NEPA HANDBOOK

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1. GENERAL

1.1 Introduction.

A. Purpose. This Handbook provides guidance in preparing documents required by the National Environmental Policy Act of 1969 (NEPA), and the Council on Environmental Quality (CEQ) regulations implementing NEPA, for Bureau of Indian Affairs (Bureau) actions. It also explains how the Bureau and Indian tribes can use the NEPA process to advise other federal agencies on the impacts the actions of those agencies might have on Indian people and their environment.

B. Scope. This Handbook is strictly advisory. It does not create, add to, or otherwise modify any legal requirement. The procedures described in this Handbook are intended to aid Bureau officials in the internal administration of the agency, and are subject to re-interpretation, revision, or suspension by the Bureau as circumstances may require. Users of this Handbook should resolve any conflict with its content in favor of the applicable legal authority.

1.2 Authorities.

A. National Environmental Policy Act of 1969 (NEPA). Section 102(2) of NEPA establishes procedures that are binding on all Federal agencies. The primary requirement is that an Environmental Impact Statement (EIS) be prepared for every major Federal action significantly affecting the quality of the human environment. The full text of NEPA is included in this Handbook in Appendix 1.

B. Council on Environmental Quality Regulations. NEPA established the CEQ in the Executive Office of the President. The CEQ promulgated the Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1508). Appendix 2 of this Handbook contains a copy of these regulations. As stated in Executive Order 11991, the purpose of the regulations is:

> "..... to make the Environmental Impact Statement process more useful to decision-makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. [The Regulations] require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses."

NOTE: Part 1500 of the regulations discusses their purpose in further detail. References to the regulations in this Handbook normally give only the section number, omitting "40 CFR."

C. Department of the Interior Procedures. The CEQ regulations require Federal agencies to adopt procedures to implement the regulations in agency programs. The implementing procedures of the Department of the Interior (Department) are in 516 DM (Departmental

Manual) 1-7. These procedures are generally uniform for all bureaus within the Department. However, because of the differences among bureaus, some provisions apply only to specific bureaus. These bureau-specific provisions are codified as Chapter 8-15 of 516 DM, with the information specified in 516 DM 6.5A. The chapter for the Bureau of Indian Affairs is 516 DM 10. A copy of 516 DM 1-15 is provided in Appendix 3 of this Handbook.

D. Bureau of Indian Affairs Manual. 59 IAM 3, issued 10/25/1999, lists the statutory authorities, and specifies the roles and responsibilities of Bureau officials for compliance with NEPA.

1.3 Responsibilities. The responsibilities of Bureau officials for administering compliance with NEPA and with CEQ regulations may be found in 516 DM 1.3 and 6.3-5, in 516 DM 10.1 and in 59 IAM 3. All Bureau officials having the authority to make decisions on proposed Bureau actions also have the responsibility for compliance with NEPA and the CEQ regulations for those proposed actions. Such officials should assign sufficient staff and financial resources to meet this responsibility.

A. Central Office Division of Environmental Management (DEM). The Division Chief exercises primary staff responsibility for policy direction, coordination, and monitoring of NEPA activities and resulting documents within the Bureau. DECRM also provides assistance, advice and training to achieve the objectives of Bureau compliance with NEPA.

B. Regional Directors. Regional Directors are responsible for NEPA compliance at the regional office level. Regional Directors should make adequate funds and adequately trained staff available for this purpose.

C. Regional NEPA Coordinators.

(1) implement the procedures established in this Handbook, and may develop region-specific policies or procedures consistent with this Handbook (See §2.4 below) when additional requirements are necessary.

(2) coordinate and assist with NEPA activities at the regional level and with the Agencies, Field Offices and tribes.

(3) serve as liaison between their Regional Office and DEM.

(4) maintain a Region-wide list of completed NEPA documents (Categorical Exclusions, EA's and EIS's), updated as of the end of each March and September.

(5) monitor mitigation measures stipulated in EAs and EISs.

D. Agency Superintendents and Field Office Directors. Agency Superintendents and Field Office Directors are responsible for NEPA compliance for actions initiated at their Agency or Field Office. If the Agency or Field Office does not have its own environmental coordinator, the Superintendent assumes the duties outlined in 1.3E.

E. Agency and Field Office NEPA Coordinators

(1) implement the procedures established in this Handbook.

(2) coordinate NEPA activities at the Agency/Field Office level and with tribes.

(3) serve as liaison between their Agency/Field Office and their Regional Office.

(4) submit to the Regional Environmental Protection Specialist, as requested by DEM, a list of completed NEPA documents (Categorical Exclusions, EAs and EISs) processed by or through the Agency/Field Office during a given period.

(5) inform the Regional NEPA coordinator of, and monitor mitigation measures stipulated in EAs and EISs.

1.4 Definitions. For the purpose of this Handbook all definitions of terms are the same as those in 40 CFR Part 1508 (Terminology and Index). An additional term used in this Handbook is "Bureau decision-maker" (decision maker). This means the Bureau official to whom authority has been delegated to make the decision on a proposed action for which NEPA is required.

1.5 Relationships With Other Agencies. The CEQ regulations encourage agencies to consult cooperatively with each other prior to the preparation of an EIS, rather than submitting adverse comments after a document has been completed (§1501.1). There are three basic roles that the Bureau may assume in the NEPA process.

A. Lead Agency. If the Bureau has jurisdiction over the proposed action, it may take primary responsibility for NEPA compliance as the lead agency. The lead agency is primarily responsible for the preparation of the EIS for a proposed action. In some circumstances, two or more agencies may serve as joint lead agencies. The Bureau office that initiates the EIS shall notify DEM of joint lead arrangements within the Department. DEM will provide the Departmental Office of Environmental Policy and Compliance (OEPC) with the required notice of such arrangements. (See §1501.5 and 1508.16 and 516 DM 2.4)

(1) Integrated Analysis. Integrate analysis uses a single NEPA process to enable several agencies to satisfy multiple environmental requirements by conducting

concurrent rather than consecutive analysis. Whenever the need for integrate analysis occurs, such as when a proposed action requires compliance with other permitting and/or regulatory requirements, the Bureau should

(a) develop memoranda of understanding with relevant regulatory agencies, detailing the process by which their regulatory and/or permitting procedures will be integrated into the Bureau's NEPA process, including ways to streamline analysis and bench marks for when analyses will be completed.

(b) establish core NEPA evaluation and documentation teams that include contact individuals from relevant regulatory and permitting agencies to coordinate the regulatory requirements of all agencies involved in a particular NEPA activity.

(c) arrange the sequencing of permits with other agencies to avoid unnecessary delays in agency planning, preparation and implementation.

(d) notify applicants when other permitting and/or regulatory requirements exist and provide them with the points of contact in the appropriate agencies to identify any additional information needed.

B. Cooperating Agency. The Bureau or affected Indian tribes may support another agency by providing special expertise or resources in the preparation of an EA, or by serving as a cooperating agency for an EIS. The Bureau should consider serving as a cooperating agency whenever a proposed federal action might affect Indian lands, rights or other interests. The Bureau office that initiates for the EIS shall notify DEM of cooperating agency arrangements. DEM will provide OEPC with the required notice of such arrangements. (See §§ 1501.6 and 1508.5 and 516 DM 2.5). Any cooperating agency arrangement to which the Bureau is a party shall be confirmed by letter, or, if the arrangement is complex, with an agreement.

C. Commenting Agency. The Bureau may comment on environmental documents prepared by other agencies. If a proposed federal action for which an environmental document has been prepared may affect Indian lands, rights, or other interests, the Bureau has a duty to review and, if appropriate, comment on the draft document, whether or not the BIA is a cooperating agency. Tribes may also review and comment on the document. (See §§ 1503.1, 1503.2, 1503.3 and 516 DM 7 and Chapter 7 of this Handbook for further details.)

NOTE: It is best to begin comments during the scoping process (see Chapter 6.4(B) of this Handbook). This provides a placeholder and establishes the Bureau's concerns in the administrative record.

2. NEPA AND BUREAU DECISION-MAKING

2.1 Introduction. This chapter explains how the NEPA process relates to Bureau decision-making. The NEPA process analyzes and discloses the significant impacts a proposed action may have on the quality of the human environment. Completing the NEPA process for a proposed action does not automatically mean that the action may be implemented. The decision on whether or not to proceed with the action must also take into account requirements imposed by laws, regulations, policies, procedures and other considerations unrelated to NEPA. An overview of the NEPA process is presented in Illustration 1.

2.2 NEPA Requirement. The primary requirement of §102(2) of NEPA (Appendix 1) is that an Environmental Impact Statement (EIS) be prepared for major federal actions (see §1508.18) significantly affecting the quality of the human environment. An Environmental Assessment (EA) is a less detailed document that may be used to determine whether or not an EIS is required. If, based on an EA, it is determined that a proposed action will not significantly affect the quality of the human environment, the decision maker may fulfill the documentation required by the CEQ regulations by issuing a Finding of No Significant Impact (FONSI). In addition, certain kinds of actions, called Categorical Exclusions, may be taken without the preparation of either an EA or an EIS. Chapters 3 and 5 of this Handbook provide guidance on how to determine whether a Categorical Exclusion, an EA or an EIS is appropriate for the proposed action.

2.3 Authority for Bureau Decision-making. Decisions that Bureau officials make are based upon delegations of authority which are documented in 3 IAM. Authority is generally delegated to the lowest level, typically the Agency Superintendent or the Field Office Director, where resources and competence are available for the proper exercise of that authority. Environmental documents are subject to review by higher level line officials.

2.4 Regional Addenda. Regional Directors may issue addenda to this Handbook to provide more detailed guidance regarding NEPA compliance for Bureau actions within their service areas. To assure consistency from Region to Region, such addenda must be submitted for approval through the Director of the Bureau of Indian Affairs to the Director of Management Support Services.

2.5 Tribal Governments and NEPA. Tribal governments have substantial authority, through their retained tribal sovereignty, for additional environmental protection within their reservations. This tribal governmental authority is distinct from the responsibilities and authority of the Bureau under NEPA and other Federal environmental laws, and from the federal trust responsibility. Activities affecting the environment of an Indian reservation often require the approval of both the Bureau and the tribal government. Because of this dual authority, the Bureau's NEPA process should be coordinated with the tribal decision-making process. Such coordination helps reduce paperwork and delay, integrates environmental considerations into the early stages of planning and increases the usefulness of the NEPA process for decision-makers.

A. Being Realistic about Timing. Tribes must be made aware in the earliest stages of their project planning of the NEPA and other legal and procedural requirements that would have

to be met, and of how long it may take to complete those requirements, before their project may be implemented. This is especially important when tribes are negotiating with third parties.

B. Involvement in Preparation of Environmental Documents. Tribal governments that are applicants and/or are affected by a proposed federal action shall be consulted during the preparation of environmental documents. Tribes that qualify as eligible governmental entities under 516 DM 2.5 C must be invited to cooperate, at the tribe's option, in the review or preparation of Bureau environmental documents. Any requests by other tribes to participate as a cooperating agency with respect to the Bureau's preparation of a particular EIS must also be considered, and either accepted or denied. Notwithstanding the above, the Bureau retains sole responsibility and discretion in all NEPA compliance matters.

C. Tribal Environmental Laws. If a tribal government has enacted any environmental law or ordinance that applies to a proposed action for which the Bureau must prepare an EA or an EIS, compliance with the law(s)/ordinance(s) must be addressed in the EA or EIS. If the proposed action is categorically excluded, but taking the action might violate a tribal environmental law or ordinance, an EA must be prepared (516 DM 2, Appendix 2.9).

2.6 Indian Landowners and NEPA. Proposed actions by allottees or assignees on their trust allotments are subject to NEPA if a federal action is required before it may proceed.

2.7 Public Involvement. Public disclosure is a key requirement of NEPA. Departmental policy offers the public meaningful opportunities for participation in decision-making that may lead to actions and policies which may significantly affect or interest the public (301 DM 2.1). (See §1500.1(b), §1506.6, 516 DM 1.6, and 301 DM 2.) The public must be involved as early and often as possible in the NEPA process, and prior to development of draft alternatives and other early project documents.

A. Community-Based Training. As a part of the NEPA process, Bureau personnel must make a reasonable effort to train persons and organizations whenever it would enable these persons and organizations to more fully participate in the process. Such training should also strive to impart an understanding of the principles of adaptive management (see 4.4.G.(2).

B. Consensus-Based Management in Agency Planning and Operations. The Bureau must make a reasonable effort to achieve agreement from diverse interests on the goals, purposes and needs of Bureau actions and the methods needed to reach those ends. This should include

(1) establishing a network of communication with the diverse interest groups that represent the community affected by the proposed action.

NOTE: Consider the use of community based training in developing the network of communication. Besides helping participants better understand the NEPA processw and their roles therein, it could provide a focal point for assembling the diverse interest groups that make up the relevant community.

(2) initiating the scoping process with full and direct involvement by the community, identifying and evaluating issues and impacts of concern relating to the proposed action. This applies to <u>any</u> NEPA compliance document.

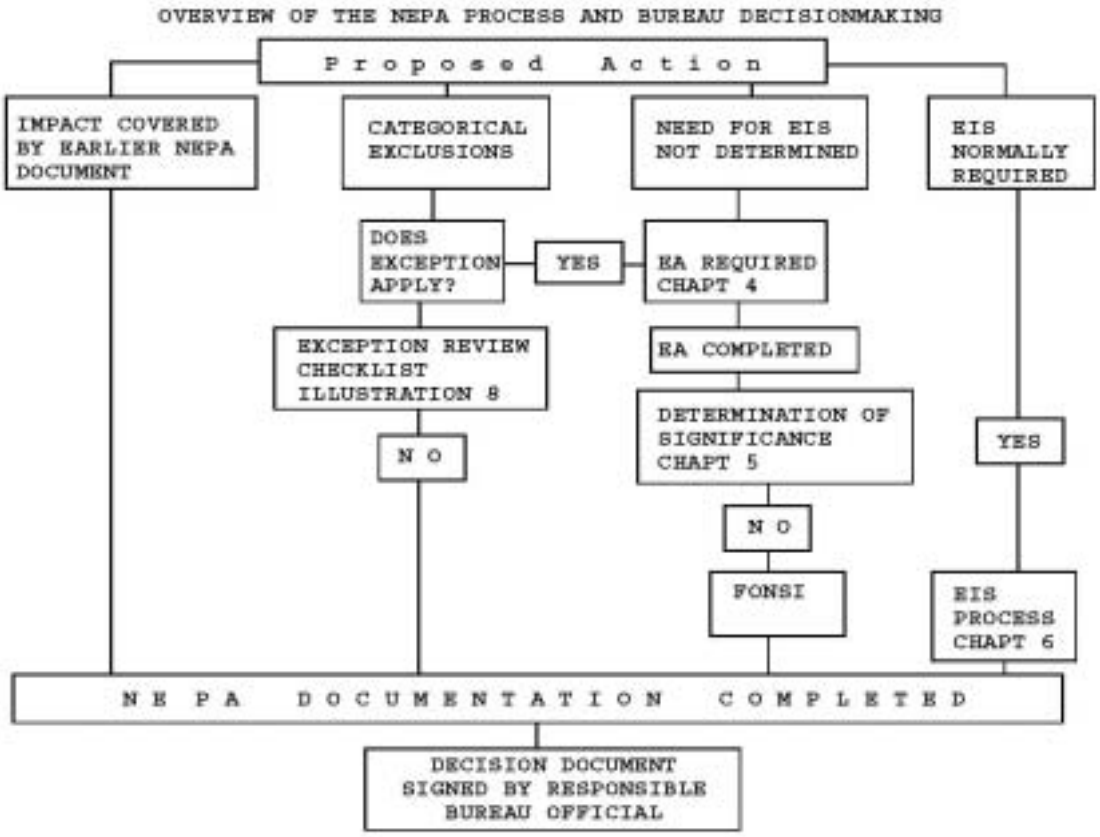
(3) when feasible and practical, including the community alternative, if one exists, among the alternatives evaluated in the NEPA analysis.

(4) when feasible and practical, and subject to statutory, regulatory and political constraints, designating the community alternative as the Bureau's preferred alternative in the NEPA process, so long as a consensus exists within the community in support of that alternative. Such consensus may be considered to exist when no locally established or commonly recognized group within the community has objections to the alternative that would undermine or nullify the proposed action; <u>and/or</u> when, in the judgement of the Bureau decision maker, the community alternative clearly enjoys the broad support of a fair and representative cross-section of the community.

C. <u>Compliance with the Federal Advisory Committee Act (FACA)</u>. The FACA applies whenever a Bureau decision maker establishes or uses a committee, board, commission or similar group for the purpose of obtaining advice or recommendations on issues or policies within the decision maker's official responsibility. As a general rule, FACA does not apply to collaborative groups that are initiated outside the federal government and who maintain their independence from federal management or control, or to collaborative groups composed entirely of federal government representatives. In any case where there is doubt as to whether or not the FACA applies, the Bureau decision maker should consult with the Office of the Solicitor; and in cases where FACA does apply, consult with the Department's Group Federal Officer under FACA for assistance in document preparation.

D. <u>Environmental Justice</u>. Executive Order 12898 (February 11, 1994), "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," requires federal agencies to identify and address any disproportionately high and adverse human health or environmental effects their proposed actions might have on minority communities or low-income communities. The Bureau must therefore reach and communicate to the extent practicable with such communities, from the earliest stages of planning through the decision to proceed with a proposed action, and to specifically address in the environmental analysis any such communities that might be affected by a proposed action. The points where these approaches are incorporated in the Bureau's NEPA process are indicated throughout this Handbook. Detailed guidance is provided in Appendix 6.

Illustration 1



3. INITIATING THE NEPA PROCESS

3.1 Introduction. The purpose of this chapter is to provide guidance to Bureau personnel on the level of documentation required before a decision may be made on whether or not to implement a proposed action.

NOTE: Section 106, National Historic Preservation Act and Section 7, Endangered Species Act consultation should be started at the beginning of the NEPA process.

3.2 Actions not Requiring an EA or an EIS. Most federal actions do not result in significant environmental impacts. The CEQ regulations allow agencies to proceed with the following kinds of actions without preparing either an EIS or an EA.

A. Categorical Exclusions. Actions listed in 516 DM 2, Appendix 1 and 516 DM 10.5 have been determined not to individually or cumulatively affect the quality of the human environment. However, circumstances may exist in which a normally excluded action could result in significant effects upon the environment. These circumstances are listed in the Exception Checklist for BIA Categorical Exclusions (Appendix 7). Proper use of the Exclusion Checklist is as follows:

(1) Check 516 DM 2, Appendix 1 and 516 DM 10.5. Is the proposed action listed? If yes, go to (2). If no, determine whether to prepare an EA or an EIS.

NOTE: The Exception Checklist may not be used on its own to determine that a proposed action is a categorical exclusion. An answer of no to all of the circumstances listed on the checklist does not create a categorical exclusion. The proposed action must be listed in 516 DM 2, Appendix 1 or 516 DM 10.5.

(2) Enter on the Exception Checklist, under Chapter 10 Exclusion Category, the paragraph number of the exclusion (e.g. 10.5.F.3). Write in title and date of document(s), when an earlier NEPA analysis is a provision of the exclusion (such as in 10.5. F.1).

(3) Determine (yes or no) if any of the circumstances listed exist in the case of the proposed action. If the answer is yes for any listed circumstance, determine whether to prepare an EA or an EIS. The categorical exclusion cannot be used.

(4) If the answer is no for all listed circumstances, obtain all signatures indicated on the Exception Checklist. Retain the signed checklist, and any other associated documentation (e.g. Section 106, Section 7), for the record. This completes the NEPA requirement for the proposed action.

B. Actions Analyzed in Existing Environmental Documents. If the environmental impacts of a proposed action are sufficiently covered in an existing federal EA or EIS, it may not

be necessary to prepare new NEPA documents. The use of such earlier documents is referred to as Adoption. (See 6.7 for guidance on using earlier documents.)

(1) An existing federal EA may be adopted if it sufficiently describes the Bureau's part of the proposed action and alternatives and fully assesses the impacts of the Bureau's action. The Bureau must either join the other agency in signing a collaborative Finding of No Significant Impact (FONSI), or prepare a FONSI that specifically addresses the Bureau's portion of the action and states that the Bureau is adopting another agency's EA.

NOTE: If the Bureau prepares its own FONSI, it is easier to prove that it independently evaluated impacts.

(2) An existing EIS, or portion thereof, may be adopted, as follows: (§1506.3)

(a) If the Bureau's proposed action is substantially the same as that in the EIS, the Bureau may treat and re-circulate the document as a final EIS.

(b) If there are minor variations in the Bureau's action, the EIS must be treated and re-circulated as a draft EIS; EXCEPT

(c) As a cooperating agency, the Bureau may adopt without re-circulating the EIS of the lead agency if, after an independent review of the EIS, the Bureau's comments and suggestions have been satisfied.

C. Emergencies. In an emergency, an action with significant environmental impacts may be taken without observing the provisions of the CEQ Regulations (See §1506.11 and 516 DM 5.8), if the action is necessary to control the immediate impacts of the emergency. Such actions, however, must be documented. All other actions remain subject to the NEPA process. In an emergency situation, contact DEM as soon as possible. DEM will consult and coordinate with the Assistant Secretary - Indian Affairs, OEPC and the Office of the Solicitor on alternative compliance actions. OEPC and the Bureau will jointly be responsible for consulting with CEQ.

3.3 Determination of Whether to Prepare an EA or an EIS. If none of the situations described in 3.2 apply, then an EA or EIS is required. This section provides guidance for determining whether to prepare an EA or an EIS.

A. EIS Required. The primary requirement of NEPA is that an EIS be prepared for every federal action that would or may significantly affect the quality of the human environment. There are three ways to determine if an EIS is required.

(1) List of actions in 516 DM 10.4 normally requiring an EIS.

(2) An EA finding that the proposed action would significantly affect the quality of the human environment and cannot be mitigated.

(3) Available information indicates that the proposed action would significantly affect the quality of the human environment and cannot be mitigated. Under these circumstances, there is no need to first complete an EA.

B. EA Required. An EA must be prepared for all Bureau actions, except those covered under 3.2 and 3.3. A. Also, if an EIS has been initiated and it becomes apparent that the action will not have significant impacts, the document may be released as an EA in support of a FONSI. The notice of cancellation for the EIS shall explain the reasons for not completing the document as an EIS and include a statement that the EA and FONSI will be made available for public review.

4. ENVIRONMENTAL ASSESSMENT

4.1 Introduction. An EA is a concise public document, for which a federal agency is responsible, that provides sufficient analysis for determining whether a proposed action may or will have a significant impact on the quality of the human environment. The EA should be completed early in the decision making process so that if it becomes apparent that the proposed action may or will have significant impacts, an EIS can be prepared. If the EA does not reveal any significant impacts, a FONSI is prepared. Illustration 1 shows where the EA fits into the NEPA process.

4.2 Initiating an EA. There are two ways that an EA may be initiated.

A. Internally Initiated Proposals. (See 516 DM 1.4B.) Internally initiated proposals are actions that the Bureau itself takes, such as the construction of a school. An EA is normally prepared by the program staff which has identified the need for the proposed action and which has lead responsibility for implementing the action. Depending upon the complexity of the proposed action, the responsibility for preparation of, or oversight of a contract for the preparation of the EA may be assigned to either an individual or an interdisciplinary team.

B. Externally Initiated Proposals. (See 516 DM 1.4 C.) Externally initiated proposals trigger Bureau actions, such as approval of the lease of trust land in response to a tribal proposal for economic development. The applicant (tribe or third party) normally prepares the EA. The EA should be submitted with the application, or as soon thereafter as possible. The Bureau shall, however, make its own evaluation of the environmental issues and take responsibility for the scope and content of the EA. (See §1506.5(b))

4.3 EA Contents and Format. Bureau EA's shall include brief discussions of the purpose and need for the proposed action, alternatives, including no action, the affected environment, and the environmental consequences, plus a listing of agencies and persons consulted. An EA may include enforceable and reasonable mitigation measures that will eliminate significant impacts.

NOTE: It is important to keep in mind that an EA is not supposed to be a short EIS. The analysis in an EA need not go beyond that needed to determine whether impacts will or may be significant. This analysis should rely on existing data.

A. Incorporation by Reference. All or portions of any pertinent, publicly available document, including, but not limited to existing EAs, EISs or state environmental documents, may be incorporated by reference into an EA. The text of the EA need only include a brief synopsis of such incorporated information. However, a FONSI must rely only on the information contained in the EA itself.

B. Combining Documents. An EA may be combined with another planning or decision making document. The analysis of the environmental impacts of the proposed action and

alternatives, however, must be clearly and separately identified in the combined document, and not spread throughout or interwoven into other sections. (516 DM 3.5.B).

4.4 EA Organization. An EA is typically organized as follows:

A. Cover Sheet. This will include the title and location of the proposed action; date of issue of the EA; name of responsible federal agency(s); and name(s) of the preparing entity(s). If the EA is to be circulated as a draft, this should be clearly marked on the cover sheet.

B. Table of Contents. This lists chapter and section headings, along with tables, figures and illustrations.

C. Purpose of and Need for Action. In this section, explain in a few sentences why the proposed Bureau action is being considered. The purpose of and need for the action should, at a minimum, clearly answer the questions: What federal action triggered NEPA? Why here? and Why now? in order to ensure that NEPA compliance is actually required and that the proposed action and alternatives address the purpose and need directly. If a programmatic EA or other program documents have previously been prepared relating to the proposed action, they should be referenced, but not repeated.

D. Alternatives. Consideration of alternatives should not be a mere exercise, but a good faith effort to find an adequate range of ways to fully and realistically meet the identified need or purpose of the proposed action. The proposed action and no action alternatives are mandatory and must be analyzed throughout an EA. The discussion of the proposed action should clearly answer the questions: Who? What? Where? and When?

(1) Other alternatives must also be considered. For most Bureau EAs, these can be described and eliminated in this section, with reasons given for not considering them further instead of analyzing them throughout the EA. This is because an EA is normally an internal document used by a decision maker to determine if a proposed action will have a significant impact on the environment. If the impact of the proposed action is significant, it would lead to an EIS where all viable alternatives are fully evaluated.

E. Description of the Affected Environment. In this section, succinctly describe existing conditions in the area in which the proposed action would occur. Do not discuss environmental effects in this section. Analyze effects in the Environmental Consequences section. Use page-sized maps, photos and other illustrations as much as possible. Existing documents may also be incorporated by reference, along with a summary of the key facts included in these references.

NOTE: The components of the environment to consider in preparing the EA are listed below. While all of these components should be considered, only those which will be affected by the proposed action need be described. For each of the remaining components, a brief statement of why the component will not be affected is sufficient.

(1) Land Resources

(a) Topography (land forms, drainage, gradients)

(b) Soils (types, characteristics)

(c) Geologic Setting, Mineral and Paleontological Resources

(2) Water Resources (surface and ground; quality, quantity, use, rights)

(3) Air (quality/achievement, visibility)

(4) Living Resources

(a) Wildlife (terrestrial, aquatic, threatened/endangered)

NOTE: Section 7, Endangered Species Act consultation should be completed at this point.

(b) Vegetation (terrestrial, aquatic, riparian, threatened/ endangered)

(c) Ecosystems and Biological Communities

(d) Agriculture (livestock, crops, prime and unique farmland)

(5) Cultural Resources

(a) Historic, Cultural, and Religious Properties

(b) Archeological Resources

NOTE: For the purposes of Section 106, National Historic Preservation Act compliance, the Area of Potential Effect should be determined and all potentially affected cultural resources identified at this point. This includes initial inquiry to the SHPO/THPO, surveys needed to locate resources and consultation with tribes.

(6) Socioeconomic Conditions

(a) Employment and Income

(b) Demographic Trends

NOTE: For the purposes of environmental justice, be certain to include all minority and low income populations that are present.

(c) Lifestyle and Cultural Values

(d) Community Infrastructure (public services, utilities)

(7) Resource Use Patterns

(a) Hunting, Fishing, Gathering

(b) Timber Harvesting

(c) Agriculture

(d) Mining

(e) Recreation

(f) Transportation Networks

(g) Land Use Plans

(8) Other Values

(a) Wilderness

(b) Noise and Light

(c) Visual

(d) Public Health and Safety

NOTE: Phase I and II Contaminant Survey results may be included here.

F. Environmental Consequences. Good analyses in this section is the key to a good EA. Since the purpose of preparing an EA is to determine whether or not the proposed action will or may significantly affect the human environment, analyze all potentially significant effects, beneficial and adverse. Analyze in this section the impacts on the components described in 4.4.E. Discuss the consequences of each alternative on a component of the environment before moving on to the next component. The types of effects to be analyzed follow. For each type of effect, consider those that are short term, long term, irreversible and irretrievable.

(1) Direct Effects. Direct effects occur at the same time and place as the triggering action. For example, application of a pesticide kills a listed endangered plant.
(2) Indirect Effects. Indirect effects are later or away from the triggering action. For example, listed endangered birds die from eating seeds contaminated by the application of a pesticide.

(3) Cumulative Effects. Cumulative effects equals past actions, plus proposed action, plus present actions by others, plus reasonably foreseeable future actions by anyone. Identify reasonably foreseeable future actions through documents, such as tribal resolutions, zoning ordinances, Integrated Resource Management Plans or Natural Resource Restoration Plans; and through consultation with tribal and local planning offices. Put boundaries on the cumulative effects analysis for both time and location (e.g. over the next 5-10 years within the X watershed.)

NOTE: In order to minimize the need for NEPA documentation on specific actions, a reasonable grouping of related actions should be considered in the same EA. This would be particularly appropriate if there are impacts from individual actions which do not appear to be significant, but which may be significant when cumulative effects are considered. See the EPA cumulative effects guidance in Appendix 8.

(4) Disproportionate Effects (Environmental Justice). These are disproportionately high and adverse environmental effects, including human health, economic and social effects, on minority communities and low income communities.

NOTE: Any consultation to determine effects under Section 7 of the Endangered Species Act or Section 106 of the National Historic Preservation Act should be completed by the time the environmental consequences analysis is completed.

G. Mitigation Measures. When adverse effects are noted, mitigation measures to reduce or eliminate such effects may be identified where possible. Mitigation measures, however, may only be relied upon to support a FONSI if they are imposed by statute or regulation, or are an integral part of the action as originally proposed. Other mitigation measures may support a FONSI if they are enforceable. Discussion of mitigation measures must explain how each measure will be enforced. (See question number 40 of Appendix 4, CEQ Forty Most Asked Questions for more detailed discussion.)

NOTE: Extensive mitigation measures in an EA indicate that the proposed action warrants an EIS.

Consultation on and development of Memorandums of Agreement under Section 106 of the National Historic Preservation Act should be completed at this point if cultural resources would be adversely affected.

(1) Mitigation of Disproportionate Effects (Environmental Justice) Mitigation measures shall address, whenever necessary, high and adverse environmental effects to minority communities and low income communities.

(2) Adaptive Management. Adaptive management is a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes and, if not, facilitating management changes that will best ensure that outcomes are met or to re-evaluate the outcomes. Monitoring designed for adaptive management must be able to result in appropriate adjustments in project activities as the project is underway and planned mitigation is implemented. This monitoring must be built into the project and considered in the NEPA analysis and documentation. When applying adaptive management, the Bureau must involve the public by

(a) maintaining open channels of information to the public, including transparency of the monitoring process that precedes adaptive management and the decision making process by which it is implemented. This involves identifying indicators of change; assessing monitoring activities for accuracy and usefulness; and making changes in tactics, activities and/or strategies.

(b) providing post-activity opportunity for public and affected outside agency review of adaptive management practices, including practices that were exceptions to any resource management plans or that had permitting and/or other regulatory requirements not satisfied by prior coordination.

H. Consultation and Coordination. In this section, include agencies, organizations and individuals consulted, and coordination with applicable statutes, regulations and Executive Orders. Affected tribes and appropriate tribal agencies should always be included in this consultation.

(1) Consultation. Federal, tribal, state, and local agencies, such as those having jurisdiction by law or special expertise, and the interested public should be consulted in preparing the EA. This effort must involve all minority communities /low income communities that might be affected by the proposed action. All affected tribes (see 2.5 B.), the State or Tribal Historic Preservation Officer(s) and the U.S. Fish and Wildlife Service shall always be included in this consultation. List in this section the agencies, organizations and individuals consulted. Include all correspondence in appendices.

NOTE: The EA should contain documentation showing completion of the consultation processes under Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

(2) Coordination. Coordinate compliance with statutes and executive orders that apply to the proposed action with the preparation of the EA. A partial list of such statutes and executive orders follows. Because of the time that may be required for compliance, this coordination should begin early in the EA process. If compliance cannot be achieved by the time the EA is completed, explain in the EA how compliance will ultimately be accomplished. Be aware, however, that non-compliance at the time of the EA may lead to a finding of significant impacts.

*(a) National Historic Preservation Act

*(b) Endangered Species Act

(c) Clean Water Act

(d) Safe Drinking Water Act

(e) Clean Air Act

(f) Fish and Wildlife Coordination Act

(g) Comprehensive Environmental Response, Compensation and Liability Act

(h) Resource Conservation and Recovery Act

(i) Federal Insecticide, Fungicide and Rodenticide Act

(j) Toxic Substances Control Act

(k) Asbestos Hazard Emergency Response Act

(l) E.O. 13101 Greening the Government

(m) E.O. 13007 Sacred Sites

(n) Indian Gaming Regulatory Act (§ 20)

*Always required (Except, National Historic Preservation Act compliance is not required for the issuance of a permit under the Archaeological Resources Protection Act of 1979).

NOTE: Remember, compliance with these laws is independent of NEPA and vice-versa.

I. List of Preparers. List all persons, with position title and area of expertise/ discipline, who contributed to the development of the EA.

J. Appendices. Include correspondence and reports resulting from consultation and coordination, a list of references cited, and any other pertinent material.

4.5 EA Processing. When the EA is completed, present it to the Bureau decision maker, along with recommendations for a finding. The decision maker may then:

A. Sign a FONSI. A FONSI is appropriate if the decision maker determines that the proposed action will not have a significant impact on the quality of the human environment. (See chapter 5 for directions on how to prepare a FONSI).

B. Direct Further Work on the EA. The decision maker may decide that the EA is not sufficient to determine whether or not an EIS is required. In such a case, he or she may direct the preparer(s) to revise analyses, consider new alternatives or mitigation measures, seek public involvement, or take other measures to make the EA adequate for making a decision.

C. Initiate an EIS. An EIS shall be prepared if the decision maker determines that the proposed action may or will have a significant impact on the quality of the human environment. (See chapter 6).

REMINDER: An EIS may be initiated at any time during the EA process, without completing the EA, if it becomes apparent that the proposed action will have a significant impact on the quality of the human environment.

4.6 Public Review. The EA shall only be made publically available for review and written comment at the time the Notice of Availability of the FONSI (5.3.B.(3) is published; EXCEPT where the EA contains measures to mitigate impacts to the environment to a level below that which may be considered significant, or where there is public controversy over alternatives or environmental consequences, the EA shall be made available for public review and written comment for a period of no less than 30 days before publishing the Notice of Availability of the FONSI. See 2.7.D. and 5.3.E. for guidance on the publishing/posting of notices.

5. DETERMINATION OF SIGNIFICANCE

5.1 Introduction. The purpose of this chapter is to provide guidance for determining, based on an EA, whether or not a proposed action will have a significant impact on the quality of the human environment. This chapter also includes directions on how to prepare a FONSI.

5.2 Determination of Significance. Determine significance in terms of both context and intensity (See §1508.27), and in terms of all of the types of effects (direct, indirect, cumulative and disproportionate) defined in 4.4.F.

A. Context. Take into account the location, population and interests affected and the duration of impacts.

B. Intensity. Take into account the severity of impact. Consider the following:

(1) The degree to which the proposed action will adversely affect one or more components of the environment, even though its overall effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) The degree to which the action may adversely affect properties that are listed in, or eligible for listing in, the National Register of Historic Places, other cultural resources, scientific resources, park lands, prime farmlands, wetlands, wild and scenic rivers, ecologically critical areas or other special characteristics of the geographical area.

(4) The degree to which the effects are likely to be controversial.

NOTE: "Controversy" here means disagreement among experts over whether or not, or in what way a component of the environment, such as ground water, will be affected by the proposed action. It does not mean public controversy over the proposed action.

(5) The degree to which the effects are uncertain.

(6) The degree to which the action may establish a precedent.

(7) The degree to which the action is related to other actions whose cumulative effects would be adverse, even though the effect of the proposed action alone would not be adverse.

NOTE: Significance cannot be avoided by calling an action temporary or by breaking it down into small component parts (i.e. segmenting).

(8) The degree to which the action may adversely affect an endangered or threatened species or its habitat, as determined per the Endangered Species Act of 1973.

(9) The degree to which the action will have disproportionately high and adverse environmental or human health effects on minority communities and low income communities.

(10) Whether the action threatens a violation of federal, state or local law or requirements imposed for the protection of the environment.

NOTE: Significant economic or social effects by themselves do not require the preparation of an EIS (see §1508.14). They are, however, effects for purposes of NEPA and must be considered in determining whether a proposed action will have a significant effect on the quality of the human environment.

5.3 Finding of No Significant Impact (FONSI). (§1508.13). If it is determined that implementation of a proposed action will not constitute a major federal action significantly affecting the quality of the human environment, prepare a FONSI for the signature of the Bureau decision maker.

NOTE: The FONSI shall be based only on information included in the EA. If new information is developed between the EA and FONSI stages, amend the EA.

A. Contents.

(1) The statement: "Based on the [title and date of EA], it has been determined that the proposed action will not have a significant impact on the quality of the human environment, therefore, an Environmental Impact Statement is not required."

(2) A brief statement of the reasons, with references to pertinent portions of the EA, supporting the finding.

(3) References to all other environmental documents related to the EA.

(4) Signature line for decision maker.

B. Decision Package. The decision package to be presented by Bureau environmental staff to the Bureau decision maker shall include:

(1) The FONSI.

(2) The EA.

(3) Notice of Availability. The CEQ regulations require that there shall be a public notice of availability of the FONSI (§1506.6(b)). This notice shall not be issued before consultation under Section 106 of the National Historic Preservation Act (meaning

a determination of no adverse effect or the signing of a Memorandum of Agreement) and under Section 7 of the Endangered Species Act have been completed. The notice shall:

(a) Briefly describe the proposed action;

(b) State that based on an EA, it has been determined that the action will not result in significant impacts to the quality of the human environment, therefore, an EIS is not required;

(c) Identify a person to contact for further information or to obtain a copy of the FONSI and EA; and

(d) Include the following statement: "This FONSI is a finding on environmental effects, not a decision to proceed with an action, therefore cannot be appealed. 25 C.F.R. Part 2.7 requires a 30 day appeal period after the decision to proceed with the action is made before the action may be implemented. Appeal information will be made publically available when the decision to proceed is made."

NOTE: See Appendix 9 for an example of a FONSI.

C. Record Keeping. Copies of all FONSIs generated within a Region shall be provided to, and retained by the Regional NEPA Coordinator.

D. Review by Next Higher Line Official. The Bureau decision maker shall make controversial EA's available for review by the next higher line official before the Notice of Availability is published.

E. Publish Notice of Availability. The notice of availability of the FONSI shall be made publicly available for 30 days. The notice shall be provided as required by §1506.6(b), such as publication in a local newspaper. Notices for minor localized actions need only be posted at the agency and tribal offices.

NOTE: It would be advisable to make the decision to proceed with the action publicly available at the same time as the Notice of Availability for the FONSI. The time between the Notice and the time when the action may be implemented will then correspond to the 30-day appeal period on the decision to proceed required in 25 C.F.R. 2.7.

5.4 EA Supplements and Revisions. An EA that has not been acted upon must be reviewed to determine if it needs to be revised or supplemented when

A. it is more than 3 years old;

B. substantial changes have been made in the proposed action that may be relevant to environmental concerns; and/or

D. significant new circumstances or information relevant to environmental concerns are present.

6. ENVIRONMENTAL IMPACT STATEMENT

6.1 Introduction. The purpose of this chapter is to provide guidance for the preparation of an EIS. The purpose of an EIS is stated in §1502.1. (See also §§1502.2 - 1502.25.) An EIS provides information to decision makers on the potential impacts of proposed actions on the quality of the human environment, and discloses that information to the public. Much of the guidance given in the previous section on EAs is also applicable to EISs. Two basic differences between an EA and an EIS are the depth of the analysis and the formalities regarding public involvement.

6.2 Lead Agency. The lead agency is the federal agency preparing, or having taken primary responsibility for preparing and administratively processing the EIS. (See §1501.5)

A. Joint Lead Agency. When more than one federal agency has an action being analyzed in the same EIS, such as when one agency is funding a road and another is approving the right of way, the following apply:

(1) Non-delegated EIS. The EIS may be referred to OEPC. OEPC will then coordinate the administrative processing of the EIS.

(2) Delegated EIS. Federal agencies may agree as to which joint lead agency will coordinate the administrative processing of the EIS. If there is a disagreement, OEPC may designate which Bureau within the Department will assume this role, or may recommend a non-delegated EIS. For joint EIS's with agencies outside the Department, OEPC will represent the Department in consultations with CEQ or other federal agencies in resolving which joint lead agency will coordinate the administrative processing of the EIS.

(3) Non-Federal Agencies. A non-federal agency may not be designated as a joint lead agency unless it has a duty to comply with a local or state EIS requirement that is comparable to NEPA.

B. Cooperating Agencies. Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed action may become a cooperating agency. (See §1501.6.) An affected Indian tribe or state or local agency may similarly become a cooperating agency. Bureau requirements for including tribes as cooperating agencies are in 2.5 B. Cooperating agencies should be identified and confirmed in writing by the time the scoping process is completed, and DEM notified in accordance with 1.5 B. of any agreements or declinations to assume cooperating agency status.

6.3 Designation of EIS Team and Team Leader. When the decision has been made to prepare an EIS, the Regional Director will appoint an EIS team leader and, if required, a Contracting Officer's Technical Representative from the appropriate program staff. BIA will use an interdisciplinary team approach. Regional and/or DEM environmental staff, as appropriate,

shall be represented on the EIS team and be responsible for the adequacy of the document. The team leader, in consultation with these environmental staff, will make recommendations to the Regional Director for the selection of other EIS team members. For the applicability of FACA to an EIS team, see 2.7.C.

