



United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

9040.1b
PEP/NRM

PEP - ENVIRONMENTAL REVIEW MEMORANDUM NO. ERM10-8

To: Heads of Bureaus and Offices

From: Michaela E. Noble, Director /s/09/12/2018
Office of Environmental Policy and Compliance

Subject: Guidance on Referrals to CEQ of Proposed Federal Actions Found to be
Environmentally Unsatisfactory

PURPOSE

The purpose of this memorandum is to clarify the referral process when two or more executive branch departments of the Federal government come to a total impasse on a major national environmental issue.

BACKGROUND

It is the Council on Environmental Quality's (CEQ) policy that referrals reflect an agency's careful determination that a proposed action raises significant and environmental issues of national importance that may be precedent-setting. This memorandum supplements 516 DM 4.7C. Summary comments on draft environmental statements prepared pursuant to 516 DM 4.7C(2) shall, when appropriate, include early notification of the intention to refer a proposal to CEQ.

A bureau referring an action to CEQ as unsatisfactory should, by the time the referral is made, have a fully documented history and record of all attempts to coordinate and negotiate with the concerned agency and should make this background available with the referral request to OEPC.

Bureaus attempting to refer an action solely on the basis of an inadequate EIS should recognize that such basis alone may not pass the criteria for a referral set forth in Section 1504.2 of the CEQ Regulations. Further, bureaus must also decide if the criteria for referral are met at the headquarters level since bureaus may have more than one potential referral and may have to select one resource issue for referral over another [see 516 DM 4.7C(1)].

PROCESS

A referring agency has twenty-five days from the date the notice of availability of a final

statement appears in the Federal Register to deliver its referral to the Council unless an extension has been granted by the lead agency. Accordingly, the OEPC will give priority to distributing copies of other agencies' final environmental statements. Bureaus and offices shall establish and maintain screening procedures at the headquarters level to ensure expedited review of potentially unsatisfactory proposals.

Upon review, if a bureau or office proposes to refer an environmentally unsatisfactory proposal to the Council, it shall draft a proposed referral and transmit it by signature of the bureau director simultaneously to the OEPC and the bureau's assistant secretary.

The originating bureau or office should provide early notification and an advance copy of the proposed referral to the OEPC so that the interests of other reviewing bureaus can be immediately canvassed.

In consultation with the involved assistant secretary and bureaus, the OEPC shall recommend and the Assistant Secretary - Policy, Management and Budget shall determine whether or not to refer the proposal to the Council.

Documentation of this decision must be made as soon as possible and placed in the appropriate project file. This phase of the process is generally conducted through one or more briefings by a bureau field team so that Departmental management is collectively informed as soon as possible. Bureau environmental managers shall arrange all appropriate briefings.

Upon a determination to refer, the bureau proposing the referral shall immediately finalize the referral and forward it through channels for the Secretary's personal signature.

Upon a determination not to refer, the OEPC shall document the countervailing reasons for the record.

Any subsequent meetings with the Council or lead agency will be coordinated with OEPC.

GENERAL

This memorandum has been revised and reissued as ERM 10-8. ERM 10-8 replaces ERM 10-6 which is now applicable to Interior's hydropower review activity.

This memorandum establishes internal Department guidelines. It does not create any legal rights, substantive or procedural, enforceable at law by any party.