Law

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## Environmental Assessments (EA)

### Should:

- ◆ Identify All Direct and Long-term Adverse Impacts
- ◆ Allow Decision Maker to Determine:
  - Whether the Proposed Action should be regarded as a “Major Action”
  - Whether the environmental impact is significant
  - Whether the action could be environmentally controversial

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## Environmental Assessment Process

- ◆ Define Purpose
- ◆ Define Preferred Action
- ◆ Scoping
- ◆ Identify Alternatives (Reject)
- ◆ Impact Analysis (focused)
  - Existing Conditions
  - Impacts (Significance)
- ◆ Mitigation
- ◆ Draft FONSI or EIS
- ◆ Draft ES
- ◆ Public/Agency Comment
- ◆ Final EA/Final FONSI

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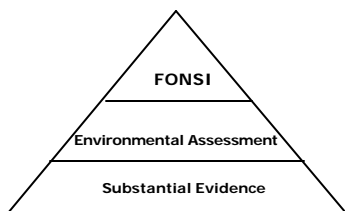
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## FONSI

- ◆ Finding of No Significant Impacts



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## Mitigated FONSI

- ◆ Agency must demonstrate it has taken a hard look at environmental consequences
- ◆ Agency must show mitigation measures will reduce impacts to less-than-significant levels
- ◆ Mitigation must be specific and project related
- ◆ Agency committed to implementation
- ◆ FONSI supported by adequate EA

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## Aspects of the Environment Evaluated in an EA

- ◆ **Natural Environment**
  - Water Resources
  - Biological Resources
  - Geological Resources
  - Aesthetic Resources
  - Air Quality
- ◆ **Built Environment**
  - Transportation
  - Noise
  - Cultural Resources
  - Land Use
  - Population/Housing
  - Socioeconomic
  - Utilities
  - Public Services
- ◆ **Human Health**
  - Natural Disasters
  - Hazardous Materials

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## Review Airport MAX EA

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