6.4 Preparation.

A. Notice of Intent (NOI). The first formal step in preparing an EIS is publication of a Notice in the Federal Register, informing the public that the Bureau intends to prepare an EIS. The NOI should be published as soon as possible after the decision is made to prepare an EIS. The NOI shall briefly describe the proposed action and possible alternatives, and the agency's proposed scoping process, including whether, when, and where any scoping meeting(s) will be held. It shall also include the name and telephone number of a contact person within the agency. (See §1508.22). The NOI shall be sent to DEM for processing for Federal Register publication. The Bureau office initiating the EIS should make the NOI available through other media, such as local newspapers, that will provide adequate notice to the affected public.

(1) Notice of Correction. Corrections may be required if there are omissions, errors or changes in the information provided in the NOI. The notice must reference the date and page numbers of all previous Federal Register notices relating to the proposed action. This notice must be published in the Federal Register and made available through the same media as the original NOI.

(2) Notice of Cancellation. A notice of cancellation shall be prepared promptly if a decision is made to terminate the EIS process. The notice must reference the date and page numbers of all previous Federal Register notices relating to the proposed action. This notice must be published in the Federal Register and made available through the same media as the original NOI.

NOTE: All Notices of Intent, Correction, or Cancellation shall be sent to DEM for processing for Federal Register publication. DEM will obtain the signature of the Assistant Secretary - Indian Affairs (which is required for Federal Register publication), transmit the notice to the Federal Register, and forward copies of the notice to OEPC and the EPA Office of Federal Activities. Sample notices are provided in Appendices 10 - 12.

B. Scoping (See §§1501.7 and 1508.25). Scoping is an early and open process through which cooperating agencies and interested persons are identified, and the significant issues and alternatives to be addressed in the EIS are determined. Scoping must include a reasonable effort to meet the community-based training and management objectives described in 2.7.A. and B. The lead agency shall:

(1) Invite the participation of affected federal, state and local agencies, any affected Indian tribe, any affected minority or low income community (environmental

justice), the proponent of the action, and other interested persons, including those who might not be in accord with the action on environmental grounds. In addition, the Solicitor's Office and the Departmental Regional Environmental Officer should be invited.

(2) Determine the alternatives and significant issues to be analyzed in depth in the EIS (§1508.25).

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§1506.3).

(4) Allocate assignments for preparation of the EIS among the lead and cooperating agencies, with the lead agency retaining responsibility for the EIS.

(5) Indicate any public EAs or other EISs which are being or will be prepared that are related to, but are not part of the scope of the EIS under consideration.

(6) Identify other environmental review and consultation requirements, such as Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act and Section 20 of the Indian Gaming Regulatory Act, so that other required analyses and studies may be prepared concurrently, and integrated with the EIS.

(7) Establish a timetable for preparing and completing the EIS.

C. Scoping Meetings. Scoping meetings in various formats are a useful, but optional tool for scoping (§1501.7(b)(4). Local partnerships, collaborative workgroups interactive web sites and other mechanisms should also be considered as means to provide a timely exchange of information with the public so that the scoping process and follow-up activities continue to reflect the public's input. If scoping meetings are held, the required public notice shall be included in the Notice of Intent. The NOI shall be published at least 15 days in advance of scoping meetings. DEM must be contacted before meeting dates are set to ensure proper lead time in the NOI.

D. Scoping Reports. When the scoping process is completed, the EIS team leader submits a scoping report (Appendix 13) to the Regional Director. A copy of the scoping report shall be provided to the affected tribe(s), any cooperating agencies, and any person who requested a copy.

The scoping report shall include:

(1) A statement of the purpose and need for the proposed action;

(2) The alternatives being considered;

(3) A summary of the significant issues identified during the scoping process;

(4) A list of agencies which have agreed to be cooperating agencies;

(5) A summary of any scoping meetings that were held; and

(6) Any other information that the EIS team leader deems appropriate.

E. EIS Format. (§§1502.10-1502.18.)

(1) Cover Sheet/Letter. (§1502.11.) The cover sheet/letter shall not exceed one page. It shall include the following:

(a) The names of the lead agency(s) and any cooperating agencies;

(b) The title of the proposed action. This title must include the name of the state(s), county(s), Indian reservation(s) or other jurisdiction(s) where the action is located, and must state whether the EIS is a draft, final, or a draft or final supplement;

(c) The titles of any related cooperating agency actions;

(d) The name, address and telephone number of a lead agency contact;

(e) A one-paragraph abstract of the EIS; and

(f) The date by which comments must be received.

(2) Cover/Title Page. The cover/title page must contain items E.(1)(a) and (b) above, plus the name(s) of the preparing entity(s), and the date of issue. The title page is normally signed by the Regional Director. However, in some cases a programmatic or other broad scope EIS is signed by the Assistant Secretary.

(3) Executive Summary. (§1502.12). This summary shall stress the major conclusions, areas of environmental controversy and the issues to be resolved, including the choice among alternatives. Matrices, tables, and other graphic displays may be useful to include in the Summary. Specific analysis regarding the impacts and other data will be found in the body of the EIS.

(4) Table of Contents.

(5) Purpose of and Need for Action. (§1502.13). In this section, explain why the proposed Bureau action is being considered. The purpose of and need for the action should, at a minimum, clearly answer the questions: What federal action triggered NEPA? Why here? and Why now? The proposed action and alternatives must address the purpose and need directly.

(6) Alternatives. (§1502.14). In this section, describe, but do not analyze, the proposed action, the no action alternative, and reasonable and feasible alternatives for meeting the purpose and need for action. [In a final EIS, a preferred alternative must be identified. Ordinarily, this would be the environmentally preferred alternative, which is the one judged to be the least damaging to the biological and physical environment. If the Bureau's preferred alternative differs from the applicant's proposed action, both alternatives must be identified in this section. If a preferred alternative cannot be identified, contact DEM for assistance.]

NOTE: Differences in the proposed action, such as size or location, are appropriate alternatives to consider, but by themselves are not sufficient to meet CEQ regulations. Viable alternatives are other possible means to meet the purpose and need, such as a sports complex instead of a casino to meet the need for tribal income.

(7) Affected Environment. (§1502.15). For this section, follow the guidance in 4.4.E. The information in an EIS should be more detailed than that in an EA, but no more than what is needed to understand the impacts to be analyzed in the Environmental Consequences section. As with an EA, only those components of the environment that will actually be affected require detailed description. For each of the remaining components, a brief discussion of why the component will not be affected is sufficient.

(8) Environmental Consequences. (§1502.16). This section forms the scientific and analytic basis for comparing the impact of the proposed action and other alternatives, including the no action alternative, on the environment. For this section, follow the guidance in 4.4.F. The information in an EIS should be more detailed than that in an EA, and must also include discussion of:

(a) Any adverse effects that cannot be avoided;

(b) The relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

(c) Any irreversible and irretrievable commitments of resources;

(d) Possible conflicts between the proposed action and the objectives of federal, tribal, regional, state and local land use plans, policies and controls for the area(s) of concern;

(e) Energy requirements and conservation potential of alternatives and mitigation measures;

(f) Natural or depletable resource requirements and conservation potential of alternatives and mitigation measures; and

(g) The design of the built environment, including the reuse and conservation potential of alternatives and mitigation measures.

(9) Mitigation. Analysis of alternatives must include a discussion of mitigation measures where mitigation is feasible, and of any monitoring designed for adaptive management (see 4.4.G.(2). The purpose of including mitigation measures is to permit a full and accurate comparison of the environmental effects of the alternatives.

NOTE: Mitigation of adverse environmental impacts is not required to implement a proposed action. The purposes of NEPA are met by analyzing these impacts and disclosing them to the public in the EIS.

(10) Consultation and coordination. (§1502.25). For this section, follow the guidance in 4.4.H. In addition, this section shall include a list of agencies, organizations and individuals receiving a copy of the document. The final EIS should have an "*" before those entities and individuals that commented on the DEIS.

(11) List of Preparers. List all persons, with position title and area of expertise/discipline, who contributed to the development of the EIS.

(12) Appendices. (§1502.18). Appendices shall include, but not be limited to correspondence and reports resulting from consultation and coordination; a list of references cited; studies generated specifically in connection with the proposed action; and any other appropriate material.

F. Other EIS Guidance.

(1) Data

(a) Methodology. (§1502.24) The methods used in collecting and analyzing data must be described in the EIS .

(b) Incomplete or Unavailable Information. (§1502.22) Every effort must be made to obtain the information needed to fully evaluate all reasonably foreseeable impacts. The Bureau should not move ahead on proposals without having all of the relevant obtainable information. Information needs should be identified early, to enable timely completion of required studies and integration of the information into the EIS. Where information relevant to adverse impacts is unobtainable due to exorbitant costs, or the means to obtain it are not known, the EIS shall state that the information is lacking and explain why.

NOTE: Some information may not be available to the Bureau because it is proprietary information maintained by an applicant or a tribe. The Bureau should work closely with the applicant or tribe on proprietary issues or information. Proprietary information may be withheld under NEPA to the extent allowed by the Freedom of Information Act. (§1506(f)) Federal agencies are, however, expected to have and report sufficient information to allow informed public review and enable agencies to make responsible decisions.

(c) Combining Documents. (§1506.4) CEQ and the Department encourage combining documents to reduce duplication and paperwork.

(i) Tiering. (§1502.20) Tiering is where a site specific action references a program, policy, or plan covered in an EIS of broad scope. The EIS (or EA) for the narrower action need only address the issues specific to that action.

(ii) Transferred Analysis. Transferred analysis is where environmental impact information learned in one circumstance can be used in the analysis of a similar project or circumstance. Transferred analysis can be assisted by the exchange of environmental information stored in agency libraries and databases. The Bureau should work with other federal agencies to establish and share common databases containing examples of good and bad documents, sources with contact information, procedures for tiered and transferred analysis, and limits on use of certain information.

(iii) Incorporation by Reference. (§1502.21) All or portions of any pertinent, publically available document, including, but not limited to existing EAs, EISs or state environmental documents, may be incorporated by reference into an EIS. The text of the EIS need only include a brief synopsis of such incorporated information.

(2) Funding and Contracts. Funding the EIS and choosing a consulting firm to prepare the EIS may be done by any of the following means.

(a) Federal Procurement. The Bureau may itself fund the EIS and may choose the consulting firm under the federal procurement regulations.

(b) Tribal Procurement. The Bureau or the project applicant may transfer funds for the EIS to a tribe, and the tribe then solicit proposals under its own procurement process from consulting firms. The proposals received are passed along to the Bureau, which chooses the consulting firm and informs the tribe of its choice. The tribe, in turn, informs the firm of this choice and enters into a contract with the firm. The contract must contain a provision that the consulting firm is preparing the EIS for, and under the direction of the Bureau, and the EIS must in fact be prepared under the ultimate direction of the Bureau. A three party agreement may be used to confirm this arrangement.

(c) Third Party Contract. A project applicant may fund the EIS and solicit proposals from consulting firms. The proposals received are passed along to the Bureau, which chooses the consulting firm and informs the project applicant of its choice. The project applicant informs the firm of this choice and enters into a contract with the firm. The contract must contain a provision that the consulting firm is preparing the EIS for, and under the direction of the Bureau, and the EIS must in fact be prepared fully under the direction of the Bureau. A three party agreement may also be used to confirm this arrangement.

(d) Disclosure Statement. (§1506.5 (c) Any consulting firm chosen to prepare an EIS for the Bureau must prepare a statement (see Appendix 14) disclosing that it has "no financial or other interests in the outcome of the project." The Bureau shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the EIS.

6.5 Review.

A. Preliminary Draft EIS. (§1502.17) After the EIS team determines that a preliminary draft of the EIS is complete, it should be distributed to other affected offices within the lead, joint lead and cooperating agencies for critical review and comment. The purpose of this review is to insure legal adequacy, policy consistency, and technical accuracy. Internal distribution should at least include: appropriate Field Office, Agency, Regional Office and Central Office personnel, the Office of the Solicitor (Headquarters, Regional or Field, as appropriate), and the OEPC Regional Environmental Officer. Sufficient time should be allowed for resolving conflicting views, evaluating new data or addressing significant concerns raised during review.

B. Draft EIS.

(1) Printing. After revising the preliminary draft, as needed, in response to the review comments, prepare the DEIS for printing. At least 25 percent more copies of the DEIS should be printed than the project mailing list indicates are needed.

(2) Distribution. Transmittal letters and packaging (e.g. labels, containers) for mailing the DEIS should be prepared while the DEIS is being printed. The following parties shall be sent copies of, and requested to review and comment on the DEIS.

(a) Any federal agency with jurisdiction by law or special expertise with respect to the issue involved in, or impacts resulting from, the proposed action;

(b) Any federal, tribal, state or local agency responsible for environmental review, consultation, coordination, clearance, or permit requirements associated with the project;

(c) Affected Indian tribes;

(d) The applicant; and

(e) All other parties on the project mailing list and anyone else who requested a copy of the DEIS.

(3) File with EPA. DEM files the DEIS with the Environmental Protection Agency (EPA) and OEPC, and distributes it to other bureaus and services within the Department at the Central Office level. For these purposes, 6 hard and 17 CD copies of

the DEIS shall, at the same time as the distribution in 6.5.B(2), be sent to DEM. DEM will obtain a control number for the DEIS from OEPC.

(4) Notice of Availability (NOA). EPA serves as the repository for all EISs prepared in accordance with NEPA, and is responsible for publishing the NOA for the DEIS in the Federal Register. EPA publishes the NOA on the Friday of the week after the week in which they receive the DEIS (5 copies). EPA will not, however, publish the NOA if the DEIS has not been distributed as specified in 6.5.B(2) and (3). EPA's NOA officially starts the comment period for the DEIS.

(5) Bureau Notice. (§1502.19) The Bureau shall supplement the EPA NOA by publishing and/or posting its own notice in other media (including Web sites) and/or

mailing the notice to reach the widest possible affected public, including minority or low income communities. This notice shall at a minimum contain a brief description of the proposed action and alternatives; the name, address and telephone number of the individual to whom to submit comments; and the closing date for the receipt of comments. The Bureau Notice must be published on or before the date EPA publishes their NOA in the Federal Register, and the closing date for comments in the Bureau Notice must be the same as the closing date in the EPA NOA. The Bureau Notice shall also announce the date(s) of the public hearing(s) (6.5.B(6) for the DEIS.

(6) DEIS Review and Comment Period. (§1506.10) The review period for a DEIS is at least 45 days (516 DM 4.26.A) following the date on which the EPA publishes the NOA in the Federal Register. The Bureau may allow a longer comment period, as appropriate.

NOTE: All extensions of review and waiting periods must be processed through DEM. Any changes from dates published in the Federal Register require a new notice in the Federal Register.

(a) Public Hearing. During the DEIS review period, at least one public hearing must be held. This hearing may be held no sooner than 15 days following EPA's publication of the NOA in the Federal Register. A court stenographer shall record all statements made at the public hearing(s).

NOTE: It would be best to hold the public hearing(s) near the middle of the comment period, to allow those attending time to prepare comments they may wish to submit in writing.

C. Final EIS.

(1) Respond to Comments on Draft EIS and Prepare Preliminary Final EIS. (§1503.4) After the comment period has ended, a preliminary version of the final EIS is prepared. All comments received during the comment period, including those submitted or recorded at the public hearing(s), and our responses to the comments must be exhibited in the Final EIS (FEIS). If the changes made in response to the public comments are minor, the FEIS may consist of comments, responses and errata sheets to show changes from the DEIS. In such cases, only the comments, responses and errata sheets need to be circulated. The preliminary FEIS should be circulated for review, as in 6.5.A.

(2) Printing. After revising the preliminary version of the FEIS, as needed, in response to the review comments, prepare the FEIS for printing. (See 6.5.B(1).

(3) Distribution . Follow the guidance in 6.5.B(2). In addition to the parties listed in 6.5.B(2), the FEIS must also be sent to anyone who submitted comments on the DEIS.

(4) File with EPA. Follow the guidance in 6.5.B(3).

(5) Notice of Availability. Follow the guidance in 6.5.B(4). This NOA officially starts the waiting period for the FEIS.

(6) Bureau Notice. Follow the guidance in 6.5.B(5). No public hearing is required for an FEIS.

(7) FEIS Waiting Period. The waiting period for a FEIS is 30 days following the date on which the EPA publishes the NOA in the Federal Register. If comments are made on the FEIS within the 30-day waiting period, they need not be considered in making the final decision on the proposed action, unless a significant issue has been raised. DEM will help in making this determination, along with the Office of the Solicitor, if necessary. The comments, however, must be answered in the ROD.

6.6 Record of Decision (ROD). The ROD (see Appendix 15), which constitutes the decision on the proposed action, is signed by the Bureau decision maker. In some cases, because of special circumstances or where the FEIS is programmatic or of broad scope, the Assistant Secretary may be the Bureau decision maker. No action having either an adverse environmental effect or which would limit the choice of alternatives may be taken before the ROD is issued, (§1506.1(a).

A. Issuing the ROD. The ROD may be issued at any of the following times, but not before consultation under Section 106 of the National Historic Preservation Act (meaning a determination of no adverse effect or the signing of a Memorandum of Agreement) and under Section 7 of the Endangered Species Act have been completed.

(1) Immediately After the Close of the 30-day Waiting Period for the FEIS. The advantage of this timing is that it allows comments requiring response that are received during the waiting period to be addressed in the ROD. The disadvantage is that the 30-day appeal period for the ROD (see 6.6 C.) means that the project cannot be implemented for a total of 60 days from the date on which the EPA publishes the NOA for the FEIS.

(a) When the Assistant Secretary signs the ROD at the close of the 30-day waiting period for the FEIS, the project may be implemented immediately, as there is no appeal period in a ROD signed by the Assistant Secretary.

(2) At the Same Time EPA Publishes the NOA for the FEIS. Where an agency, such as the Bureau, has an appeal period, CEQ allows (1506.10 (2) the ROD to be issued

at the same time the NOA is published, so that the waiting period and the appeal period may run concurrently. The advantage of this timing is that it allows the soo0nest possible project to be implementation, 30 days from the publication date of the NOA for the FEIS. The disadvantage is the risk, that comments requiring a response may be received during the waiting period for the FEIS. In that event, the ROD would have to be reissued to address such comments, and would contain a new 30-day appeal period. This could result in a period of more than 60 days from the date on which the EPA publishes its NOA before the project may be implemented.

(a) When using this option, the FEIS, the ROD and the Bureau Notice must explain the timing of the ROD's issuance and the public's right of appeal.

(b) As a variation on this option, the ROD may be issued anytime during the waiting period for the FEIS. In this case the project could not be implemented at the close of the waiting period, but only after 30 days (the appeal period) from the date the ROD was signed.

(c) The Assistant Secretary may not sign a ROD prior to the close of the 30-day waiting period for the FEIS, as there is no appeal period in a ROD signed by the Assistant Secretary.

(3) Any Time After the Close of the 30-day Waiting Period for the FEIS. There is no maximum time limit on how long after the close of the 30-day waiting period for the FEIS the ROD may be issued. Depending upon the amount of time that has passed since issuance of the FEIS, however, the FEIS may need to be reviewed for freshness according to the guidance in 6.7 before the ROD is issued.

B. ROD Contents. In addition to answering any comments received during the 30-day FEIS waiting period, the ROD must state which alternative has been selected for implementation and briefly discuss the other alternatives considered. There is no requirement to select the environmentally preferred alternative in the EIS. If it is not selected, however, it must be identified as the environmentally preferred alternative in the discussion of the other alternatives considered and the reason it was not selected must be given. If the selected alternative includes mitigation measures, these must be incorporated in the ROD. The decision should provide for monitoring or other means, including adaptive management (see 4.4.G.(2), to insure that these measures are implemented.

C. ROD Distribution. The ROD must be published and/or posted (including on Web sites), as needed, to reach the widest possible affected public, including minority or low income communities, but does not need to be published in the Federal Register. It must also be mailed to the parties listed in 6.5.B(2) and to any additional parties who submitted comments on the FEIS.

D. Appeals. 25 C.F.R. 2.7 requires a 30 day appeal period after the ROD is published or posted before the proposed action may be implemented. The ROD shall contain the following statement:

> "Any person who may be adversely affected by this decision may appeal the decision **[*if by Regional Director]*** to the Interior Board of Indian Appeals (IBIA) at 801 N. Quincy Street, #300, Arlington, Virginia, 22203, ***[if by Superintendent or Field Office Director, to: Regional Director/address]*** in accordance with the regulations set forth at 25 CFR Part 2. The notice of appeal must be signed and mailed within thirty days of the date of this decision. The notice should clearly identify the decision being appealed, and a copy of the decision should be attached to the notice of appeal. Copies of the notice must be sent to the Assistant Secretary for Indian Affairs, MS 4140-MIB, U.S. Department of the Interior, 1849 C Street, N.W., Washington, D.C., 20240, as well as to my office and to all other interested parties known to the person appealing the decision. The notice of appeal to the **[IBIA or Regional Director]** must also certify that the appealing party sent copies to each of these parties. The **[IBIA or Regional Director]** will notify an appealing party of further appeal procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior."

EXCEPTION: Do not include this statement when the ROD is signed by the Assistant Secretary - Indian Affairs. Such decisions are final for the Department (25 C.F.R. 2.6).

6.7 EIS Supplements and Revisions. Draft and final EISs must be reviewed to determine if they need to be revised or supplemented under the conditions listed in A - E below. Supplemental and revised draft and final EISs are subject to the same preparation (see Chapter 6.4 of this Handbook) and review (see Chapter 6.5 of this Handbook) requirements, except for scoping, as regular draft and final EISs, unless they are determined to be for information purposes only (§1502.9).

A. A DEIS is more than 3 years old and the FEIS has not been completed.

B. An FEIS is more than 5 years old for an action not yet taken.

C. Substantial changes have been made in the proposed action that may be relevant to environmental concerns.

D. Significant new circumstances or information relevant to environmental concerns.

E. Comments received result in the inclusion of a new preferred alternative which was not detailed as a reasonable alternative in the draft or final EIS.

NOTE: A. or B. alone do not trigger the requirement for a supplemental draft or final EIS. One or more of C., D. or E. must have occurred.

Illustration 2

ENVIRONMENTAL IMPACT STATEMENT PROCESS

DETERMINE EIS REQUIRED

ISSUE NOTICE OF INTENT (NOI) IN FEDERAL REGISTER

SCOPING (MAY INCLUDE PUBLIC MEETINGS)

PREPARE AND DISTRIBUTE SCOPING REPORT

PREPARE AND REVIEW PRELIMINARY DRAFT EIS
(WITH JOINT AND/OR COOPERATING AGENCIES)

PREPARE DRAFT EIS (DEIS)

APPROVE DEIS (EIS TEAM)

DISTRIBUTE DEIS

FILE WITH DOI AND EPA

ISSUE BUREAU PUBLIC NOTICE

EPA ISSUES NOTICE OF AVAILABILITY (NOA) IN FEDERAL REGISTER
(STARTS CLOCK ON COMMENT PERIOD)

PUBLIC REVIEW AND COMMENT PERIOD
(MINIMUM 45 DAYS)

HOLD PUBLIC MEETING(S)

RESPOND TO COMMENTS

PREPARE AND REVIEW FINAL EIS (FEIS)

APPROVE FEIS (REGIONAL DIRECTOR)

Illustration 2 (CONT'D.)

ENVIRONMENTAL IMPACT STATEMENT PROCESS (CON'T'D)

DISTRIBUTE FEIS

ISSUE BUREAU PUBLIC NOTICE

FILE WITH DOI AND EPA

EPA ISSUES NOA IN FEDERAL REGISTER
(STARTS CLOCK ON WAITING PERIOD)

PREPARE RECORD OF DECISION (ROD)
(MINIMUM 30 DAYS AFTER NOA)

IMPLEMENT ACTION
(AFTER 30 DAY APPEAL PERIOD)

7. REVIEW OF ACTIONS OF OTHER AGENCIES

7.1 Introduction. The purpose of this chapter is to provide guidance on reviewing environmental documents of other agencies. It also explains the process for referral to CEQ when environmental impacts of an action proposed by another agency would have adverse consequences for an Indian tribe or trust resources.

7.2 Reviewing and Commenting on EISs. (§1503) CEQ regulations require that the lead agency for an EIS obtain comments from Federal agencies with jurisdiction by law or special expertise, and request comments from affected tribes and appropriate state and local agencies. Since the Bureau has special expertise in matters affecting Indian tribes, and in some cases also has jurisdiction by law, other agencies frequently ask the Bureau for comments on their (the other agencies') EISs. In such cases, the Bureau has the duty to comment. For agencies within DOI, the Bureau may comment directly to the agency. For agencies outside of DOI, comments must be submitted through DEM for coordination by OEPC.

NOTE: The best way for the Bureau or a tribe to influence the decision making of another federal agency is to become involved early in the EIS process. It is far more effective to participate in scoping and/or become a cooperating agency than to wait until the DEIS is written and then submit comments. Also, the Bureau should establish working relationships with other federal agencies wherein the Bureau and potentially affected tribes are routinely consulted on proposed actions that may affect Indian tribes.

7.3 Pre-decision Referrals to CEQ. (§1504) CEQ regulations establish a procedure through which, following the filing of an FEIS, but prior to a decision based thereon, a Federal agency which objects to the proposed action on environmental grounds may refer the matter to CEQ. In such situations, CEQ may take a range of actions including submitting the matter to the President.

A. Bases for Referral. Pre-decision referral may be triggered by controversy over the material facts in an EIS, or by the likelihood that the proposed action will violate environmental requirements or policies (§1504.3(c)(2)(i and ii), such as the federal trust responsibility to manage and conserve trust resources for beneficial use by Indian tribes.

B. Timing and Process. Except where the lead agency has granted an extension, referral of another agency's action must be done within 25 days of the filing of the FEIS with EPA. DEM must, therefore, be contacted without delay when a referral to CEQ appears warranted. DEM will then contact the lead agency to try to resolve the problem. If the problem cannot be resolved promptly, DEM will initiate the referral process. DEM may ask Regional staff to prepare the documentation required by §1504.3(a) - (c), and a cover memorandum highlighting the significant issues.

7.4 Pre-decision Referral of BIA Actions by Other Agencies. If another federal agency informs the Bureau that it intends to refer a proposed Bureau action to CEQ, DEM, in coordination with OEPC, will promptly meet with that agency in order to try and resolve the issue.

7.5 Post-Decision Referrals to EPA. Pursuant to Section 309 of the Clean Air Act, EPA is required to refer to CEQ any action the Administrator of EPA believes to be unsatisfactory from the standpoint of public health, welfare, or environmental quality. If at any phase of the proposed action it becomes apparent that an unacceptable environmental impact is expected or is occurring, the Assistant Secretary will request that EPA initiate action under Section 309. This action would be subject to demonstration by the Assistant Secretary that the impact is unsatisfactory.

Replaces 30 BIAM, Supp. 1, dated 9/24/93

National Environmental Policy Act

The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, §§ 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC §§ 4321]. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC §§ 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

> (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 USC §§ 4332]. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) t he relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement

and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph ©) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC §§ 4333]. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the

purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC §§ 4334]. Nothing in section 102 [42 USC §§ 4332] or 103 [42 USC §§ 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC §§ 4335]. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201 [42 USC §§ 4341]. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban an rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC §§ 4342]. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC §§ 4343].

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 USC §§ 4344]. It shall be the duty and function of the Council --

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC §§ 4341] of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205 [42 USC §§ 4345]. In exercising its powers, functions, and duties under this Act, the Council shall --

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of

science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206 [42 USC §§ 4346]. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC §§ 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC §§ 5315].

Sec. 207 [42 USC §§ 4346a]. The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 USC §§ 4346b]. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC §§ 4347]. There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

THE ENVIRONMENTAL QUALITY IMPROVEMENT ACT, as amended (Pub. L. No. 91-224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

42 USC §§ 4372.

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions ;under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by --

> (1) providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
>
> (2) assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;
>
> (3) reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
>
> (4) promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;
>
> (5) assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
>
> (6) assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;

(7) collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC §§ 4373. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

42 USC §§ 4374. There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

(a) $2,126,000 for the fiscal year ending September 30, 1979.

(b) $3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.

(c) $44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) $480,000 for each of the fiscal years ending September 30, 1985 and 1986.

42 USC §§ 4375.

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

(1) study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

(2) Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

National Environmental Policy Act

The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, §§ 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC §§ 4321]. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC §§ 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

> (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 USC §§ 4332]. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) t he relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement

and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph ©) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC §§ 4333]. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the

purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC §§ 4334]. Nothing in section 102 [42 USC §§ 4332] or 103 [42 USC §§ 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC §§ 4335]. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201 [42 USC §§ 4341]. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban an rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC §§ 4342]. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC §§ 4343].

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 USC §§ 4344]. It shall be the duty and function of the Council --

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC §§ 4341] of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205 [42 USC §§ 4345]. In exercising its powers, functions, and duties under this Act, the Council shall --

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of

science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206 [42 USC §§ 4346]. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC §§ 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC §§ 5315].

Sec. 207 [42 USC §§ 4346a]. The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 USC §§ 4346b]. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC §§ 4347]. There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

THE ENVIRONMENTAL QUALITY IMPROVEMENT ACT, as amended (Pub. L. No. 91-224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

42 USC §§ 4372.

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions ;under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by --

> (1) providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
>
> (2) assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;
>
> (3) reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
>
> (4) promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;
>
> (5) assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
>
> (6) assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;

(7) collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC §§ 4373. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

42 USC §§ 4374. There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

(a) $2,126,000 for the fiscal year ending September 30, 1979.

(b) $3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.

(c) $44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) $480,000 for each of the fiscal years ending September 30, 1985 and 1986.

42 USC §§ 4375.

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

(1) study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

(2) Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

Council on Environmental Quality

REGULATIONS
For Implementing The Procedural Provisions Of The
NATIONAL ENVIRONMENTAL POLICY ACT

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PART 1500 – PURPOSE, POLICY, AND MANDATE

Sec. 1500.1 Purpose.
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1500.6 Agency authority.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and E.O. 11514, Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55990, Nov. 28, 1978, unless otherwise noted.

Sec. 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

Sec. 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

Sec. 1500.3 Mandate.

Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

Sec. 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (Sec. 1502.2(c)), by means such as setting appropriate page limits (Secs. 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (Sec. 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (Sec. 1502.2(b)).

(d) Writing environmental impact statements in plain language (Sec. 1502.8).

(e) Following a clear format for environmental impact statements (Sec. 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (Secs. 1502.14 and 1502.15) and reducing emphasis on background material (Sec. 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to de-emphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (Sec. 1501.7).

(h) Summarizing the environmental impact statement (Sec. 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (Sec. 1502.19).

(I) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (Secs. 1502.4 and 1502.20).

(j) Incorporating by reference (Sec. 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (Sec. 1502.25).

(l) Requiring comments to be as specific as possible (Sec. 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (Sec. 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (Sec. 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3).

(o) Combining environmental documents with other documents (Sec. 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (Sec. 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (Sec. 1508.13).

[43 FR 55990, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (Sec. 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (Sec. 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (Sec. 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (Sec. 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (Secs. 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (Sec. 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (Sec. 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (Sec. 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3).

(I) Combining environmental documents with other documents (Sec. 1506.4).

(j) Using accelerated procedures for proposals for legislation (Sec. 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (Sec. 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (Sec. 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

Sec. 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

PART 1501 – NEPA AND AGENCY PLANNING

Sec. 1501.1 Purpose.
1501.2 Apply NEPA early in the process.
1501.3 When to prepare an environmental assessment.
1501.4 Whether to prepare an environmental impact statement.
1501.5 Lead agencies.
1501.6 Cooperating agencies.
1501.7 Scoping.
1501.8 Time limits.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55992, Nov. 29, 1978, unless otherwise noted.

Sec. 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and de-emphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

Sec. 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by Sec. 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

Sec. 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (Sec. 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in Sec. 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

Sec. 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in Sec. 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (Sec. 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by Sec. 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (Sec. 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (Sec. 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in Sec. 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under Sec. 1507.3, the agency shall make the finding of no significant impact available for public review (including State and area wide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to Sec. 1507.3, or

(ii) The nature of the proposed action is one without precedent.

Sec. 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one 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.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (Sec. 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to

determine which Federal agency shall be the lead agency. A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in Sec. 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

Sec. 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (Sec. 1508.22) in the Federal Register except as provided in Sec. 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under Sec. 1507.3(c). An agency may give notice in accordance with Sec. 1506.6.

(2) Determine the scope (Sec. 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (Sec. 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in Sec. 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (Sec. 1502.7).

(2) Set time limits (Sec. 1501.8).

(3) Adopt procedures under Sec. 1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

Sec. 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by Sec. 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: *Provided*, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process, which may include:

(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

PART 1502 – ENVIRONMENTAL IMPACT STATEMENT

Sec. 1502.1 Purpose.
1502.2 Implementation.
1502.3 Statutory requirements for statements.
1502.4 Major Federal actions requiring the preparation of environmental impact statements.
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1502.24 Methodology and scientific accuracy.
1502.25 Environmental review and consultation requirements.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

Sec. 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

Sec. 1502.2 Implementation.

To achieve the purposes set forth in Sec. 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (Sec. 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

Sec. 1502.3 Statutory requirements for statements.

As required by sec. 102(2)(C) of NEPA environmental impact statements (Sec. 1508.11) are to be included in every recommendation or report.

On proposals (Sec. 1508.23).
For legislation and (Sec. 1508.17).
Other major Federal actions (Sec. 1508.18).
Significantly (Sec. 1508.27).
Affecting (Secs. 1508.3, 1508.8).
The quality of the human environment (Sec. 1508.14).

Sec. 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (Sec. 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (Sec. 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (Sec. 1501.7), tiering (Sec. 1502.20), and other methods listed in Secs. 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

Sec. 1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (Sec. 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (Secs. 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

Sec. 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter- disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (Sec. 1501.7).

Sec. 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of Sec. 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

Sec. 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

Sec. 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in Sec. 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

Sec. 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for action.

(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).

(h) List of preparers.

(I) List of Agencies, Organizations, and persons to whom copies of the statement are sent.

(j) Index.

(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (I), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in Secs. 1502.11 through 1502.18, in any appropriate format.

Sec. 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA under Sec. 1506.10).

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

Sec. 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

Sec. 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

Sec. 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (Sec. 1502.15) and the Environmental Consequences (Sec. 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

Sec. 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

Sec. 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under Sec. 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in Sec. 1502.14. It shall include discussions of:

(a) Direct effects and their significance (Sec. 1508.8).

(b) I indirect effects and their significance (Sec. 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See Sec. 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under Sec. 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under Sec. 1502.14(f)).

[43 FR 55994, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (Secs. 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

Sec. 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (Sec. 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

Sec. 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in Sec. 1502.18(d) and unchanged statements as provided in Sec. 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

Sec. 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (Sec. 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

Sec. 1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

Sec. 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable;

(2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;

(3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and

(4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the Federal Register on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

[51 FR 15625, Apr. 25, 1986]

Sec. 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, 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.

Sec. 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

Sec. 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503 – COMMENTING

Sec. 1503.1 Inviting comments.
1503.2 Duty to comment.
1503.3 Specificity of comments.
1503.4 Response to comments.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55997, Nov. 29, 1978, unless otherwise noted.

Sec. 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under Sec. 1506.10.

Sec. 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in Sec. 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

Sec. 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

Sec. 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (Sec. 1502.19). The entire document with a new cover sheet shall be filed as the final statement (Sec. 1506.9).

PART 1504 – PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec. 1504.1 Purpose.
1504.2 Criteria for referral.
1504.3 Procedure for referrals and response.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55998, Nov. 29, 1978, unless otherwise noted.

Sec. 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

Sec. 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

Sec. 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response.

f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

[43 FR 55998, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

PART 1505 – NEPA AND AGENCY DECISIONMAKING

Sec. 1505.1 Agency decisionmaking procedures.
1505.2 Record of decision in cases requiring environmental impact statements.
1505.3 Implementing the decision.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55999, Nov. 29, 1978, unless otherwise noted.

Sec. 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (Sec. 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

Sec. 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (Sec. 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6(c) and (d), and Part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

Sec. 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (Sec. 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506 – OTHER REQUIREMENTS OF NEPA

Sec. 1506.1 Limitations on actions during NEPA process.
1506.2 Elimination of duplication with State and local procedures.
1506.3 Adoption.
1506.4 Combining documents.
1506.5 Agency responsibility.
1506.6 Public involvement.
1506.7 Further guidance.
1506.8 Proposals for legislation.
1506.9 Filing requirements.
1506.10 Timing of agency action.
1506.11 Emergencies.
1506.12 Effective date

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 56000, Nov. 29, 1978, unless otherwise noted.

Sec. 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in Sec. 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g. long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

Sec. 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

Sec. 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under Part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

Sec. 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

Sec. 1506.5 Agency responsibility.

(a) *Information*. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (Sec. 1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) *Environmental assessments*. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) *Environmental impact statements*. Except as provided in Secs. 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under Sec. 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

Sec. 1506.6 Public involvement.

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and area wide clearinghouses pursuant to OMB Circular A- 95 (Revised)

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

Sec. 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

Sec. 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (Sec. 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; *Provided*, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by Secs. 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and the Wilderness Act
(16 U.S.C. 1131 et seq.)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

Sec. 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to

commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and Sec. 1506.10.

Sec. 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under Sec. 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see Sec. 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

[43 FR 56000, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

Sec. 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

Sec. 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under section 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the Federal Register of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

PART 1507– AGENCY COMPLIANCE

Sec. 1507.1 Compliance.
1507.2 Agency capability to comply.
1507.3 Agency procedures.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 56002, Nov. 29, 1978, unless otherwise noted.

Sec. 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by Sec. 1507.3 to the requirements of other applicable laws.

Sec. 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

Sec. 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the Federal Register, or five months after the establishment of an agency, whichever shall come later, each agency

shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the Federal Register for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by Secs. 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (Sec. 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in Sec. 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by Sec. 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508 – TERMINOLOGY AND INDEX

Sec. 1508.1 Terminology.
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Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

Sec. 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

Sec. 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

Sec. 1508.3 Affecting.

"Affecting" means will or may have an effect on.

Sec. 1508.4 Categorical exclusion.

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Sec. 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Sec. 1508.5 Cooperating agency.

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in Sec. 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Sec. 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

Sec. 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Sec. 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Sec. 1508.9 Environmental assessment.

"Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Sec. 1508.10 Environmental document.

"Environmental document" includes the documents specified in Sec. 1508.9 (environmental assessment), Sec. 1508.11 (environmental impact statement), Sec. 1508.13 (finding of no significant impact), and Sec. 1508.22 (notice of intent).

Sec. 1508.11 Environmental impact statement.

"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

Sec. 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

Sec. 1508.13 Finding of no significant impact.

"Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall

include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

Sec. 1508.14 Human environment.

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (Sec. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Sec. 1508.15 Jurisdiction by law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

Sec. 1508.16 Lead agency.

"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

Sec. 1508.17 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

Sec. 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Sec. 1508.19 Matter.

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

Sec. 1508.20 Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

Sec. 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

Sec. 1508.22 Notice of intent.

"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

Sec. 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

Sec. 1508.24 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

Sec. 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs.1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

(1) No action alternative.

(2) Other reasonable courses of actions.

(2) Mitigation measures (not in the proposed action).

(c) Impacts, which may be:

(1) Direct.
(2) Indirect.
(3) Cumulative.

Sec. 1508.26 Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

Sec. 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

[43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

Sec. 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site- specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

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Departmental Manual

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Chapter 1: Protection and Enhancement of Environmental Quality

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516 DM 1

1.1 **Purpose**. This Chapter establishes the Department's policies for complying with Title I of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347) (NEPA); Section 2 of Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991; Executive Order 12114, Environmental Effects Abroad of Major Federal Actions; and the regulations of the Council on Environmental Quality (CEQ) implementing the procedural provisions of NEPA (40 CFR 1500-1508; identified in this Part 516 as the CEQ Regulations).

1.2 **Policy**. It is the policy of the Department:

A. To provide leadership in protecting and enhancing those aspects of the quality of the Nation's environment which relate to or may be affected by the Department's policies, goals, programs, plans, or functions in furtherance of national environmental policy;

B. To the fullest practicable extent, to encourage public involvement in the development of Departmental plans and programs through State, local, and tribal partnerships and cooperative agreements at the beginning of the NEPA process, and to provide timely information to the public to better assist in understanding such plans and programs affecting environmental quality in accordance with the CEQ Regulations;

C. To interpret and administer, to the fullest extent possible, the policies, regulations, and public laws of the United States administered by the Department in accordance with the requirements of Sections 101 and 102 of NEPA;

D. To consider and give important weight to environmental factors, along with other societal needs, in developing proposals and making decisions in order to achieve a proper balance between the development and utilization of natural, cultural, and human resources and the protection and enhancement of environmental quality (see Section 101 of NEPA and 1508.14);

E. To consult, coordinate, and cooperate with other Federal agencies and, particularly, State, local, Alaska Native Corporations, and Indian tribal governments in the development and implementation of the Department's plans and programs affecting

environmental quality and, in turn, to give consideration to those activities that succeed in best addressing State and local concerns;

F. To be innovative in natural resource protection and to use all practicable means, consistent with other essential considerations of national policy, to improve, coordinate, and direct its policies, plans, functions, programs, and resources in furtherance of national environmental goals;

G. To rigorously integrate systematic, interdisciplinary approaches into the design of all activities and to base decision making on adequate environmental data in order to identify reasonable alternatives to proposed actions that will avoid or minimize adverse environmental impacts;

H. Where necessary, to monitor, evaluate, and control activities to protect and enhance the quality of the environment and to base decision making on monitoring data and evaluation results; and

I. To cooperate with and assist the CEQ.

1.3 **General Responsibilities**. The following responsibilities reflect the Secretary's decision that the officials responsible for making program decisions are also responsible for taking the requirements of NEPA into account in those decisions and will be held accountable for that responsibility:

A. Assistant Secretary - Policy, Management and Budget (AS/PMB).

(l) Is the Department's focal point on NEPA matters and is responsible for overseeing the Department's implementation of NEPA.

(2) Serves as the Department's principal contact with the CEQ.

(3) Assigns to the Director, Office of Environmental Policy and Compliance (OEPC), the responsibilities outlined for that Office in this Part.

