

## 8 questions any EA or EIS should readily answer

Ask this question	Looking for	CEQ: 40 CFR	Notes:	Comment:
1. What action is proposed?	Proposal  <b>PA</b>	1502.4(a); 1508.23; 1502.14; 1502.5	A "proposal" for action triggers the NEPA process, and the "proposal" is one of the alternative actions normally present in an EA or EIS.	
2. Why?	Underlying need  <b>DFC</b>	1502.13; 1508.9(b)	It is the "finding" of the existence of an underlying need that justifies the proposal to take action, authorizes the ultimate agency action, defines the range of alternatives, and forms the basis to create a no-action alternative in true contrast to the action alternatives (including the proposed action alternative).	
3. What other action would meet the same need?	Alternatives  <b>PA</b>	1502.14; 1508.25(b)	The "heart" of the NEPA process is the evaluation, comparison, and consideration of alternatives. The statement of underlying need defines the range of alternatives. Agencies are bound by law to consider all reasonable ways to meet the same need that the proposed action is intended to meet, and may by law exclude from serious consideration all alternatives that do not meet the need for action.	
4. What would it mean not to meet the need?	No-action alternative  <b>EC</b>	1508.25(b)(1); 1502.14(d)	"No-action" forms the basis for a true comparison between meeting the underlying need and <i>not</i> meeting the underlying need. "No-action" is not simply the absence of the proposed action or other action alternatives, but is a scenario about the future that is alternative to any of the action alternatives.	
5. What are the effects of the proposed action, and alternative actions — in comparative format?	Impacts, "events"	1502.14; 1508.8; 1502.16	An EA or EIS should contain a sufficient discussion of the relevant issues and opposing viewpoints to enable the decisionmaker to take a "hard look" at relevant environmental factors. The agency must articulate a rational connection between the facts and law found and the conclusions made. A court may set aside an agency decision if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A). An agency's action is arbitrary and capricious if the agency fails to consider an important aspect of a problem, if the agency offers an explanation for the decision that is contrary to the evidence, if the agency's	

			decision is so implausible that it could not be ascribed to a difference in view or be the product of agency expertise, or if the agency's decision is contrary to the governing law.	
6. What factors will be used when making the decision between alternatives?	Purposes	1502.23	"... an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision." These "decision factors" are relevant to an EIS, and relevant again at the time of decision in the Record of Decision.	
7. Are there any ways to mitigate adverse effects?	Mitigation <b>PA</b>	1508.25(b)(3); 1502.14(f); 1502.16(h); 1508.20; 1500.2(e)	If "mitigation" is part of the proposal, or part of an alternative, it is already accounted for in that proposal or alternative. Only "mitigation" that is <i>optional</i> above and beyond the proposal or alternative is to be considered here. Thus, as CEQ says, "mitigation" is an "alternative" that must be considered apart from the proposal or other alternatives.	
8. What monitoring is necessary that is not included in the proposed action or alternative action?	Monitoring	1505.3; 1505.2(c)	At the time of decision, a monitoring program must be considered for mitigation. Earlier, the EIS is a good place to invite public involvement on potential monitoring. Moreover, monitoring may be incorporated into the proposal, alternatives, or mitigation measures — so their presence in the EIS is required in such a case for purposes of full disclosure.	

Caveats: answers may be present, but not readily apparent; answers may exist in the administrative record but not in the environmental document. If these conditions are present, the ultimate conclusion of the decisionmaker may be supportable, but other problems may be posed. PA = Proposed Action; DFC = Desired Future Condition; EC = Existing Condition.

## EC + PA = DFC

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### *Practice Pointers*

1. What action is proposed?

<b>Do</b>	<b>Don't</b>
The reader is looking for action that triggers the NEPA process. Without a proposal for action there is no need for a NEPA process. Indeed, the NEPA process is impossible without a clearly defined, well-articulated proposal for action.	The proposal may be so vaguely stated or poorly defined that a reader cannot understand what the agency proposes to do. The proposal may be stated variously or differently in the EA or EIS, again with the effect that the reader cannot understand what the agency proposes to do.

2. Why?

<b>Do</b>	<b>Don't</b>
The reader is looking for a match between the need for action and the proposal for action. The proposal for action should meet the need for action. The need for action should support the proposal for action. And the need for action must be supported by evidence that it is bona fide, that it really exists. See the practice pointers, above, for writing a need statement.	One common way to get this wrong is to write about the need for an EA or EIS. Another is to use a circular logic, or use the same language for both the proposal for action and the need for action, as in "We propose to take action because we need to take action." "We propose to do X because we need to do X."

3. What other action would meet the same need?

<b>Do</b>	<b>Don't</b>
The reader is looking for alternative ways to meet the need. If the proposal would meet the need, what other action would also meet the need? If there is only one way, say so. If there is more than one way, these are alternatives.	Any set of alternatives that loses sight of the need for action would be wrong. One example is to "bracket" the proposed action with alternatives, such as smaller and larger sizes. Thus alternatives are present, but they may make no sense. If there is a need to do one thing, then it may make no sense to look at doing half of it, or double whatever it is. Another example would be to bracket the proposed action with alternatives having different emphasis, such as a "pro-development" alternative and a "pro-conservation" alternative. If either of those would not meet the need for action, they make no sense.

4. What would it mean not to meet the need?

<b>Do</b>	<b>Don't</b>
The reader is looking for the consequences of leaving the need un-met. This is usually the "no action" alternative, though the explanation could be present in the same section the underlying need is described. This information may be the best support there is for why it is important to take action.	The most common mistake is omission. If the "no action" alternative is not analyzed in detail, and if the "underlying need" is not proved, the reader will not grasp the basic comparison between taking action and not taking action, which is meeting the need and not meeting the need.

5. What is the comparison of effects between the proposed action and alternative actions?

<b>Do</b>	<b>Don't</b>
The reader is looking for the “heart” of the EA or EIS, a ready comparison between the “action” alternatives. This is commonly lumped with question 4, above. A comparison table is usually effective.	As for question 4, the most common mistake is omission. Another mistake would be to use different metrics for different alternatives, creating an apples-and-oranges comparison.

6. What factors will be used when making the decision between alternatives?

<b>Do</b>	<b>Don't</b>
Looking ahead to the time of the decision, the reader wants to know what factors will be important to the decisionmaker. For example, if cost is an overriding consideration the reader will want to be satisfied that cost has been adequately analyzed.	The most common mistake is to write a decision that rests on considerations not first presented in the EA or EIS. Thus the task for the EA and EIS is to accurately predict what these factors will be.

7. Are there any ways to mitigate adverse effects?

<b>Do</b>	<b>Don't</b>
The reader is looking at “left over” adverse consequences, those not mitigated at all and those left over even after mitigation. The agency has a duty to investigate the possibility of mitigation, even though it may choose not to mitigate.	Mitigation measures incorporated into the proposed action or alternative actions are just that — part of the proposal or alternatives. Those don't count here. The usual mistake is to disclose an adverse effect and move on, without an analysis of mitigating that effect.

8. What monitoring is necessary that is not included in the proposed action or alternative action?

<b>Do</b>	<b>Don't</b>
The reader is looking for what the agency says about monitoring, whether it is being done already or needs to be added.	The only way to get this wrong is omission. NEPA case law requires monitoring, but does not specify what kind or how to carry it out.

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