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INTRODUCING FEDERAL NATIONAL ENVIRONMENTAL POLICY ACT PRACTITIONERS TO THE PUERTO RICO ENVIRONMENTAL PUBLIC POLICY ACT PROCESS

This fact sheet is designed to familiarize Federal [National Environmental Policy Act](#) (NEPA) practitioners with Puerto Rico's [Environmental Public Policy Act](#) (EPPA), as amended. When a proposed NEPA action also requires compliance with EPPA, it is critical that these practitioners familiarize themselves with EPPA and understand how EPPA compares to and contrasts with NEPA.

Both statutes are designed to facilitate informed decision-making and environmental review. EPPA requires that state agencies study the environmental consequences of their actions, including permitting and financial assistance. It also requires them to take all feasible measures to avoid, minimize, and mitigate damage to the environment. This fact sheet compares EPPA and Puerto Rico's [Regulation for the Evaluation and Processing of Environmental Documents](#) (Regulations)¹ with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA, [40 CFR Parts 1500-1508](#).

This fact sheet only provides basic information and is intended to serve as a springboard for discussion with the Environmental Quality Board (EQB) staff when proposed projects trigger both Federal and Puerto Rico environmental review requirements. Project proponents are strongly encouraged to contact the EQB in the early stages of project planning so that the Federal and Puerto Rico environmental review processes, if applicable, can be appropriately aligned.

It is important to note that EPPA expressly permits that NEPA documents may be used in lieu of a State document. The EPPA Regulations and EQB Governing Board Resolution No. RI-12-18-3 allow the proposing agencies to use a NEPA document in lieu of a State document, and therefore not prepare a new document, provided that they complied with the NEPA requirements, comply with the EPPA Regulations, and circulate the document to the pertinent Federal and State government agencies. [Regulations 111\(F\)](#).

Introduction

Enacted in 1970, EPPA establishes “a public policy that fosters a desirable and convenient harmony between humankind and its environment.” [EPPA Section 2](#). To implement this mandate, EPPA incorporated NEPA's section 102(C) environmental review process and created the EQB to oversee agency implementation, including the evaluation of all environmental documents submitted by proposing agencies. [EPPA Section 4](#). Act No. 161-2009, the “Permit

¹ The EQB has proposed regulatory changes to implement recent legislative amendments, Act No. 151-2013, which separate the environmental impact review from the land use and construction permit processes; the Permits Management Office (PMO) or Oficina de Gerencia de Permisos (OGPe) determinations of both processes will be subject to separate judicial review proceedings. Act No. 151-2013 also reinstates the application of the Uniform Administrative Procedures Act, Act 170-1988, to the evaluation and adjudication process for all final permit decisions and enforcement actions of the PMO and Autonomous Municipalities. Please check the EQB website for the status of the proposed regulatory changes and any other future regulatory changes.



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Process of Puerto Rico Reform Act,” transferred this responsibility to the Permits Management Office (PMO). As mandated by Act No. 161-2009, the EQB promulgated Regulations to establish an environmental review process similar to NEPA and to guide the PMO in making its final determinations concerning environmental documents. The process outlined in the Regulations mimics NEPA’s public participation and agency consultation process, although there are some differences regarding the timing of public participation and commenting periods, among others.

EPPA requires environmental review for actions where a “government permit or authorization will eventually be required or any legislative proposal and/or government decision that could have an impact on the environment.” [Regulations 109\(A\)](#). If EPPA applies, the entity proposing the action, known as the Proposing Agency ([Regulations 114\(A\)](#)), may take one of three courses of action: (1) apply for a categorical exclusion (CE); (2) submit an environmental assessment (EA); or (3) submit an environmental impact statement (EIS).

Key Points of Comparison

The table below compares NEPA terms and procedural requirements to EPPA terms and the EQB’s Regulations.

NEPA	EPPA
Categorical Exclusion (CE), 40 CFR 1508.4 , 40 CFR 1507.3	Categorical Exclusion, Regulations 109(BB) .
Environmental Assessment, 40 CFR 1508.9 , 40 CFR 1501.3	Environmental Assessment, Regulations 109(AA) .
Notice of Intent, 40 CFR 1508.22	Notice of Intent, Regulations 112(A) .
Draft Environmental Impact Statement (DEIS), 40 CFR 1502 , 40 CFR 1508.11	Draft Environmental Impact Statement, Regulations 109(I) , Regulations 112 .
Final Environmental Impact Statement (FEIS), 40 CFR 1502 , 40 CFR 1508.11	Final Environmental Impact Statement, Regulations 109(I) , Regulations 112 .
Finding of No Significant Impact, 40 CFR 1508.13	Finding of No Environmental Impact (FONEI), Regulations 109(K) .
Record of Decision, 40 CFR 1505.2	Final Determination, Regulations 109(L) .