B. Solicitor. Is responsible for providing legal advice in the Department's compliance with NEPA.

C. Assistant Secretaries.

(1) Are responsible for compliance with NEPA, Executive Order 11514, as amended, Executive Order 12114, the CEQ Regulations, and this Part for bureaus and offices under their jurisdiction.

(2) Shall ensure that, to the fullest extent possible, the policies, regulations, and public laws of the United States administered under their jurisdiction are interpreted and administered in accordance with the requirements of NEPA.

D. Heads of Bureaus and Offices.

(1) Must comply with the provisions of NEPA, Executive Order 11514, as amended, Executive Order 12114, the CEQ Regulations, and this Part.

(2) Shall interpret and administer, to the fullest extent possible, the policies, regulations, and public laws of the United States administered under their jurisdiction in accordance with the requirements of NEPA.

(3) Shall continue to review their statutory authorities, administrative regulations, policies, programs, and procedures, including those related to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the intent, purpose, and provisions of NEPA and, in consultation with the Solicitor and the Office of Congressional and Legislative Affairs, shall take or recommend, as appropriate, corrective actions as may be necessary to bring these authorities and policies into conformance with the intent, purpose, and procedures of NEPA.

(4) Shall monitor, evaluate, and control on a continuing basis their activities as needed to protect and enhance the quality of the environment. Such activities will include both those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. They will develop programs and measures to protect and enhance environmental quality. They will assess progress in meeting the specific objectives of such activities as they affect the quality of the environment.

(5) Shall, in furtherance of public participation practices (see 1.2B, above), use consensus-based management and community-based NEPA training to the extent possible in all NEPA compliance activities. (Consensus-based management in the NEPA context is the inclusion of interested parties with an assurance for the participants that the results of their work will be given consideration by the decision maker in selecting a course of action. It is a logical outgrowth of public participation. Community-based training in the NEPA context is the training of local participants with Federal participants in the intricacies of the environmental planning and decision making effort as it relates to the local community(ies). It should de-mystify the process and inform participants how to become effectively involved.) Will ensure that the Department's collaborative efforts under this part comply with the Federal Advisory Committee Act (FACA), 5 U.S.C., Appendix. (To ensure FACA compliance, each bureau and office will verify whether FACA applies, and will ensure that the FACA requirements are followed anytime the Department utilizes (i.e., manages and controls) or establishes a group to be consulted or to provide recommendations to a Departmental official.)

(6) Shall use tiered and transferred analyses to help avoid needless repetition. They will require decision makers to produce NEPA documents that save resources and reduce the public's perception that NEPA documents merely accomplish compliance with a process and do not add to the general knowledge of environmental impacts to natural resources.

(7) Shall use adaptive management (see 516 DM 4.16) to fully comply with 40 CFR 1505.2 which requires a monitoring and enforcement program to be adopted, where applicable, for any mitigation activity.

E. Heads of Regional, Field, or Area Offices.

(1) Must comply with the provisions of NEPA, Executive Order 11514, as amended, Executive Order 12114, the CEQ Regulations, and this Part.

(2) Shall use information obtained in the NEPA process, including pertinent information provided by State and local agencies, Indian tribal governments, and interest groups, to identify reasonable alternatives to proposed actions that will avoid or minimize adverse impacts to the human environment while improving overall environmental results.

(3) Shall monitor, evaluate, and control their activities on a continuing basis to further protect and enhance the quality of the environment.

1.4 Consideration of Environmental Values.

A. In Departmental Management.

(1) In the management of the natural, cultural, and human resources under its jurisdiction, the Department must consider and balance a wide range of economic, environmental, and societal needs at the local, regional, national, and international levels, not all of which are quantifiable in comparable terms. In considering and balancing these objectives, Departmental plans, proposals, and decisions often require recognition of complements and resolution of conflicts among interrelated uses of these natural, cultural, and human resources within technological, budgetary, and legal constraints. Various Departmental conflict resolution mechanisms are available to assist this balancing effort.

(2) Departmental project reports, program proposals, issue papers, and other decision documents must carefully analyze the various objectives, resources, and constraints, and comprehensively and objectively evaluate the advantages and disadvantages of the proposed actions and their reasonable alternatives. Where appropriate, these documents will contain or reference supporting and underlying economic, environmental, technological, and other societal analyses in language that all participants can understand and use.

(3) The underlying environmental analyses will factually, objectively, and comprehensively analyze the environmental effects of proposed actions and their reasonable alternatives. They will systematically analyze the environmental impacts of alternatives, and particularly those alternatives and measures that would reduce, mitigate or prevent adverse environmental impacts or that would enhance environmental quality. However, such an environmental analysis is not, in and of itself, a program proposal or the decision document, is not a justification of a proposal, and will not support or deprecate the overall merits of a proposal or its various alternatives.

(4) Environmental analyses shall strive to provide baseline data where possible and shall provide monitoring and evaluation tools as necessary to ensure that an activity is implemented as contemplated by the NEPA analysis. Baseline data gathered for these analyses may include pertinent social, economic, and environmental data.

(5) If proposed actions are planned for the same geographic area or are otherwise closely related, environmental analysis should be integrated to ensure adequate consideration of resource use interactions, to reduce resource conflicts, to establish baseline data, to monitor and evaluate changes in such data, to adapt actions or groups of actions accordingly, and to comply with NEPA and the CEQ Regulations. Proposals shall not be segmented in order to reduce the levels of environmental impacts reported in NEPA documents.

(6) When proposed actions involve approval processes of other agencies, the Department shall use its lead role to identify opportunities to consolidate those processes.

B. In Internally Initiated Proposals. Officials responsible for development or conduct of planning and decision making systems within the Department shall incorporate environmental planning as an integral part of these systems in order to ensure that environmental values and impacts are fully considered, facilitate any necessary documentation of those considerations, and identify reasonable alternatives in the design and implementation of activities that minimize adverse environmental impacts. An interdisciplinary approach shall be initiated at the earliest possible time to provide for consultation among all participants for each planning or decision making endeavor. This interdisciplinary approach should, to the extent possible, have the capacity to consider innovative and creative solutions from all participants.

C. In Externally Initiated Proposals. Officials responsible for the development or conduct of loan, grant, contract, lease, license, permit, or other externally initiated activities shall require applicants, to the extent necessary and practicable, to provide environmental information, analyses, and reports as an integral part of their applications. As with internally initiated proposals, officials shall encourage applicants and other interested parties to consult with the Department and provide their comments, recommendations, and suggestions for improvement.

1.5 Consultation, Coordination, and Cooperation with Other Agencies and Organizations.

A. Departmental Plans and Programs.

(1) Officials responsible for planning or implementing Departmental plans and programs will develop and utilize procedures to consult, coordinate, and cooperate with relevant State, local, and Indian tribal governments; other bureaus and Federal agencies; and public and private organizations and individuals concerning the environmental effects of these plans and programs on their jurisdictions or interests. Such efforts should, to the extent allowed by law and in accordance with FACA, include consensus-based management whenever possible. This is a planning process that incorporates direct community involvement into bureau activities from initial scoping through implementation of the bureau or office decision and, in appropriate

cases, monitoring and future adaptive management measures. All bureau NEPA and planning procedures will be made available to the public.

(2) Bureaus and offices will use, to the maximum extent possible, existing notification, coordination, and review mechanisms established by the Office of Management and Budget and CEQ. However, use of these mechanisms must not be a substitute for early consultation, coordination, and cooperation with others, especially State, local, and Indian tribal governments.

(3) Bureaus and offices are encouraged to expand, develop, and use new forms of notification, coordination, and review, particularly by electronic means and the Internet. Bureaus are also encouraged to stay abreast of and use new technologies in environmental data gathering and problem solving.

B. Other Departmental Activities.

(1) Technical assistance, advice, data, and information useful in restoring, maintaining, and enhancing the quality of the environment will be made available to other Federal agencies; State, local, and Indian tribal governments; institutions; and other entities as appropriate.

(2) Information regarding existing or potential environmental problems and control methods developed as a part of research, development, demonstration, test, or evaluation activities will be made available to other Federal agencies; State, local, and Indian tribal governments; institutions; and other entities as appropriate.

(3) Recognizing the worldwide and long-range character of environmental problems and consistent with the foreign policy of the United States, appropriate support will be made available (in consultation with clearly defined interested parties including tribal governments, if applicable) to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment.

C. Plans and Programs of Other Agencies and Organizations.

(1) Officials responsible for protecting, conserving, developing, or managing resources under the Department's jurisdiction shall coordinate and cooperate with State, local, and Indian tribal governments; other bureaus and Federal agencies; and public and private organizations and individuals, and provide them with timely information concerning the environmental effects of these entities' plans and programs.

(2) Bureaus and offices are encouraged to participate early in the planning processes of other agencies and organizations in order to ensure full cooperation with, and understanding of, the Department's programs and interests in natural, cultural, and human resources.

(3) Bureaus and offices will use, to the fullest extent possible, existing Departmental review mechanisms to avoid unnecessary duplication of effort and to avoid confusion by other organizations.

(4) Bureaus and offices will work closely with other Federal agencies to ensure that similar or related proposed actions in the same geographic area are fully evaluated to determine if agency analyses can be integrated so that one NEPA compliance document can be used by all for their individual permitting and licensing needs.

1.6 **Public Involvement.**

A. Bureaus and offices, in accordance with 301 DM 2 and this part, will develop and implement procedures to ensure the fullest practicable provision of timely public information and understanding of their plans and programs with environmental impacts including information on the environmental impacts of alternative courses of action. This is to include public involvement in the development of NEPA analyses and documents.

B. These procedures will include, wherever appropriate, provision for public meetings in order to obtain the views of interested parties, newsletters, and status reports of NEPA compliance activities. Public information shall include all necessary policies and procedures concerning plans and programs in a readily accessible, consistent format.

C. Bureaus and offices will also coordinate and collaborate with State and local agencies and Indian tribal governments in developing and using similar procedures for informing the public concerning their activities affecting the quality of the environment.

1.7 **Mandate.**

A. This Part provides Department-wide instructions for complying with NEPA, Executive Orders 11514, as amended by 11991 (Protection and Enhancement of Environmental Quality) and 12114 (Environmental Effects Abroad of Major Federal Actions), and the CEQ Regulations. The provisions of Part 516 are intended to establish guidelines to be followed by the Department and its bureaus, services and offices. Part 516 is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person. The provisions of Part 516 are not intended to direct or bind any person outside the Department.

B. The Department hereby adopts the CEQ Regulations implementing the procedural provisions of NEPA [Sec. 102(2)(C)] except where compliance would be inconsistent with other statutory requirements. In the case of any discrepancies among these procedures and the NEPA statute; Executive Orders 11514, 11991, and 12114; or the mandatory provisions of the CEQ Regulations, the laws, Executive Orders, and regulations shall govern.

C. Instructions supplementing the CEQ Regulations are provided in Chapters 2-7 of this Part. Citations in brackets refer to the CEQ Regulations.

D. Instructions specific to each bureau are found in Chapters 8 through 15. This portion of the manual may expand or contract depending on the number of bureaus existing at any particular time. In addition, bureaus may prepare handbooks or other technical guidance for their personnel on how to apply this Part to principal programs. In the case of any apparent discrepancies between these procedures and bureau handbooks or technical guidance, 516 DM 2-7 shall govern.

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Part 516: National Environmental Policy Act of 1969
Chapter 2: Initiating the NEPA Process

Originating Office: Office of Environmental Policy and Compliance

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516 DM 2

2.1 **Purpose**. This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to initiating the NEPA process. The numbers in parentheses signify the appropriate citation in the CEQ Regulations.

2.2 **Apply NEPA Early** (40 CFR 1501.2).

A. Bureaus shall initiate early consultation and coordination with other bureaus and any Federal agency having jurisdiction by law or special expertise with respect to any environmental issue that should be addressed, and with appropriate Federal, State, local and Indian tribal governments authorized to develop and enforce environmental standards or to manage and protect natural resources.

B. Bureaus shall also initiate the consultation process with interested parties and organizations at the time an application is received, or when the bureau initiates action on an agency plan or project requiring NEPA analyses and documentation.

C. Bureaus shall revise or amend program regulations, requirements, and directives to ensure that private or non-Federal applicants are informed of any environmental information required to be included in their applications and of any consultation with other Federal agencies, or State, local, or Indian tribal governments required prior to making the application. A discussion and a list of these regulations, requirements, and directives are found in 516 DM 6.4 and 6.5. The specific regulations, requirements, and directives for each bureau are found in separate chapters of this Part beginning with Chapter 8.

D. It is imperative that bureaus enlist the participation of all interested parties as early as possible and provide any necessary community-based training in order to reduce costs, prevent delays, and to promote efficiency in the NEPA process. It is the intent of these procedures to achieve early consensus on the scope of NEPA compliance and the methodologies for collecting needed baseline data. Consensus-based management [as described in 516 DM 1.5A(1)] should be used, as appropriate, to facilitate this process including the consideration of any publicly developed alternatives. However, the use of consensus-based management may be restricted or ended based on applicable statutory, regulatory, or policy requirements. Further, it

is the intent of these procedures to facilitate environmental analyses that avoid the late introduction of issues and alternatives that should have been identified initially during scoping.

E. Bureaus shall engage in a rigorous interdisciplinary approach at the earliest possible time to ensure adequate identification and consideration of the wide variety of environmental factors and considerations inherent in NEPA compliance activities.

F. NEPA applies to Department and bureau decision making and focuses on major Federal actions significantly affecting the quality of the human environment.

2.3 **Whether to prepare an Environmental Impact Statement (EIS)** (40 CFR 1501.4).

A. Categorical Exclusions (CX) (40 CFR 1508.4).

(1) Categorical exclusions are defined as a group of actions that would have no significant individual or cumulative effect on the quality of the human environment and, for which in the absence of extraordinary circumstances, neither an environmental assessment nor an environmental impact statement is required.

(2) Based on (1) above, the categories of actions listed in Appendix 1 to this Chapter are categorically excluded, Department-wide, from the preparation of environmental assessments or environmental impact statements. A list of CX specific to bureau programs will be found in the bureau chapters beginning with Chapter 8. Note that 1508.18(a) excludes bringing judicial or administrative civil or criminal enforcement actions.

(3) The CEQ Regulations at 40 CFR 1508.4 require agency procedures to provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect thus requiring additional analysis and action. The extraordinary circumstances to be considered when using categorical exclusions are listed in Appendix 2 of this Chapter. Any action that is normally categorically excluded must be subjected to sufficient environmental review to determine whether it meets any of the extraordinary circumstances, in which case, further analysis and environmental documents must be prepared for the action. Bureaus are reminded and encouraged to work within existing administrative frameworks, including any existing programmatic agreements, when deciding how to apply any of the Appendix 2 extraordinary circumstances.

B. Environmental Assessment (EA) (40 CFR 1508.9). See 516 DM 3. Decisions/actions which would normally require the preparation of an EA will be identified in each bureau chapter beginning with Chapter 8.

C. Finding of No Significant Impact (FONSI) (40 CFR 1508.13). A FONSI will be prepared as a separate covering document based upon a review of an EA. Accordingly, the words include(d) in Section 1508.13 will be interpreted as attach(ed) in reference to the EA.

D. Notice of Intent (NOI) (40 CFR 1508.22.). An NOI will be prepared as soon as practicable after a decision to prepare an EIS and shall be published in the Federal Register, with

a copy to the OEPC and made available to the affected public in accordance with Section 1506.6. Publication of an NOI may be delayed if there is proposed to be more than three (3) months between the decision to prepare an EIS and the time preparation is actually initiated. The notice, at a minimum, identifies key personnel, sets forth a schedule, and invites early comment. Scoping requests generally announce a schedule for scoping meetings where the agencies and the public can participate in the formal scoping process. These notices are also usually published in the Federal Register and may contain the text of a draft scoping document that outlines the actions, alternatives, and environmental issues and impacts identified at that time. The draft scoping document may also be made available upon request to a contact usually named in the notice.

E. Environmental Impact Statement (40 CFR 1508.11). See 516 DM 4. Decisions/actions which would normally require the preparation of an EIS will be identified in each bureau chapter beginning with Chapter 8.

F. Existing environmental analyses should be used in analyzing impacts of a proposed action to the extent possible and appropriate. CEQ Regulations encourage agencies to make the best use of existing NEPA documents and to avoid redundancy and unneeded paperwork through supplementing, incorporating by reference, or adopting previous environmental analyses. Use of existing documents carries with it a presumption that the bureaus will determine, in a deliberative manner and through agency procedures, that existing environmental analyses still adequately cover current actions.

2.4 **Lead Agencies** (40 CFR 1501.5).

A. The AS/PMB shall designate lead bureaus within the Department when bureaus under more than one Assistant Secretary are involved and cannot reach agreement on lead bureau status. The AS/PMB shall represent the Department in consultations with CEQ or other Federal agencies in the resolution of lead agency determinations.

B. Bureaus will inform the OEPC of any agreements to assume lead agency status. OEPC will assist in the coordination and documentation of any AS/PMB designations made in 2.4A.

C. To eliminate duplication with State and local procedures, a non-Federal agency (including Indian tribal governments) may be designated as a joint lead agency when it has a duty to comply with State or local requirements that are comparable to the NEPA requirements.

D. 40 CFR 1501.5 describes the selection of lead agencies, the settlement of lead agency disputes, and the use of joint lead agencies. While the joint lead relationship is not precluded among several Federal agencies, the Department recommends that it be applied sparingly and that one Federal agency be selected as the lead with the remaining Federal, State, Indian tribal governments, and local agencies assuming the role of cooperating agency. In this manner, the other Federal, State, and local agencies can work to ensure that the ensuing NEPA document will meet their needs for adoption and application to their related decision. If joint

lead is dictated by other law, regulation, policy, or practice, then one Federal agency shall be identified as the agency responsible for filing the EIS.

E. Lead agency designations may be required by law in certain circumstances.

2.5 **Cooperating Agencies** (40 CFR 1501.6).

A. The OEPC will assist Bureaus in determining cooperating agencies and coordinate requests from non-Interior agencies.

B. Bureaus will inform the OEPC of any agreements to assume cooperating agency status or any declinations pursuant to Section 1501.6(c).

C. Upon the request of the lead agency, any Federal agency with jurisdiction by law shall, and any Federal agency with special expertise may, be a cooperating agency. Any non-Federal agency (State, tribal, or local) may be a cooperating agency by agreement when it has jurisdiction by law (40 CFR 1508.15) or special expertise (40 CFR 1508.26) and meets the requirements of 40 CFR 1501.6. Bureaus will consult with the Solicitor's Office in cases where such non-Federal agencies are also applicants before the Department to determine relative lead/cooperating agency responsibilities. (CEQ guidance to agencies dated July 28, 1999, and January 30, 2002, urges agencies to more actively solicit participation of Federal, State, tribal, and local governments as cooperating agencies.)

D. Bureaus and potential cooperating agencies are advised to express in a letter and, if necessary, a memorandum of understanding their respective roles, assignment of issues, schedules, and staff commitments so that the NEPA process remains on track and within the time schedule.

2.6 **Scoping** (40 CFR 1501.7).

A. The invitation requirement in Section 1501.7(a)(1) may be satisfied by including such an invitation in the NOI.

B. Scoping is a process which continues throughout the planning and early stages of preparation of an EIS. Bureaus are encouraged through scoping to engage State, local and tribal governments and the public in the early identification of concerns, potential impacts, and possible alternative actions. Scoping requires interdisciplinary considerations. Scoping is an opportunity to bring agencies and applicants together to lay the groundwork for setting time limits, expediting reviews where possible, integrating other environmental reviews, and identifying any major obstacles that could delay the process.

C. Scoping should encourage the responsible official to integrate analyses required by other environmental laws. Scoping should also be used to integrate other planning activities for separate projects that may have similar or cumulative impacts. Integrated analysis facilitates the resolution of resource conflicts and minimizes redundancy.

D. Through scoping meetings, newsletters, or other communication methods, it should be made clear that the lead agency is ultimately responsible for the scope of an EIS and that suggestions obtained during scoping (see B and C above) are considered to be advisory.

2.7 **Time Limits** (40 CFR 1501.8).

A. Time limits are an important consideration and, when used diligently, can contribute greatly to a more efficient NEPA process. Bureaus are encouraged to set time limits of their own and to respond favorably to applicant requests for time limits and set them consistent with the requirements of 40 CFR 1501.8. Bureaus should work with cooperating agencies and agencies with which they must consult in setting time limits and encourage their commitment in meeting the time frames established.

B. When time limits are established, they should reflect the availability of personnel and funds. Efficiency of the NEPA process is dependent on the management capabilities of the lead bureau, which is encouraged to assemble a sufficiently well qualified staff commensurate with the type of project to be analyzed to ensure timely completion of NEPA documents.

APPENDIX 1

Departmental Categorical Exclusions

The following actions are CXs pursuant to 516 DM 2.3A(2). However, environmental documents will be prepared for individual actions within these CX if any of the extraordinary circumstances listed in 516 DM 2, Appendix 2, apply.

1.1 Personnel actions and investigations and personnel services contracts.

1.2 Internal organizational changes and facility and office reductions and closings.

1.3 Routine financial transactions including such things as salaries and expenses, procurement contracts (in accordance with applicable procedures and Executive Orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

1.4 Departmental legal activities including, but not limited to, such things as arrests, investigations, patents, claims, and legal opinions. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA in accordance with 40 CFR 1508.18(a).

1.5 Reserved.

1.6 Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

1.7 Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (e.g., limited size and magnitude or short-term effects).

1.8 Management, formulation, allocation, transfer, and reprogramming of the Department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.)

1.9 Legislative proposals of an administrative or technical nature (including such things as changes in authorizations for appropriations and minor boundary changes and land title transactions) or having primarily economic, social, individual, or institutional effects; and comments and reports on referrals of legislative proposals.

l.10 Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

1.11 Activities which are educational, informational, advisory, or consultative to other agencies, public and private entities, visitors, individuals, or the general public.

1.12 Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities: Shall be limited to areas (1) in wildland-urban interface and (2) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface; Shall be identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan;" Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans; Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction. (Refer to the Environmental Statement Memoranda Series for additional, required guidance.)

1.13 Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities: Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans; Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and Shall be completed within three years following a wildland fire. (Refer to the Environmental Statement Memoranda Series for additional, required guidance.)

APPENDIX 2

Categorical Exclusions: Extraordinary Circumstances

Extraordinary circumstances exist for individual actions within CXs which may:

2.1 Have significant impacts on public health or safety.

2.2 Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

2.3 Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].

2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

2.6 Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

2.7 Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.

2.8 Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.

2.9 Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

2.10 Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).

2.11 Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).

2.12 Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).

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516 DM 3

3.1 **Purpose**. This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to Environmental Assessment (EA).

3.2 **When to Prepare** (40 CFR 1501.3).

A. An EA will be prepared for all actions, except those covered by a categorical exclusion, those covered sufficiently by an earlier environmental document, or those actions for which a decision has already been made to prepare an EIS. The purpose of an EA is to allow the responsible official to determine whether to prepare an EIS or a FONSI.

B. In addition, an EA may be prepared on any action at any time in order to assist in planning and decision making, to aid an agency's compliance with NEPA when no EIS is necessary, or to facilitate EIS preparation.

3.3 **Public Involvement.**

A. The public must be provided notice of the availability of EAs (40 CFR 1506.6).

B. Where appropriate, bureaus and offices, when conducting the EA process, shall provide the opportunity for public participation and shall consider the public comments on the pending plan or program.

C. The scoping process may be applied to an EA (40 CFR 1501.7).

3.4 **Content.**

A. At a minimum, an EA will include brief discussions of the proposal, the need for the proposal, alternatives [as required by Section 102(2)(E) of NEPA], the environmental impacts of the proposed action and such alternatives, and a listing of agencies and persons consulted [1508.9(b)].

B. In addition, an EA may describe a broader range of alternatives and proposed mitigation measures to facilitate planning and decision making.

C. The level of detail and depth of impact analysis should normally be limited to the minimum needed to determine whether there would be significant environmental effects.

D. An EA will contain objective analyses that support its environmental impact conclusions. It will not conclude whether an EIS will be prepared. This conclusion will be made upon review of the EA by the responsible bureau official and documented in either a NOI or a FONSI.

E. Previous NEPA analyses should be used in a tiered analysis or transferred and used in a subsequent analysis to enhance the content of an EA whenever possible.

3.5 **Format.**

A. An EA may be prepared in any format useful to facilitate planning, decision making, and appropriate public participation.

B. An EA may be combined with any other planning or decision making document; however, that portion which analyzes the environmental impacts of the proposal and alternatives will be clearly and separately identified and not spread throughout or interwoven into other sections of the document.

3.6 **Adoption.**

A. An EA prepared for a proposal before the Department by another agency, entity, or person, including an applicant, may be adopted if, upon independent evaluation by the responsible official, it is found to comply with this Chapter and relevant provisions of the CEQ Regulations.

B. When appropriate and efficient, a responsible official may augment such an EA when it is essentially, but not entirely, in compliance, in order to make it so.

C. If such an EA is adopted or augmented, responsible officials must prepare their own NOI or FONSI that acknowledges the origin of the EA and takes full responsibility for its scope and content.

D. Adoption or augmentation of an EA shall receive the same public participation that the EA would have received if it had originated with the adopting or augmenting bureau or office.

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516 DM 4

4.1 **Purpose**. This Chapter provides supplementary instructions for implementing those portions of the CEQ regulations pertaining to EIS.

4.2 **Statutory Requirements** (40 CFR 1502.3). NEPA requires that an EIS be prepared by the responsible Federal official. This official is normally the lowest-level official who has overall responsibility for formulating, reviewing, or proposing an action or, alternatively, has been delegated the authority or responsibility to develop, approve, or adopt a proposal or action. Preparation at this level will ensure that the NEPA process will be incorporated into the planning process and that the EIS will accompany the proposal through existing review processes.

4.3 **Timing** (40 CFR 1502.5).

A. For such actions as broad programmatic decisions, rulemakings, or resource management plans, an EIS should be commenced whenever a proposed action has been defined. These types of actions can be inherently vague and difficult to analyze until the proposed action is defined. At that point, concurrent drafting of the proposal and its accompanying EIS should be commenced.

B. The feasibility analysis (go/no-go) stage, at which time an EIS is to be prepared for proposed projects undertaken by DOI, is to be interpreted as the stage prior to the first point of major commitment to the proposal. For example, this would normally be at the authorization stage for proposals requiring Congressional authorization; the location or corridor stage for transportation, transmission, and communication projects; and the leasing stage for offshore mineral resources proposals [40 CFR 1502.5(a)].

C. For situations involving applications to DOI or the bureaus, an EIS need not be commenced until an application is essentially complete; i.e., any required environmental information is submitted and any required advance funding is paid by the applicant [40 CFR 1502.5(b)]. Officials shall also inform applicants of any responsibility they will bear for funding environmental analyses associated with their proposals.

4.4 **Page Limits** (40 CFR 1502.7). Bureaus will ensure that the length of EISs is no greater than necessary to comply with NEPA, the CEQ regulations, and this Chapter.

4.5 **Supplemental Statements** (40 CFR 1502.9).

A. Supplements are required if an agency makes substantial changes in the proposed action relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

B. A bureau and/or the appropriate program Assistant Secretary will consult with the OEPC and the Office of the Solicitor prior to proposing to CEQ to prepare a supplemental statement using alternative arrangements such as issuing a final supplement without preparing an intervening draft.

C. If, after a decision has been made based on a final EIS, a described proposal is further defined or modified and if its changed effects are not significant and still within the scope of the earlier EIS, an EA, and a FONSI may be prepared for subsequent decisions rather than a supplement.

4.6 **Format** (40 CFR 1502.10).

A. Proposed departures from the standard format described in the CEQ regulations and this Chapter must be approved by the OEPC.

B. The section listing the preparers of the EIS will also include other sources of information, including a bibliography or list of cited references, when appropriate.

C. The section listing the distribution of the EIS will also fully describe the consultation and public involvement processes used in planning the proposal and in preparing the EIS, if this information is not discussed elsewhere in the document. The section will also describe the level to which the public contributed usable data for the document.

D. If CEQ's standard format is not used or if the EIS is combined with another planning or decision making document, the section which analyzes and compares the environmental consequences of the proposal and its alternatives will be clearly and separately identified and not interwoven into other portions of or spread throughout the document.

4.7 **Cover Sheet** (40 CFR 1502.11). The cover sheet will also indicate whether the EIS is intended to serve any other environmental review or consultation requirements pursuant to Section 1502.25. The cover sheet will also identify cooperating agencies, the location of the action, and whether the analysis is programmatic in nature.

4.8 **Summary** (40 CFR 1502.12). The emphasis in the summary should be on those considerations, controversies, and issues that significantly affect the quality of the human environment.

4.9 **Purpose and Need** (40 CFR 1502.13). This section shall present the purpose of and need for the agency action. The purpose and need shall be described in sufficient detail to aid in

the development of an appropriate range of alternatives. Care should be taken to ensure an objective presentation and not a justification.

4.10 **Alternatives Including the Proposed Action** (40 CFR 1502.14).

A. The following terms are commonly used in NEPA compliance activities and are described below for clarification.

(1) Range of Alternatives - This term means all reasonable alternatives that will be rigorously explored and objectively evaluated as well as other alternatives that are eliminated from detailed study after providing reasons for their elimination.

(2) Reasonable Alternatives - This term means alternatives that are technically and economically practical or feasible and that meet the purpose and need of the proposed action.

(3) Proposed Action - This term means the agency activity to be undertaken. It also means a non-Federal entity's planned activity which falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal approvals, funding, or regulatory instruments. The proposed action is generally the earliest known description of the action to be taken. The proposed action is not necessarily, but may become, during the NEPA process, a preferred alternative or an environmentally preferred alternative. The proposed action must be fully and clearly described in order to proceed with NEPA analysis.

(4) Preferred Alternative - This term means the alternative which the agency believes would fulfill its statutory mission and responsibilities, while giving consideration to economic, environmental, technical, and other factors. It may or may not be the same as the agency's or the non-Federal entity's proposed action.

(5) Environmentally Preferred Alternative - This term means the alternative that will best promote the national environmental policy as expressed in NEPA's Section 101 and can be characterized as causing the least damage to the biological and physical environment and best protect, preserve, and enhance the nation's historic, cultural, and natural resources.

(6) No Action Alternative - This term has two interpretations. First "no action" means "no change" from a current management direction or level of management intensity. Second "no action" means "no project" in cases where a new project is proposed for construction. Regardless of the interpretation, the "no action" alternative is required to be analyzed in an EIS.

B. As a general rule, the following guidance will apply:

(1) For internally initiated proposals, i.e., for those cases where the Department conducts or controls the planning process, both the draft and final EIS shall identify the bureau's proposed action.

(2) For externally initiated proposals, i.e., for those cases where the Department is reacting to an application or similar request,

(a) the draft and final EIS shall identify the applicant's proposed action, and

(b) the draft EIS should also identify the bureau's preferred alternative, if one or more exists, and the final EIS should identify the bureau's preferred alternative unless another law prohibits the expression of a preference.

(3) Proposed departures from this guidance must be approved by the OEPC and the Office of the Solicitor.

C. Certain mitigation measures can be clearly integral to the proposed action and its alternatives and should be incorporated into and analyzed as a part of the proposal and appropriate alternatives. When this is done, these measures are no longer considered independently with other mitigation. Where appropriate, major mitigation measures may be identified and analyzed as separate alternatives where the environmental consequences are distinct and significant enough to warrant separate evaluation.

D. In practicing consensus-based management during the development of an EIS, bureaus should give full consideration to any reasonable alternative(s) put forth by participating interested parties. While there can be no guarantee that a community's proposed alternative will be taken as the agency proposed action, bureaus must be able to show that a community's work is reflected in the evaluation of the proposed action and the final decision. To be considered, the community's alternative must be fully consistent with NEPA, the CEQ Regulations, this Departmental Manual part, all applicable Departmental and bureau written policies and guidance.

4.11 **Appendix** (40 CFR 1502.18). If an EIS is intended to serve other environmental review or consultation requirements pursuant to Section 1502.25, any more detailed information needed to comply with these requirements may be included as an appendix.

4.12 **Tiering** (40 CFR 1502.20).

A. Tiering is a tool to prevent repetitive discussions and to focus on issues currently before the decision maker. In this process, earlier documents from which later documents are tiered, must be reliable and kept current. Tiered documents must make a finding that conditions described in earlier documents are still in effect or must revise any analyses that are out of date.

B. In some cases, transferring or combining information from previous NEPA documents can be done to reduce repetitive discussions and duplication of effort (see 4.20, below).

C. Bureaus must maintain access to such things as: sources of similar information, examples of tiered and transferred analyses, a set of procedural steps to make the most of tiered

and transferred analyses, knowledge of when to use previous material, and how to used tiered and transferred analyses without sacrificing references to original sources.

4.13 **Incorporation by Reference** (40 CFR 1502.21). Citations of specific topics will include the pertinent page numbers. All literature references will be listed in the bibliography.

4.14 **Incomplete or Unavailable Information** (40 CFR 1502.22). The references to overall costs in this section are not limited to market costs, but include other costs to society such as social costs due to delay.

4.15 **Methodology and Scientific Accuracy** (40 CFR 1502.24). Conclusions about environmental effects will be preceded by an analysis that supports that conclusion unless explicit reference by footnote is made to other supporting documentation that is readily available to the public. Bureaus will also follow Departmental procedures for information quality as required under Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001.

4.16 **Adaptive Management**. Adaptive management is a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes, and, if not, facilitating management changes that will best ensure that outcomes are met or to re-evaluate the outcomes. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain and is the preferred method of management in these cases. Bureaus are encouraged to build adaptive management practice into their proposed actions and NEPA compliance activities and train personnel in this important environmental concept.

4.17 **Environmental Review and Consultation Requirements** (40 CFR 1502.25).

A. A list of related environmental review and consultation requirements is available from the OEPC (ESM94-14).

B. If the EIS is intended to serve as the vehicle to fully or partially comply with any of these requirements, the associated analyses, studies, or surveys will be identified as such and discussed in the text of the EIS and the cover sheet will so indicate. Any supporting analyses or reports will be referenced or included as an appendix and shall be sent to reviewing agencies as appropriate in accordance with applicable regulations or procedures.

C. The draft EIS should list all Federal permits, licenses, or approvals that must be obtained to implement the proposal. To the fullest extent possible, the environmental analyses for these related permits, licenses, and approvals shall be integrated and performed concurrently. Although all approvals do not need to be in place to complete the NEPA analysis, they do need to be in place before implementing the proposed action. Bureaus shall ensure that they have a process in place to make integrated analyses a standard part of their NEPA compliance efforts.

4.18 **Inviting Comments** (40 CFR 1503.1).

A. Comments from State agencies will be requested through procedures established by the Governor pursuant to Executive Order 12372, and may be requested from local agencies through these procedures to the extent that they include the affected local jurisdictions.

B. When the proposed action may affect the environment of Indian trust or restricted land or other Indian trust resources, trust assets, or tribal health and safety, comments will be requested from the Indian tribal government unless the Indian tribal government has designated an alternate review process.

C. The comments of other Departmental bureaus and offices must also be requested. In order to do this, the preparing bureau must furnish copies of the environmental document to the other bureaus in quantities sufficient to allow simultaneous review. Bureaus may be removed from this circulation following consultation with, and concurrence of, a bureau.

4.19 **Response to Comments** (40 CFR 1503.4).

A. Preparation of a final EIS need not be delayed in those cases where a Federal agency, external to DOI and from which comments are required to be obtained [40 CFR 1503.1(a)(1)], does not comment within the prescribed time period.

B. Informal attempts will be made to determine the status of any late comments and a reasonable attempt should be made to include the comments and a response in the final EIS. As noted in 516 DM 2.2D, the late introduction of new issues and alternatives is to be avoided and they will be considered only to the extent practicable.

C. For those EISs requiring the approval of the AS/PMB pursuant to 516 DM 6.3, bureaus will consult with the OEPC when they propose to prepare an abbreviated final EIS [40 CFR 1503.4(c)].

4.20 **Elimination of Duplication with State and Local Procedures** (40 CFR 1506.2). Bureaus will incorporate in their appropriate program regulations provisions for the preparation of an EIS by a State agency to the extent authorized in Section 102(2)(D) of NEPA. Eligible programs are listed in Appendix 1 to this Chapter.

4.21 **Combining Documents** (40 CFR 1506.4). See 516 DM 4.6D.

4.22 **Departmental Responsibility** (40 CFR 1506.5).

A. Bureaus are responsible for preparation of their environmental documents and independent evaluation of environmental documents prepared by others for a bureau.

B. A contractor may be used to prepare any environmental document in accordance with the standards of 40 CFR 1506.5(c).

4.23 **Public Involvement** (40 CFR 1506.6). See 516 DM 1.2, 1.3, 1.6, and 301 DM 2.

4.24 **Further Guidance** (40 CFR 1506.7). The OEPC may provide further guidance concerning NEPA pursuant to its organizational responsibilities (112 DM 4) and through supplemental directives (381 DM 4.5B). Current guidance is located in the Environmental Memoranda Series periodically updated by OEPC and available on the OEPC website at http://www.doi.gov/oepc.

4.25 **Proposals for Legislation** (40 CFR 1506.8). The Office of Congressional and Legislative Affairs, in consultation with the OEPC, shall:

A. Identify in the annual submittal to OMB of the Department's proposed legislative program any requirements for, and the status of, any environmental documents.

B. When required, ensure that a legislative EIS is included as a part of the formal transmittal of a legislative proposal to the Congress.

4.26 **Time Periods** (40 CFR 1506.10).

A. The minimum review period for a draft EIS will be forty-five (45) days from the date of publication by the Environmental Protection Agency (EPA) of the notice of availability.

B. For those ElSs requiring the approval of the AS/PMB pursuant to 516 DM 6.3, the OEPC will be responsible for consulting with the EPA and/or CEQ about any proposed reductions in time periods or any extensions of time periods proposed by the bureaus.

4.27 **Emergencies** (40 CFR 1506.11). See subpart 5.8.

APPENDIX 1

Programs of Grants to States and/or Tribes in Which Agencies Having Statewide Jurisdiction May Prepare EISs

1.1 **Fish and Wildlife Service**.

A. Anadromous Fish Conservation (11.405).

B. Fish Restoration (15.605).

C. Wildlife Restoration (15.611).

D. Endangered Species Conservation (15.615).

1.2 **National Park Service**.

A. Historic Preservation Grants-in-Aid (15.904).

B. Outdoor Recreation-Acquisition Development and Planning (15.916).

1.3 **Office of Surface Mining**.

A. Regulation of Surface Coal Mining and Surface Effects of Underground Coal Mining (15.250).

B. Abandoned Mine Land Reclamation Program (15.252).

1.4 **Office of Insular Affairs**.

A. Economic and Political Development of the Territories and the Trust Territory of the Pacific Islands (15.875).

Note: Citations in parentheses refer to the Catalog of Federal Domestic Assistance. Citations are current as of 2003. The catalog may be viewed at: http://cfda.gov/.

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Replaces 9/26/84 #3509

Department of the Interior
Departmental Manual

Effective Date: 5/27/04
Series: Environmental Quality Programs
Part 516: National Environmental Policy Act of 1969
Chapter 5: Relationship to Decision Making

Originating Office: Office of Environmental Policy and Compliance

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516 DM 5

5.1 **Purpose**. This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to decision making.

5.2 **Predecision Referrals to CEQ** (40 CFR 1504.3).

A. Upon receipt of advice that another Federal agency intends to refer a Departmental matter to CEQ, the lead bureau will immediately meet with that Federal agency to attempt to resolve the issues raised and expeditiously notify its Assistant Secretary, the Solicitor, and the OEPC.

B. Upon any referral of a Departmental matter to CEQ by another Federal agency, the OEPC will be responsible for coordinating the Department's role with CEQ. The lead bureau will be responsible for developing and presenting the Department's position at CEQ including preparation of briefing papers and visual aids.

5.3 **Decision Making Procedures** (40 CFR 1505.1).

A. Procedures for decisions by the Secretary/Deputy Secretary are specified in 301 DM 1. Assistant Secretaries should follow a similar process when an environmental document accompanies a proposal for their decision.

B. Bureaus will incorporate in their decision making procedures and NEPA handbooks provisions for consideration of environmental factors and relevant environmental documents. The major decision points for principal programs likely to have significant environmental effects will be identified in the bureau chapters on "Managing the NEPA Process" beginning with Chapter 8 of this Part.

C. Relevant environmental documents, including supplements, will be included as part of the record in formal rulemaking or adjudicatory proceedings.

D. Relevant environmental documents, comments, and responses will accompany proposals through existing review processes so that Departmental officials use them in making decisions.

E. The decision maker will consider the environmental impacts of the alternatives described in any relevant environmental document and the range of these alternatives must encompass the alternatives considered by the decision maker.

F. To the extent practicable, the decision maker will consider other substantive and legal obligations beyond the immediate context of the proposed action.

5.4 **Record of Decision** (40 CFR 1505.2).

A. Any decision documents prepared pursuant to 301 DM 1 for proposals involving an EIS shall incorporate all appropriate provisions of Section 1505.2(b) and (c).

B. If a decision document incorporating these provisions is made available to the public following a decision, it will serve the purpose of a record of decision.

5.5 **Implementing the Decision** (40 CFR 1505.3). The terms "monitoring" and "conditions" will be interpreted as being related to factors affecting the quality of the natural and human environment.

5.6 **Limitations on Actions** (40 CFR 1506.1). A bureau will immediately notify its Assistant Secretary, the Solicitor, and the OEPC of any situations described in Section 1506.1(b).

5.7 **Timing of Actions** (40 CFR 1506.10). For those EISs requiring the approval of the AS/PMB pursuant to 516 DM 6.3, the responsible official will consult with the OEPC before making any request for reducing the time period before a decision or action.

5.8 **Emergencies** (40 CFR 1506.11). In the event of an emergency situation, a bureau will immediately take any necessary action to prevent or reduce risks to public health or safety or important resources. If the agency action has significant environmental impacts, a bureau will immediately consult with its Assistant Secretary, the Solicitor, OEPC, and (together with OEPC) CEQ about compliance with NEPA. Upon learning of the emergency situation, the OEPC will immediately notify CEQ. During follow-up activities OEPC and the bureau will jointly be responsible for consulting with CEQ. Paragraph 1506.11 applies only to the emergency and not to any related recovery actions after the emergency has passed. If the agency action does not have significant environmental impacts, a bureau will consult with OPEC to consider any appropriate action.

