

Cooperating Agency Report to the Council on Environmental Quality Frequently Asked Questions and Answers

1. What are the major changes between the reporting requirement established in January 2002 and the 2004 reporting requirement?

The major changes: (1) increase the reporting period from six to twelve months; (2) align the reporting period with the fiscal year; (3) decrease the amount of information reported; (4) simplify the identification of challenges or barriers to establishing cooperating agency status; and (5) report completed rather than initiated environmental assessments.

2. Do agencies report Environmental Impact Statements (EISs) and Environmental Assessments (EAs) if they are a Cooperating Agency (CA)?

No. Report only those EAs and EISs that the agency is responsible for preparing. When more than one federal agency has NEPA responsibilities (e.g. one funds or approves a project that another implements) then the agencies should work together, either as joint-leads or as lead and cooperating agencies, to avoid duplicative NEPA work. The lead agency responsible for preparing the EA or EIS is responsible for submitting the CA report.

3. Who reports the EIS or EA when there are joint lead agencies responsible for preparing the EIS or EA?

Joint lead agencies can be involved when a Tribe, State or local agency with a requirement comparable to NEPA, or another federal agency either (1) proposes or is involved in the same action, or (2) is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity [see 40 CFR §§1501.5 and 1506.2]. When a federal agency is a joint-lead agency with a Tribal, State or local government, the federal agency will report the EA or EIS. When more than one federal agency is a joint-lead, the federal joint-lead agencies should agree on which one federal agency will report the EA or EIS. Although a formal document to establish Cooperating Agency Status is not required, the agencies involved need to clearly understand their respective roles and a formal document or exchange of letters may be helpful in correcting misunderstandings brought on by changing personnel and priorities. When a formal document or an exchange of letters is used, the agency with reporting responsibility should be identified.

4. Which EAs and EISs are reported?

The report will provide information on EISs begun during the fiscal year reporting period, and on EAs completed during the fiscal year reporting period. For purposes of this report, an EIS is begun when the Notice of Intent (NOI) is published in the Federal Register, and an EA is completed when a Finding of No Significant Impact (FONSI) is completed or a NOI to prepare an EIS is published.

5. What is required for an agency to be reported as a Cooperating Agency?

Agencies with either "jurisdiction by law" or "special expertise" are eligible to be cooperating agencies. When they are invited and agree to be cooperating agencies or their request for

cooperating agency status is granted, then they qualify and should be reported as cooperating agencies. When more than one federal agency has NEPA responsibilities – or in the case of tribal, state or local governments, responsibilities for requirements in addition to but not in conflict with those in NEPA – then the agencies should work together, either as joint-leads or as lead and cooperating agencies, to avoid redundant, duplicative NEPA work and cooperating agency status is one way to accomplish these responsibilities. Agencies with a permitting or approval role, often referred to as consulting agencies, can be invited to be cooperating agencies and lead agencies are encouraged to actively consider extending cooperating agency status to such agencies.

6. Does the cooperating agency’s name go on the EA or EIS?

Yes. For an EIS, the cover must list all cooperating agencies (federal and non-federal) as required by Section 1502.11 of the CEQ NEPA regulations [see <http://ceq.eh.doe.gov/nepa/regs/000925letter.html>]. An EA must list the agencies consulted [see 40 CFR §1508.9] and agencies with cooperating agency status can be listed as a subset of those consulted.

7. Which agencies must be reported when Cooperating Agency status is not established or is ended?

Agencies should be reported in the EIS column “CA Status not Established or Ended” and in the EA report’s third row or optional explanatory paragraph when:

- (1) An agency declines an invitation to participate as a Cooperating Agency in writing or verbally. Federal agencies are required to decline in writing and to provide a copy of their reply to the invitation to the Council on Environmental Quality (see 40 CFR §1501.6(c)).
- (2) An agency requests cooperating agency status but an agreement to participate as a Cooperating Agency is not reached with the agency responsible for the NEPA analysis and documentation.
- (3) An agency whose Cooperating Agency status was established but ended prior to completion of the NEPA analysis and documentation.

The reporting agency must indicate the reason that the Cooperating Agency status was not established or was ended. Five main categories of reasons, with examples, are provided on the report form. When there are several reasons, provide the primary reason(s) for not establishing or ending the Cooperating Agency status.

8. How will agencies update the EIS information in subsequent fiscal years?

The reporting agency will provide updated information (for example: new cooperating agencies; new EIS status) in subsequent FYs by submitting the previous EIS report with new information inserted and highlighted.