The bullets below provide a general comparison of processes:

- Under NEPA each agency maintains a list of CEs specific to its operations that have no significant impact on the environment based on the agency’s experience ([40 CFR 1508.4](#)); EPPA requires the EQB keep the list of CE actions ([Regulations 117\(A\)\(1\)](#)). EPPA CEs may be determined by regulation or by EQB resolution.
- Under EPPA, if the EQB has determined that a proposed action is a CE, the Proposing Agency prepares an Application for a Determination of Environmental Compliance by CE before the PMO, which has discretion to determine whether the proposed action can



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be designated as a CE due to certain particular characteristics, regardless of whether the action could potentially meet the requirements to apply for a CE. [Regulations 115\(E\)\(1\)](#).

- A public notice of intent to apply a CE is required for proposed actions related to the use or award of Federal funds. [Regulations 115\(E\)\(3\), 122\(B\)](#).
- Under EPPA, the environmental review process begins with the filing of a Public Notice of Intent to Submit an Environmental Document by the Proposing Agency in coordination with the PMO. The Public Notice must be accompanied by the draft environmental document, be it an EA or an EIS, or an Application for a Determination of Environmental Compliance by Categorical Exclusion. See [Regulations 115 \(E\)\(2\)](#) (stating that the term “environmental document” applies to EAs and EISs.) The PMO has the discretion to grant requests for a public hearing. [Regulations 115\(E\)\(7\)](#).
- A NEPA EA must discuss alternative courses of action for any proposal that involves unresolved conflicts concerning alternative uses of available resources and the environmental impacts of alternatives. [40 CFR 1508.9\(b\)](#). Under EPPA, an analysis of alternatives is not required for an EA.
- NEPA requires a formal scoping process before the agency begins to prepare the DEIS in order to identify the issues that need to be addressed, identify points of contact, establish schedules, and provide recommendations to the agency. [40 CFR 1501.7](#). EPPA does not require a scoping process and does not expressly require input from the public or other government entities until after the agency publishes the DEIS. However, under EPPA, prior to submitting the EIS to the PMO, the Proposing Agency may consult and obtain recommendations from other governmental entities with particular interest in the proposed action and/or its potential environmental impacts. [Regulations 115\(C\)\(5\)](#). The Consulted Agency will have an additional and new opportunity to submit recommendations during the public participation stage, if applicable. [Regulations 115\(C\)\(6\)](#).
- Under EPPA, the Proposing Agency must prepare an EIS if it finds that the action may have a significant environmental impact. [Regulations 112\(A\)](#). There are eight types of listed actions that require an EIS, and the PMO may require an EIS for any other action it determines could have a significant environmental impact, even if not listed. [Regulations 112\(B\)](#). A DEIS must provide the same information as an EA, plus a discussion of 14 other factors, including environmental justice, potentially affected ecological, historic, cultural, archaeological, and physiographic aspects, and energy requirements. [Regulations 112\(D\)](#).
- NEPA and EPPA both require a public comment period after the publication of the DEIS and require agencies to address and incorporate any comments into the FEIS. [40 CFR 1506.10\(c\)](#), [1503.4](#). The period lasts 45 days under NEPA and 30 days under EPPA. [40 CFR 1506.10\(c\)](#); [Regulations 115\(E\)\(6\)-\(7\)](#).
- After the comment period, the Proposing Agency electronically files the environmental document, and the PMO validates the document for any deficiencies. [Regulations 115\(G\)\(1\)-\(2\)](#). Once the document has been validated, the PMO assigns a final file number and the document is sent to the Environmental Compliance Assurance Division (ECAD) for evaluation. [Regulations 115\(H\)\(1\)](#). The ECAD then issues a determination



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of environmental compliance, which accounts for the impacts evaluated and the mitigation measures referenced in the document. [Regulations 116\(C\)](#). The EPPA process is complete once this determination is finalized. NEPA does not require an agency's environmental document to be validated or evaluated by any entity or person. The NEPA process is complete as soon as the agency applies the CE or publishes the FONSI or Record of Decision.

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Flowchart