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Replaces 3/18/80 #3510

Department of the Interior
Departmental Manual

Effective Date: 5/27/04
Series: Environmental Quality Programs
Part 516: National Environmental Policy Act of 1969
Chapter 6: Managing the NEPA Process

Originating Office: Office of Environmental Policy and Compliance

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516 DM 6

6.1 **Purpose.** This Chapter provides supplementary instructions for implementing those provisions of the CEQ Regulations pertaining to procedures for implementing and managing the NEPA process.

6.2 **Organization for Environmental Quality.**

A. Office of Environmental Policy and Compliance (OEPC). The Director, OEPC, reporting to the Assistant Secretary - Policy, Management and Budget (AS/PMB), is responsible for providing advice and assistance to the Department on matters pertaining to environmental quality and for overseeing and coordinating the Department's compliance with NEPA. (See also 112 DM 4.)

B. Bureaus and Offices. Heads of bureaus and offices will designate organizational elements or individuals, as appropriate, at headquarters and regional levels to be responsible for overseeing matters pertaining to the environmental effects of the bureau's plans and programs. The individuals assigned these responsibilities should have management experience or potential, understand the bureau's planning and decision making processes, and be well trained in environmental matters, including the Department's policies and procedures so that their advice has significance in the bureau's planning and decisions. These organizational elements will be identified in Chapters 8-15, which contain all bureau NEPA requirements.

6.3 **Approval of EISs.**

A. A program Assistant Secretary is authorized to approve an EIS in those cases where the responsibility for the decision for which the EIS has been prepared rests with the Assistant Secretary or below. The Assistant Secretary may further assign the authority to approve the EIS if he or she chooses. The AS/PMB will make certain that each program Assistant Secretary has adequate safeguards to ensure that the EISs comply with NEPA, the CEQ Regulations, and the Departmental Manual.

B. The AS/PMB is authorized to approve an EIS in those cases where the decision for which the EIS has been prepared will occur at a level in the Department above an individual program Assistant Secretary.

6.4 **List of Specific Compliance Responsibilities.**

A. Bureaus and offices shall:

(1) Prepare NEPA handbooks providing guidance on how to implement NEPA in principal program areas.

(2) Prepare program regulations or directives for applicants.

(3) Propose and apply categorical exclusions.

(4) Prepare and approve EAs.

(5) Decide whether to prepare an EIS.

(6) Prepare and publish NOIs and FONSIs.

(7) Prepare and, when assigned, approve EISs.

B. Assistant Secretaries shall:

(1) Approve bureau and offices handbooks.

(2) Approve regulations or directives for applicants.

(3) Approve proposed categorical exclusions.

(4) Approve EISs pursuant to 516 DM 6.3.

C. The AS/PMB shall:

(1) Concur with regulations or directives for applicants.

(2) Concur with proposed categorical exclusions.

(3) Approve EISs pursuant to 516 DM 6.3.

6.5 **Bureau Requirements.**

A. Requirements specific to bureaus appear as separate chapters beginning with Chapter 8 of this Part and include the following:

(1) Identification of officials and organizational elements responsible for NEPA compliance.

(2) List of program regulations or directives which provide information to applicants.

(3) Identification of major decision points in principal programs for which an EIS is normally prepared.

(4) List of projects or groups of projects for which an EA is normally prepared.

(5) List of categorical exclusions.

B. Bureau requirements are found in the following chapters for the current bureaus:

(1) U.S. Fish and Wildlife Service (Chapter 8; formerly Appendix 1).

(2) U.S. Geological Survey (Chapter 9; formerly Appendix 2).

(3) Bureau of Indian Affairs (Chapter 10; formerly Appendix 4).

(4) Bureau of Land Management (Chapter 11; formerly Appendix 5).

(5) National Park Service (Chapter 12; formerly Appendix 7).

(6) Office of Surface Mining (Chapter 13; formerly Appendix 8).

(7) Bureau of Reclamation (Chapter 14; formerly Appendix 9).

(8) Minerals Management Service (Chapter 15; formerly Appendix 10).

C. The Office of the Secretary and other Departmental offices do not have separate chapters but must comply with this Part and will consult with the OEPC about compliance activities.

6.6 **Information about the NEPA Process**. The OEPC will periodically publish a Departmental list of bureau contacts where information about the NEPA process and the status of EISs may be obtained. This list will be available on OEPC's website at http://www.doi.gov/oepc.

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Department of the Interior
Departmental Manual

Effective Date: 5/27/04
Series: Environmental Quality Programs
Part 516: National Environmental Policy Act of 1969
Chapter 7: Review of Environmental Impact Statements and Project Proposals Prepared by Other Federal Agencies

Originating Office: Office of Environmental Policy and Compliance

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516 DM 7

7.1 **Purpose.**

A. These procedures implement the policy and directives of the National Environmental Policy Act of 1969 (PL 91-190, 83 Stat. 852, January 1, 1970, NEPA); Section 2(f) of Executive Order No. 11514 (March 5, 1970); the CEQ Regulations (43 FR 55990, November 28, 1978; CEQ); Bulletin No. 72-6 of the Office of Management and Budget (September 14, 1971); and provide guidance to bureaus and offices of the Department in the review of EISs prepared by and for other Federal agencies.

B. In accordance with 112 DM 4.2F, these procedures further govern the Department's environmental review of non-Interior proposals such as regulations, applications, plans, reports, and other environmental documents which affect the interests of the Department. Such proposals are prepared, circulated, and reviewed under a wide variety of statutes and regulations. These procedures ensure that the Department responds to these review requests with coordinated comments and recommendations under Interior's various authorities.

7.2 **Policy**. The Department considers it a priority to provide competent and timely review comments on EISs and other environmental or project review documents prepared by other Federal agencies for their major actions which significantly affect the quality of the human environment. All such documents are hereinafter referred to as "environmental review documents." The term "environmental review document" as used in this chapter is separate from and broader than the term "environmental document" found in 40 CFR 1508.10 of the CEQ Regulations. These reviews are predicated on the Department's jurisdiction by law or special expertise with respect to the environmental impact involved and shall provide constructive comments to other Federal agencies to assist them in meeting their environmental responsibilities.

7.3 **Responsibilities.**

A. The Assistant Secretary - Policy, Management and Budget (AS/PMB): Shall be the Department's contact point for the receipt of requests for reviews of environmental review

documents prepared by or for other Federal agencies. This authority shall be carried out through the Director, Office of Environmental Policy and Compliance (OEPC).

B. The Director, Office of Environmental Policy and Compliance.

(1) Shall determine whether such review requests are to be answered by a Secretarial Officer, the Director, OEPC, or by a Regional Environmental Officer, and determine which bureaus and/or offices shall perform such reviews;

(2) Shall prepare, or where appropriate, shall designate a lead bureau responsible for preparing the Department's review comments. The lead bureau may be a bureau, Secretarial office, other Departmental office, or task force and shall be that organizational entity with the most significant jurisdiction or environmental expertise in regard to the requested review;

(3) Shall establish review schedules and target dates for responding to review requests and monitor their compliance;

(4) Shall review, sign, and transmit the Department's review comments to the requesting agency;

(5) Shall consult with the requesting agency on the Department's review comments on an "as needed" basis to ensure resolution of the Department's concerns; and

(6) Shall consult with the Office of Congressional and Legislative Affairs and the Solicitor when environmental reviews pertain to legislative or legal matters, respectively.

C. The Office of Congressional and Legislative Affairs: Shall ensure that requests for reviews of environmental review documents prepared by other Federal agencies that accompany or pertain to legislative proposals are immediately referred to the AS/PMB.

D. Regional Environmental Officers: When designated by the Director, OEPC, shall review, sign, and transmit the Department's review comments to the requesting agency.

E. Assistant Secretaries and Heads of Bureaus and Offices:

(1) Shall designate officials and organizational elements responsible for the coordination and conduct of environmental reviews and report this information to the Director, OEPC;

(2) Shall provide the Director, OEPC, with appropriate information and material concerning their delegated jurisdiction and special expertise in order to assist in assigning review responsibilities;

(3) Shall conduct reviews based upon their areas of jurisdiction or special expertise and provide comments to the designated lead bureau or office assigned responsibilities for preparing Departmental comments;

(4) When designated lead bureau by the Director, OEPC, shall prepare and forward the Department's review comments as instructed;

(5) Shall ensure that review schedules for discharging assigned responsibilities are met and promptly inform other concerned offices if established target dates cannot be met and when they will be met;

(6) Shall provide a single, unified bureau response to the lead bureau, as directed;

(7) Shall ensure that the policies of 516 DM 7.2 regarding competency and timeliness are carried out; and

(8) Shall provide the necessary authority to those designated in 7.3E(1) above to carry out all the requirements of 516 DM 7.

7.4 **Types of Reviews.**

A. Descriptions of Proposed Actions:

(1) Federal agencies and applicants for Federal assistance may circulate descriptions of proposed actions for the purpose of soliciting information concerning environmental impacts in order to determine whether to prepare EISs. Such descriptions of proposed actions are not substitutes for EISs.

(2) Requests for reviews of descriptions of proposed actions are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

B. Environmental Assessments:

(1) EAs are not substitutes for EISs. These assessments or reports may be prepared by Federal agencies, their consultants, or applicants for Federal assistance. They are prepared either to provide information in order to make a finding that there are no significant impacts or that an EIS should be prepared. If they are separately circulated, it is generally for the purpose of soliciting additional information concerning environmental impacts.

(2) Requests for reviews of EAs are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the

Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. If a bureau requests and OEPC agrees, a control number may be assigned with appropriate instructions. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

C. Findings of No Significant Impact:

(1) Findings of No Significant Impact are prepared by Federal agencies to document that there is no need to prepare an EIS. A FONSI is a statement for the record by the proponent Federal agency that it has reviewed the environmental impact of its proposed action (in an EA), that it determines that the action will not significantly affect the quality of the human environment, and that an EIS is not required. Public notice of the availability of such findings shall be announced; however, FONSIs are not normally circulated.

(2) Findings of No Significant Impact are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues.

D. Notices of Intent and Scoping Requests:

(1) Notices of intent and scoping requests mark the beginning of the formal review process. Notices of intent are published in the Federal Register and announce that an agency plans to prepare an environmental review document under NEPA. Often the NOI and notice of scoping meetings and/or requests are combined into one Federal Register notice.

(2) Reviews of notices of intent and scoping requests are processed through the OEPC with instructions to bureaus to comment directly to the requesting agency. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

E. Preliminary, Proposed, or Working Draft Environmental Impact Statements:

(1) Preliminary, proposed, or working draft EISs are sometimes prepared and circulated by Federal agencies and applicants for Federal assistance for consultative purposes.

(2) Requests for reviews of these types of draft EISs are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

F. Draft Environmental Impact Statements:

(1) Draft EISs are prepared by Federal agencies under the provisions of Section 102(2)(C) of NEPA and provisions of the CEQ Regulations. They are filed with the EPA and officially circulated to other Federal, State, and local agencies [see 40 CFR 1503.1(a)] for review based upon their jurisdiction by law or special expertise with respect to the agency mission, related program experience, or environmental impact of the proposed action or alternatives to the action [see 7.5A(1)].

(2) All requests from other Federal agencies for review of draft EISs shall be made through the Director, OEPC. Review comments shall be handled in accordance with the provisions of this chapter and guidance memoranda may be issued and updated by the OEPC.

G. Final Environmental Impact Statements:

(1) Final EISs are prepared by Federal agencies following receipt and consideration of review comments. They are filed with the EPA and are circulated to the public for an administrative waiting period of thirty days and sometimes for comment.

(2) The Director, OEPC, shall review final EISs to determine whether they reflect adequate consideration of the Department's comments. Bureaus and offices shall not comment independently on final EISs, but shall inform the Director, OEPC, of their views. Any review comments shall be handled in accordance with the instructions of the OEPC.

H. License and Permit Applications:

(1) The Department receives draft and final environmental review documents associated with applications for other Federal licenses and permits. This activity largely involves the regulatory program of the Corps of Engineers and the hydroelectric and natural gas pipeline licensing programs of the Federal Energy Regulatory Commission.

(2) Environmental review of applications is generally handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

(3) While review of NEPA compliance documents associated with Corps of Engineers permit applications is managed in accordance with this Chapter, review of Corps of Engineers permit applications is managed in accordance with 503 DM 1. Reviewers are referred to that Manual Part and to 7.5C(3) below for the processing of concurrent reviews.

I. Project Plans and Reports without Associated Environmental Review Documents:

(1) The Department receives draft and final project plans and reports under various authorities which do not have environmental review documents circulated with them.

This may be because NEPA compliance has been completed, will be completed on a slightly different schedule, NEPA does not apply, or other reasons.

(2) Environmental review of these documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

J. Federal Regulations:

(1) The Department circulates and controls the review of advance notices of proposed rulemaking, proposed rulemaking, and final rulemaking which are environmental in nature, may impact the quality of the human environment, and may impact the Department's natural resources and programs.

(2) Environmental review of these documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

K. Documents Prepared Pursuant to Other Environmental Statutes:

(1) The Department receives draft and final project plans prepared pursuant to other environmental statutes [e.g., National Historic Preservation Act (NHPA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Resource Conservation and Recovery Act (RCRA), and the Oil Pollution Act (OPA)], which may not have environmental review documents circulated with them.

(2) Environmental review of these documents is handled consistently with the policies and provisions of this part, and in accordance with further guidance from the Director, OEPC. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

L. Section 4(f) Documents:

(1) Under Section 4(f) of the Department of Transportation Act, the Secretary of Transportation may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if there is no prudent and feasible alternative to using that land and the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

(2) Environmental review of Section 4(f) documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

7.5 **Content of Comments on Environmental Review Documents.**

A. Departmental Comments:

(1) Departmental comments on environmental review documents prepared by other Federal agencies shall be based upon the Department's jurisdiction by law or special expertise with respect to the agency mission, related program experience, or environmental impact of the proposed action or alternatives to the action. The adequacy of the document in regard to applicable statutes is the responsibility of the agency that prepared the document and any comments on its adequacy shall be limited to the Department's jurisdiction or environmental expertise.

(2) Reviews shall be conducted in sufficient detail to ensure that both potentially beneficial and adverse environmental effects of the proposed action and alternatives, including cumulative and secondary effects, are adequately identified. Wherever possible, and within the Department's competence and resources, other agencies will be advised on ways to avoid or minimize adverse impacts of the proposed action and alternatives, and on alternatives to the proposed action that may have been overlooked or inadequately treated.

(3) Review comments should not capsulate or restate the environmental review document , but should provide clear, concise, substantive, fully justified, and complete comments on the stated or unstated environmental impacts of the proposed action and, if appropriate, on alternatives to the action. Comments, either positive or negative, shall be objective and constructive.

(4) Departmental review comments shall be organized as follows:

(a) Control Number. The Departmental review control number shall be typed in the upper left hand corner below the Departmental seal on the letterhead page of the comments.

(b) Introduction. The introductory paragraph shall reference the other Federal agency's review request, including the date, the type of review requested, the subject of the review; and, where appropriate, the geographic location of the subject and the other agency's control number.

(c) General Comments, if any. This section will include those comments of a general nature and those which occur throughout the review which ought to be consolidated in order to avoid needless repetition.

(d) Detailed Comments. The format of this section shall follow the organization of the other agency's environmental review document. These comments shall not comment on the proposed actions of other Federal agencies, but shall constructively and objectively comment on the statement's adequacy in describing the environmental impacts of the action, the alternatives, and the impacts of the alternatives. Comments shall specify any corrections, additions, or other changes required to make the statement adequate.

(e) Summary Comments, if any. In general, the Department will not take a position on the proposed action of another Federal agency, but will limit its comments to those above. However, in those cases where the Department has jurisdiction by statute, Executive Order, memorandum of agreement, or other authority, the Department may comment on the proposed action. These comments shall be provided in this section and may take the form of support for, concurrence with, concern over, or objection to the proposed action and/or the alternatives.

B. Bureau and Office Comments: Bureau and office reviews of EISs prepared by other Federal agencies are considered informal inputs to the Department's comments and their content will generally conform to paragraph 7.5A of this chapter with the substitution of the bureau's or office's delegated jurisdiction or special environmental expertise for that of the Department.

C. Relationship to Other Concurrent Reviews:

(1) Where the Department, because of other authority or agreement, is concurrently requested to review a proposal as well as its EIS, the Department's comments on the proposal shall be separately identified and placed in front of the comments on the EIS. A summary of the Department's position, if any, on the proposal and its environmental impact shall be separately identified and follow the review comments on the EIS.

(2) Where another Federal agency elects to combine other related reviews into the review of the EIS by including additional or more specific information into the statement, the introduction to the Department's review comments will acknowledge the additional review request and the review comments will be incorporated into appropriate parts of the combined statement review. A summary of the Department's position, if any, on the environmental impacts of the proposal and any alternatives shall be separately identified and follow the detailed review comments on the combined statement.

(3) In some cases, the concurrent review is not an integral part of the environmental compliance review but is being processed within the same general time period as the environmental review. If there is also an environmental review being processed by the OEPC, there is potential for two sets of conflicting comments to reach the requesting agency. Bureaus must recognize that this possibility exists and must check with the Regional Environmental Officer to determine the status of any environmental review prior to forwarding the concurrent review comments to the requesting agency. Any conflicts must be resolved before the separate comments may be filed. One review may be held up pending completion of the concurrent review and consideration of filing a single comment letter. A time extension may

be necessary and must be obtained if a review is to be held up pending completion of a concurrent review.

(4) The Department's intervention in another agency's adjudicatory process is also a concurrent review. Such reviews are governed by 452 DM 2 which must be consulted in applicable cases. The most common cases involve the Department's review of hydroelectric and natural gas applications of the Federal Energy Regulatory Commission. In these cases, it is recommended that bureaus consult frequently with the appropriate attorney of record in the Office of the Solicitor.

7.6 **Availability of Review Comments.**

A. Prior to the public availability of another Federal agency's final EIS, the Department shall not independently release to the public its comments on that agency's draft EIS. In accordance with Section 1506.6(f) of the CEQ Regulations, the agency that prepared the statement is responsible for making the comments available to the public, and requests for copies of the Department's comments shall be referred to that agency. Exceptions to this procedure shall be made by the OEPC and the Office of the Solicitor.

B. The availability of various internal Departmental memoranda, such as the review comments of bureaus, offices, task forces, and individuals, which are used as inputs to the Department's review comments is governed by the Freedom of Information Act (5 U.S.C. Section 552) and the Departmental procedures established by 43 CFR 2. Upon receipt of such requests and in addition to following the procedures above in 7.6A, the responsible bureau or office shall notify and consult their bureau Freedom of Information Act Officer and the OEPC to coordinate any responses.

7.7 **Procedures for Processing Environmental Reviews.**

A. General Procedures:

(1) All requests for reviews of environmental review documents prepared by or for other Federal agencies shall be received and controlled by the Director, OEPC.

(2) If a bureau or office, whether at headquarters or field level, receives an environmental review document for review directly from outside of the Department, it should ascertain whether the document is a preliminary, proposed, or working draft circulated for technical assistance or input in order to prepare a draft document or whether the document is in fact a draft environmental review document being circulated for official review.

(a) If the document is a preliminary, proposed, or working draft, the bureau or office should handle independently and provide whatever technical assistance possible, within the limits of their resources, to the requesting agency. The response should clearly indicate the type of assistance being provided and state that it does not represent the Department's review of the document. Each bureau or office should provide the Regional

Environmental Officer and the Director, OEPC, copies of any comments involving significant or controversial issues.

(b) If the document is a draft or final environmental review document circulated for official review, the bureau or office should inform the requesting agency of the Department's procedures in subparagraph (1) above and promptly refer the request and the document to the Director, OEPC, for processing.

(3) All bureaus and offices processing and reviewing environmental review documents of other Federal agencies will do so within the time limits specified by the Director, OEPC. From thirty (30) to forty-five (45) days are normally available for responding to other Federal agency review requests. Whenever possible the Director, OEPC, shall seek a forty-five (45) day review period. Further extensions shall be handled in accordance with paragraph 7.7B(3) of this chapter.

(4) The Department's review comments on other Federal agencies' environmental review documents shall reflect the full and balanced interests of the Department in the protection and enhancement of the environment. Lead bureaus shall be responsible for resolving any intra-Departmental differences in bureau or office review comments submitted to them. The OEPC is available for guidance and assistance in this regard. In cases where agreement cannot be reached, the matter shall be referred through channels to the AS/PMB with attempts to resolve the disagreement at each intervening management level. The OEPC will assist in facilitating this process.

B. Processing Environmental Reviews:

(1) The OEPC shall secure and distribute sufficient copies of environmental review documents for Departmental review. Bureaus and offices should keep the OEPC informed as to their needs for review copies, which shall be kept to a minimum, and shall develop internal procedures to efficiently and expeditiously distribute environmental review documents to reviewing offices.

(2) Reviewing bureaus and offices which cannot meet the review schedule shall so inform the lead bureau and shall provide the date that the review will be delivered. The lead bureau shall inform the OEPC in cases of headquarters-level response, or the Regional Environmental Officer in cases of field-level response, if it cannot meet the schedule, why it cannot, and when it will. The OEPC or the Regional Environmental Officer shall be responsible for informing the other Federal agency of any changes in the review schedule.

(3) Reviewing offices shall route their review comments through channels to the lead bureau, with a copy to the OEPC. When, in cases, of headquarters-level response, review comments cannot reach the lead bureau within the established review schedule, reviewing bureaus and offices shall send a copy marked "Advance Copy" directly to the lead bureau. Review comments shall also be sent to the lead bureau by electronic means to facilitate meeting the requesting agency's deadline.

(4) In cases of headquarters-level response:

(a) The lead bureau shall route the completed comments through channels to the OEPC in both paper copy and electronic word processor format. Copies shall be prepared and attached for all bureaus and offices from whom review comments were requested, for the OEPC, and for the Regional Environmental Officer when the review pertains to a project within a regional jurisdiction. In addition, original copies of all review comments received or documentation that none were provided shall accompany the Department's comments through the clearance process and shall be retained by the OEPC.

(b) The OEPC shall review, secure any necessary additional surnames, surname, and either sign the Department's comments or transmit the Department's comments to another appropriate Secretarial Officer for signature. Upon signature, the OEPC shall transmit the comments to the requesting agency.

(5) In cases of field-level response:

(a) The lead bureau shall provide the completed comments to the appropriate Regional Environmental Officer in both paper-copy and electronic word processor format. In addition, original copies of all review comments received or documentation that none were provided shall be attached to the paper copy.

(b) The Regional Environmental Officer shall review, sign, and transmit the Department's comments to the agency requesting the review. In addition they shall reproduce and send the Department's comments to the regional bureau reviewers. The entire completed package including the bureau review comments shall be sent to the OEPC for recording and filing.

(c) If the Regional Environmental Officer determines that the review involves policy matters of Secretarial significance, they shall not sign and transmit the comments as provided in subparagraph (b) above, but shall forward the review to the OEPC in headquarters for final disposition.

C. Referrals of Environmentally Unsatisfactory Proposals to the Council on Environmental Quality

(1) Referral to CEQ is a formal process provided for in the CEQ Regulations (40 CFR 1504). It is used sparingly and only when all other administrative processes have been exhausted in attempting to resolve issues between the project proponent and one or more other Federal agencies. These issues must meet certain criteria (40 CFR 1504.2), and practice has shown that these issues generally involve resource concerns of national importance to the Department.

(2) A bureau or office intending to recommend referral of a proposal to CEQ must, at the earliest possible time, advise the proponent Federal agency that it considers the

proposal to be a possible candidate for referral. If not expressed at an earlier time, this advice must be outlined in the Department's comments on the draft EIS.

(3) CEQ referral is a high level activity that must be conducted in an extremely short time frame. A referring bureau or office has 25 days after EPA has published a notice of availability of the final EIS in the Federal Register in which to file the referral unless an extension is granted per 40 CFR 1504.3(b). The referral documents must be signed by the Secretary of the Interior.

(4) Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website at http://www.doi.gov/oepc and consult with the OEPC for the most current review guidance.

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516 DM 8

8.1 **Purpose**. This Chapter provides supplementary requirements for implementing provisions of 516 DM 1 through 6 within the Department's U.S. Fish and Wildlife Service. This Chapter is referenced in 516 DM 6.5.

8.2 **NEPA Responsibility**.

A. The Director is responsible for NEPA compliance for U.S. Fish and Wildlife Service (Service) activities, including approving recommendations to the Assistant Secretary (FW) for proposed referrals to the Council on Environmental Quality (CEQ) of other agency actions under 40 CFR 1504.

B. Each Assistant Director (Refuges and Wildlife, Fisheries, International Affairs, External Affairs, and Ecological Services) is responsible for general guidance and compliance in their respective areas of responsibility.

C. The Assistant Director for Ecological Services has been delegated oversight responsibility for Service NEPA compliance.

D. The Division of Habitat Conservation (DHC--Washington), which reports to the Assistant Director for Ecological Services, is responsible for internal control of the environmental review and analysis of documents prepared by other agencies and environmental statements prepared by the various Service Divisions. This office is also responsible for preparing Service NEPA procedures, guidelines, and instructions, and for supplying technical assistance and specialized training in NEPA compliance, in cooperation with the Service Office of Training and Education, to Service entities. The Washington Office Environmental Coordinator, who reports to DHC, provides staff assistance on NEPA matters to the Director, Assistant Directors, and their divisions and offices, and serves as the Service NEPA liaison to the CEQ, the Department's Office of Environmental Policy and Compliance (OEPC), and NEPA liaisons in other Federal agencies, in accordance with 516 DM 6.2.

E. Each Regional Director is responsible for NEPA compliance in his/her area of responsibility. The Regional Director should ensure that Service decisionmakers in his/her area of responsibility contact affected Federal agencies and State, tribal and local governments when

initiating an action subject to an EA or EIS. An individual in each Regional Office, named by title and reporting to the Assistant Regional Director for Ecological Services, other appropriate Assistant Regional Director, or the Regional Director, will have NEPA coordination duties with all program areas at the Regional level similar to those of the Washington Office Environmental Coordinator, in accordance with 516 DM 6.2.

8.3 **General Service Guidance**. Service guidance on internal NEPA matters is found in 30 AM 2-3 (organizational structure and internal NEPA compliance), 550 FW1-3 (in preparation), 550 FW 3 (documenting and implementing Service decisions on Service actions), and 550 FW 1-2 (replacement to 30 AM 2-3 in preparation). These guidance documents encourage Service participation as a cooperating agency with other Federal agencies, encourage early coordination with other agencies and the public to resolve issues in a timely manner, and provide techniques for streamlining the NEPA process and integrating the NEPA process with other Service programs, environmental laws, and Executive orders. Some Service programs have additional NEPA compliance information related to specific program planning and decisionmaking activities. Service program guidance on NEPA matters must be consistent with the Service Manual on NEPA guidance and Departmental NEPA procedures. For example, additional NEPA guidance is found in the Federal Aid Handbook (521-523 FW), refuge planning guidance (602 FW 1-3), Handbook for Habitat Conservation Planning and Incidental Take Processing, and North American Wetlands Conservation Act Grant Application Instructions.

8.4 **Guidance to Applicants**.

A. Service Permits. The Service has responsibility for issuing permits to Federal and State agencies and private parties for actions which would involve certain wildlife species and/or use of Service-administered lands. When applicable, the Service may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy the Service's requirements to comply with NEPA, other Federal laws, and Executive orders.

(1) Permits for the Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, or Importation of Certain Wildlife Species. The Code of Federal Regulations, Part 13, Title 50 (50 CFR 13) contains regulations for General Permit Procedures. Section 13.3 lists types of permits and the pertinent Parts of 50 CFR. These include: Importation, Exportation, and Transportation of Wildlife (Part 14); Exotic Wild Bird Conservation (Part 15); Injurious Wildlife (Part 16); Endangered and Threatened Wildlife and Plants (Part 17); Marine Mammals (Part 18); Migratory Bird Hunting (Part 20); Migratory Bird Permits (Part 21); Eagle Permits (Part 22); Endangered Species Convention (Part 23); and Importation and Exportation of Plants (Part 24). Potential permit applicants should request information from the appropriate Regional Director, or the Office of Management Authority, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, as outlined in the applicable regulation.

(2) Federal Lands Managed by the Service. Service lands are administered under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), the Refuge Recreation Act of 1962 (16 U.S.C. 460k-460k-4), and the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 410hh-3233, 43 U.S.C.

1602-1784). Inherent in these acts is the requirement that only those uses that are compatible with the purposes of the refuge system unit may be allowed on Service lands. The Service also complies with Executive Order 12996, signed March 25, 1996, entitled "Management and General Public Use of the National Wildlife Refuge System." This Executive Order identifies general public uses that will be given priority consideration in refuge planning and management, subject to meeting the compatibility requirement and if adequate funding is available to administer the use. Detailed procedures regarding comprehensive management planning and integration with NEPA are found in the Service Manual (602 FW 1-3). Reference to this and other National Wildlife Refuge System requirements are found in the Code of Federal Regulations, Title 50 parts 25-29, 31-36, 60, and 70-71. Under these regulations, these protections are extended to all Service-administered lands, including the National Fish Hatchery System.

B. Federal Assistance to States, Local or Private Entities.

(1) Federal Assistance Programs. The Service administers financial assistance (grants and/or cooperative agreements) to State, local, and private entities under the Anadromous Fish Conservation Act (CFDA #15.600); North American Wetlands Conservation Act; Fish and Wildlife Act of 1956; Migratory Bird Conservation Act; Food Security Act of 1985; Food, Agriculture, Conservation and Trade Act of 1990; Partnerships for Wildlife Act of 1992; and Consolidated Farm and Rural Development Act. The Service administers financial assistance to States under the Sport Fish Restoration Act (CFDA #15.605), Wildlife Restoration Act (CFDA #15.611), Endangered Species Act (CFDA #15.612 and 15.615), Coastal Wetlands Planning Protection and Restoration Act (CFDA #15.614), and Clean Vessel Act of 1992 (CFDA #15.616).

(2) Program Information and NEPA Compliance. Information on how State, local, and private entities may request funds and assist the Service in NEPA compliance relative to the Anadromous Fish Conservation Act may be obtained through the Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 840, Washington, D.C. 20240. Similar information regarding the North American Wetlands Conservation Act may be obtained through the North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 110, Washington, D.C. 20240. All other requests for information on how funds may be obtained and guidance on how to assist the Service in NEPA compliance may be obtained through the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 140, Washington, D.C. 20240.

8.5 **Categorical Exclusions**. Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment. Categorical exclusions are not the equivalent of statutory exemptions. If exceptions to categorical exclusions apply, under 516 DM 2, Appendix 2 of the Departmental Manual, the Departmental categorical exclusions cannot be used. In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, the following Service actions are designated categorical exclusions unless the action is an exception to the categorical exclusion.

A. General.

(1) Changes or amendments to an approved action when such changes have no or minor potential environmental impact.

(2) Personnel training, environmental interpretation, public safety efforts, and other educational activities, which do not involve new construction or major additions to existing facilities.

(3) The issuance and modification of procedures, including manuals, orders, guidelines, and field instructions, when the impacts are limited to administrative effects.

(4) The acquisition of real property obtained either through discretionary acts or when acquired by law, whether by way of condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, purchase, or transfer and that will be under the jurisdiction or control of the United States. Such acquisition of real property shall be in accordance with 602 DM 2 and the Service's procedures, when the acquisition is from a willing seller, continuance of or minor modification to the existing land use is planned, and the acquisition planning process has been performed in coordination with the affected public.

B. Resource Management. Prior to carrying out these actions, the Service should coordinate with affected Federal agencies and State, tribal, and local governments.

(1) Research, inventory, and information collection activities directly related to the conservation of fish and wildlife resources which involve negligible animal mortality or habitat destruction, no introduction of contaminants, or no introduction of organisms not indigenous to the affected ecosystem.

(2) The operation, maintenance, and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use, and have no or negligible environmental effects on-site or in the vicinity of the site.

(3) The construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area. The following are examples of activities that may be included.

(a) The installation of fences.

(b) The construction of small water control structures.

(c) The planting of seeds or seedlings and other minor revegetation actions.

(d) The construction of small berms or dikes.

(e) The development of limited access for routine maintenance and management purposes.

(4) The use of prescribed burning for habitat improvement purposes, when conducted in accordance with local and State ordinances and laws.

(5) Fire management activities, including prevention and restoration measures, when conducted in accordance with Departmental and Service procedures.

(6) The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated.

(7) Minor changes in the amounts or types of public use on Service or State-managed lands, in accordance with existing regulations, management plans, and procedures.

(8) Consultation and technical assistance activities directly related to the conservation of fish and wildlife resources.

(9) Minor changes in existing master plans, comprehensive conservation plans, or operations, when no or minor effects are anticipated. Examples could include minor changes in the type and location of compatible public use activities and land management practices.

(10) The issuance of new or revised site, unit, or activity-specific management plans for public use, land use, or other management activities when only minor changes are planned. Examples could include an amended public use plan or fire management plan.

(11) Natural resource damage assessment restoration plans, prepared under sections 107, 111, and 122(j) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA); section 311(f)(4) of the Clean Water Act; and the Oil Pollution Act; when only minor or negligible change in the use of the affected areas is planned.

C. Permit and Regulatory Functions.

(1) The issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR Chapter 1, Subsection B, when such permits cause no or negligible environmental disturbance. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered

Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.

(2) The issuance of ESA section 10(a)(1)(B) "low-effect" incidental take permits that, individually or cumulatively, have a minor or negligible effect on the species covered in the habitat conservation plan.

(3) The issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental effects.

(4) The issuance or reissuance of permits for limited additional use of an existing right-of-way for underground or above ground power, telephone, or pipelines, where no new structures (i.e., facilities) or major improvement to those facilities are required; and for permitting a new right-of-way, where no or negligible environmental disturbances are anticipated.

(5) The issuance or reissuance of special use permits for the administration of specialized uses, including agricultural uses, or other economic uses for management purposes, when such uses are compatible, contribute to the purposes of the refuge system unit, and result in no or negligible environmental effects.

(6) The denial of special use permit applications, either initially or when permits are reviewed for renewal, when the proposed action is determined not compatible with the purposes of the refuge system unit.

(7) Activities directly related to the enforcement of fish and wildlife laws, not included in 516 DM 2, Appendix 1.4. These activities include:

(a) Assessment of civil penalties.

(b) Forfeiture of property seized or subject to forfeiture.

(c) The issuance or reissuance of rules, procedures, standards, and permits for the designation of ports, inspection, clearance, marking, and license requirements pertaining to wildlife and wildlife products, and for the humane and healthful transportation of wildlife.

(8) Actions where the Service has concurrence or coapproval with another agency and the action is a categorical exclusion for that agency. This would normally involve one Federal action or connected actions where the Service is a cooperating agency.

D. Recovery Plans. Issuance of recovery plans under section 4(f) of the ESA.

E. Financial Assistance.

(1) State, local, or private financial assistance (grants and/or cooperative agreements), including State planning grants and private land restorations, where the environmental effects are minor or negligible.

(2) Grants for categorically excluded actions in paragraphs A, B, and C, above; and categorically excluded actions in Appendix 1 of 516 DM 2.

8.6 **Actions Normally Requiring an EA**.

A. Proposals to establish most new refuges and fish hatcheries; and most additions and rehabilitations to existing installations.

B. Any habitat conservation plan that does not meet the definition of "low-effect" in the Section 10(a)(1)(B) Handbook.

C. If, for any of the above proposals, the EA determines that the proposal is a major Federal action significantly affecting the quality of the human environment, an EIS will be prepared. The determination to prepare an EIS will be made by a notice of intent in the Federal Register and by other appropriate means to notify the affected public.

8.7 **Major Actions Normally Requiring an EIS**.

A. The following Service proposals, when determined to be a major Federal action significantly affecting the quality of the human environment, will normally require the preparation of an EIS.

(1) Major proposals establishing new refuge system units, fish hatcheries, or major additions to existing installations, which involve substantive conflicts over existing State and local land use, significant controversy over the environmental effects of the proposal, or the remediation of major on-site sources of contamination.

(2) Master or comprehensive conservation plans for major new installations, or for established installations, where major new developments or substantial changes in management practices are proposed.

B. If, for any of the above proposals it is initially determined that the proposal is not a major Federal action significantly affecting the quality of the human environment, an EA will be prepared and handled in accordance with 40 CFR 1501.4(e)(2). If the EA subsequently indicates the proposed action will cause significant impacts, an EIS will be prepared.

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Chapter 9: Managing the NEPA Process--U.S. Geological Survey

Originating Office: U.S. Geological Survey

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516 DM 9

9.1 **Purpose**. This Chapter provides supplementary requirements for implementing provisions of 516 DM 1 through 6 within the Department's U.S. Geological Survey. This Chapter is referenced in 516 DM 6.5.

9.2 **NEPA Responsibility**.

A. The Director of the U.S. Geological Survey (USGS) is responsible for National Environmental Policy Act (NEPA) compliance for USGS activities.

B. The Assistant Director for Engineering Geology produces policy guidance, direction and oversight for environmental activities including implementation of NEPA, and approves Environmental Impact Statements (EIS) prepared by the USGS. The Assistant Director is also responsible for approving USGS reviews of environmental documents, regulations or rules proposed by other agencies.

C. The Chief, Environmental Affairs Program (Reston, VA), is the focal point for NEPA matters and develops NEPA-related policy and guidance for the USGS. The Chief is responsible for: assuring the quality control of USGS environmental documents; monitoring USGS-wide activities to ensure NEPA compliance, reviewing and commenting on other bureaus' and agencies' environmental documents; managing the assignment of USGS personnel to assist other agencies in developing ElSs; and assisting in the performance of specialized studies to support environmental analyses. Information about USGS environmental documents or the NEPA process can be obtained by contacting the Environmental Affairs Program.

D. The Chiefs of the Divisions or Independent Offices are responsible within their respective organizations for ensuring compliance with NEPA and applicable consultation requirements.

9.3 **Guidance to Applicants**. Because the USGS does not have any regulatory responsibilities in this area, the USGS has no applicable programs requiring guidance to applicants.

9.4 **Actions Normally Requiring an EIS or Environmental Assessment (EA)**.

A. Approval of construction of major new USGS research centers or test facilities normally will require the preparation of an EIS.

B. An EA will be prepared to aid in deciding whether a finding of no significant impact is appropriate, or whether an EIS is required prior to implementing any action. The EA will be prepared in accordance with guidance provided in 516 DM 3.1. Specifically, an EA is required for all actions which are: (a) not categorically excluded; (b) listed as exceptions to the Departmental categorical exclusions in 516 DM 2, Appendix 2; (c) not being addressed by an EIS.

9.5 **Categorical Exclusions**. In addition to the actions listed in the Departmental categorical exclusions specified in Appendix 1 of 516 DM 2, many of which the USGS also performs, the following USGS actions are designated categorical exclusions unless the action qualifies as an exemption from the Department's categorical exclusions under Appendix 2 of 516 DM 2. The exclusions shall apply to internal program initiatives performed in the United States and its Trust Territories and Possessions, including Federal lands and the Outer Continental Shelf (OCS).

A. Topographic, land use and land cover, geological, mineralogic, resources evaluation, and hydrologic mapping activities, including aerial topographic surveying, photography, and geophysical surveying.

B. Collation of data and samples for geologic, paleontologic, hydrologic, mineralogic, geochemical and surface or subsurface geophysical investigations, and resource evaluation, including contracts therefor.

C. Acquisition of existing geological, hydrological or geophysical data from private exploration ventures.

D. Well logging, aquifer response testing, digital modeling, inventory of existing wells and water supplies, water-sample collection.

E. Operation, construction and installation of: (a) Water-level or water quality recording devices in wells; (b) pumps in wells; (c) surface-water flow measuring equipment such as weirs and stream-gaging stations, and (d) telemetry systems, including contracts therefor.

F. Routine exploratory or observation groundwater well drilling operations which do not require a special access road, and which use portable tanks to recycle and remove drilling mud, and create no significant surface disturbance.

G. Test or exploration drilling and downhole testing, including contracts therefor.

H. Establishment of survey marks, placement and operation of field instruments, and installation of any research/monitoring devices.

I. Digging of exploratory trenches requiring less than 20 cubic yards of excavation.

J. Establishment of seasonal and temporary field camps.

K. Off-road travel to drilling, data collection or observation sites which does not impact ecologically sensitive areas such as wilderness areas, wetlands, or areas of critical habitat for listed endangered or threatened species.

L. Hydraulic fracturing of rock formations for the singular purpose of in situ stress measurements.

M. Reports to Surface Management Agencies, or any State, Territorial, Commonwealth or Federal Agencies concerning mineral and water resources appraisals.

N. Other actions where USGS has concurrence or coapproval with another Department of the Interior bureau and the action is a categorical exclusion for that bureau.

O. Minor, routine, or preventive maintenance activities at USGS facilities and lands, and geological, hydrological, or geophysical data collection stations.

P. Minor activities required to gain or prepare access to sites selected for completion of exploration drilling operations or construction of stations for hydrologic, geologic, or geophysical data collection.

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516 DM 10

10.1 **Purpose**. This Chapter provides supplementary requirements for implementing provisions of 516 DM 1 through 6 within the Department's Bureau of Indian Affairs (BIA). This Chapter is referenced in 516 DM 6.5.

10.2 **NEPA Responsibility**.

A. Deputy Commissioner of Indian Affairs is responsible for NEPA compliance of BIA activities and programs.

B. Director, Office of Trust Responsibilities (OTR) is responsible for oversight of the BIA program for achieving compliance with NEPA, program direction, and leadership for BIA environmental policy, coordination and procedures.

C. Environmental Services Staff, reports to the Director (OTR). This office is the Bureau-wide focal point for overall NEPA policy and guidance and is responsible for advising and assisting Area Offices, Agency Superintendents, and other field support personnel in their environmental activities. The office also provides training and acts as the Central Office's liaison with Indian tribal governments on NEPA and other environmental compliance matters. Information about BIA NEPA documents or the NEPA process can be obtained by contacting the Environmental Services Staff.

D. Other Central Office Directors and Division Chiefs are responsible for ensuring that the programs and activities within their jurisdiction comply with NEPA.

E. Area Directors and Project Officers are responsible for assuring NEPA compliance with all activities under their jurisdiction and providing advice and assistance to Agency Superintendents and consulting with the Indian tribes on environmental matters related to NEPA. Area Directors and Project Officers are also responsible for assigning sufficient trained staff to ensure NEPA compliance is carried out. An Environmental Coordinator is located at each Area Office.

F. Agency Superintendents and Field Unit Supervisors are responsible for NEPA compliance and enforcement at the Agency or field unit level.

10.3 **Guidance to Applicants and Tribal Governments**.

A. Relationship with Applicants and Tribal Governments.

(1) Guidance to Applicants.

(a) An "applicant" is an entity which proposes to undertake any activity which will at some point require BIA action. These may include tribal governments, private entities, state and local governments or other Federal agencies. BIA compliance with NEPA is Congressionally mandated. Compliance is initiated when a BIA action is necessary in order to implement a proposal.

(b) Applicants should contact the BIA official at the appropriate level for assistance. This will be the Agency Superintendent, Area Director or the Director, Office of Trust Responsibilities.

(c) If the applicant's proposed action will affect or involve more than one tribal government, one government agency, one BIA Agency, or where the action may be of State-wide or regional significance, the applicant should contact the respective Area Director(s). The Area Director(s), using sole discretion, may assign the lead NEPA compliance responsibilities to one Area Office or, as appropriate, to one Agency Superintendent. From that point, the Applicant will deal with the designated lead office.

(d) Since much of the applicant's planning may take place outside the BIA system, it is the applicant's responsibility to prepare a milestone chart for BIA use at the earliest possible stage in order to coordinate the efforts of both parties. Early communication with the responsible BIA office will expedite determination of the appropriate type of NEPA documentation required. Other matters such as the scope, depth and sources of data for an environmental document will also be expedited and will help lead to a more efficient and more timely NEPA compliance process.

(2) Guidance to Tribal Governments.

(a) Tribal governments may be applicants, and/or be affected by a proposed action of BIA or another Federal agency. Tribal governments affected by a proposed action shall be consulted during the preparation of environmental documents and, at their option, may cooperate in the review or preparation of such documents. Notwithstanding the above, the BIA retains sole responsibility and discretion in all NEPA compliance matters.

(b) Any proposed tribal actions that do not require BIA or other Federal approval, funding or "actions" are not subject to the NEPA process.

B. Prepared Program Guidance. BIA has implemented regulations for environmental guidance for surface mining in 25 CFR Part 216 (Surface Exploration, Mining and Reclamation

of Lands.) Environmental guidance for Forestry activities is found in 25 CFR 163.27 and 53 BIAM Supplements 2 and 3.

C. Other Guidance. Programs under 25 CFR for which BIA has not yet issued regulations or directives for environmental information for applicants are listed below. These programs may or may not require environmental documents and could involve submission of applicant information to determine NEPA applicability. Applicants for these types of programs should contact the appropriate BIA office for information and assistance:

(1) Partial payment construction charges on Indian irrigation projects (25 CFR Part 134).

(2) Construction assessments, Crow Indian irrigation project (25 CFR Part 135).

(3) Fort Hall Indian irrigation project, Idaho (25 CFR Part 136).

(4) Reimbursement of construction costs, San Carlos Indian irrigation project, Arizona (25 CFR Part 137).

(5) Reimbursement of construction costs, Ahtanum Unit, Wapato Indian irrigation project, Washington CFR Part 138).

(6) Reimbursement of construction costs, Wapato-Satus Unit, Wapato Indian Irrigation project, Washington (25 CFR Part 139).

(7) Land acquisitions (25 CFR Part 151).

(8) Leasing and permitting (Lands) (25 CFR Part 162).

(9) Sale of lumber and other forest products produced by Indian enterprises from the forests on Indian reservation (25 CFR Part 164).

(10) Sale of forest products, Red Lake Indian Reservation, Minn. (25 CFR Part 165).

(11) General grazing regulations (25 CFR Part 166).

(12) Navajo grazing regulations (25 CFR Part 167).

(13) Grazing regulations for the Hopi partitioned lands (25 CFR Part 168).

(14) Rights-of-way over Indian lands (25 CFR Part 169).

(15) Roads of the Bureau of Indian Affairs (25 CFR Part 170).

(16) Concessions, permits and leases on lands withdrawn or acquired in connection with Indian irrigation projects (25 CFR Part 173).

(17) Indian Electric Power Utilities (25 CFR Part 175).

(18) Resale of lands within the badlands Air Force Gunnery Range (Pine Ridge Aerial Gunnery Range) (25 CFR Part 178).

(19) Leasing of tribal lands for mining (25 CFR Part 211).

(20) Leasing of allotted lands for mining (25 CFR Part 212).

(21) Leasing of restricted lands of members of Five Civilized Tribes, Oklahoma, for mining (25 CFR Part 213).

(22) Leasing of Osage Reservation lands, Oklahoma, for mining, except oil and gas (25 CFR Part 214).

(23) Lead and zinc mining operations and leases, Quapaw Agency (25 CFR Part 215).

(24) Leasing of Osage Reservation lands for oil and gas mining (25 CFR Part 226).

(25) Leasing of certain lands in Wind River Indian Reservation, Wyoming, for oil and gas mining (25 CFR Part 227).

(26) Indian fishing in Alaska (25 CFR Part 241).

(27) Commercial fishing on Red Lake Indian Reservation (25 CFR 242).

(28) Use of Columbia River in-lieu fishing sites (25 CFR Part 248).

(29) Off-reservation treaty fishing (25 CFR Part 249).

(30) Indian fishing - Hoopa Valley Indian Reservation (25 CFR Part 150).

(31) Housing Improvement Program (25 CFR Part 256).

(32) Contracts under Indian Self-Determination Act (25 CFR Part 271).

(33) Grants under Indian Self-Determination Act 25 CFR Part 272).

(34) School construction or services for tribally operated previously private schools (25 CFR Part 274).

(35) Uniform administration requirements for grants (25 CFR 276).

(36) School construction contracts for public schools (25 CFR Part 277).

10.4 **Major Actions Normally Requiring an EIS**.

A. The following BIA actions normally require the preparation of an Environmental Impact Statement (EIS):

(1) Proposed mining contracts (for other than oil and gas), or the combination of a number of smaller contracts comprising a mining unit for:

(a) New mines of 640 acres or more, other than surface coal mines.

(b) New surface coal mines of 1,280 acres or more, or having an annual full production level of 5 million tons or more.

(2) Proposed water development projects which would, for example, inundate more than 1,000 acres, or store more than 30,000 acre-feet, or irrigate more than 5,000 acres of undeveloped land.

(3) Construction of a treatment, storage or disposal facility for hazardous waste or toxic substances.

(4) Construction of a solid waste facility for commercial purposes.

B. If, for any of these actions, it is proposed not to prepare an EIS, an Environmental Assessment (EA) will be developed in accordance with 40 CFR 1501.4(a)(2).

10.5 **Categorical Exclusions**. In addition to the actions listed in the Department's categorical exclusions in Appendix 1 of 516 DM 2, many of which the BIA also performs, the following BIA actions are hereby designated as categorical exclusions unless the action qualifies as an exception under Appendix 2 of 516 DM 2. These activities are single, independent actions not associated with a larger, existing or proposed, complex or facility. If cases occur that involve larger complexes or facilities, an EA or supplement should be accomplished.

A. Operation, Maintenance, and Replacement of Existing Facilities. Examples are normal renovation of buildings, road maintenance and limited rehabilitation of irrigation structures.

B. Transfer of Existing Federal Facilities to Other Entities. Transfer of existing operation and maintenance activities of Federal facilities to tribal groups, water user organizations, or other entities where the anticipated operation and maintenance activities are agreed to in a contract, follow BIA policy, and no change in operations or maintenance is anticipated.

C. Human Resources Programs. Examples are social services, education services, employment assistance, tribal operations, law enforcement and credit and financing activities not related to development.

D. Administrative Actions and Other Activities Relating to Trust Resources. Examples are: Management of trust funds (collection and distribution), budget, finance, estate planning, wills and appraisals.

E. Self-Determination and Self-Governance.

(1) Self-Determination Act contracts and grants for BIA programs listed as categorical exclusions, or for programs in which environmental impacts are adequately addressed in earlier NEPA analysis.

(2) Self-Governance compacts for BIA programs which are listed as categorical exclusions or for programs in which environmental impacts are adequately addressed in earlier NEPA analysis.

F. Rights-of-Way.

(1) Rights-of-Way inside another right-of-way, or amendments to rights-of-way where no deviations from or additions to the original right-of-way are involved and where there is an existing NEPA analysis covering the same or similar impacts in the right-of-way area.

(2) Service line agreements to an individual residence, building or well from an existing facility where installation will involve no clearance of vegetation from the right-of-way other than for placement of poles, signs (including highway signs), or buried power/cable lines.

(3) Renewals, assignments and conversions of existing rights-of-way where there would be essentially no change in use and continuation would not lead to environmental degradation.

G. Minerals.

(1) Approval of permits for geologic mapping, inventory, reconnaissance and surface sample collecting.

(2) Approval of unitization agreements, pooling or communitization agreements.

(3) Approval of mineral lease adjustments and transfers, including assignments and subleases.

(4) Approval of royalty determinations such as royalty rate adjustments of an existing lease or contract agreement.

H. Forestry.

(1) Approval of free-use cutting, without permit, to Indian owners for on-reservation personal use of forest products, not to exceed 2,500 feet board measure when cutting will not adversely affect associated resources such as riparian zones, areas of special significance, etc.

(2) Approval and issuance of cutting permits for forest products not to exceed $5,000 in value.

(3) Approval and issuance of paid timber cutting permits or contracts for products valued at less than $25,000 when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(4) Approval of annual logging plans when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(5) Approval of Fire Management Planning Analysis detailing emergency fire suppression activities.

(6) Approval of emergency forest and range rehabilitation plans when limited to environmental stabilization on less than 10,000 acres and not including approval of salvage sales of damaged timber.

(7) Approval of forest stand improvement projects of less than 2000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(8) Approval of timber management access skid trail and logging road construction when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(9) Approval of prescribed burning plans of less than 2000 acres when in compliance with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

(10) Approval of forestation projects with native species and associated protection and site preparation activities on less than 2000 acres when consistent with policies and guidelines established by a current management plan addressed in earlier NEPA analysis.

I. Land Conveyance and Other Transfers. Approvals or grants of conveyances and other transfers of interests in land where no change in land use is planned.

J. Reservation Proclamations. Lands established as or added to a reservation pursuant to 25 U.S.C. 467, where no change in land use is planned.

K. Waste Management.

(1) Closure operations for solid waste facilities when done in compliance with other federal laws and regulations and where cover material is taken from locations which have been approved for use by earlier NEPA analysis.

(2) Activities involving remediation of hazardous waste sites if done in compliance with applicable federal laws such as the Resource Conservation and Recovery Act (P.L. 94-580), Comprehensive Environmental Response, Compensation, and Liability Act (P.L. 96-516) or Toxic Substances Control Act (P.L. 94-469).

L. Roads and Transportation.

(1) Approval of utility installations along or across a transportation facility located in whole within the limits of the roadway right-of-way.

(2) Construction of bicycle and pedestrian lanes and paths adjacent to existing highways and within the existing rights-of-way.

(3) Activities included in a "highway safety plan" under 23 CFR 402.

(4) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(5) Emergency repairs under 23 U.S.C. 125.

(6) Acquisition of scenic easements.

(7) Alterations to facilities to make them accessible for the elderly or handicapped.

(8) Resurfacing a highway without adding to the existing width.

(9) Rehabilitation, reconstruction or replacement of an existing bridge structure on essentially the same alignment or location (e.g., widening, adding shoulders or safety lanes, walkways, bikeways or guardrails).

(10) Approvals for changes in access control within existing right-of-ways.

(11) Road construction within an existing right-of-way which has already been acquired for a HUD housing project and for which earlier NEPA analysis has already been prepared.

M. Other.

(1) Data gathering activities such as inventories, soil and range surveys, timber cruising, geological, geophysical, archeological, paleontological and cadastral surveys.

(2) Establishment of non-disturbance environmental quality monitoring programs and field monitoring stations including testing services.

(3) Actions where BIA has concurrence or co-approval with another Bureau and the action is categorically excluded for that Bureau.

(4) Approval of an Application for Permit to Drill for a new water source or observation well.

(5) Approval of conversion of an abandoned oil well to a water well if water facilities are established only near the well site.

(6) Approval and issuance of permits under the Archaeological Resources Protection Act (16 U.S.C. 470aa-ll) when the permitted activity is being done as a part of an action for which a NEPA analysis has been, or is being prepared.

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516 DM 11

11.1 **Purpose.** This Chapter provides supplementary requirements for implementing provisions of 516 DM 1 through 6 within the Department's Bureau of Land Management. This Chapter is referenced in 516 DM 6.5.

11.2 **NEPA Responsibility**.

A. The Director/Deputy Director are responsible for National Environmental Policy Act compliance for Bureau of Land Management activities.

B. The Assistant Director, Support Services, is responsible for policy interpretation, program direction, leadership, and line management for Bureau environmental policy, coordination and procedures. The Division of Planning and Environmental Coordination (P&EC) which reports to the Assistant Director, Support Services, has Bureauwide environmental compliance responsibilities. These responsibilities include program direction for environmental compliance and ensuring the incorporation and integration of the NEPA compliance process into Bureau environmental documents.

C. The Assistant Directors, Renewable Resources, Energy and Minerals Resources, and Management Services are responsible for cooperating with the Assistant Director, Support Services, to ensure that the environmental compliance process operates as prescribed within their areas of responsibility. This includes managing and ensuring the quality of environmental analyses, assigned environmental documents and records of decisions.

D. The State Directors are responsible to the Director/Deputy Director for overall direction and integration of the NEPA process into their activities and for NEPA compliance in their States. The P&EC unit provides major staff support and is the key focal point for NEPA matters at the State level.

(1) The District Managers are responsible for implementing the NEPA process at the District level. The P&EC unit provides major support and is the key focal point for NEPA matters at the District level.

(2) The Area Managers are responsible for implementing the NEPA process at the resource area level.

11.3 **Guidance to Applicants**.

A. General.

(1) Applicants should make initial contact with the line manager (Area Manager, District Manager or State Director) of the office where the affected public lands are located.

(2) If the application will affect responsibilities of more then one State Director, an applicant may contact any State Director whose jurisdiction is involved. In such cases, the Director may assign responsibility to the Headquarters Office or to one of the State offices. From that point the applicant will deal with the designated lead office.

(3) Potential applicants may secure from State Directors a list of program regulations or other directives/guidance providing advice or requirements for submission of environmental information. The purpose of making these regulations known to potential applicants, in advance, is to assist them in presenting a detailed, adequate and accurate description of the proposal and alternatives when they file their application and to minimize the need to request additional information. This is a minimum list and additional requirements may be identified after detailed review of the formal submission and during scoping.

(4) Since much of an applicant's planning may take place outside of BLM's planning system, it is important for potential applicants to advise BLM of their planning at the earliest possible stage. Early communication is necessary to properly conduct our stewardship role on the public lands and to seek solutions to situations where private development decisions may conflict with public land use decisions. Early contact will also allow the determination of basic data needs concerning environmental amenities and values, potential data gaps that could be filled by the application, and a modification of the list or requirements to fit local situations. Scheduling of the environmental analysis process can also be discussed, as well as various ways of preparing any environmental documents.

B. Regulations. The following partial list provides guidance to applicants on program regulations which may apply to a particular application. Many other regulations deal with proposals affecting public lands, some of which are specific to BLM while others are applicable across a broad range of Federal programs (e.g., Protection of Historic and Cultural Programs--36 CFR Part 800).

(1) Resource Management Planning--43 CFR 1610;

(2) Withdrawals--43 CFR 2300;

(3) Land Classification--43 CFR 2400;

(4) Disposition: Occupancy and Use--43 CFR 2500;

(5) Disposition: Grants--43 CFR 2600;

(6) Disposition: Sales--43 CFR 2700;

(7) Use: Rights-of-Way--43 CFR 2800;

(8) Use: Leases and Permits--43 CFR 2900;

(9) Oil and Gas Leasing--43 CFR 3100;

(10) Geothermal Resources Leasing--43 CFR 3200;

(11) Coal Management--43 CFR 3400;

(12) Leasing of Solid Minerals Other than Coal/Oil Shale--43 CFR 3500;

(13) Mineral Materials Disposal--43 CFR 3600;

(14) Mining Claims Under the General Mining Laws--43 CFR 3800;

(15) Grazing Administration--43 CFR 4100;

(16) Wild Free-Roaming Horse and Burro Management--43 CFR 4700;

(17) Forest Management--43 CFR 5000;

(18) Wildlife Management--43 CFR 6000; and

(19) Recreation Management--43 CFR 8300.

11.4 **Major Actions Normally Requiring an EIS**.

A. The following types of bureau actions will normally require the preparation of an EIS:

(1) Approval of Resource Management Plans.

(2) Proposals for Wilderness, Wild and Scenic Rivers, and National Historic Scenic Trails.

(3) Approval of regional coal lease sales in a coal production region.

(4) Decision to issue a coal preference right lease.

(5) Approval of applications to the BLM for major actions in the following categories:

(a) Sites for steam-electric powerplants, petroleum refineries, synfuel plants, and industrial facilities.

(b) Rights-of-way for major reservoirs, canals, pipelines, transmission lines, highways and railroads.

(6) Approval of operations that would result in liberation of radioactive tracer materials or nuclear stimulation.

(7) Approval of any mining operation where the area to be mined, including any area of disturbance, over the life of the mining plan, is 640 acres or larger in size.

B. If, for any of these actions it is anticipated that an EIS is not needed based on potential impact significance, an environmental assessment will be prepared and processed in accordance with 40 CFR 1501.4(e)(2).

11.5 **Categorical Exclusions**. The Departmental Manual (516 DM 2.3A(3) & App. 2) requires that before any action described in the following list of categorical exclusions is used, the exceptions must be reviewed for applicability in each case. The proposed action cannot be categorically excluded if one or more of the exceptions apply, thus requiring either an EA or an EIS. When no exceptions apply, the following types of bureau actions normally do not require the preparation of an EA or EIS.

A. Fish and Wildlife.

(1) Modification of existing fences to provide improved wildlife ingress and egress.

(2) Minor modification of water developments to improve or facilitate wildlife use (e.g., modify enclosure fence, install flood value, or reduce ramp access angle).

(3) Construction of perches, nesting platforms, islands and similar structures for wildlife use.

(4) Temporary emergency feeding of wildlife during periods of extreme adverse weather conditions.

(5) Routine augmentations such as fish stocking, providing no new species are introduced.

(6) Relocation of nuisance or depredating wildlife, providing the relocation does not introduce new species into the ecosystem.

(7) Installation of devices on existing facilities to protect animal life such as raptor electrocution prevention devices.

B. Fluid Minerals.

(1) Issuance of future interest leases under the Mineral Leasing Act of Acquired Lands where the subject lands are already in production.

(2) Approval of mineral lease adjustments and transfers, including assignments and subleases.

(3) Approval of minor modifications or minor variances from activities described in approved development/production plans (e.g., the approved plan identifies no new surface disturbance outside the area already identified to be disturbed).

(4) Approval of unitization agreements, communitization agreements, drainage agreements, underground gas storage agreements, compensatory royalty agreements, or development contracts.

(5) Approval of suspensions of operations, *force majeure* suspensions, and suspensions of operations and production.

(6) Approval of royalty determinations such as royalty rate reductions.

C. Forestry.

(1) Land cultivation and silvicultural activities (excluding herbicides) in forest tree nurseries, seed orchards, and progeny test sites.

(2) Sale and removal of individual trees or small groups of trees which are dead, diseased, injured, or which constitute a safety hazard, and where access for the removal requires no more than maintenance to existing roads.

(3) Seeding or reforestation of timber sales or burn areas where no chaining is done, no pesticides are used, and there is no conversion of timber type or conversion of nonforest to forest land. Specific reforestation activities covered include: seeding and seedling plantings, shading, tubing (browse protection), paper mulching, bud caps, ravel protection, application of non-toxic big game repellant, spot scalping, rodent trapping, fertilization of seed trees, fence construction around out-planting sites, and collection of pollen, scions and cones.

(4) Precommercial thinning and brush control using small mechanical devices.

(5) Disposal of small amounts of miscellaneous vegetation products outside established harvest areas, such as Christmas trees, wildings, floral products (ferns, boughs, etc.), cones, seeds, and personal use firewood.

D. Rangeland Management.

(1) Approval of transfers of grazing preference.

(2) Placement and use of temporary (not to exceed one month) portable corrals and water troughs, providing no new road construction is needed.

(3) Temporary emergency feeding of livestock or wild horses and burros during periods of extreme adverse weather conditions.

(4) Removal of wild horses or burros from private lands at the request of the landowner.

(5) Processing (transporting, sorting, providing veterinary care to, vaccinating, testing for communicable diseases, training, gelding, marketing, maintaining, feeding, and trimming of hooves of) excess wild horses and burros.

(6) Approval of the adoption of healthy, excess wild horses and burros.

(7) Actions required to ensure compliance with the terms of Private Maintenance and Care Agreements.

(8) Issuance of title to adopted wild horses and burros.

(9) Destroying old, sick, and lame wild horses and burros as an act of mercy.

E. Realty.

(1) Withdrawal extensions or modifications which only establish a new time period and entail no changes in segregative effect or use.

(2) Withdrawal revocations, terminations, extensions, or modifications and classification terminations or modifications which do not result in lands being opened or closed to the general land laws or to the mining or mineral leasing laws.

(3) Withdrawal revocations, terminations, extensions, or modifications; classification terminations or modifications; or opening actions where the land would be opened only to discretionary land laws and where subsequent discretionary actions (prior to implementation) are in conformance with and are covered by a Resource Management Plan/EIS (or plan amendment and EA or EIS).

(4) Administrative conveyances from the Federal Aviation Administration (FAA) to the State of Alaska to accommodate airports on lands appropriated by the FAA prior to the enactment of the Alaska Statehood Act.

(5) Actions taken in conveying mineral interest where there are no known mineral values in the land, under Section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA).

(6) Resolution of class one color-of-title cases.

(7) Issuance of recordable disclaimers of interest under Section 315 of FLPMA.

(8) Corrections of patents and other conveyance documents under section 316 of FLPMA and other applicable statutes.

(9) Renewals and assignments of leases, permits or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations.

(10) Transfer or conversion of leases, permits, or rights-of-way from one agency to another (e.g., conversion of Forest Service permits to a BLM Title V Right-of-way).

(11) Conversion of existing right-of-way grants to Title V grants or existing leases to FLPMA section 302(b) leases where no new facilities or other changes are needed.

(12) Grants of right-of-way wholly within the boundaries of other compatibly developed rights-of-way.

(13) Amendments to existing rights-of-way such as the upgrading of existing facilities which entail no additional disturbances outside the rights-of-way boundary.

(14) Grants of rights-of-way for an overhead line (no pole or tower on BLM land) crossing over a corner of public land.

(15) Transfer of land or interest in land to or from other bureaus or Federal agencies where current management will continue and future changes in management will be subject to the NEPA process.

(16) Acquisition of easements for an existing road or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.

(17) Grant of a short rights-of-way for utility service or terminal access roads to an individual residence, outbuilding, or water well.

(18) Temporary placement of a pipeline above ground.

(19) Issuance of short-term (3 years or less) rights-of-way or land use authorizations for such uses as storage sites, apiary sites, and construction sites where the proposal includes rehabilitation to restore the land to its natural or original condition.

(20) One-time issuance of short-term (3 years or less) rights-of-way or land use authorizations which authorize trespass action where no new use or construction is allowed, and where the proposal includes rehabilitation to restore the land to its natural or original condition.

F. Solid Minerals.

(1) Issuance of future interest leases under the Mineral Leasing Act for Acquired Lands where the subject lands are already in production.

(2) Approval of mineral lease readjustments, renewals and transfers including assignments and subleases.

(3) Approval of suspensions of operations, *force majeure* suspensions, and suspensions of operations and production.

(4) Approval of royalty determinations such as royalty rate reduction and operations reporting procedures.

(5) Determination and designation of logical mining units (LMUs).

(6) Findings of completeness furnished to the Office of Surface Mining Reclamation and Enforcement for Resource Recovery and Protection Plans.

(7) Approval of minor modifications to or minor variances from activities described in an approved exploration plan for leasable, salable and locatable minerals. (e.g., the approved plan identifies no new surface disturbance outside the areas already identified to be disturbed.)

(8) Approval of minor modifications to or minor variances from activities described in an approved underground or surface mine plan for leasable minerals. (e.g., change in mining sequence or timing.)

(9) Digging of exploratory trenches for mineral materials, except in riparian areas.

(10) Disposal of mineral materials such as sand, stone, gravel, pumice, pumicite, cinders, and clay, in amounts not exceeding 50,000 cubic yards or disturbing more than 5 acres, except in riparian areas.

G. Transportation Signs.

(1) Placing existing roads in any transportation plan when no new construction or upgrading is needed.

(2) Installation of routine signs, markers, culverts, ditches, waterbars, gates, or cattleguards on/or adjacent to existing roads.

(3) Temporary closure of roads.

(4) Placement of recreational, special designation or information signs, visitor registers, kiosks and portable sanitation devices.

H. Other.

(1) Maintaining plans in accordance with 43 CFR 1610.5-4.

(2) Acquisition of existing water developments (e.g., wells and springs) on public land.

(3) Conducting preliminary hazardous materials assessments and site investigations, site characterization studies and environmental monitoring. Included are siting, construction, installation and/or operation of small monitoring devices such as wells, particulate dust counters and automatic air or water samples.

(4) Use of small sites for temporary field work camps where the sites will be restored to their natural or original condition within the same work season.

(5) Issuance of special recreation permits to individuals or organized groups for search and rescue training, orienteering or similar activities and for dog trials, endurance horse races or similar minor events.

(6) A single trip in a one month period to data collection or observation sites.

(7) Construction of snow fences for safety purposes or to accumulate snow for small water facilities.

(8) Installation of minor devices to protect human life (e.g., grates across mines).

(9) Construction of small protective enclosures including those to protect reservoirs and springs and those to protect small study areas.

(10) Removal of structures and materials of nonhistorical value, such as abandoned automobiles, fences, and buildings, including those built in trespass and reclamation of the site when little or no surface disturbance is involved.

(11) Actions where BLM has concurrence or coapproval with another DOI agency and the action is categorically excluded for that DOI agency.

(12) Rendering formal classification of lands as to their mineral character and waterpower and water storage values.

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516 DM 12

12.1 **Purpose.** This Chapter provides supplementary requirements for implementing provisions of 516 DM 1 through 6 within the Department's National Park Service. This Chapter is referenced in 516 DM 6.5.

12.2 **NEPA Responsibility**.

A. The Director is responsible for NEPA compliance for National Park Service (NPS) activities.

B. Regional Directors are responsible to the Director for integrating the NEPA process into all regional activities and for NEPA compliance in their regions.

C. The Denver Service Center performs most major planning efforts for the National Park Service and integrates NEPA compliance and environmental considerations with project planning, consistent with direction and oversight provided by the appropriate Regional Director.

D. The Environmental Compliance Division (Washington), which reports to the Associate Director-Planning and Development, serves as the focal point for all matters relating to NEPA compliance; coordinates NPS review of NEPA documents prepared by other agencies; and provides policy review and clearance for NPS EISs. Information concerning NPS NEPA documents or the NEPA process can be obtained by contacting this office.

12.3 **Guidance to Applicants**. Actions in areas of NPS jurisdiction that are initiated by private or non-Federal entities include the following:

A. Minerals. Mineral exploration, leasing and development activities are not permitted in most units of the National Park System. There are exceptions where mineral activities are authorized by law and all mineral activities conducted under these exceptions require consultation with and evaluation by officials of the NPS and are subject to NEPA compliance. Some procedures whereby mineral activities are authorized are outlined below. For site-specific proposals, interested parties should contact the appropriate NPS Regional Director for a determination of whether authorities for conducting other types of mineral activities in particular areas exist and, if so, how to obtain appropriate permits. For further information about

NPS minerals policy, interested parties should contact the Energy, Mining, and Minerals Division (Denver, Colorado).

(1) Mining Claims and Associated Mining Operations. All Units of the National Park System are closed to mineral entry under the 1872 Mining Law, and mining operations associated with mining claims are limited to the exercise of valid prior existing rights. Prior to conducting mining operations on patented or unpatented mining claims within the National Park System, operators must obtain approval of the appropriate NPS Regional Director. The Regional Directors base approval on information submitted by potential operators that discusses the scope of the proposed operations, evaluates the potential impacts on park resources, identifies measures that will be used to mitigate adverse impacts, and meets other requirements contained in 36 CFR Part 9, Subpart A, which governs mining operations on mining claims under the authority of the Mining in the Parks Act of 1976.

(2) Non-Federal Mineral Rights. Privately held Oil, gas and mineral rights on private land or split estates (Federally-owned surface estate and non-Federally owned subsurface estate) exist within some park boundaries. Owners of outstanding subsurface oil and gas rights are granted reasonable access on or across park units through compliance with 36 CFR Part 9, Subpart B. These procedures require an operator to file a plan of operations for approval by the appropriate NPS Regional Director. An approved plan of operations serves as the operator's access permit.

(3) Federal Mineral Leasing and Mineral Operations.

(a) Leasing of Federally-owned minerals is restricted to five national recreation areas in the National Park System, where leasing is authorized in the enabling legislation of the units. According to current regulations (43 CFR 3100.0-3(g)(4); 43 CFR 3500.0-3(c)(7)). These areas are: Lake Mead, Glen Canyon, Ross Lake, Lake Chelan, and Whiskeytown National Recreation Areas. However, Lake Chelan was designated in 1981 as an "excepted" area under the regulations and is closed to mineral leasing. The Bureau of Land Management (BLM) issues leases on these lands and controls and monitors operations. Applicable general leasing and operating procedures for oil and gas are contained in 43 CFR Part 3100, et seq, and for minerals other than oil and gas in 43 CFR 3500 et seq. Within units of the National Park System, the NPS, as the surface management agency, must consent to the permitting and leasing of park lands and concur with operating conditions established in consultation with the BLM. Leases and permits can only be granted upon a finding by the NPS Regional Director that the activities authorized will not have a significant adverse effect on the resources and administration of the unit. The NPS can also require special lease and permit stipulations for protecting the environment and other park resources. In addition, the NPS participates with BLM in preparing environmental analyses of all proposed activities and in establishing reclamation requirements for park unit lands.

(b) Glen Canyon National Recreation Area is the only unit of the National Park System containing special tar sands areas as defined in the Combined Hydrocarbon Leasing Act of 1981. In accordance with the requirements of this Act, the BLM has promulgated regulations governing the conversion of existing oil and gas leases located in

special tar sands areas to combined hydrocarbon (oil, gas, and tar sands) leases and for instituting a competitive combined hydrocarbon leasing program in the special tar sands areas. Both of these activities, lease conversions and new leasing, may occur within the Glen Canyon NRA provided that they take place commensurate with the unit's minerals management plan and that the Regional Director of the NPS makes a finding of no significant adverse impact on the resources and administration of the unit or on other contiguous units of the National Park System. If the Regional Director does not make such a finding, then the BLM cannot authorize lease conversions or issue new leases within the Glen Canyon NRA. The applicable regulations are contained in 43 CFR 3140.7 and 3141.4-2, respectively. Intra-Departmental procedures for processing conversion applications have been laid out in a Memorandum of Understanding (MOU) between the BLM and the NPS. For additional information about combined hydrocarbon leasing, interested parties should contact the Energy, Mining and Minerals Division (Denver, Colorado).

B. Grazing. Grazing management plans for NPS units subject to legislatively-authorized grazing are normally prepared by the NPS or jointly with the BLM. Applicants for grazing allotments must provide the NPS and/or the BLM with such information as may be required to enable preparation of environmental documents on grazing management plans. Grazing is also permitted in some NPS areas as a condition of land acquisition in instances where grazing rights were held prior to Federal acquisition. The availability of these grazing rights is limited and information should be sought through individual Park Superintendents.

C. Permits, Rights-of-Way, and Easements for Non-Park Uses. Informational requirements are determined on a case-by-case basis, and applicants should consult with the Park Superintendent before making formal application. The applicant must provide sufficient information on the proposed non-park use, as well as park resources and resource-related values to be affected directly and indirectly by the proposed use in order to allow the Service to evaluate the application, assess the impact of the proposed use on the NPS unit and other environmental values, develop restrictions/stipulations to mitigate adverse impacts, and reach a decision on issuance of the instrument. Authorities for such permits, rights-of-way, etc., are found in the enabling legislation for individual National Park System units and 16 U.S.C. 5 and 79 and 23 U.S.C. 317. Right-of-way and easement regulations are found at 36 CFR Part 14. Policies concerning regulation of special uses are described in the NPS Management Policies Notebook.

D. Archaeological Permits. Permits for the excavation or removal of archaeological resources on public and Indian lands owned or administered by the Department of the Interior, and by other agencies that may delegate this responsibility to the Secretary, are issued by the Director of the NPS. These permits are required pursuant to the Archaeological Resources Protection Act of 1979 (Pub. L. 96-95) and implementing regulations (43 CFR Part 7), whenever materials of archaeological interest are to be excavated or removed. These permits are not required for archaeological work that does not result in any subsurface testing and does not result in the collection of any surface or subsurface archaeological materials. Applicants should contact the Departmental Consulting Archaeologist in Washington about these permits.

E. Federal Aid. The NPS administers financial and land grants to States, local governments and private organizations/individuals for outdoor recreation acquisition,

development and planning (Catalog of Federal Domestic Assistance (CFDA #15.916), historic preservation (CFDA #15.904), urban park and recreation recovery (CFDA #15.919) and Federal surplus real property for park recreation and historic monument use (CFDA #15.403). The following program guidelines and regulations list environmental requirements which applicants must meet:

(1) Land and Water Conservation Fund Grants Manual, Part 650.2;

(2) Historic Preservation Grants-in-Aid Manual, Chapter 4;

(3) Urban Park and Recreation Recovery Guidelines, NPS-37;

(4) Policies and Responsibilities for Conveying Federal Surplus Property Manual, Part 271.

Copies of documents related to the Land and Water Conservation Fund and the Historic Preservation Fund have been provided to all State Liaison Officers for outdoor recreation and all State Historic Preservation Officers. Copies of these documents related to the Urban Park and Recreation Recovery Program are available for inspection in each NPS Regional Office as well as the NPS Office of Public Affairs in Washington, D.C. Many State agencies which seek NPS grants may prepare related EISs pursuant to section 102(2)(D) of NEPA. Such agencies should consult with the NPS Regional Office.

F. Conversion of Acquired and Developed Recreation Lands. The NPS must approve the conversion of certain acquired and developed lands prior to conversion. These include:

(1) All State and local lands and interests therein, and certain Federal lands under lease to the States, acquired or developed in whole or in part with monies from the Land and Water Conservation Fund Act are subject to section 6(f) of the Act which requires approval of conversion of use.

(2) All recreation areas and facilities (as defined in section 1004), developed or improved, in whole or in part, with a grant under the Urban Park and Recreation Recovery Act of 1978 (Pub. L. 95-625, Title 10) are subject to section 1010 of the Act which requires approval for a conversion to other than public recreation uses.

(3) Most Federal surplus real property which has been conveyed to State and local governments for use as recreation demonstration areas, historic monuments or public park and recreation areas (under the Recreation Demonstration Act of 1942 or the Federal Property and Administrative Services Act of 1949, as amended) are subject to approval of conversion of use.

(4) All abandoned railroad rights-of-way acquired by State and local governments for recreational and/or conservation uses with grants under section 809(b) of the Railroad Revitalization and Regulatory Reform Act of 1976, are subject to approval of

conversion of use. Application for approval of conversion of the use of these lands must be submitted to the appropriate Regional Director of the NPS. Early consultation with the Regional Office is encouraged to insure that the application is accompanied by any required environmental documentation. If the property was acquired through the Land and Water Conservation Fund, then the application must be submitted through the appropriate State Liaison Officer for Outdoor Recreation. If the property was acquired under the Federal Property and Administrative Services Act of 1949, as amended, approval of an application for conversion of use must also be concurred in by the General Services Administration.

12.4 **Major Actions Normally Requiring Environmental Impact Statements**.

A. The following types of NPS proposals will normally require the preparation of an EIS:

(1) Wild and Scenic River proposals;

(2) National Trail proposals;

(3) Wilderness proposals;

(4) General Management Plans for major National Park System units;

(5) Grants, including multi-year grants, whose size and/or scope will result in major natural or physical changes, including interrelated social and economic changes and residential and land use changes within the project area or its immediate environs;

(6) Grants which foreclose other beneficial uses of mineral, agricultural, timber, water, energy or transportation resources important to National or State welfare.

B. If for any of these proposals it is initially decided not to prepare an EIS, an EA will be prepared and made available for public review in accordance with section 1501.4(e)(2).

12.5 **Categorical Exclusions**. In addition to the actions listed in the Departmental categorical exclusions in Appendix 1 of 516 DM 2, many of which the Service also performs, the following NPS actions are designated categorical exclusions unless the action qualifies as an exception under Appendix 2 to 516 DM 2.

A. <u>Actions Related to General Administration</u>.

(1) Changes or amendments to an approved action when such changes would cause no or only minimal environmental impact.

(2) Land and boundary surveys,

(3) Minor boundary changes,

(4) Reissuance/renewal of permits, rights-of-way or easements not involving new environmental impacts,

(5) Conversion of existing permits to rights-of-way, when such conversions do not continue or initiate unsatisfactory environmental conditions,

(6) Issuances, extensions, renewals, reissuances or minor modifications of concession contracts or permits not entailing new construction,

(7) Commercial use licenses involving no construction,

(8) Leasing of historic properties in accordance with 36 CFR Part 18 and NPS-38,

(9) Preparation and issuance of publications,

(10) Modifications or revisions to existing regulations, or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions or new regulations do not:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it,

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it,

(c) Conflict with adjacent ownerships or land uses, or

(d) Cause a nuisance to adjacent owners or occupants.

(11) At the direction of the NPS responsible official, actions where NPS has concurrence or coapproval with another bureau and the action is a categorical exclusion for that bureau.

B. Plans, Studies and Reports.

(1) Changes or amendments to an approved plan, when such changes would cause no or only minimal environmental impact.

(2) Cultural resources maintenance guides, collection management plans and historic furnishings reports.

(3) Interpretive plans (interpretive prospectuses, audio-visual plans, museum exhibit plans, wayside exhibit plans).

(4) Plans, including priorities, justifications and strategies, for non-manipulative research, monitoring, inventorying and information gathering.

(5) Statements for management, outlines of planning requirements and task directives for plans and studies.

(6) Technical assistance to other Federal, State and local agencies or the general public.

(7) Routine reports required by law or regulation.

(8) Authorization, funding or approval for the preparation of Statewide Comprehensive Outdoor Recreation Plans.

(9) Adoption or approval of surveys, studies, reports, plans and similar documents which will result in recommendations or proposed actions which would cause no or only minimal environmental impact.

(10) Preparation of internal reports, plans, studies and other documents containing recommendations for action which NPS develops preliminary to the process of preparing a specific Service proposal or set of alternatives for decision.

(11) Land protection plans which propose no significant change to existing land or visitor use.

(12) Documents which interpret existing mineral management regulations and policies, and do not recommend action.

C. Actions Related to Development.

(1) Land acquisition within established park boundaries.

(2) Land exchanges which will not lead to significant changes in the use of land.

(3) Routine maintenance and repairs to non-historic structures, facilities, utilities, grounds and trails.

(4) Routine maintenance and repairs to cultural resource sites, structures, utilities and grounds under an approved Historic Structures Preservation Guide or Cyclic Maintenance Guide; or if the action would not adversely affect the cultural resource.

(5) Installation of signs, displays, kiosks, etc.

(6) Installation of navigation aids.

(7) Establishment of mass transit systems not involving construction, experimental testing of mass transit systems, and changes in operation of existing systems (e.g., routes and schedule changes).

(8) Replacement in kind of minor structures and facilities with little or no change in location, capacity or appearance.

(9) Repair, resurfacing, striping, installation of traffic control devices, repair/replacement of guardrails, etc., on existing roads.

(10) Sanitary facilities operation.

(11) Installation of wells, comfort stations and pit toilets in areas of existing use and in developed areas.

(12) Minor trail relocation, development of compatible trail networks on logging roads or other established routes, and trail maintenance and repair.

(13) Upgrading or adding new overhead utility facilities to existing poles, or replacement poles which do not change existing pole line configurations.

(14) Issuance of rights-of-way for overhead utility lines to an individual building or well from an existing line where installation will not result in significant visual intrusion and will involve no clearance of vegetation other than for placement of poles.

(15) Issuance of rights-of-way for minor overhead utility lines not involving placement of poles or towers and not involving vegetation management or significant visual intrusion in an NPS-administered area.

(16) Installation of underground utilities in previously disturbed areas having stable soils, or in an existing utility right-of-way.

(17) Construction of minor structures, including small improved parking lots, in previously disturbed or developed areas.

(18) Construction or rehabilitation in previously disturbed or developed areas, required to meet health or safety regulations, or to meet requirements for making facilities accessible to the handicapped.

(19) Landscaping and landscape maintenance in previously disturbed or developed areas.

(20) Construction of fencing enclosures or boundary fencing posing no effect on wildlife migrations.

D. Actions Related to Visitor Use.

(1) Carrying capacity analysis.

(2) Minor changes in amounts or types of visitor use for the purpose of ensuring visitor safety or resource protection in accordance with existing regulations.

(3) Changes in interpretive and environmental education programs.

(4) Minor changes in programs and regulations pertaining to visitor activities.

(5) Issuance of permits for demonstrations, gathering, ceremonies, concerts, arts and crafts shows, etc., entailing only short-term or readily mitigable environmental disturbance.

(6) Designation of trail side camping zones with no or minimal improvements.

E. Actions Related to Resource Management and Protection.

(1) Archeological surveys and permits involving only surface collection or small-scale test excavations.

(2) Day-to-day resource management and research activities.

(3) Designation of environmental study areas and research natural areas.

(4) Stabilization by planting native plant species in disturbed areas.

(5) Issuance of individual hunting and/or fishing licenses in accordance with State and Federal regulations.

(6) Restoration of noncontroversial native species into suitable habitats within their historic range and elimination of exotic species.

(7) Removal of park resident individuals of non-threatened/endangered species which pose a danger to visitors, threaten park resources or become a nuisance in areas surrounding a park, when such removal is included in an approved resource management plan.

(8) Removal of non-historic materials and structures in order to restore natural conditions.

(9) Development of standards for, and identification, nomination, certification and determination of eligibility of properties for listing in the National Register of Historic Places and the National Historic Landmark and National Natural Landmark Programs.

F. Actions Related to Grant Programs.

(1) Proposed actions essentially the same as those listed in paragraphs A-E above.

(2) Grants for acquisition of areas which will continue in the same or lower density use with no additional disturbance to the natural setting.

(3) Grants for replacement or renovation of facilities at their same location without altering the kind and amount of recreational, historical or cultural resources of the area; or the integrity of the existing setting.

(4) Grants for construction of facilities on lands acquired under a previous NPS or other Federal grant provided that the development is in accord with plans submitted with the acquisition grant.

(5) Grants for the construction of new facilities within an existing park or recreation area, provided that the facilities will not:

(a) Conflict with adjacent ownerships or land use, or cause a nuisance to adjacent owners or occupants; e.g., extend use beyond daylight hours;

(b) Introduce motorized recreation vehicles;

(c) Introduce active recreation pursuits into a passive recreation area;

(d) Increase public use or introduce noncompatible uses to the extent of compromising the nature and character of the property or causing physical damage to it; or

(e) Add or alter access to the park from the surrounding area.

(6) Grants for the restoration, rehabilitation, stabilization, preservation and reconstruction (or the authorization thereof) of properties listed on or eligible for listing on the National Register of Historic Places at their same location and provided that such actions:

(a) Will not alter the integrity of the property or its setting;

(b) Will not increase public use of the area to the extent of compromising the nature and character of the property; and

(c) Will not cause a nuisance to adjacent property owners or occupants.

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Chapter 13: Managing the NEPA Process--Office of Surface Mining

Originating Office: Office of Surface Mining

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516 DM 13

13.1 **Purpose**. This Chapter provides supplementary requirements for implementing provisions of 516 DM 1 through 6 within the Department's Office of Surface Mining. This Chapter is referenced in 516 DM 6.5.

13.2 **NEPA Responsibility**.

A. Director. Is responsible for NEPA compliance for the Office of Surface Mining (OSM).

B. Assistant Directors.

(1) Are responsible to the Director for supervision and coordination of NEPA activities in their program areas of responsibility.

(2) Are responsible, within their program areas, for OSM Headquarters review of EISs for compliance with program area policy guidance.

(3) Are responsible for assuring that environmental concerns are identified early in the planning stages and appropriate policy and program guidance is disseminated.

C. Regional Directors.

(1) Are responsible to the Director for integrating the NEPA process into all Regional activities and for NEPA compliance activities in their Regions.

(2) Will designate a staff position to be responsible to the Regional Director for the consistency, adequacy, and quality of all NEPA documents prepared by the Region's staff. The position will also be responsible to the Regional Director for providing information, guidance, training, advice, and coordination on NEPA matters, and for oversight of the Region's NEPA process.

D. Chief, Branch of Environmental Analysis (Washington). Is designated by the Director to be responsible for overall policy guidance for NEPA compliance for OSM.

Information about OSM NEPA documents or the NEPA process can be obtained by contacting this Branch.

13.3 **Guidance to Applicants**. OSM personnel are available to meet with all applicants for permits on Federal lands or under a Federal program for a State to provide guidance on the permitting procedures. Permit applications under approved State programs are excluded from NEPA compliance. In addition, OSM's regulations implementing the Surface Mining Control and Reclamation Act of 1977 (SMCRA) provide requirements for applicants to submit environmental information. The following parts of the regulations (30 CFR) describe the information requirements.

A. Parts 770 and 771 outline the content requirements of permit applications on Federal lands or under a Federal program for a State, including: the procedures for coal exploration operations required by 30 CFR 776; the permit application contents for surface coal mining activities required by 30 CFR 778, 779, and 780; the permit application contents for underground coal mining required by 30 CFR 782, 783, and 784; the requirements for special categories of surface coal mining required by 30 CFR 785; and the procedures for review, revision, and renewal of permits and for the transfer, sale, or assignment of rights granted under permits, as required by 30 CFR 788.

B. Part 776 identifies the minimum requirements for coal exploration activities outside the permit area. Part 776 is complemented by Part 815 of Subchapter K which provides environmental protection performance standards applicable to these operations.

C. Part 778 provides the minimum requirements for legal, financial, compliance, and general nontechnical information for surface mining activities applications. Information submitted in permit applications under Part 778 will be used primarily to enable the regulatory authority and interested members of the public to ascertain the particular nature of the entity which will mine the coal and those entities which have other financial interests and public record ownership interests in both the mining entity and the property which is to be mined.

D. Part 779 establishes the minimum standards for permit applications regarding information on existing environmental resources that may be impacted by the conduct and location of the proposed surface mining activities. With the information required under Part 779, the regulatory authority is to utilize information provided in mining and reclamation plans under Part 780, in order to determine what specific impacts the proposed surface mining activities will have on the environment.

E. Part 780 establishes the heart of the permit application: the mining operations and reclamation plan for surface mining activities. The regulatory authority will utilize this information, together with the description of the existing environmental resources obtained under Part 779, to predict whether the lands to be mined can be reclaimed as required by the Act.

F. Part 782 contains permit application requirements for underground mining activities. This corresponds to Part 778 for surface mining. As such, Part 782 sets forth the minimum requirements for general, legal, financial, and compliance information required to be contained in applications for permits.

G. Part 783 describes the minimum requirements for information on existing environmental resources required in the permit application for underground mining and corresponds to Part 779 for surface mining activities.

H. Part 784 contains a discussion of the minimum requirements for reclamation and operation plans related to underground mining permit applications and corresponds to Part 780 for surface mining activities.

I. Part 785 contains requirements for permits for special categories of mining, including anthracite, special bituminous, experimental practices, mountaintop removal, steep slope, variances from approximate original contour restoration requirements, prime farmlands, alluvial valley floors, augering operation, and insitu activities. The provisions of Part 785 are interrelated to the performance standards applicable to the special categories covered in Subchapter K and must be reviewed together with the preamble and text for Parts 818 through 828 of Subchapter K.

J. Part 788 specifies the responsibilities of persons conducting surface coal mining and reclamation operations with respect to changes, modifications, renewals, and revisions of permits after they are originally granted, and of persons who attempt to succeed to rights granted under permits by transfer, sale, or assignment of rights.

13.4 **Major Actions Normally Requiring an EIS**.

A. The following OSM actions will normally require the preparation of an EIS:

(1) Approval of the Abandoned Mine Lands Reclamation Program, (SMCRA, Title IV). Completed in March 1980.

(2) Promulgation of the permanent regulatory program for surface coal mining and reclamation operations (SMCRA, Title V). Completed in February 1979.

(3) Approval of a proposed mining and reclamation plan that includes any of the following:

(a) Mountaintop removal operations.

(b) Mining within high use recreation areas.

(c) Mining that will cause population increases that exceed the community's ability to absorb the growth.

(d) Mining that would require a major change in existing coal transportation facilities.

(4) Approval of a proposed mining and reclamation plan for a surface mining operation that meets the following:

(a) The environmental impacts of the proposed mining operation are not adequately analyzed in an earlier environmental document covering the specific leases or mining activity; and

(b) The area to be mined is 1280 acres or more, or the annual full production level is 5 million tons or more; and

(c) Mining and reclamation operations will occur for 15 years or more.

B. If for any of these actions it is proposed not to prepare an EIS, an EA will be prepared and handled in accordance with Section 1501.4(e)(2).

13.5 **Categorical Exclusions**.

A. The following OSM actions are deemed not to be major Federal actions within the meaning of Section 102(2)(C) of NEPA under Sections 501(a) or 702(d) of the SMCRA. They are hereby designated as categorical exclusions from the NEPA process and are exempt from the exceptions under 516 DM 2.3A(3):

(1) Promulgation of interim regulations.

(2) Approval of State programs.

(3) Promulgation of Federal programs where a State fails to submit, implement, enforce, or maintain an acceptable State program.

(4) Promulgation and implementation of the Federal lands program.

B. In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which OSM also performs, the following OSM actions (SMCRA sections are in parentheses) are designated categorical exclusions unless the actions qualify as an exception under 516 DM 2.3A(3):

(1) Monetary allotments to States for mining and mineral resources institutes (301).

(2) Allocation of research funds to institutes (302).

(3) Any research effort associated with ongoing abandoned mine land reclamation projects where the research is coincidental to the reclamation (401(c)(6)).

(4) Collection of reclamation fees from operators (402(a)).

(5) Findings of fact and entries on land adversely affected by past coal mining (407(a)).

(6) Acquisition of particular parcels of abandoned mine lands for reclamation (407(c)).

(7) Filing liens against property adversely affected by past coal mining (408).

(8) Interim regulatory grants (502(e)(4)).

(9) Disapproval of a proposed State program (503(c)).

(10) Review of permits issued under a previously approved State program (504(d)).

(11) Five-year permit renewal on life-of-mine plans under the Federal lands program or the Federal program for a State where the environmental impacts of continued mining are adequately analyzed in a previous environmental document for the mining operation (506(d)).

(12) Small operator assistance program (507(c)).

(13) Issuance of public notices and holding public hearings on permit applications involving Federal lands or under a Federal program for a State (513).

(14) Routine inspection and enforcement activities (517).

(15) Conflict of interest regulations (517(g)).

(16) Assessment of civil penalties (518).

(17) Releases of performance bonds or deposits for mining on Federal lands or under a Federal program for a State (519).

(18) Issuance of cessation orders for coal mining and reclamation operations (521(a)(2) and (3)).

(19) Suspension or revocation of permits (521(a)(4)).

(20) Federal oversight and enforcement of ineffective State programs (521(b)).

(21) Cooperative agreements between a state and the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands (523(c)).

(22) Development of a program to assure that, with respect to the granting of permits, leases, or contracts for Federally-owned coal, no one shall be unreasonably denied purchase of the mined coal (523(d)).

(23) Annual grants programs to States for program development, administration, and enforcement (705(a)).

(24) Assistance to States in the development, administration, and enforcement of State programs (705(b)).

(25) Increasing the amount of annual grants to States (705(c)).

(26) Submission of the Secretary's annual report to the Congress (706).

(27) The proposal of legislation to allow Indian tribes to regulate surface coal mining on Indian lands (710(a)).

(28) The certification and training of blasters (719).

(29) Approval of State Reclamation Plans for abandoned mine lands (405).

(30) Development of project proposals for AML grants, including field work only to the extent necessary for the preparation and design of the proposal.

(31) Use of AML funds to allow States or tribes to set aside State share funds in a special trust for future AML projects.

(32) Use of AML funds in an insurance pool for the purposes of compensation for damage caused by mining prior to the date of the Act.

(33) AML reclamation projects involving: No more than 100 acres; no hazardous wastes; no explosives; no hazardous or explosive gases; no dangerous impoundments; no mine fires and refuse fires; no undisturbed, noncommercial borrow or disposal sites, no dangerous slides where abatement has the potential for damaging inhabited property; no subsidences involving the placement of material into underground mine voids through drilled holes to address more than one structure, and no unresolved issues with agencies, persons, or groups or adverse effects requiring specialized mitigation. Departmental exceptions in 516 DM 2, Appendix 2 apply to this exclusion. All sites considered in this categorical exclusion would have to first meet the eligibility test in sections 404, 409 and 411 of SMCRA. Also projects that have been declared an emergency pursuant to section 410 of SMCRA, may be candidates for this exclusion.

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516 DM 14

14.1 **Purpose**. This Chapter provides supplementary requirements for implementing provisions of 516 DM 1 through 6 within the Department's Bureau of Reclamation. This Chapter is referenced in 516 DM 6.5.

14.2 **NEPA Responsibility**.

A. Commissioner. Is responsible for NEPA compliance for Bureau of Reclamation (BuRec) activities.

B. Assistant Commissioners.

(1) Are responsible to the Commissioner for supervising and coordinating NEPA activities in their assigned areas of responsibility.

(2) Are responsible, in assigned areas of responsibility, for the Washington level review of EISs prepared in the regions or E&R Center for compliance with program area policy guidance.

(3) Provide supervision and coordination in assigned areas of responsibility to insure that environmental concerns are identified in the planning stages and to see that Regional Directors follow through with environmental commitments during the construction and operation and maintenance stages.

(4) May designate a staff position to be responsible for NEPA oversight and coordination in their assigned areas of responsibility.

C. Regional Directors.

(1) Are fully responsible to the Commissioner for integrating the NEPA compliance activities in their regional area.

(2) Will designate a staff position with the full responsibility to the Regional Director for providing direction of the NEPA process including information, guidance, training,

advice, consistency, quality, adequacy, oversight, and coordination on NEPA documents or matters.

D. Division and Office Chiefs in E&R Center.

(1) Are responsible for integrating the NEPA process into their activities.

(2) Will designate a staff position to be responsible to the division or office chief for providing guidance, advice, consistency, quality, adequacy, oversight, and coordination on NEPA documents for matters originating in the E&R Center.

(3) Will provide a technical review within their area of expertise of environmental documents directed to their office for review and comment.

E. Director, Office of Environmental Affairs (Washington). Is the position designated by the Commissioner to be responsible for overall policy review of BuRec NEPA compliance. Information about BuRec NEPA documents of the NEPA process can be obtained by contacting this office.

14.3 **Guidance to Applicants**.

A. Types of Applicants.

(1) Actions that are initiated by private or non-Federal entities through applications include the following: Repayment contracts, water service contracts, Small Reclamation Projects Act Loans, Emergency Loans, Rehabilitation and Betterment Loans, Distribution System Loans, land use permits, licenses, easements, crossing agreements, permits for removal of sand and gravel, renewal of grazing, recreation management, or cabin site leases.

(2) Applicants will be provided information by the regional office on what environmental reports, analysis, or information are needed when they initiate their application. The environmental information requested may, of necessity, be related to impacts on private lands or other lands not under the jurisdiction of the Bureau to allow the BuRec to meet its environmental responsibilities.

B. Prepared Program Guidance for Applicants.

(1) Loans under the Small Reclamation Projects Act of 1958, U.S. Department of the Interior, Bureau of Reclamation, March 1976 (35 pages).

(2) Guidelines for Preparing Applications for Loans and Grants under the Small Reclamation Projects Act, Public Law 84-984, U.S. Department of the Interior, Bureau of Reclamation, December 1973 (121 pages).

(3) The Rehabilitation and Betterment Program, U.S. Department of the Interior, Bureau of Reclamation, September 1978 (14 pages).

(4) Guidelines for Preparation of Reports to Support Proposed Rehabilitation and Betterment Programs, U.S. Department of the Interior, Bureau of Reclamation, September 1978 (8 pages).

14.4 **Major Actions Normally Requiring an EIS**.

A. The following types of BuRec proposals will normally require the preparation of an EIS:

(1) Proposed Feasibility Reports on water resources projects.

(2) Proposed Definite Plan Reports (DPR) on water resources projects if not covered by an EIS at the feasibility report stage or if there have been major changes in the project plan which may cause significantly different or additional new impacts.

(3) Proposed repayment contracts and water service contracts or amendments thereof or supplements thereto, for irrigation, municipal, domestic, or industrial water where NEPA compliance has not already been accomplished.

(4) Proposed modifications to existing projects or proposed changes in the programmed operation of an existing project that may cause a significant new impact.

(5) Proposed initiation of construction of a project or major unit thereof, if not already covered by an EIS, or if significant new impacts are anticipated.

(6) Proposed major research projects where there may be significant impacts resulting from experimentation or other such research activities.

B. If, for any of these proposals it is initially decided not to prepare an EIS, an EA will be prepared and handled in accordance with Section 1501.4(e)(2).

14.5 **Categorical Exclusions**. In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the Bureau also performs, the following Bureau actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2.3A(3):

A. General Activities.

(1) Changes in regulations or policy directives and legislative proposals where the impacts are limited to economic and/or social effects.

(2) Training activities of enrollees assigned to the various youth programs. Such training may include minor construction activities for other entities.

(3) Research activities, such as nondestructive data collection and analysis, monitoring, modeling, laboratory testing, calibration, and testing of instruments or procedures and nonmanipulative field studies.

B. Planning Activities.

(1) Routine planning investigation activities where the impacts are expected to be localized, such as land classification surveys, topographic surveys, archeological surveys, wildlife studies, economic studies, social studies, and other study activity during any planning, preconstruction, construction, or operation and maintenance phases.

(2) Special, status, concluding, or other planning reports that do not contain recommendations for action, but may or may not recommend further study.

(3) Data collection studies that involve test excavations for cultural resources investigations or test pitting, drilling, or seismic investigations for geologic exploration purposes where the impacts will be localized.

C. Project Implementation Activities.

(1) Classification and certification of irrigable lands.

(2) Minor acquisition of land and rights-of-way or easements.

(3) Minor construction activities associated with authorized projects which correct unsatisfactory environmental conditions or which merely augment or supplement, or are enclosed within existing facilities.

(4) Approval of land management plans where implementation will only result in minor construction activities and resultant increased operation and maintenance activities.

D. Operation and Maintenance Activities.

(1) Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation.

(2) Transfer of the operation and maintenance of Federal facilities to water districts, recreation agencies, fish and wildlife agencies, or other entities where the anticipated operation and maintenance activities are agreed to in a contract or a memorandum of agreement, follow approved Reclamation policy, and no major change in operation and maintenance is anticipated.

(3) Administration and implementation of project repayment and water service contracts, including approval of organizational or other administrative changes in contracting entities brought about by inclusion or exclusion of lands in these contracts.

(4) Approval, execution, and implementation of water service contracts for minor amounts of long-term water use or temporary or interim water use where the action does not lead to long-term changes and where the impacts are expected to be localized.

(5) Approval of changes in pumping power and water rates charged contractors by the Bureau for project water service or power.

(6) Execution and administration of recordable contracts for disposal of excess lands.

(7) Withdrawal, termination, modification, or revocation where the land would be opened to discretionary land laws and where such future discretionary actions would be subject to the NEPA process, and disposal and sale of acquired lands where no major change in usage is anticipated.

(8) Renewal of existing grazing, recreation management, or cabin site leases which do not increase the level of use or continue unsatisfactory environmental conditions.

(9) Issuance of permits for removal of gravel or sand by an established process from existing quarries.

(10) Issuance of permits, licenses, easements, and crossing agreements which provide right-of-way over Bureau lands where the action does not allow for or lead to a major public or private action.

(11) Implementation of improved appearance and soil and moisture conservation programs where the impacts are localized.

(12) Conduct of programs of demonstration, educational, and technical assistance to water user organizations for improvement of project and on-farm irrigation water use and management.

(13) Follow-on actions such as access agreements, contractual arrangements, and operational procedures for hydropower facilities which are on or appurtenant to Bureau facilities or lands which are permitted or licensed by the Federal Energy Regulatory Commission (FERC), when FERC has accomplished compliance with NEPA (including actions to be taken by the Bureau) and when the Bureau's environmental concerns have been accommodated in accordance with the Bureau/FERC Memorandum of Understanding of June 22, 1981.

(14) Approval, renewal, transfer, and execution of an original, amendatory, or supplemental water service or repayment contract where the only result will be to implement an administrative or financial practice or change.

(15) Approval of second party water sales agreements for small amounts of water (usually less than 10 acre-feet) where the Bureau has an existing water sales contract in effect.

(16) Approval and execution of contracts requiring the repayment of funds furnished or expended on behalf of an entity pursuant to the Emergency Fund Act of June 26, 1948 (43 U.S.C. 502), where the action taken is limited to the original location of the damaged facility.

(17) Minor safety of dams construction activities where the work is confined to the dam, abutment areas, or appurtenant features, and where no major change in reservoir or downstream operation is anticipated as a result of the construction activities.

E. Grant and Loan Activities.

(1) Rehabilitation and Betterment Act loans and contracts which involve repair, replacement, or modification of equipment in existing structures or minor repairs to existing dams, canals, laterals, drains, pipelines, and similar facilities.

(2) Small Reclamation Projects Act grants and loans where the work to be done is confined to areas already impacted by farming or development activities, work is considered minor, and where the impacts are expected to be localized.

(3) Distribution System Loans Act loans where the work to be done is confined to areas already impacted by farming or developing activities, work is considered minor, and where the impacts are expected to be localized.

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516 DM 15

15.1 **Purpose.** This Chapter provides supplementary requirements for implementing provisions of 516 DM 1 through 6 within the Department's Minerals Management Service. This Chapter is referenced in 516 DM 6.5.

15.2 **NEPA Responsibility.**

A. The Director/Deputy Director are responsible for NEPA compliance for Minerals Management Service (MMS) activities.

B. The Associate Director for Offshore Minerals Management is responsible for ensuring NEPA compliance for all offshore MMS activities.

C. The Chief, Offshore Environmental Assessment Division (OEAD), is responsible for NEPA-related policy and guidance for MMS activities, including monitoring MMS activities to ensure NEPA compliance, assuring the quality control of MMS environmental documents, and managing the review of non-MMS environmental documents. The office is the focal point for all NEPA matters and information about MMS environmental documents or the NEPA process can be obtained by contacting it or the appropriate Region.

D. The Regional Directors are responsible to the Associate Director for Offshore Minerals Management for overall direction and integration of the NEPA process into their activities and for NEPA compliance in their Regions.

15.3 **Guidance to Applicants.**

A. General.

(1) Applicants should make initial contact with the Regional Director of the office where the affected action is located.

(2) Potential applicants may secure from Regional Directors a list or program regulations or other directives/guidance providing advice or requirements for submission of environmental information. The purpose of making these regulations known to potential

applicants in advance is to assist them in presenting a detailed, adequate, and accurate description of the proposal and alternatives when they file their application and to minimize the need to request additional information. This is a minimum list, and additional requirements may be identified after detailed review of the formal submission and during scoping.

B. Regulations. The following partial list identifies MMS Outer Continental Shelf (OCS) regulations and other guidance which may apply to a particular application.

(1) Grants of pipeline rights-of-way and related facilities on the OCS (30 CFR Part 256, Subpart N).

(2) Exploration, development and production activities, Environmental Report (30 CFR Part 250, Sec. 250.34-3).

(3) Air quality (30 CFR Part 250, Sec. 250,57).

(4) Geological and geophysical explorations of the OCS (30 CFR Part 251. Sec. 251.6-2(b)).

(5) OCS Pipelines Rights-of-Ways. A Procedure Handbook.

(6) Guidelines for Preparing OCS Environmental Reports.

15.4 **Major Actions Normally Requiring an EIS.**

A. The following proposals will normally require the preparation of an EIS:

(1) Approval of a 5-year offshore oil and gas leasing program.

(2) Approval of offshore lease sales.

(3) Approval of an offshore oil and gas development and production plan in any area or region of the offshore, other than the central or western Gulf of Mexico, when the plan is declared to be a major Federal action in accordance with section 25(e)(1) of the OCS Lands Act Amendments of 1978.

B. If, for any of these actions, it is proposed not to prepare an EIS, an environmental assessment will be prepared and handled in accordance with Section 1501.4(e)(2).

15.4 **Categorical Exclusions.** In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the MMS also performs, the following MMS actions are designated categorical exclusions unless the action qualifies as an exception under Appendix 2 of 516 DM 2:

A. General.

(1) Inventory, data, and information collection, including the conduct of environmental monitoring and nondestructive research programs.

(2) Actions for which MMS has concurrence or co-approval with another Bureau if the action is a categorical exclusion for that Bureau.

B. Internal Program Initiatives.

(1) All resource evaluation activities including surveying, mapping, and geophysical surveying which do not use solid or liquid explosives.

(2) Collection of geologic data and samples including geologic, paleontologic, mineralogic, geochemical, and geophysical investigations which does not involve drilling beyond 50 feet of consolidated rock or beyond 300 feet of unconsolidated rock, including contracts therefor.

(3) Acquisition of existing geological or geophysical data from otherwise private exploration ventures.

(4) Well logging, digital modeling. inventory of existing wells, and installation of recording devices in wells.

(5) Establishment and installation of any research/monitoring devices.

(6) Test or exploration drilling and downhole testing included in a project previously subject to the NEPA process.

(7) Insignificant revisions to the approved 5-year leasing program.

(8) Prelease planning steps such as the Call for Information and Area Identification.

C. Permit and Regulatory Functions.

(1) Issuance and modification of regulations, Orders, Standards, Notices to Lessees and Operators. Guidelines and field rules for which the impacts are limited to administrative, economic, or technological effects and the environmental impacts are minimal.

(2) Approval of production measurement methods, facilities, and procedures.

(3) Approval of off-lease storage in existing facilities.

(4) Approval of unitization agreements, pooling, or communitization agreements.

(5) Approval of commingling of production.

(6) Approval of suspensions of operations and suspensions of production.

(7) Approval of lease consolidation applications, lease assignments or transfers, operating rights, operating agreements, lease extensions, lease relinquishments, and bond terminations.

(8) Administration decisions and actions and record keeping such as:

(a) Approval of applications for pricing determinations under the Natural Gas Policy Act.

(b) Approval of underground gas storage agreements from a presently or formerly productive reservoir.

(c) Issuance of paying well determinations and participating area approvals.

(d) Issuance of drainage determinations.

(9) Approval of offshore geological and geophysical mineral exploration activities, except when the proposed activity includes the drilling of deep stratigraphic test holes or uses solid or liquid explosives.

(10) Approval of an offshore lease or unit exploration. development/production plan or a Development Operation Coordination Document in the central or western Gulf of Mexico (30 CFR 250.2) except those proposing facilities: (1) In areas of high seismic risk or seismicity, relatively untested deep water, or remote areas, or (2) within the boundary of a proposed or established marine sanctuary, and/or within or near the boundary of a proposed or established wildlife refuge or areas of high biological sensitivity; or (3) in areas of hazardous natural bottom conditions; or (4) utilizing new or unusual technology.

(11) Approval of minor revisions of or minor variances from activities described in an approved offshore exploration or development/production plan, including pipeline applications.

(12) Approval of an Application for Permit to Drill (APD) an offshore oil and gas exploration or development well, when said well and appropriate mitigation measures are described in an approved exploration plan, development plan, production plan, or Development Operations Coordination Document.

(13) Preliminary activities conducted on a lease prior to approval of an exploration or development/production plan or a Development Operations Coordination Plan. These are activities such as geological, geophysical, and other surveys necessary to develop a

comprehensive exploration plan, development/production plan, or Development Operations Coordination Plan.

(14) Approval of Sundry Notices and Reports on Wells.

(15) Rights-of-ways, easements, temporary use permits, and any revisions thereto that do not result in a new pipeline corridor to shore.

D. Royalty Functions. All functions of the Associate Director for Royalty Management including, but not limited to, such activities as: approval of royalty payment procedures, including royalty oil contracts; and determinations concerning royalty quantities and values, such as audits, royalty reductions, collection procedures, reporting procedures, and any actions taken with regard to royalty collections (including similar actions relating to net profit and windfall profit taxes).

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NEPA'S FORTY MOST ASKED QUESTIONS

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ENDNOTES 29

1a. Range of Alternatives. What is meant by "range of alternatives" as referred to in Sec. 1505.1(e)?

A. The phrase "range of alternatives" refers to the alternatives discussed in environmental documents. It includes all reasonable alternatives, which must be rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them. Section 1502.14. A decisionmaker must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents. Moreover, a decisionmaker must, in fact, consider all the alternatives discussed in an EIS. Section 1505.1(e).

1b. How many alternatives have to be discussed when there is an infinite number of possible alternatives?

A. For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. For example, a proposal to designate wilderness areas within a National Forest could be said to involve an infinite number of alternatives from 0 to 100 percent of the forest. When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the Forest to wilderness. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.

2a. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency. If an EIS is prepared in connection with an application for a permit or other federal approval, must the EIS rigorously analyze and discuss alternatives that are outside the capability of the applicant or can it be limited to reasonable alternatives that can be carried out by the applicant?

A. Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

2b. Must the EIS analyze alternatives outside the jurisdiction or capability of the agency or beyond what Congress has authorized?

A. An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 1506.2(d). Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may

serve as the basis for modifying the Congressional approval or funding in light of NEPA's goals and policies. Section 1500.1(a).

3. No-Action Alternative. What does the "no action" alternative include? If an agency is under a court order or legislative command to act, must the EIS address the "no action" alternative?

A. Section 1502.14(d) requires the alternatives analysis in the EIS to "include the alternative of no action." There are two distinct interpretations of "no action" that must be considered, depending on the nature of the proposal being evaluated. The first situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases "no action" is "no change" from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the "no action" alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.

The second interpretation of "no action" is illustrated in instances involving federal decisions on proposals for projects. "No action" in such cases would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward.

Where a choice of "no action" by the agency would result in predictable actions by others, this consequence of the "no action" alternative should be included in the analysis. For example, if denial of permission to build a railroad to a facility would lead to construction of a road and increased truck traffic, the EIS should analyze this consequence of the "no action" alternative.

In light of the above, it is difficult to think of a situation where it would not be appropriate to address a "no action" alternative. Accordingly, the regulations require the analysis of the no action alternative even if the agency is under a court order or legislative command to act. This analysis provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives. It is also an example of a reasonable alternative outside the jurisdiction of the agency which must be analyzed. Section 1502.14(c). See Question 2 above. Inclusion of such an analysis in the EIS is necessary to inform the Congress, the public, and the President as intended by NEPA. Section 1500.1(a).

4a. Agency's Preferred Alternative. What is the "agency's preferred alternative"?

A. The "agency's preferred alternative" is the alternative which the agency believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors. The concept of the "agency's preferred alternative" is different from the "environmentally preferable alternative," although in some cases one alternative may be both. See Question 6 below. It is identified so that agencies and the public can understand the lead agency's orientation.

4b. Does the "preferred alternative" have to be identified in the Draft EIS and the Final EIS or just in the Final EIS?

A. Section 1502.14(e) requires the section of the EIS on alternatives to "identify the agency's preferred alternative if one or more exists, in the draft statement, and identify such alternative in the final statement . . ." This means that if the agency has a preferred alternative at the Draft EIS stage, that alternative must be labeled or identified as such in the Draft EIS. If the responsible federal official in fact has no preferred alternative at the Draft EIS stage, a preferred alternative need not be identified there. By the time the Final EIS is filed, Section 1502.14(e) presumes the existence of a preferred alternative and requires its identification in the Final EIS "unless another law prohibits the expression of such a preference."

4c. Who recommends or determines the "preferred alternative?"

A. The lead agency's official with line responsibility for preparing the EIS and assuring its adequacy is responsible for identifying the agency's preferred alternative(s). The NEPA regulations do not dictate which official in an agency shall be responsible for preparation of EISs, but agencies can identify this official in their implementing procedures, pursuant to Section 1507.3.

Even though the agency's preferred alternative is identified by the EIS preparer in the EIS, the statement must be objectively prepared and not slanted to support the choice of the agency's preferred alternative over the other reasonable and feasible alternatives.

5a. Proposed Action v. Preferred Alternative. Is the "proposed action" the same thing as the "preferred alternative"?

A. The "proposed action" may be, but is not necessarily, the agency's "preferred alternative." The proposed action may be a proposal in its initial form before undergoing analysis in the EIS process. If the proposed action is [46 FR 18028] internally generated, such as preparing a land management plan, the proposed action might end up as the agency's preferred alternative. On the other hand the proposed action may be granting an application to a non-federal entity for a permit. The agency may or may not have a "preferred alternative" at the Draft EIS stage (see Question 4 above). In that case the agency may decide at the Final EIS

stage, on the basis of the Draft EIS and the public and agency comments, that an alternative other than the proposed action is the agency's "preferred alternative."

5b. Is the analysis of the "proposed action" in an EIS to be treated differently from the analysis of alternatives?

A. The degree of analysis devoted to each alternative in the EIS is to be substantially similar to that devoted to the "proposed action." Section 1502.14 is titled "Alternatives including the proposed action" to reflect such comparable treatment. Section 1502.14(b) specifically requires "substantial treatment" in the EIS of each alternative including the proposed action. This regulation does not dictate an amount of information to be provided, but rather, prescribes a level of treatment, which may in turn require varying amounts of information, to enable a reviewer to evaluate and compare alternatives.

6a. Environmentally Preferable Alternative. What is the meaning of the term "environmentally preferable alternative" as used in the regulations with reference to Records of Decision? How is the term "environment" used in the phrase?

A. Section 1505.2(b) requires that, in cases where an EIS has been prepared, the Record of Decision (ROD) must identify all alternatives that were considered, ". . . specifying the alternative or alternatives which were considered to be environmentally preferable." The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.

The Council recognizes that the identification of the environmentally preferable alternative may involve difficult judgments, particularly when one environmental value must be balanced against another. The public and other agencies reviewing a Draft EIS can assist the lead agency to develop and determine environmentally preferable alternatives by providing their views in comments on the Draft EIS. Through the identification of the environmentally preferable alternative, the decisionmaker is clearly faced with a choice between that alternative and others, and must consider whether the decision accords with the Congressionally declared policies of the Act.

6b. Who recommends or determines what is environmentally preferable?

A. The agency EIS staff is encouraged to make recommendations of the environmentally preferable alternative(s) during EIS preparation. In any event the lead agency official responsible for the EIS is encouraged to identify the environmentally preferable alternative(s) in the EIS. In all cases, commentors from other agencies and the public are also encouraged to address this question. The agency must identify the environmentally preferable alternative in the ROD.

7. Difference Between Sections of EIS on Alternatives and Environmental Consequences. What is the difference between the sections in the EIS on "alternatives" and "environmental consequences"? How do you avoid duplicating the discussion of alternatives in preparing these two sections?

A. The "alternatives" section is the heart of the EIS. This section rigorously explores and objectively evaluates all reasonable alternatives including the proposed action. Section 1502.14. It should include relevant comparisons on environmental and other grounds. The "environmental consequences" section of the EIS discusses the specific environmental impacts or effects of each of the alternatives including the proposed action. Section 1502.16. In order to avoid duplication between these two sections, most of the "alternatives" section should be devoted to describing and comparing the alternatives. Discussion of the environmental impacts of these alternatives should be limited to a concise descriptive summary of such impacts in a comparative form, including charts or tables, thus sharply defining the issues and providing a clear basis for choice among options. Section 1502.14. The "environmental consequences" section should be devoted largely to a scientific analysis of the direct and indirect environmental effects of the proposed action and of each of the alternatives. It forms the analytic basis for the concise comparison in the "alternatives" section.

8. Early Application of NEPA. Section 1501.2(d) of the NEPA regulations requires agencies to provide for the early application of NEPA to cases where actions are planned by private applicants or non-Federal entities and are, at some stage, subject to federal approval of permits, loans, loan guarantees, insurance or other actions. What must and can agencies do to apply NEPA early in these cases?

A. Section 1501.2(d) requires federal agencies to take steps toward ensuring that private parties and state and local entities initiate environmental studies as soon as federal involvement in their proposals can be foreseen. This section is intended to ensure that environmental factors are considered at an early stage in the planning process and to avoid the situation where the applicant for a federal permit or approval has completed planning and eliminated all alternatives to the proposed action by the time the EIS process commences or before the EIS process has been completed.

Through early consultation, business applicants and approving agencies may gain better appreciation of each other's needs and foster a decisionmaking process which avoids later unexpected confrontations.

Federal agencies are required by Section 1507.3(b) to develop procedures to carry out Section 1501.2(d). The procedures should include an "outreach program," such as a means for prospective applicants to conduct pre-application consultations with the lead and cooperating agencies. Applicants need to find out, in advance of project planning, what environmental studies or other information will be required, and what mitigation requirements are likely, in connection with the later federal NEPA process. Agencies should

designate staff to advise potential applicants of the agency's NEPA information requirements and should publicize their pre-application procedures and information requirements in newsletters or other media used by potential applicants.

Complementing Section 1501.2(d), Section 1506.5(a) requires agencies to assist applicants by outlining the types of information required in those cases where the agency requires the applicant to submit environmental data for possible use by the agency in preparing an EIS.

Section 1506.5(b) allows agencies to authorize preparation of environmental assessments by applicants. Thus, the procedures should also include a means for anticipating and utilizing applicants' environmental studies or "early corporate environmental assessments" to fulfill some of the federal agency's NEPA obligations. However, in such cases the agency must still evaluate independently the environmental issues [46 FR 18029] and take responsibility for the environmental assessment.

These provisions are intended to encourage and enable private and other non-federal entities to build environmental considerations into their own planning processes in a way that facilitates the application of NEPA and avoids delay.

9. Applicant Who Needs Other Permits. To what extent must an agency inquire into whether an applicant for a federal permit, funding or other approval of a proposal will also need approval from another agency for the same proposal or some other related aspect of it?

A. Agencies must integrate the NEPA process into other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Specifically, the agency must "provide for cases where actions are planned by . . . applicants," so that designated staff are available to advise potential applicants of studies or other information that will foreseeably be required for the later federal action; the agency shall consult with the applicant if the agency foresees its own involvement in the proposal; and it shall insure that the NEPA process commences at the earliest possible time. Section 1501.2(d). (See Question 8.)

The regulations emphasize agency cooperation early in the NEPA process. Section 1501.6. Section 1501.7 on "scoping" also provides that all affected Federal agencies are to be invited to participate in scoping the environmental issues and to identify the various environmental review and consultation requirements that may apply to the proposed action. Further, Section 1502.25(b) requires that the draft EIS list all the federal permits, licenses and other entitlements that are needed to implement the proposal.

These provisions create an affirmative obligation on federal agencies to inquire early, and to the maximum degree possible, to ascertain whether an applicant is or will be seeking other federal assistance or approval, or whether the applicant is waiting until a proposal has been substantially developed before requesting federal aid or approval.

Thus, a federal agency receiving a request for approval or assistance should determine whether the applicant has filed separate requests for federal approval or assistance with other federal agencies. Other federal agencies that are likely to become involved should then be contacted, and the NEPA process coordinated, to insure an early and comprehensive analysis of the direct and indirect effects of the proposal and any related actions. The agency should inform the applicant that action on its application may be delayed unless it submits all other federal applications (where feasible to do so), so that all the relevant agencies can work together on the scoping process and preparation of the EIS.

10a. Limitations on Action During 30-Day Review Period for Final EIS. What actions by agencies and/or applicants are allowed during EIS preparation and during the 30-day review period after publication of a final EIS?

A. No federal decision on the proposed action shall be made or recorded until at least 30 days after the publication by EPA of notice that the particular EIS has been filed with EPA. Sections 1505.2 and 1506.10. Section 1505.2 requires this decision to be stated in a public Record of Decision.

Until the agency issues its Record of Decision, no action by an agency or an applicant concerning the proposal shall be taken which would have an adverse environmental impact or limit the choice of reasonable alternatives. Section 1506.1(a). But this does not preclude preliminary planning or design work which is needed to support an application for permits or assistance. Section 506.1(d).

When the impact statement in question is a program EIS, no major action concerning the program may be taken which may significantly affect the quality of the human environment, unless the particular action is justified independently of the program, is accompanied by its own adequate environmental impact statement and will not prejudice the ultimate decision on the program. Section 1506.1(c).

10b. Do these limitations on action (described in Question 10a) apply to state or local agencies that have statutorily delegated responsibility for preparation of environmental documents required by NEPA, for example, under the HUD Block Grant program?

A. Yes, these limitations do apply, without any variation from their application to federal agencies.

11. Limitations on Actions by an Applicant During EIS Process. What actions must a lead agency take during the NEPA process when it becomes aware that a non-federal applicant is about to take an action within the agency's jurisdiction that would either have an adverse environmental impact or limit the choice of reasonable alternatives (e.g., prematurely commit money or other resources towards the completion of the proposal)?

A. The federal agency must notify the applicant that the agency will take strong affirmative steps to insure that the objectives and procedures of NEPA are fulfilled. Section 1506.1(b). These steps could include seeking injunctive measures under NEPA, or the use of sanctions available under either the agency's permitting authority or statutes setting forth the agency's statutory mission. For example, the agency might advise an applicant that if it takes such action the agency will not process its application.

12a. Effective Date and Enforceability of the Regulations. What actions are subject to the Council's new regulations, and what actions are grand-fathered under the old guidelines?

A. The effective date of the Council's regulations was July 30, 1979 (except for certain HUD programs under the Housing and Community Development Act, 42 U.S.C. 5304(h), and certain state highway programs that qualify under Section 102(2)(D) of NEPA for which the regulations became effective on November 30, 1979). All the provisions of the regulations are binding as of that date, including those covering decisionmaking, public participation, referrals, limitations on actions, EIS supplements, etc. For example, a Record of Decision would be prepared even for decisions where the draft EIS was filed before July 30, 1979.

But in determining whether or not the new regulations apply to the preparation of a particular environmental document, the relevant factor is the date of filing of the draft of that document. Thus, the new regulations do not require the redrafting of an EIS or supplement if the draft EIS or supplement was filed before July 30, 1979. However, a supplement prepared after the effective date of the regulations for an EIS issued in final before the effective date of the regulations would be controlled by the regulations.

Even though agencies are not required to apply the regulations to an EIS or other document for which the draft was filed prior to July 30, 1979, the regulations encourage agencies to follow the regulations "to the fullest extent practicable," i.e., if it is feasible to do so, in preparing the final document. Section 1506.12(a).

12b. Are projects authorized by Congress before the effective date of the Council's regulations grand-fathered?

A. No. The date of Congressional authorization for a project is not determinative of whether the Council's regulations or former Guidelines apply to the particular proposal. No incomplete projects or proposals of any kind are grand-fathered in whole or in part. Only certain environmental documents, for which the draft was issued before the effective date of the regulations, are grand-fathered and [46 FR 18030] subject to the Council's former Guidelines.

12c. Can a violation of the regulations give rise to a cause of action?

A. While a trivial violation of the regulations would not give rise to an independent cause of action, such a cause of action would arise from a substantial violation of the regulations. Section 1500.3.

13. Use of Scoping Before Notice of Intent to Prepare EIS. Can the scoping process be used in connection with preparation of an environmental assessment, i.e., before both the decision to proceed with an EIS and publication of a notice of intent?

A. Yes. Scoping can be a useful tool for discovering alternatives to a proposal, or significant impacts that may have been overlooked. In cases where an environmental assessment is being prepared to help an agency decide whether to prepare an EIS, useful information might result from early participation by other agencies and the public in a scoping process.

The regulations state that the scoping process is to be preceded by a Notice of Intent (NOI) to prepare an EIS. But that is only the minimum requirement. Scoping may be initiated earlier, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively.

However, scoping that is done before the assessment, and in aid of its preparation, cannot substitute for the normal scoping process after publication of the NOI, unless the earlier public notice stated clearly that this possibility was under consideration, and the NOI expressly provides that written comments on the scope of alternatives and impacts will still be considered.

14a. Rights and Responsibilities of Lead and Cooperating Agencies. What are the respective rights and responsibilities of lead and cooperating agencies? What letters and memoranda must be prepared?

A. After a lead agency has been designated (Sec. 1501.5), that agency has the responsibility to solicit cooperation from other federal agencies that have jurisdiction by law or special expertise on any environmental issue that should be addressed in the EIS being prepared. Where appropriate, the lead agency should seek the cooperation of state or local agencies of similar qualifications. When the proposal may affect an Indian reservation, the agency should consult with the Indian tribe. Section 1508.5. The request for cooperation should come at the earliest possible time in the NEPA process.

After discussions with the candidate cooperating agencies, the lead agency and the cooperating agencies are to determine by letter or by memorandum which agencies will undertake cooperating responsibilities. To the extent possible at this stage, responsibilities for specific issues should be assigned. The allocation of responsibilities will be completed during scoping. Section 1501.7(a)(4).

Cooperating agencies must assume responsibility for the development of information and the preparation of environmental analyses at the request of the lead agency. Section 1501.6(b)(3). Cooperating agencies are now required by Section 1501.6 to devote staff resources that were normally primarily used to critique or comment on the Draft EIS after its preparation, much earlier in the NEPA process -- primarily at the scoping and Draft EIS preparation stages. If a cooperating agency determines that its resource limitations preclude any involvement, or the degree of involvement (amount of work) requested by the lead agency, it must so inform the lead agency in writing and submit a copy of this correspondence to the Council. Section 1501.6(c).

In other words, the potential cooperating agency must decide early if it is able to devote any of its resources to a particular proposal. For this reason the regulation states that an agency may reply to a request for cooperation that "other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement." (Emphasis added). The regulation refers to the "action," rather than to the EIS, to clarify that the agency is taking itself out of all phases of the federal action, not just draft EIS preparation. This means that the agency has determined that it cannot be involved in the later stages of EIS review and comment, as well as decisionmaking on the proposed action. For this reason, cooperating agencies with jurisdiction by law (those which have permitting or other approval authority) cannot opt out entirely of the duty to cooperate on the EIS. See also Question 15, relating specifically to the responsibility of EPA.

14b. How are disputes resolved between lead and cooperating agencies concerning the scope and level of detail of analysis and the quality of data in impact statements?

A. Such disputes are resolved by the agencies themselves. A lead agency, of course, has the ultimate responsibility for the content of an EIS. But it is supposed to use the environmental analysis and recommendations of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible, consistent with its own responsibilities as lead agency. Section 1501.6(a)(2).

If the lead agency leaves out a significant issue or ignores the advice and expertise of the cooperating agency, the EIS may be found later to be inadequate. Similarly, where cooperating agencies have their own decisions to make and they intend to adopt the environmental impact statement and base their decisions on it, one document should include all of the information necessary for the decisions by the cooperating agencies. Otherwise they may be forced to duplicate the EIS process by issuing a new, more complete EIS or Supplemental EIS, even though the original EIS could have sufficed if it had been properly done at the outset. Thus, both lead and cooperating agencies have a stake in producing a document of good quality. Cooperating agencies also have a duty to participate fully in the scoping process to ensure that the appropriate range of issues is determined early in the EIS process.

Because the EIS is not the Record of Decision, but instead constitutes the information and analysis on which to base a decision, disagreements about conclusions to be drawn from the EIS need not inhibit agencies from issuing a joint document, or adopting another agency's EIS, if the analysis is adequate. Thus, if each agency has its own "preferred alternative," both can be identified in the EIS. Similarly, a cooperating agency with jurisdiction by law may determine in its own ROD that alternative A is the environmentally preferable action, even though the lead agency has decided in its separate ROD that Alternative B is environmentally preferable.

14c. What are the specific responsibilities of federal and state cooperating agencies to review draft EISs?

A. Cooperating agencies (i.e., agencies with jurisdiction by law or special expertise) and agencies that are authorized to develop or enforce environmental standards, must comment on environmental impact statements within their jurisdiction, expertise or authority. Sections 1503.2, 1508.5. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should simply comment accordingly. Conversely, if the cooperating agency determines that a draft EIS is incomplete, inadequate or inaccurate, or it has other comments, it should promptly make such comments, conforming to the requirements of specificity in section 1503.3.

14d. How is the lead agency to treat the comments of another agency with jurisdiction by law or special expertise which has failed or refused to cooperate or participate in scoping or EIS preparation?

A. A lead agency has the responsibility to respond to all substantive comments raising significant issues regarding a draft EIS. Section 1503.4. However, cooperating agencies are generally under an obligation to raise issues or otherwise participate in the EIS process during scoping and EIS preparation if they reasonably can do so. In practical terms, if a cooperating agency fails to cooperate at the outset, such as during scoping, it will find that its comments at a later stage will not be as persuasive to the lead agency.

15. Commenting Responsibilities of EPA. Are EPA's responsibilities to review and comment on the environmental effects of agency proposals under Section 309 of the Clean Air Act independent of its responsibility as a cooperating agency?

A. Yes. EPA has an obligation under Section 309 of the Clean Air Act to review and comment in writing on the environmental impact of any matter relating to the authority of the Administrator contained in proposed legislation, federal construction projects, other federal actions requiring EISs, and new regulations. 42 U.S.C. Sec. 7609. This obligation is independent of its role as a cooperating agency under the NEPA regulations.

16. Third Party Contracts. What is meant by the term "third party contracts" in connection with the preparation of an EIS? See Section 1506.5(c). When can "third party contracts" be used?

A. As used by EPA and other agencies, the term "third party contract" refers to the preparation of EISs by contractors paid by the applicant. In the case of an EIS for a National Pollution Discharge Elimination System (NPDES) permit, the applicant, aware in the early planning stages of the proposed project of the need for an EIS, contracts directly with a consulting firm for its preparation. See 40 C.F.R. 6.604(g). The "third party" is EPA which, under Section 1506.5(c), must select the consulting firm, even though the applicant pays for the cost of preparing the EIS. The consulting firm is responsible to EPA for preparing an EIS that meets the requirements of the NEPA regulations and EPA's NEPA procedures. It is in the applicant's interest that the EIS comply with the law so that EPA can take prompt action on the NPDES permit application. The "third party contract" method under EPA's NEPA procedures is purely voluntary, though most applicants have found it helpful in expediting compliance with NEPA.

If a federal agency uses "third party contracting," the applicant may undertake the necessary paperwork for the solicitation of a field of candidates under the agency's direction, so long as the agency complies with Section 1506.5(c). Federal procurement requirements do not apply to the agency because it incurs no obligations or costs under the contract, nor does the agency procure anything under the contract.

17a. Disclosure Statement to Avoid Conflict of Interest. If an EIS is prepared with the assistance of a consulting firm, the firm must execute a disclosure statement. What criteria must the firm follow in determining whether it has any "financial or other interest in the outcome of the project" which would cause a conflict of interest?

A. Section 1506.5(c), which specifies that a consulting firm preparing an EIS must execute a disclosure statement, does not define "financial or other interest in the outcome of the project." The Council interprets this term broadly to cover any known benefits other than general enhancement of professional reputation. This includes any financial benefit such as a promise of future construction or design work on the project, as well as indirect benefits the consultant is aware of (e.g., if the project would aid proposals sponsored by the firm's other clients). For example, completion of a highway project may encourage construction of a shopping center or industrial park from which the consultant stands to benefit. If a consulting firm is aware that it has such an interest in the decision on the proposal, it should be disqualified from preparing the EIS, to preserve the objectivity and integrity of the NEPA process.

When a consulting firm has been involved in developing initial data and plans for the project, but does not have any financial or other interest in the outcome of the decision, it need not be disqualified from preparing the EIS. However, a disclosure statement in the draft EIS should clearly state the scope and extent of the firm's prior involvement to expose any potential conflicts of interest that may exist.

17b. If the firm in fact has no promise of future work or other interest in the outcome of the proposal, may the firm later bid in competition with others for future work on the project if the proposed action is approved?

A. Yes.

18. Uncertainties About Indirect Effects of A Proposal. How should uncertainties about indirect effects of a proposal be addressed, for example, in cases of disposal of federal lands, when the identity or plans of future landowners is unknown?

A. The EIS must identify all the indirect effects that are known, and make a good faith effort to explain the effects that are not known but are "reasonably foreseeable." Section 1508.8(b). In the example, if there is total uncertainty about the identity of future land owners or the nature of future land uses, then of course, the agency is not required to engage in speculation or contemplation about their future plans. But, in the ordinary course of business, people do make judgments based upon reasonably foreseeable occurrences. It will often be possible to consider the likely purchasers and the development trends in that area or similar areas in recent years; or the likelihood that the land will be used for an energy project, shopping center, subdivision, farm or factory. The agency has the responsibility to make an informed judgment, and to estimate future impacts on that basis, especially if trends are ascertainable or potential purchasers have made themselves known. The agency cannot ignore these uncertain, but probable, effects of its decisions.

19a. Mitigation Measures. What is the scope of mitigation measures that must be discussed?

A. The mitigation measures discussed in an EIS must cover the range of impacts of the proposal. The measures must include such things as design alternatives that would decrease pollution emissions, construction impacts, esthetic intrusion, as well as relocation assistance, possible land use controls that could be enacted, and other possible efforts. Mitigation measures must be considered even for impacts that by themselves would not be considered "significant." Once the proposal itself is considered as a whole to have significant effects, all of its specific effects on the environment (whether or not "significant") must be considered, and mitigation measures must be developed where it is feasible to do so. Sections 1502.14(f), 1502.16(h), 1508.14.

19b. How should an EIS treat the subject of available mitigation measures that are (1) outside the jurisdiction of the lead or cooperating agencies, or (2) unlikely to be adopted or enforced by the responsible agency?

A. All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agencies, and thus would not be committed as part of the RODs of these agencies. Sections 1502.16(h), 1505.2(c). This will serve to [46 FR 18032] alert agencies or officials who can implement these extra measures, and will encourage them to do so. Because the EIS is the most comprehensive environmental document, it is an ideal vehicle in which to lay out not

only the full range of environmental impacts but also the full spectrum of appropriate mitigation.

However, to ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and the Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies. Sections 1502.16(h), 1505.2. If there is a history of non-enforcement or opposition to such measures, the EIS and Record of Decision should acknowledge such opposition or non-enforcement. If the necessary mitigation measures will not be ready for a long period of time, this fact, of course, should also be recognized.

20. Worst Case Analysis. [Withdrawn.]

21. Combining Environmental and Planning Documents. Where an EIS or an EA is combined with another project planning document (sometimes called "piggybacking"), to what degree may the EIS or EA refer to and rely upon information in the project document to satisfy NEPA's requirements?

A. Section 1502.25 of the regulations requires that draft EISs be prepared concurrently and integrated with environmental analyses and related surveys and studies required by other federal statutes. In addition, Section 1506.4 allows any environmental document prepared in compliance with NEPA to be combined with any other agency document to reduce duplication and paperwork. However, these provisions were not intended to authorize the preparation of a short summary or outline EIS, attached to a detailed project report or land use plan containing the required environmental impact data. In such circumstances, the reader would have to refer constantly to the detailed report to understand the environmental impacts and alternatives which should have been found in the EIS itself.

The EIS must stand on its own as an analytical document which fully informs decisionmakers and the public of the environmental effects of the proposal and those of the reasonable alternatives. Section 1502.1. But, as long as the EIS is clearly identified and is self-supporting, it can be physically included in or attached to the project report or land use plan, and may use attached report material as technical backup.

Forest Service environmental impact statements for forest management plans are handled in this manner. The EIS identifies the agency's preferred alternative, which is developed in detail as the proposed management plan. The detailed proposed plan accompanies the EIS through the review process, and the documents are appropriately cross-referenced. The proposed plan is useful for EIS readers as an example, to show how one choice of management options translates into effects on natural resources. This procedure permits initiation of the 90-day public review of proposed forest plans, which is required by the National Forest Management Act.

All the alternatives are discussed in the EIS, which can be read as an independent document. The details of the management plan are not repeated in the EIS, and vice versa. This is a

reasonable functional separation of the documents: the EIS contains information relevant to the choice among alternatives; the plan is a detailed description of proposed management activities suitable for use by the land managers. This procedure provides for concurrent compliance with the public review requirements of both NEPA and the National Forest Management Act.

Under some circumstances, a project report or management plan may be totally merged with the EIS, and the one document labeled as both "EIS" and "management plan" or "project report." This may be reasonable where the documents are short, or where the EIS format and the regulations for clear, analytical EISs also satisfy the requirements for a project report.

22. State and Federal Agencies as Joint Lead Agencies. May state and federal agencies serve as joint lead agencies? If so, how do they resolve law, policy and resource conflicts under NEPA and the relevant state environmental policy act? How do they resolve differences in perspective where, for example, national and local needs may differ?

A. Under Section 1501.5(b), federal, state or local agencies, as long as they include at least one federal agency, may act as joint lead agencies to prepare an EIS. Section 1506.2 also strongly urges state and local agencies and the relevant federal agencies to cooperate fully with each other. This should cover joint research and studies, planning activities, public hearings, environmental assessments and the preparation of joint EISs under NEPA and the relevant "little NEPA" state laws, so that one document will satisfy both laws.

The regulations also recognize that certain inconsistencies may exist between the proposed federal action and any approved state or local plan or law. The joint document should discuss the extent to which the federal agency would reconcile its proposed action with such plan or law. Section 1506.2(d). (See Question 23).

Because there may be differences in perspective as well as conflicts among [46 FR 18033] federal, state and local goals for resources management, the Council has advised participating agencies to adopt a flexible, cooperative approach. The joint EIS should reflect all of their interests and missions, clearly identified as such. The final document would then indicate how state and local interests have been accommodated, or would identify conflicts in goals (e.g., how a hydroelectric project, which might induce second home development, would require new land use controls). The EIS must contain a complete discussion of scope and purpose of the proposal, alternatives, and impacts so that the discussion is adequate to meet the needs of local, state and federal decisionmakers.

23a. Conflicts of Federal Proposal With Land Use Plans, Policies or Controls. How should an agency handle potential conflicts between a proposal and the objectives of Federal, state or local land use plans, policies and controls for the area concerned? See Sec. 1502.16(c).

A. The agency should first inquire of other agencies whether there are any potential conflicts. If there would be immediate conflicts, or if conflicts could arise in the future when the plans are finished (see Question 23(b) below), the EIS must acknowledge and describe the extent

of those conflicts. If there are any possibilities of resolving the conflicts, these should be explained as well. The EIS should also evaluate the seriousness of the impact of the proposal on the land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area. Comments from officials of the affected area should be solicited early and should be carefully acknowledged and answered in the EIS.

23b. What constitutes a "land use plan or policy" for purposes of this discussion?

A. The term "land use plans," includes all types of formally adopted documents for land use planning, zoning and related regulatory requirements. Local general plans are included, even though they are subject to future change. Proposed plans should also be addressed if they have been formally proposed by the appropriate government body in a written form, and are being actively pursued by officials of the jurisdiction. Staged plans, which must go through phases of development such as the Water Resources Council's Level A, B and C planning process should also be included even though they are incomplete.

The term "policies" includes formally adopted statements of land use policy as embodied in laws or regulations. It also includes proposals for action such as the initiation of a planning process, or a formally adopted policy statement of the local, regional or state executive branch, even if it has not yet been formally adopted by the local, regional or state legislative body.

23c. What options are available for the decisionmaker when conflicts with such plans or policies are identified?

A. After identifying any potential land use conflicts, the decisionmaker must weigh the significance of the conflicts, among all the other environmental and non-environmental factors that must be considered in reaching a rational and balanced decision. Unless precluded by other law from causing or contributing to any inconsistency with the land use plans, policies or controls, the decisionmaker retains the authority to go forward with the proposal, despite the potential conflict. In the Record of Decision, the decisionmaker must explain what the decision was, how it was made, and what mitigation measures are being imposed to lessen adverse environmental impacts of the proposal, among the other requirements of Section 1505.2. This provision would require the decisionmaker to explain any decision to override land use plans, policies or controls for the area.

24a. Environmental Impact Statements on Policies, Plans or Programs. When are EISs required on policies, plans or programs?

A. An EIS must be prepared if an agency proposes to implement a specific policy, to adopt a plan for a group of related actions, or to implement a specific statutory program or executive directive. Section 1508.18. In addition, the adoption of official policy in the form of rules, regulations and interpretations pursuant to the Administrative Procedure Act, treaties, conventions, or other formal documents establishing governmental or agency policy which

will substantially alter agency programs, could require an EIS. Section 1508.18. In all cases, the policy, plan, or program must have the potential for significantly affecting the quality of the human environment in order to require an EIS. It should be noted that a proposal "may exist in fact as well as by agency declaration that one exists." Section 1508.23.

24b. When is an area-wide or overview EIS appropriate?

A. The preparation of an area-wide or overview EIS may be particularly useful when similar actions, viewed with other reasonably foreseeable or proposed agency actions, share common timing or geography. For example, when a variety of energy projects may be located in a single watershed, or when a series of new energy technologies may be developed through federal funding, the overview or area-wide EIS would serve as a valuable and necessary analysis of the affected environment and the potential cumulative impacts of the reasonably foreseeable actions under that program or within that geographical area.

24c. What is the function of tiering in such cases?

A. Tiering is a procedure which allows an agency to avoid duplication of paperwork through the incorporation by reference of the general discussions and relevant specific discussions from an environmental impact statement of broader scope into one of lesser scope or vice versa. In the example given in Question 24b, this would mean that an overview EIS would be prepared for all of the energy activities reasonably foreseeable in a particular geographic area or resulting from a particular development program. This impact statement would be followed by site-specific or project-specific EISs. The tiering process would make each EIS of greater use and meaning to the public as the plan or program develops, without duplication of the analysis prepared for the previous impact statement.

25a. Appendices and Incorporation by Reference. When is it appropriate to use appendices instead of including information in the body of an EIS?

A. The body of the EIS should be a succinct statement of all the information on environmental impacts and alternatives that the decisionmaker and the public need, in order to make the decision and to ascertain that every significant factor has been examined. The EIS must explain or summarize methodologies of research and modeling, and the results of research that may have been conducted to analyze impacts and alternatives.

Lengthy technical discussions of modeling methodology, baseline studies, or other work are best reserved for the appendix. In other words, if only technically trained individuals are likely to understand a particular discussion then it should go in the appendix, and a plain language summary of the analysis and conclusions of that technical discussion should go in the text of the EIS.

The final statement must also contain the agency's responses to comments on the draft EIS. These responses will be primarily in the form of changes in the document itself, but specific answers to each significant comment should also be included. These specific responses may

be placed in an appendix. If the comments are especially voluminous, summaries of the comments and responses will suffice. (See Question 29 regarding the level of detail required for responses to comments.)

25b. How does an appendix differ from incorporation by reference?

A. First, if at all possible, the appendix accompanies the EIS, whereas the material which is incorporated by reference does not accompany the EIS. Thus the appendix should contain information that reviewers will be likely to want to examine. The appendix should include material that pertains to preparation of a particular EIS. Research papers directly relevant to the proposal, lists of affected species, discussion of the methodology of models used in the analysis of impacts, extremely detailed responses to comments, or other information, would be placed in the appendix.

The appendix must be complete and available at the time the EIS is filed. Five copies of the appendix must be sent to EPA with five copies of the EIS for filing. If the appendix is too bulky to be circulated, it instead must be placed in conveniently accessible locations or furnished directly to commentors upon request. If it is not circulated with the EIS, the Notice of Availability published by EPA must so state, giving a telephone number to enable potential commentors to locate or request copies of the appendix promptly.

Material that is not directly related to preparation of the EIS should be incorporated by reference. This would include other EISs, research papers in the general literature, technical background papers or other material that someone with technical training could use to evaluate the analysis of the proposal. These must be made available, either by citing the literature, furnishing copies to central locations, or sending copies directly to commentors upon request.

Care must be taken in all cases to ensure that material incorporated by reference, and the occasional appendix that does not accompany the EIS, are in fact available for the full minimum public comment period.

26a. Index and Keyword Index in EISs. How detailed must an EIS index be?

A. The EIS index should have a level of detail sufficient to focus on areas of the EIS of reasonable interest to any reader. It cannot be restricted to the most important topics. On the other hand, it need not identify every conceivable term or phrase in the EIS. If an agency believes that the reader is reasonably likely to be interested in a topic, it should be included.

26b. Is a keyword index required?

A. No. A keyword index is a relatively short list of descriptive terms that identifies the key concepts or subject areas in a document. For example it could consist of 20 terms which describe the most significant aspects of an EIS that a future researcher would need: type of

proposal, type of impacts, type of environment, geographical area, sampling or modeling methodologies used. This technique permits the compilation of EIS data banks, by facilitating quick and inexpensive access to stored materials. While a keyword index is not required by the regulations, it could be a useful addition for several reasons. First, it can be useful as a quick index for reviewers of the EIS, helping to focus on areas of interest. Second, if an agency keeps a listing of the keyword indexes of the EISs it produces, the EIS preparers themselves will have quick access to similar research data and methodologies to aid their future EIS work. Third, a keyword index will be needed to make an EIS available to future researchers using EIS data banks that are being developed. Preparation of such an index now when the document is produced will save a later effort when the data banks become operational.

27a. List of Preparers. If a consultant is used in preparing an EIS, must the list of preparers identify members of the consulting firm as well as the agency NEPA staff who were primarily responsible?

A. Section 1502.17 requires identification of the names and qualifications of persons who were primarily responsible for preparing the EIS or significant background papers, including basic components of the statement. This means that members of a consulting firm preparing material that is to become part of the EIS must be identified. The EIS should identify these individuals even though the consultant's contribution may have been modified by the agency.

27b. Should agency staff involved in reviewing and editing the EIS also be included in the list of preparers?

A. Agency personnel who wrote basic components of the EIS or significant background papers must, of course, be identified. The EIS should also list the technical editors who reviewed or edited the statements.

27c. How much information should be included on each person listed?

A. The list of preparers should normally not exceed two pages. Therefore, agencies must determine which individuals had primary responsibility and need not identify individuals with minor involvement. The list of preparers should include a very brief identification of the individuals involved, their qualifications (expertise, professional disciplines) and the specific portion of the EIS for which they are responsible. This may be done in tabular form to cut down on length. A line or two for each person's qualifications should be sufficient.

28. Advance or Xerox Copies of EIS. May an agency file xerox copies of an EIS with EPA pending the completion of printing the document?

A. Xerox copies of an EIS may be filed with EPA prior to printing only if the xerox copies are simultaneously made available to other agencies and the public. Section 1506.9 of the regulations, which governs EIS filing, specifically requires Federal agencies to file EISs with EPA no earlier than the EIS is distributed to the public. However, this section does not

prohibit xeroxing as a form of reproduction and distribution. When an agency chooses xeroxing as the reproduction method, the EIS must be clear and legible to permit ease of reading and ultimate microfiching of the EIS. Where color graphs are important to the EIS, they should be reproduced and circulated with the xeroxed copy.

29a. Responses to Comments. What response must an agency provide to a comment on a draft EIS which states that the EIS's methodology is inadequate or inadequately explained? For example, what level of detail must an agency include in its response to a simple postcard comment making such an allegation?

A. Appropriate responses to comments are described in Section 1503.4. Normally the responses should result in changes in the text of the EIS, not simply a separate answer at the back of the document. But, in addition, the agency must state what its response was, and if the agency decides that no substantive response to a comment is necessary, it must explain briefly why.

An agency is not under an obligation to issue a lengthy reiteration of its methodology for any portion of an EIS if the only comment addressing the methodology is a simple complaint that the EIS methodology is inadequate. But agencies must respond to comments, however brief, which are specific in their criticism of agency methodology. For example, if a commentor on an EIS said that an agency's air quality dispersion analysis or methodology was inadequate, and the agency had included a discussion of that analysis in the EIS, little if anything need be added in response to such a comment. However, if the commentor said that the dispersion analysis was inadequate because of its use of a certain computational technique, or that a dispersion analysis was inadequately explained because computational techniques were not included or referenced, then the agency would have to respond in a substantive and meaningful way to such a comment.

If a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Comments may be summarized if they are especially voluminous. The comments or summaries must be attached to the EIS regardless of whether the agency believes they merit individual discussion in the body of the final EIS.

29b. How must an agency respond to a comment on a draft EIS that raises a new alternative not previously considered in the draft EIS?

A. This question might arise in several possible situations. First, a commentor on a draft EIS may indicate that there is a possible alternative which, in the agency's view, is not a reasonable alternative. Section 1502.14(a). If that is the case, the agency must explain why the comment does not warrant further agency response, citing authorities or reasons that support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response. Section 1503.4(a). For example, a commentor on a draft EIS on a coal fired power plant may suggest the alternative of using synthetic fuel.

The agency may reject the alternative with a brief discussion (with authorities) of the unavailability of synthetic fuel within the time frame necessary to meet the need and purpose of the proposed facility.

A second possibility is that an agency may receive a comment indicating that a particular alternative, while reasonable, should be modified somewhat, for example, to achieve certain mitigation benefits, or for other reasons. If the modification is reasonable, the agency should include a discussion of it in the final EIS. For example, a commentor on a draft EIS on a proposal for a pumped storage power facility might suggest that the applicant's proposed alternative should be enhanced by the addition of certain reasonable mitigation measures, including the purchase and set-aside of a wildlife preserve to substitute for the tract to be destroyed by the project. The modified alternative including the additional mitigation measures should be discussed by the agency in the final EIS.

A third slightly different possibility is that a comment on a draft EIS will raise an alternative which is a minor variation of one of the alternatives discussed in the draft EIS, but this variation was not given any consideration by the agency. In such a case, the agency should develop and evaluate the new alternative, if it is reasonable, in the final EIS. If it is qualitatively within the spectrum of alternatives that were discussed in the draft, a supplemental draft will not be needed. For example, a commentor on a draft EIS to designate a wilderness area within a National Forest might reasonably identify a specific tract of the forest, and urge that it be considered for designation. If the draft EIS considered designation of a range of alternative tracts which encompassed forest area of similar quality and quantity, no supplemental EIS would have to be prepared. The agency could fulfill its obligation by addressing that specific alternative in the final EIS.

As another example, an EIS on an urban housing project may analyze the alternatives of constructing 2,000, 4,000, or 6,000 units. A commentor on the draft EIS might urge the consideration of constructing 5,000 units utilizing a different configuration of buildings. This alternative is within the spectrum of alternatives already considered, and, therefore, could be addressed in the final EIS.

A fourth possibility is that a commentor points out an alternative which is not a variation of the proposal or of any alternative discussed in the draft impact statement, and is a reasonable alternative that warrants serious agency response. In such a case, the agency must issue a supplement to the draft EIS that discusses this new alternative. For example, a commentor on a draft EIS on a nuclear power plant might suggest that a reasonable alternative for meeting the projected need for power would be through peak load management and energy conservation programs. If the permitting agency has failed to consider that approach in the Draft EIS, and the approach cannot be dismissed by the agency as unreasonable, a supplement to the Draft EIS, which discusses that alternative, must be prepared. (If necessary, the same supplement should also discuss substantial changes in the proposed action or significant new circumstances or information, as required by Section 1502.9(c)(1) of the Council's regulations.)

If the new alternative was not raised by the commentor during scoping, but could have been, commentors may find that they are unpersuasive in their efforts to have their suggested alternative analyzed in detail by the agency. However, if the new alternative is discovered or developed later, and it could not reasonably have been raised during the scoping process, then the agency must address it in a supplemental draft EIS. The agency is, in any case, ultimately responsible for preparing an adequate EIS that considers all alternatives.

30. Adoption of EISs. When a cooperating agency with jurisdiction by law intends to adopt a lead agency's EIS and it is not satisfied with the adequacy of the document, may the cooperating agency adopt only the part of the EIS with which it is satisfied? If so, would a cooperating agency with jurisdiction by law have to prepare a separate EIS or EIS supplement covering the areas of disagreement with the lead agency?

A. Generally, a cooperating agency may adopt a lead agency's EIS without recirculating it if it concludes that its NEPA requirements and its comments and suggestions have been satisfied. Section 1506.3(a), ©). If necessary, a cooperating agency may adopt only a portion of the lead agency's EIS and may reject that part of the EIS with which it disagrees, stating publicly why it did so. Section 1506.3(a).

A cooperating agency with jurisdiction by law (e.g., an agency with independent legal responsibilities with respect to the proposal) has an independent legal obligation to comply with NEPA. Therefore, if the cooperating agency determines that the EIS is wrong or inadequate, it must prepare a supplement to the EIS, replacing or adding any needed information, and must circulate the supplement as a draft for public and agency review and comment. A final supplemental EIS would be required before the agency could take action. The adopted portions of the lead agency EIS should be circulated with the supplement. Section 1506.3(b). A cooperating agency with jurisdiction by law will have to prepare its own Record of Decision for its action, in which it must explain how it reached its conclusions. Each agency should explain how and why its conclusions differ, if that is the case, from those of other agencies which issued their Records of Decision earlier.

An agency that did not cooperate in preparation of an EIS may also adopt an EIS or portion thereof. But this would arise only in rare instances, because an agency adopting an EIS for use in its own decision normally would have been a cooperating agency. If the proposed action for which the EIS was prepared is substantially the same as the proposed action of the adopting agency, the EIS may be adopted as long as it is re-circulated as a final EIS and the agency announces what it is doing. This would be followed by the 30-day review period and issuance of a Record of Decision by the adopting agency. If the proposed action by the adopting agency is not substantially the same as that in [46 FR 18036] the EIS (i.e., if an EIS on one action is being adapted for use in a decision on another action), the EIS would be treated as a draft and circulated for the normal public comment period and other procedures. Section 1506.3(b).

31a. Application of Regulations to Independent Regulatory Agencies. Do the Council's NEPA regulations apply to independent regulatory agencies like the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission?

A. The statutory requirements of NEPA's Section 102 apply to "all agencies of the federal government." The NEPA regulations implement the procedural provisions of NEPA as set forth in NEPA's Section 102(2) for all agencies of the federal government. The NEPA regulations apply to independent regulatory agencies, however, they do not direct independent regulatory agencies or other agencies to make decisions in any particular way or in a way inconsistent with an agency's statutory charter. Sections 1500.3, 1500.6, 1507.1, and 1507.3.

31b. Can an Executive Branch agency like the Department of the Interior adopt an EIS prepared by an independent regulatory agency such as FERC?

A. If an independent regulatory agency such as FERC has prepared an EIS in connection with its approval of a proposed project, an Executive Branch agency (e.g., the Bureau of Land Management in the Department of the Interior) may, in accordance with Section 1506.3, adopt the EIS or a portion thereof for its use in considering the same proposal. In such a case the EIS must, to the satisfaction of the adopting agency, meet the standards for an adequate statement under the NEPA regulations (including scope and quality of analysis of alternatives) and must satisfy the adopting agency's comments and suggestions. If the independent regulatory agency fails to comply with the NEPA regulations, the cooperating or adopting agency may find that it is unable to adopt the EIS, thus forcing the preparation of a new EIS or EIS Supplement for the same action. The NEPA regulations were made applicable to all federal agencies in order to avoid this result, and to achieve uniform application and efficiency of the NEPA process.

32. Supplements to Old EISs. Under what circumstances do old EISs have to be supplemented before taking action on a proposal?

A. As a rule of thumb, if the proposal has not yet been implemented, or if the EIS concerns an ongoing program, EISs that are more than 5 years old should be carefully reexamined to determine if the criteria in Section 1502.9 compel preparation of an EIS supplement.

If an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, a supplemental EIS must be prepared for an old EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal. Section 1502.9(c).

33a. Referrals. When must a referral of an interagency disagreement be made to the Council?

A. The Council's referral procedure is a pre-decision referral process for interagency disagreements. Hence, Section 1504.3 requires that a referring agency must deliver its referral to the Council not later than 25 days after publication by EPA of notice that the final EIS is available (unless the lead agency grants an extension of time under Section 1504.3(b)).

33b. May a referral be made after this issuance of a Record of Decision?

A. No, except for cases where agencies provide an internal appeal procedure which permits simultaneous filing of the final EIS and the record of decision (ROD). Section 1506.10(b)(2). Otherwise, as stated above, the process is a pre-decision referral process. Referrals must be made within 25 days after the notice of availability of the final EIS, whereas the final decision (ROD) may not be made or filed until after 30 days from the notice of availability of the EIS. Sections 1504.3(b), 1506.10(b). If a lead agency has granted an extension of time for another agency to take action on a referral, the ROD may not be issued until the extension has expired.

34a. Records of Decision. Must Records of Decision (RODs) be made public? How should they be made available?

A. Under the regulations, agencies must prepare a "concise public record of decision," which contains the elements specified in Section 1505.2. This public record may be integrated into any other decision record prepared by the agency, or it may be separate if decision documents are not normally made public. The Record of Decision is intended by the Council to be an environmental document (even though it is not explicitly mentioned in the definition of "environmental document" in Section 1508.10). Therefore, it must be made available to the public through appropriate public notice as required by Section 1506.6(b). However, there is no specific requirement for publication of the ROD itself, either in the Federal Register or elsewhere.

34b. May the summary section in the final Environmental Impact Statement substitute for or constitute an agency's Record of Decision?

A. No. An environmental impact statement is supposed to inform the decisionmaker before the decision is made. Sections 1502.1, 1505.2. The Council's regulations provide for a 30-day period after notice is published that the final EIS has been filed with EPA before the agency may take final action. During that period, in addition to the agency's own internal final review, the public and other agencies can comment on the final EIS prior to the agency's final action on the proposal. In addition, the Council's regulations make clear that the requirements for the summary in an EIS are not the same as the requirements for a ROD. Sections 1502.12 and 1505.2.

34c. What provisions should Records of Decision contain pertaining to mitigation and monitoring?

A. Lead agencies "shall include appropriate conditions [including mitigation measures and monitoring and enforcement programs] in grants, permits or other approvals" and shall "condition funding of actions on mitigation." Section 1505.3. Any such measures that are adopted must be explained and committed in the ROD.

The reasonable alternative mitigation measures and monitoring programs should have been addressed in the draft and final EIS. The discussion of mitigation and monitoring in a Record of Decision must be more detailed than a general statement that mitigation is being required, but not so detailed as to duplicate discussion of mitigation in the EIS. The Record of Decision should contain a concise summary identification of the mitigation measures which the agency has committed itself to adopt.

The Record of Decision must also state whether all practicable mitigation measures have been adopted, and if not, why not. Section 1505.2(c). The Record of Decision must identify the mitigation measures and monitoring and enforcement programs that have been selected and plainly indicate that they are adopted as part of the agency's decision. If the proposed action is the issuance of a permit or other approval, the specific details of the mitigation measures shall then be included as appropriate conditions in whatever grants, permits, funding or other approvals are being made by the federal agency. Section 1505.3 (a), (b). If the proposal is to be carried out by the [46 FR 18037] federal agency itself, the Record of Decision should delineate the mitigation and monitoring measures in sufficient detail to constitute an enforceable commitment, or incorporate by reference the portions of the EIS that do so.

34d. What is the enforceability of a Record of Decision?

A. Pursuant to generally recognized principles of federal administrative law, agencies will be held accountable for preparing Records of Decision that conform to the decisions actually made and for carrying out the actions set forth in the Records of Decision. This is based on the principle that an agency must comply with its own decisions and regulations once they are adopted. Thus, the terms of a Record of Decision are enforceable by agencies and private parties. A Record of Decision can be used to compel compliance with or execution of the mitigation measures identified therein.

35. Time Required for the NEPA Process. How long should the NEPA process take to complete?

A. When an EIS is required, the process obviously will take longer than when an EA is the only document prepared. But the Council's NEPA regulations encourage streamlined review, adoption of deadlines, elimination of duplicative work, eliciting suggested alternatives and other comments early through scoping, cooperation among agencies, and consultation with applicants during project planning. The Council has advised agencies that under the new NEPA regulations even large complex energy projects would require only about 12 months

for the completion of the entire EIS process. For most major actions, this period is well within the planning time that is needed in any event, apart from NEPA.

The time required for the preparation of program EISs may be greater. The Council also recognizes that some projects will entail difficult long-term planning and/or the acquisition of certain data which of necessity will require more time for the preparation of the EIS. Indeed, some proposals should be given more time for the thoughtful preparation of an EIS and development of a decision which fulfills NEPA's substantive goals.

For cases in which only an environmental assessment will be prepared, the NEPA process should take no more than 3 months, and in many cases substantially less, as part of the normal analysis and approval process for the action.

36a. Environmental Assessments (EA). How long and detailed must an environmental assessment (EA) be?

A. The environmental assessment is a concise public document which has three defined functions. (1) It briefly provides sufficient evidence and analysis for determining whether to prepare an EIS; (2) it aids an agency's compliance with NEPA when no EIS is necessary, i.e., it helps to identify better alternatives and mitigation measures; and (3) it facilitates preparation of an EIS when one is necessary. Section 1508.9(a).

Since the EA is a concise document, it should not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. Section 1508.9(b).

While the regulations do not contain page limits for EA's, the Council has generally advised agencies to keep the length of EAs to not more than approximately 10-15 pages. Some agencies expressly provide page guidelines (e.g., 10-15 pages in the case of the Army Corps). To avoid undue length, the EA may incorporate by reference background data to support its concise discussion of the proposal and relevant issues.

36b. Under what circumstances is a lengthy EA appropriate?

A. Agencies should avoid preparing lengthy EAs except in unusual cases, where a proposal is so complex that a concise document cannot meet the goals of Section 1508.9 and where it is extremely difficult to determine whether the proposal could have significant environmental effects. In most cases, however, a lengthy EA indicates that an EIS is needed.

37a. Findings of No Significant Impact (FONSI). What is the level of detail of information that must be included in a finding of no significant impact (FONSI)?

A. The FONSI is a document in which the agency briefly explains the reasons why an action will not have a significant effect on the human environment and, therefore, why an EIS will not be prepared. Section 1508.13. The finding itself need not be detailed, but must succinctly state the reasons for deciding that the action will have no significant environmental effects, and, if relevant, must show which factors were weighted most heavily in the determination. In addition to this statement, the FONSI must include, summarize, or attach and incorporate by reference, the environmental assessment.

37b. What are the criteria for deciding whether a FONSI should be made available for public review for 30 days before the agency's final determination whether to prepare an EIS?

A. Public review is necessary, for example, (a) if the proposal is a borderline case, i.e., when there is a reasonable argument for preparation of an EIS; (b) if it is an unusual case, a new kind of action, or a precedent setting case such as a first intrusion of even a minor development into a pristine area; ©) when there is either scientific or public controversy over the proposal; or (d) when it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS. Sections 1501.4(e)(2), 1508.27. Agencies also must allow a period of public review of the FONSI if the proposed action would be located in a floodplain or wetland. E.O. 11988, Sec. 2(a)(4); E.O. 11990, Sec. 2(b).

38. Public Availability of EAs v. FONSIs. Must (EAs) and FONSIs be made public? If so, how should this be done?

A. Yes, they must be available to the public. Section 1506.6 requires agencies to involve the public in implementing their NEPA procedures, and this includes public involvement in the preparation of EAs and FONSIs. These are public "environmental documents" under Section 1506.6(b), and, therefore, agencies must give public notice of their availability. A combination of methods may be used to give notice, and the methods should be tailored to the needs of particular cases. Thus, a Federal Register notice of availability of the documents, coupled with notices in national publications and mailed to interested national groups might be appropriate for proposals that are national in scope. Local newspaper notices may be more appropriate for regional or site-specific proposals.

The objective, however, is to notify all interested or affected parties. If this is not being achieved, then the methods should be reevaluated and changed. Repeated failure to reach the interested or affected public would be interpreted as a violation of the regulations.

39. Mitigation Measures Imposed in EAs and FONSIs. Can an EA and FONSI be used to impose enforceable mitigation measures, monitoring programs, or other requirements, even though there is no requirement in the regulations in such cases for a formal Record of Decision?

A. Yes. In cases where an environmental assessment is the appropriate environmental document, there still may be mitigation measures or alternatives that would be desirable to consider and adopt even though the impacts of the proposal will not be "significant." In such

cases, the EA should include a discussion of these measures or alternatives to "assist [46 FR 18038] agency planning and decisionmaking" and to "aid an agency's compliance with [NEPA] when no environmental impact statement is necessary." Section 1501.3(b), 1508.9(a)(2). The appropriate mitigation measures can be imposed as enforceable permit conditions, or adopted as part of the agency final decision in the same manner mitigation measures are adopted in the formal Record of Decision that is required in EIS cases.

40. Propriety of Issuing EA When Mitigation Reduces Impacts. If an environmental assessment indicates that the environmental effects of a proposal are significant but that, with mitigation, those effects may be reduced to less than significant levels, may the agency make a finding of no significant impact rather than prepare an EIS? Is that a legitimate function of an EA and scoping?

[N.B.: Courts have disagreed with CEQ's position in Question 40. The 1987-88 CEQ Annual Report stated that CEQ intended to issue additional guidance on this topic. Ed. note.]

A. Mitigation measures may be relied upon to make a finding of no significant impact only if they are imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. As a general rule, the regulations contemplate that agencies should use a broad approach in defining significance and should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement. Sections 1508.8, 1508.27.

If a proposal appears to have adverse effects which would be significant, and certain mitigation measures are then developed during the scoping or EA stages, the existence of such possible mitigation does not obviate the need for an EIS. Therefore, if scoping or the EA identifies certain mitigation possibilities without altering the nature of the overall proposal itself, the agency should continue the EIS process and submit the proposal, and the potential mitigation, for public and agency review and comment. This is essential to ensure that the final decision is based on all the relevant factors and that the full NEPA process will result in enforceable mitigation measures through the Record of Decision.

In some instances, where the proposal itself so integrates mitigation from the beginning that it is impossible to define the proposal without including the mitigation, the agency may then rely on the mitigation measures in determining that the overall effects would not be significant (e.g., where an application for a permit for a small hydro dam is based on a binding commitment to build fish ladders, to permit adequate down stream flow, and to replace any lost wetlands, wildlife habitat and recreational potential). In those instances, agencies should make the FONSI and EA available for 30 days of public comment before taking action. Section 1501.4(e)(2).

Similarly, scoping may result in a redefinition of the entire project, as a result of mitigation proposals. In that case, the agency may alter its previous decision to do an EIS, as long as the agency or applicant resubmits the entire proposal and the EA and FONSI are available for 30 days of review and comment. One example of this would be where the size and location of a proposed industrial park are changed to avoid affecting a nearby wetland area.

"ENDNOTES"

The first endnote appeared in the original Federal Register. The other endnotes are for information only.

1. References throughout the document are to the Council on Environmental Quality's Regulations For Implementing The Procedural Provisions of the National Environmental Policy Act. 40 CFR Parts 1500-1508.

2. [46 FR 18027] indicates that the subsequent text may be cited to 48 Fed. Reg. 18027 (1981). Ed Note.

3. Q20 Worst Case Analysis was withdrawn by final rule issued at 51 Fed. Reg. 15618 (Apr. 25. 1986); textual errors corrected 51 F.R. p. 16,846 (May 7, 1986). The preamble to this rule is published at ELR Admin. Mat. 35055.

Cross-Cutting Environmental Laws

A Guide For Federal/State Project Officers

January, 1991

Introduction

Congress has passed a number of environmental laws which address the federal responsibility for protecting and conserving special resources. Examples of such laws are the Endangered Species Act, the National Historic Preservation Act, and the Wild and &Scenic Rivers Act. The U.S. Environmental Protection Agency (EPA) refers to these laws generally as "cross-cutters" because the requirement to comply with them cuts across all federal programs. A list of cross-cutting environmental laws (other than those administered by EPA) is included at the end of this section.

The cross-cutters require federal agencies to consider the impact that their programs and individual actions might have on particular resources and such consideration must be documented as part of the agency's decision-making process. Federal undertakings that could have an effect include agency activities which would physically disrupt the environment, such as construction projects, and the issuance of grants and permits for projects that could also have an impact. All federal agencies must comply with these laws in carrying out activities unless a statute provides for an exemption or deferral because of an emergency or some other situation. In some cases, states administering federal programs have the lead in cross-cutter compliance. Most federal agencies administering the cross-cutters have developed regulations or guidance which lay out procedures for federal agency compliance. Many of the procedures require federal agencies to consult with these "administering agencies", and to provide an opportunity for public comment before making a decision on an action. The administering agencies have the expertise and often times the public has information about a resource to help in determining the impact of a federal undertaking on the resource and what steps should be taken to avoid or mitigate adverse impacts.

Consultation with administering agencies usually begins early in the planning stages of a program or project. This avoids delays that might be incurred from having to address an impact later on in an undertaking when it may be more difficult and time consuming for an agency to make changes. The evaluation that is conducted under cross cutters is usually integrated into other statutory reviews, such as the environmental review carried out under the National Environmental Policy Act (NEPA). This reduces paperwork and the potential for delays.

This pamphlet gives an overview of cross-cutting environmental laws administered by federal agencies other than EPA. It is intended as a guide, primarily for EPA staff and state staffs, who carry out actions for which EPA is responsible. The information provided in this pamphlet, however, may also be useful to other agencies, as well. The cross-cutters addressed in this pamphlet include the following:

Endangered Species Act

National Historic Preservation Act

Archeological and Historic Preservation Act

Wild and Scenic Rivers Act

Fish and Wildlife Coordination Act

Coastal Zone Management Act

Coastal Barriers Resources Act

Wilderness Act

Farmland Protection Policy Act

Executive Order 11990-Protection of Wetlands

Executive Order 11988-Protection of Floodplains

Endangered Species Act, 16 U.S.C. 1531 et seq.

Description And Intent

The purpose of the Endangered Species Act (ESA) is to ensure that federal agencies and departments use their authorities to protect and conserve endangered and threatened species. Section 7 of the Act requires that federal agencies prevent or modify any projects authorized, funded, or carried out by the agencies that are "likely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of critical habitat of such species."

Administering Agencies

The ESA is administered by the U.S. Department of Interior through the Fish and Wildlife Service (FWS) and the U.S. Department of Commerce through the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration.

Implementing Regulations

50 CFR Part 402: Department of Interior and Department of Commerce procedures for implementing Section 7.

50 CFR Parts 450, 451, 452, and 453: Department of Interior and Department of Commerce rules for applying for Endangered Species Act exemptions and Endangered Species Committee consideration of such applications.

Summary Of Requirements

Federal agencies must review actions they undertake or support to determine whether they may affect endangered species or their habitats. If such review reveals the potential for effects, the federal agency must consult with the FWS or NMFS, as appropriate.

Consultation is carried out for the purpose of identifying whether a federal action is likely to jeopardize the continued existence of the endangered or threatened species or adversely affect its critical habitat. If FWS or NMFS determines that a proposed action would likely have this negative impact, then the project must be stopped unless the consulting parties can agree on alternatives to eliminate jeopardy. If there are no feasible alternatives that can be carried out, the action agency may apply for an exemption with the Endangered Species Committee.

The National Historic Preservation Act, 16 U.S.C. 470

Description And Intent

The National Historic Preservation Act (NHPA), as amended, directs federal agencies to integrate historic preservation into all activities which either directly or indirectly involve land use decisions. This is to ensure federal leadership in the preservation of prehistoric and historic resources of the United States.

Administering Agencies

The NHPA is administered by the U.S. Department of the Interior, National Park Service (NPS) and the Advisory Council on Historic Preservation (ACHP). The NHPA is also implemented through State Historic Preservation Officers (SHPOs) in each state and territory and through Federal Preservation Officers (FPOs) in each federal agency.

Implementing Regulations

36 CFR Part 60: Procedures for Nominating and Listing Properties in the National Register.

36 CFR Part 61: Procedures for Approved State and Local Government Historic Preservation Programs. This describes SHPO responsibilities and historic preservation professional qualifications.

36 CFR Part 63 (soon to be combined with 36 CFR 60): Procedures for Determining Eligibility of Properties for Inclusion L-l the National Register of Historic Places.

36 CFR Part 65: National Historic Landmarks Program.

36 CFR Part 68: The Secretary of the Interior's Standards for Historic Preservation Projects.

36 CFR Part 79: Procedures for the Curation of Federal Archeological Collections.

36 CFR Part 800: Regulations of the Advisory Council on Historic Preservation Governing the NHPA Section 106 Review Process.

48 FR 190, Part IV (September 29, 1983), "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation."

53 FR 472746 (February 17, 1988), "Guidelines for Federal Agency Responsibilities under Section 110 of the National Historic Preservation Act."

Summary Of Requirements

Section 110 of the NHPA describes the general responsibilities of federal agencies with regard to the identification, evaluation, registration, protection, and preservation of historic properties. "Historic property" means any district, building, structure, site, or object that is eligible for listing in the National Register of Historic Places because the property is significant at the national, state, or local level in American history, architecture, archeology, engineering, or culture. Among the Section 110 requirements: 1) Section 110 (a) requires federal agencies to establish a program to locate, inventory, and nominate to the National Register all historic properties under the agency's ownership or control (not generally applicable to EPA); 2) Section 110 (d) creates a broad mandate for federal agencies to carry out their programs in accordance with the purposes of the NHPA; 3) Section 110 (f) requires federal agencies to minimize harm to National Historic Landmarks as Section 110 does for historic properties in general; and 4) Section 110 (b) requires federal agencies to record historic properties which might be damaged or destroyed by a federal activity.

Before approving or carrying out a federal, federally assisted, or federally licensed undertaking Section 106 of the NHPA requires federal agencies to take into consideration the impact that the action may have on historic properties which are included on, or are eligible for inclusion on, the National Register of Historic Places. Section 106 also requires that federal agencies provide the ACHP with the opportunity to comment on the undertaking.

In fulfilling the requirements of Section 106 and its implementing regulations, federal agencies are required to 1) identify and evaluate any historic properties that might be impacted by the undertaking; 2) determine the effect of the undertaking on these properties; and 3) develop alternatives and measures to avoid or mitigate adverse effects. Agencies may find it necessary to carry out a cultural resource survey in connection with the Section 106 review process. The Section 106 review process is usually carried out as part of a formal consultation with the SHPO, the ACHP, and any other parties, such as Indian tribes that have knowledge of, or a particular interest in, historic resources in the project area of the undertaking. Formal consultation is concluded upon preparation of a Memorandum of Agreement among the consulting parties which addresses the treatment of any adverse effects. If no agreement is reached, the federal agency must obtain the comments of the ACHP.

Archeological and Historic Preservation Act, as amended, 16 U.S.C. 469-469c

Description And Intent

The Archeological and Historic Preservation Act (AHPA), as amended, furthers the policies of the Historic Sites Act of 1935 by providing for the preservation of cultural resources that may be damaged by federal or federally authorized construction activities. The statute contains the Reservoir Salvage Act of 1960 and amendments made to it in 1974 (P.L.93-291, known as the Moss-Bennett Act) and 1978 (P.L. 95-625). The portions of AHPA that may apply to federal agency projects are Section 4(a) and Section 7(a). Section 4(a) requires that the Secretary of the Interior be notified when unanticipated archeological materials are discovered during construction of a federal undertaking. Section 7(a) limits the amount of funds expended for archeological data recovery as part of a federal undertaking to one percent of project expenses. However, Section 208 of the 1980 amendments to the National Historic Preservation Act (P.L. 96-515) established a procedure for agencies to request the Secretary of the Interior to waive the one percent limitation.

Administering Agencies

The Departmental Consulting Archeologist (DCA), National Park Service, is the Secretary of the Interior's representative in administering Section 4(a) and waivers of the one percent requirement of Section 7(a). As an alternative to Section 4(a), under emergency situations, discoveries of archeological resources may be handled under the procedures of the Advisory Council on Historic Preservation.

Implementing Regulations

36 CFR Part 800: The Advisory Council on Historic Preservation regulations (Protection of Historic Properties) include special provisions for archeological resources discovered during implementation of an undertaking (Part 800.11) that are an alternative to compliance with the AHPA. The DCA administers the reviews and approvals of one percent waivers. The National Park Service has information on the Emergency Discovery procedures used for Section 4(a) as well as the means of obtaining a waiver of the one percent restriction.

Summary Of Requirements

Federal agencies must notify the DCA in writing when a federal or federally funded ground disturbing project threatens or damages significant "scientific, prehistorical, historical, or archeological data". Upon receiving notification, the DCA will evaluate the data's significance, respond to the federal agency with the evaluation results, and initiate any needed data recovery efforts on the project. If survey or data recovery work are required, the DCA will keep the federal agency informed of the progress of all preservation activities. The Secretary of the Interior will compensate for damages due to project delays or the loss of land use. All survey or data recovery work must comply with the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716).

The Wild and Scenic Rivers Act, 16 U.S.C. 271 et seq.

Description And Intent

The purpose of the Wild and Scenic Rivers Act (WSRA) is to preserve the free-flowing state of rivers that are listed in the National Wild and Scenic Rivers System (System) or under study for inclusion in the System because of their outstanding scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. Rivers in the System are classified as either wild river areas, scenic river areas, or recreational river areas. The WSRA establishes requirements applicable to water resource projects and protects both the river, or river segments, and the land immediately surrounding them.

Administering Agencies

The Department of the Interior (through the NPS, BLM and FWS) and the Department of Agriculture (through the Forest Service (FS)) manage wild and scenic rivers within their jurisdiction and conduct the necessary studies to include additional rivers or river components into the System. Under Section 2(a) of the Act, states may also propose rivers to the System and manage them.

Implementation Regulations

> 36 CPR Part 297, Subpart A: Wild and Scenic Rivers. The Department of Agriculture's procedures for addressing water resources projects affecting wild and scenic rivers within its jurisdiction.
>
> Guidelines entitled "National Wild and Scenic Rivers System, Final Revised Guidelines for Eligibility, Classification and Management of River Areas", issued jointly by the National Park Service and the Forest Service and published in the Federal Register on September 7, 1982.

Summary Of Requirements

Section 7 of the WSRA specifically prohibits federal agencies from providing assistance for the construction of any water resources projects that would adversely affect wild and scenic rivers. Assistance may be in the form of a loan, grant, or license. A water resources project is defined as a dam, water conduit, reservoir, powerhouse, transmission line, discharge to waters, or development project that would affect the free-flowing characteristics or scenic, recreational, fish and wildlife values of a wild and scenic river or study river. The Act does not prohibit licensing or assisting development below or above a designated river or on tributary streams so long as the development does not invade the designated river area or unreasonably diminish the values for which the river was designated.

Before authorizing a project that may affect a wild and scenic river, a federal agency must notify either the NPS or the FS, as appropriate, of its intentions at least sixty days in advance of the planned action. The administering agency will either consent to the proposal or deny it based on whether or not the project would adversely affect the values for which the river was designated. If consent is denied, the administering agency may recommend measures to eliminate adverse

effects and the authorizing agency may submit revised plans for consideration. No proposal can proceed without the consent of the administering agency. Also, no structures affecting the free-flowing nature of the designated river can be constructed without the consent of Congress.

The Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq.

Description And Intent

The Fish and Wildlife Coordination Act (FWCA), as amended in 1964, was enacted to protect fish and wildlife when federal actions result in the control or modification of a natural stream or body of water. The statute requires federal agencies to take into consideration the effect that water-related projects would have on fish and wildlife resources; take action to prevent loss or damage to these resources; and provide for the development and improvement of these resources.

Administering Agencies

The FWCA is administered by the Department of Interior through the FWS and the Department of Commerce through the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS).

Implementing Regulations

None

Summary Of Requirements

To comply with the requirements laid out in the statute, federal agencies must first determine whether a proposed activity will result in the control or modification of a body of water. Typical actions that would fall under the jurisdiction of the Act include:

> discharges of pollutants including industrial, mining, and municipal wastes or dredged and fill material into a body of water or wetlands;
>
> projects involving construction of dams, levees, impoundments, stream relocation, and water-diversion structures.

If a project to be constructed, licensed or permitted by a federal agency would involve any of these activities or any other activity resulting in the control or modification of any water body for any purpose, then the federal agency must consult with the FWS (and NMFS, as appropriate) in order to develop measures to mitigate project-related losses of fish and wildlife resources.

The statute requires consultation with the FWS (or NMFS, as appropriate) and the fish and wildlife agency(ies) of any affected state(s) to develop measures to protect, develop, and improve wildlife. Any reports or decision-making documents subsequently prepared by the action agency must include the recommendations of the FWS and affected state(s) for protecting

fish and wildlife. Where possible, the action agency must incorporate the recommendations in the project plans. The constructing, licensing, or permitting federal agency is to include in the project plans such justifiable means and measures as it finds should be adopted to obtain maximum overall project benefits.

Coastal Zone Management Act, 16 U.S.C. Section 1451 et seq.

Description And Intent

The Coastal Zone Management Act (CZMA) encourages the management of coastal zone areas and provides grants to be used in maintaining coastal zone areas. It requires that federal agencies be consistent with the enforceable policies of state coastal zone management programs when conducting or supporting activities which affect a coastal zone. It is intended to ensure that federal activities are consistent with state programs for the protection and, where possible, enhancement of the nation's coastal zones. As defined in the Act, the coastal zone includes coastal waters extending to the outer limit of state submerged land title and ownership, adjacent shorelines and land extending inward to the extent necessary to control shorelines. The coastal zone includes islands, beaches, transitional and intertidal areas, salt marshes, etc.

Administering Agency

The CZMA is administered by the Department of Commerce through its Office of Ocean and Coastal Resource Management, and the National Oceanic and Atmospheric Administration (N0AA).

Implementing Regulations

> 15 CFR 930 Subpart D: National Oceanic and Atmospheric Administration regulations on federal consistency.
>
> 15 CFR Part 923: National Oceanic and Atmospheric Administration regulations regarding program development and operation.

Summary Of Requirements

The CZMA requires that federal agencies conducting or supporting activities affecting the coastal zone conduct or support those activities in a manner that is consistent with approved state coastal management programs.

To comply with the CZMA, the federal agency must identify activities that would affect the coastal zone, including development projects. If an activity would affect the coastal zone, the federal agency must review the state coastal zone management plan to determine whether the activity would be consistent with the plan and then notify the state of its determination. Federal agencies must prepare a written consistency determination which includes: a detailed description of the action, its associative facilities, and coastal zone effects; a brief statement on how the activity would be consistent with the state coastal zone management plan; and data to support the

consistency determination. Copies of state management plans may be obtained from the coastal commission of each state.

States are required to respond to consistency determinations. If the appropriate state agency disagrees with the determination, it will respond with its reasons for disagreeing along with supporting documentation and recommend alternatives that can be undertaken to allow the activity to proceed consistent with the management program.

If a conflict arises between the state and the federal agency over how a federal undertaking should proceed, there are several approaches that can be taken to resolve the conflict including: informal discussions between the parties with the assistance of NOAA, if requested; mediation by the Secretary of Commerce with public hearings; and judicial review.

Federally licensed and permitted activities and federal financial assistance to state and local governments which affect the coastal zone are also subject to federal consistency provisions. The applicant for a federal license, permit or financial assistance must attach; consistency certification issued by the state coastal agency before the federal agency can approve a license or permit or grant financial assistance. If the state objects to a license permit or financial award, the applicant can appeal this decision to the Department of Commerce on the grounds that the proposal is consistent with the objectives or purposes of the Coastal Zone Management Act or is necessary in the interest of national security.

Outer Continental Shelf (OCS) activities for exploration, development, or production of oil and gas are also subject to federal consistency.

Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq.

Description And Intent

The purpose of the Coastal Barrier Resources Act (CBRA) is to protect ecologically sensitive coastal barriers along the coasts of the U.S. The Act establishes the Coastal Barrier Resources System (CBRS) and, with certain exceptions, prohibits new federal expenditures and financial assistance for development within the System. Section 5 (a) of the Act lists expenditures and assistance specifically prohibited, while Section 6 outlines the specific exceptions to the general prohibition.

Administering Agency

The CBRA is administered by the Department of Interior, through the FWS.

Implementing Guidelines

U.S. DOI Coastal Barrier Act Advisory Guidelines, issued by the Fish and Wildlife Service (FWS) on October 6,1983. These guidelines detail the process which federal agencies must follow in consulting with the FWS prior to making an expenditure on or providing assistance to activities excepted under Section 6 of the CBRA. The guidelines list examples, by agency, of federal program expenditures and financial assistance which would be prohibited under the Act.

These examples are in addition to those listed in the Act. For the Environmental Protection Agency, the guidelines include grants for wastewater-treatment construction (Section 201 grants) as expenditures which would be prohibited.

Summary Of Requirements

The FWS guidelines require federal agencies to provide the FWS with the opportunity to submit written comments prior to making any federal expenditures or financial assistance on an action excepted under Section 6 of CBRA and within a CBRS unit. In response to a consultation request, the FWS will provide technical information and comments on (1) whether the action is one which Section 6 allows and (2) whether it is consistent with the purposes of CBRA as stated in Section 2(b) of the Act... "to minimize the loss of human life, wasteful expenditure of federal revenues, and damage to fish, wildlife and other natural resources associated with coastal barriers along the Atlantic and Gulf coasts". Upon consideration of FWS comments, the consulting agency is responsible for making the final deterrnination as to whether an action permitted under Section 6 is consistent with the purposes of the Act.

The Wilderness Act, 16 U.S.C. 1131 at seq.

Description And Intent

The Wilderness Act (WA) establishes a system of National Wilderness areas and a policy for protecting and managing this system. With certain exceptions, the Act prohibits motorized equipment, structures, installations, roads, commercial enterprises, aircraft landings, and mechanical transport. The Act permits mining on valid claims, access to private lands, fire control, insect and disease control, grazing, water-resource structures (upon the approval of the President), and visitor use.

Administering Agencies

The WA is administered by the Department of Interior, through BLM, FWS and NPS; and the Department of Agriculture, through the FS.

Implementing Regulations

> 50 CFR Part 35: U.S. Fish and Wildlife Service. Wilderness Preservation and Management.
>
> 43 CFR Part 19: Office of the Secretary of Interior. Wilderness Preservation.
>
> 36 CFR Part 293: U.S. Forest Service. Wilderness Primitive Areas.
>
> 36 CFR Part 261: U.S. Forest Service. Prohibitions.
>
> 36 CFR Part 219: U.S. Forest Service. Management.
>
> 43 CFR Part 8560: Bureau of Land Management. Designated Wilderness Areas; Procedures for Management.

Summary Of Requirements

In planning a project, federal agencies need to determine whether or not the activity will affect a designated wilderness area. In making this determination, the agency should consult with the appropriate administering agency. Typically, wilderness areas are located within either National Parks (administered by the NPS), National Wildlife Refuges (administered by FWS), National Forests (administered by the FS), or public lands (administered by BLM). These contacts can assist the federal agency in determining whether a proposed project falls among the activities prohibited in the wilderness areas; how proposed activities may be mitigated; and whether exemptions to the prohibitions are necessary and can be obtained. For example, it may be possible to substitute temporary structures and roads, or certain kinds of equipment in order to avoid adverse effects on a wilderness area.

Federal agencies cannot proceed with a project unless they have the approval of the administering agency. For some activities, a permit may be required.

Farmland Protection Policy Act, 7 U.S.C. 4201 et seq. and EPA Policy to Protect Environmentally Significant Agricultural Lands September 1978

Description And Intent

The purpose of the Farmland Protection Policy Act (FPPA) is to minimize the extent to which federal programs contribute to the unnecessary and irreversible conversion of farmland to non-agricultural uses, and to assure that federal programs are administered in a manner that, to the extent practicable, will be compatible with state, local, and private programs and policies to protect farmland. Additionally EPA's policy is to protect the Nation's significant/important agricultural lands from conversions that are irreversible and result in the loss of an essential food or environmental resource.

Administering Agency

The FPPA is administered by the USDA, Soil Conservation Service (SCS). EPA's Policy to Protect Environmentally Significant Agricultural Lands is administered by EPA's Office of Federal Activities.

Implementing Procedures

7 CFR Part 658. USDA Final Rule, Farmland Protection Policy, July 5,1984. Proposed revisions published on January 8, 1987. This rule and proposed revisions establish criteria for land evaluation and site assessment. It includes thresholds which are to be applied in determining which sites should be avoided. It also provides for technical assistance from SCS, the Agricultural Stabilization and Conservation Service (ASCS), and the Forest Service in determining the applicability of the Act to a particular site and in evaluating protection issues, developing alternatives and resolving conflicts.

In addition to USDA's regulations, EPA's Policy to Protect Environmentally Significant Agricultural Lands provides guidance regarding the conservation of farmlands having specific environmental value.

Summary Of Requirements

The Farmland Protection Policy Act (FPPA) and USDA's implementing procedures require federal agencies to evaluate the adverse effects (direct and indirect) of their activities on prime and unique farmland, as well as farmland of statewide and local importance, and to consider alternative actions that could avoid adverse effects. Criteria established by the SCS should be used to select among alternative farmland sites.

EPA's policy identifies three types of environmentally significant agricultural lands for protection in addition to the lands included in the FPPA. These are: farmlands in or contiguous to environmentally sensitive areas, farmlands important for waste utilization and farmlands with significant capital investments in best management practices.

Executive Order 11990 Protection of Wetlands (May 24, 1977, 42 FR 26961)

Description And Intent

The purpose of Executive Order 11990 is to "minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands". To meet these objectives, the Order requires federal agencies, in planning their actions, to consider alternatives to wetland sites and limit potential damage if an activity affecting a wetland cannot be avoided. The Order applies to:

> acquisition, management, and disposition of federal lands and facilities construction and improvement projects which are undertaken, financed or assisted by federal agencies;
>
> federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation, and licensing activities.

Administering Agency

Each federal agency is responsible for preparing implementing procedures for carrying our the provisions of the Order.

Implementing Procedures

EPA's "Statement of Procedures on Floodplain Management and Wetlands Protection", issued on January 5, 1979, addresses the Agency's policy and procedures for implementing the Order (see Appendix A of EPA's NEPA regulations at 40 CFR Part 6).

Summary Of Requirements

EPA's procedures are based primarily on the Order and address EPA's policy for avoiding

impacts to wetlands in all EPA programs. The procedures require the determination of whether or not the proposed project will be in or will affect wetlands. If so, a wetlands assessment must be prepared that describes the alternatives considered. The procedures include a requirement for public review of assessments.

Executive Order 11988 Floodplain Management
May 24, 1977

Description And Intent

Executive Order 11988 requires federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. In accomplishing this objective, "each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by flood plains in carrying out its responsibilities" for. the following actions:

> acquiring, managing, and disposing of federal lands and facilities;
>
> providing federally-undertaken, financed, or assisted construction and improvements;
>
> conducting federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation, and licensing activities.

Administering Agency

Each federal agency is responsible for preparing implementing procedures for carrying out the provisions of the Order.

Implementing Procedures

EPA's "Statement of Procedures on Floodplain Management and Wetlands Protection", issued on January 5, 1979, addresses the Agency's policy and procedures for implementing the Order (see Appendix A of EPA's NEPA regulations in 40 CFR Part 6).

Summary Of Requirements

On February 10, 1978, the Water Resources Council issued "Floodplain Management Guidelines" (40 FR 6030) to aid other federal agencies in amending their regulations and procedures to comply with the Order. The guidelines address an eight-step process that agencies should carry out as part of their decision-making on projects that have potential impacts to or within the floodplain. The eight steps, which are summarized below, reflect the decision-making process required in Section 2(a) of the Order.

> Determine if a proposed action is in the base floodplain (that area which has a one percent or greater chance of flooding in any given year).

Conduct early public review.

Identify and evaluate practicable alternatives to locating in the base floodplain, including alterative sites outside of the floodplain.

Identify impacts of the proposed action.

If impacts cannot be avoided, develop measures to minimize the impacts and restore and preserve the floodplain, as appropriate.

Reevaluate alternatives.

Present the findings and a public explanation.

Implement the action.

In 1987, the Federal Emergency Management Agency and the Interagency Task Force on Floodplain Management issued "Further Advice on EO 11988 Floodplain Management". Among a number of things, the Task Force clarified the EO with respect to development in flood plains, emphasizing the requirement for agencies to select alternative sites for projects outside the flood plains, if practicable, and to develop measures to mitigate unavoidable impacts.

Other Federal Agencies -- Headquarters Offices

Endangered Species Act

Division of Habitat Conservation and Division of Endangered Species
U.S. Fish and Wildlife Service
400 Arlington Square
4401 N. Fairfax Drive
Arlington, VA 22203
Phone: (703) 358-2183

Office of Protected Resources National Marine Fisheries Service
National Oceanic and Atmospheric Administration
1335 East-West Highway
Silver Spring, MD 20910
Phone: (301) 427-2333

National Historic Preservation Act and Archeological and Historic Preservation Act

Associate Director
Cultural Resources
National Park Service
P.O. Box 37127
Washington, D.C. 20013-7127
Phone: (202) 208-7625

Departrnental Consulting Archeologist
National Park Service
P.O. Box 37127
Washington, D.C. 20013-7127
Phone: (202) 343-1876

Chief, Archeological Assistance Division
National Park Service
P.O. Box 37127
Wasshington, D.C. 20013-7127
Phone: (202) 343-4101

Chief, Interagency Resources Division
National Park Service
P.O. Box 37127
Washington, D.C. 20013-7127
Phone: (202) 343-9500

Adv. Council on Historic Preservation
The Old Post Office Building
1100 Pennsylvania Ave., N W
#809Washington, D.C. 20004
Phone: (202)786-0503

Wild and Scenic Rivers Act

Ranger Activities Division
National Park Service
Department of Interior
1849 C Street, N.W.
Washington, D.C. 20240
Phone: (202) 208-4874

Recreation, Cultural Resources, and Wilderness Management
Forest Service
Auditor's Building
4th Floor Central
14th Str. and Independence Ave.
Washington, D.C. 20090-6090
Phone: (202) 447-7754

Fish and Wildlife Coordination Act

Office of Protected Resources
National Marine Fisheries Service
National Oceanic and Atmospheric Administration 1335 East-West Highway
Silver Spring, MD 20910
Phone: (301) 427-2332

Division of Habitat Conservation
U.S. Fish and Wiidlife Service
400 Arlington Square
4401 N. Fairfax Drive
Arlington, VA 22203
Phone: (703) 358-2183

Wilderness Act

U.S. Fish and Wildlife Service
Assistant Director
Refuges and Wildlife
1849 C Street N.W.
Washington, D.C. 20240
Phone (703) 358-2043

Ranger Activities Division
National Park ServiceDepartment of Interior
1849 C Street N.W.
Washlngton, D.C. 20240
Phone: (202) 208-4874

Recreation, Cultural Resources and Wilderness Management
Forest Service
14th Str. and Independence Ave.
Auditor's Building, 4th Floor Central
Washington, D.C. 20090-6090
Phone: (202)447-7754

Wilderness Resources Branch
Bureau of Land Management
l849 C Street, N.W.
Washington, DC 20420
Phone: (202) 208-4819

Coastal Zone Management Act

Office of Oceans and Coastal Resources Management
National Oceanic ant Atmospheric Adminstration
1825 Connecticut Avenue
Washington, D.C. 20235
Phone: (202) 673-5158

Coastal Barriers Resources Act

Division of Habitat Conservation
Special Projects Branch
U.S. Fish and Wildlife Service

400 Arlington Square
4401 N Fairfax Drive
Arlington, VA 22203
Phone: (703) 358-2183

Farmland Protection Policy Act

Soil Conservation Service
Conservation Planning Division
P.O. Box 2890
Washington, DC 20013
Phone: (202) 382-1853

EPA's Policy to Protect Environmentally Significant Agricuitural Lands

Environmental Regulatory Analysis Team
Special Prograrns and Analysis Division
Office of Federal Activities, A-104
U.S. EPA
401 M Street S.W.
Washington, D.C. 20460
Phone: (202) 382-5910

Executive Order 11990 -- Protection of Wetlands

Office of Wetlands Protection, A-104F
U.S. EPA
401 M Street S.W.
Washington, D.C. 20460
Phone: (202) 475-7791

Council on Enviromnental Quality
722 Jackson Place, N.W.
Washington, D.C. 20503
Phone: (202) 395-5080

Executive Order 11988 -- Floodplain Management

Federal Insurance Administration (Consultation Agency)
Federal Emergency Management Agency
500 C Street S.W
Washington, D.C. 20472
Phone: (202) 646-2717

State Historic Preservation Officers

For names and addresses of State Historic Preservation Officers (SHPOs) contact:

National Conference of State Historic Preservation Officers

Suite 332, Hall of the States
444 North Capitol Street, N.W.
Washington, D.C. 20001-1512
Phone: (204) 624-5465

United States
Environmental Protection
Agency

Federal Activities
(2251A)

April 1998

EPA

Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 20 1998

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Dear Citizen Concerned with Environmental Justice:

Thank you for your comments and input during development of the EPA/NEPA Environmental Justice Guidance. Your assistance was essential in our efforts to produce this document.

This guidance is designed to assist EPA staff responsible for developing compliance documentation, including Environmental Impact Statements and Environmental Assessments, with incorporating environmental justice issues into EPA's NEPA compliance process. It defines common environmental justice terms, illustrates the relevance of environmental justice in environmental analyses, presents methods for communication with the affected population throughout the NEPA process, and introduces environmental justice as a primary consideration in the NEPA process.

We are pleased to provide this final guidance to you and hope that you find it useful and responsive to your comments. We believe it adheres to the spirit of Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."

Sincerely,

Richard E. Sanderson
Director,
Office of Federal Activities

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GUIDANCE
FOR
INCORPORATING ENVIRONMENTAL JUSTICE CONCERNS
IN
EPA'S NEPA COMPLIANCE ANALYSES

April 1998

U.S. Environmental Protection Agency
Office of Federal Activities
401 M Street S.W.
Washington, D.C. 20460

DISCLAIMER AND ACKNOWLEDGMENTS

The mention of company or product names is not to be considered an endorsement by the U.S. Government or by the Environmental Protection Agency. With the technical assistance of Science Applications International Corporation (SAIC), this document was prepared in partial fulfillment of EPA Contract 68-WE-0026, Work Assignment 72-IV.

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This guidance is intended to improve the internal management of EPA with respect to environmental justice under NEPA. It will not be deemed to create any right, benefit or trust obligation either substantive or procedural, enforceable by any person, or entity in any court against the agency, its officers, or any other person. Compliance with this guidance will not be justiciable in any proceeding for judicial review of agency action.

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1.0 PURPOSE

On February 11, 1994, President Clinton issued Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." This Executive Order is designed to focus the attention of federal agencies on the human health and environmental conditions in minority communities and low-income communities. It requires federal agencies to adopt strategies to address environmental justice concerns within the context of agency operations. In an accompanying Presidential memorandum, the President emphasizes existing laws, including the National Environmental Policy Act (NEPA) should provide opportunities for federal agencies to address environmental hazards in minority communities and low-income communities. In April of 1995, the U.S. Environmental Protection Agency (EPA) released the document titled "Environmental Justice Strategy: Executive Order 12898." The document defines the approaches by which EPA will ensure that disproportionately high and adverse human health or environmental effects on minority communities and low-income communities are identified and addressed. It establishes Agency-wide goals for American Indian, Alaska Native, and other indigenous peoples (e.g., Native Hawaiian). It also establishes Agency-wide goals for environmental protection, and lists actions the EPA would take to incorporate environmental justice into its mission.

In August 1997, the EPA Office of Environmental Justice released the "Environmental Justice Implementation Plan." The Implementation Plan supplements the EPA environmental justice strategy. It provides estimated time frames for undertaking revisions, identifying the lead agents and determining the measures of success for each action item. Several EPA offices are developing more specific plans and guidance to implement Executive Order 12898 and this Agency-wide strategy.

This document serves as a guidance to incorporate environmental justice goals into EPA's preparation of environmental impact statements (EISs) and environmental assessments (EAs) under NEPA. The National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.) serves as the Nation's basic environmental protection charter. A primary purpose of NEPA is to ensure that federal agencies consider the environmental consequences of their actions and decisions as they conduct their respective missions. For "major Federal actions significantly affecting the quality of the human environment," the federal agency must prepare a detailed environmental impact statement (EIS) that assesses the proposed action and all reasonable alternatives. EISs are required to be broad in scope, addressing the full range of potential effects of the proposed action on human health and the environment. Regulations established by both the Council on Environmental Quality (CEQ) and EPA require that socioeconomic impacts associated with significant physical environmental impacts be addressed in the EIS.

Environmental assessments have also become very important components of the NEPA process. Originally intended to serve as a mechanism for determining whether an agency's action was significant, thereby meriting an EIS, EAs are important analyses on their own. As a matter of policy, EAs completed by EPA regularly address socioeconomic effects associated with environmental impacts of Agency actions.

The purpose of this guidance is to assist EPA staff responsible for developing EPA NEPA compliance documentation, including EISs and EAs, in addressing a specific concern -- that of environmental justice.

Because analyzing and addressing environmental justice may assist in determining the distributional effects of environmental impacts on certain populations, it is entirely consistent with the NEPA process. This guidance is intended to:

- heighten awareness of EPA staff in addressing environmental justice issues within NEPA analyses and considering the full potential for disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;
- present basic procedures for identifying and describing junctures in the NEPA process where environmental justice issues may be encountered;
- present procedures for addressing disproportionately high and adverse effects to evaluate alternative actions, and;
- present methods for communicating with the affected population throughout the NEPA process.

As seen throughout this guidance document, environmental justice issues can be and should be analyzed and addressed using many of the same tools currently intrinsic to the NEPA process.

1.1 BACKGROUND

1.1.1 What is Environmental Justice?

Environmental Justice has been defined by a variety of organizations interested in the topic. EPA's Office of Environmental Justice offers the following definition:

> *"The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies."*

The goal of this "fair treatment" is not to shift risks among populations, but to identify potential disproportionately high and adverse effects and identify alternatives that may mitigate these impacts.

1.1.2 Executive Order 12898

Executive Order 12898 and its accompanying memorandum have the primary purpose of ensuring that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of

its programs, policies, and activities on minority populations and low-income populations ..."[1] The Executive Order also explicitly called for the application of equal consideration for Native American programs. To meet these goals, the Order specified that each agency develop an agency-wide environmental justice strategy.

The Presidential Memorandum that accompanied the Executive Order calls for a variety of actions. Four specific actions were directed at NEPA-related activities, including:

1. Each federal agency must analyze environmental effects, including human health, economic, and social effects, of federal actions, including effects on minority communities and low-income communities, when such analysis is required by NEPA.

2. Mitigation measures outlined or analyzed in EAs, EISs, or Records of Decision (RODs), whenever feasible, should address significant and adverse environmental effects of proposed federal actions on minority communities and low-income communities.

3. Each federal agency must provide opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving accessibility of public meetings, official documents, and notices to affected communities.

4. In reviewing other agencies' proposed actions under Section 309 of the Clean Air Act, EPA must ensure that the agencies have fully analyzed environmental effects on minority communities and low-income communities, including human health, social, and economic effects.

As noted earlier, the purpose of this guidance is to assist EPA personnel in identifying and evaluating disproportionately high and adverse human health or environmental effects in minority communities and low-income communities within the context of NEPA documents prepared by EPA for actions which EPA complies with the procedural requirements of NEPA (*e.g.*, research and development activities, facilities construction, wastewater treatment construction grants, EPA-issued National Pollutant Discharge Elimination System (NPDES) permits for new sources, and programs under the EPA Voluntary NEPA Compliance Policy), including instances where EPA satisfies its NEPA compliance obligation as a cooperating agency. It is also meant to improve the affected communities' access to the NEPA process.

1.2 PRINCIPLES/PHILOSOPHY OF THIS GUIDANCE

This guidance highlights important ways in which EPA-prepared NEPA documentation may help to identify and address EJ concerns. The rationale and associated implications of the guidance will be described in the remainder of this document. This section provides a summary listing of the major implications.

[1] Throughout this guidance, the term "disproportionately high and adverse effects"is used interchangeably with the longer phrase "disproportionately high and adverse human health or environmental effects on minority populations and low-income populations." This is done purely for editorial ease.

- EPA officials should be vigilant in identifying where EPA actions may have disproportionately high and adverse human health or environmental effects on minority and/or low-income communities.

- Identification should occur as early as possible, preferably during any initial screening exercise. The screening exercise should identify the presence of minority or low-income communities and whether such communities are likely to experience adverse environmental or human health effects as a result of proposed EPA actions.

- The sensitivity to environmental justice concerns should sharpen the focus of the analysis. While the analytical tools to be used are similar, the analysis should focus both on the overall affected area and population and on smaller areas and/or communities within the affected area.

- It is desirable that EPA NEPA analysts tasked with identifying and addressing environmental justice issues work as a team. This team should be comprised of an interdisciplinary staff that includes individuals familiar with environmental justice issues, public participation mechanisms and outreach strategies, Native American concerns and issues and who are experienced in the risk assessment process. Additionally, the team should consult with EPA's Regional Environmental Justice coordinators (refer to Appendix A), who are valuable resources in identifying local community groups among other functions.

- Where proposed actions may affect tribal lands or resources (e.g., treaty-protected resources[2], cultural resources and/or sacred sites[3]) EPA will request that the affected Indian Tribe[4] seek to participate as a cooperating agency (40 CFR 1508.5). Where differences occur regarding the preferred alternative or mitigation measures that will affect tribal lands or resources, the affected Indian Tribe may request that a dispute resolution process be initiated to resolve the conflict between the tribe and the Agency.

- Environmental justice concerns may lead to more focused analyses, identifying significant effects that may otherwise have been diluted by examination of a larger population or area. Environmental justice concerns should always trigger the serious evaluation of alternatives as well as mitigation options.

---

[2] The term 'treaty-protected resources,' as it is used in the guidance, includes those resources that are protected by treaty, statute and/or executive order.

[3] On May 24, 1996, the President issued Executive Order 13007 on Indian Sacred Sites to 1) accommodate access to and ceremonial use of Indian sacred sites, and; 2) avoid adversely affecting the physical integrity of such sacred sites.

[4] For consistency throughout the document, the guidance will use the term "Indian Tribe" when referring to federally recognized tribes and "indigenous population" or "community" when generally referring to Native American, American Indian, Alaska Native, and/or Native Hawaiian peoples. Under environmental justice, the Agency's policy is to interact with both the tribal government on a government-to-government basis, as well as with any affected or interested indigenous person(s) as public stakeholders.

- Identifying the "affected community" is particularly important. The effects of the proposed action will often vary depending on the distance of the affected community from the action and the type of effect created by the action (*e.g.,* airborne or waterborne pollution, increased traffic, etc.). Effects on the community should be discussed in terms of reasonable increments from the site of the action.

- Community involvement is particularly important in cases involving potential environmental justice issues. Early and sustained communications with the affected community throughout the NEPA process is an essential component of environmental justice.

- For meaningful community involvement to be achieved in circumstances where environmental justice is an issue, technical assistance supplied by EPA should be available to the community to assist in their full participation (e.g., interpretation of scientific documents, development of alternatives or mitigation measures).

- EISs and RODs, and EAs and FONSIs (Finding of No Significant Impact) should document the analyses used to identify the presence or absence of disproportionately high and adverse effects and present the results of those analyses. The ROD and the FONSI should document the conclusion of these analyses (i.e., whether the action will or will not have a disproportionately high and adverse effect on minority and/or low-income communities) and describe any mitigation that will be undertaken to avoid or minimize such effects.

1.2.1 EPA Actions Requiring NEPA Compliance

EPA is required to comply with NEPA for its research and development activities, facilities construction, wastewater treatment construction grants under Title II of the Clean Water Act and under certain Appropriations Acts, and EPA-issued National Pollutant Discharge Elimination System (NPDES) permits for new sources subject to new source performance standards. The Agency is exempted by statute for actions taken under the Clean Air Act and for most Clean Water Act programs. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), requires EPA to comply only with the substantive, not the procedural, requirements of other environmental laws for on-site responses. In the case of other EPA programs, the courts have found EPA procedures to be "functionally equivalent" to the NEPA process and therefore these EPA programs are exempt from NEPA procedural requirements. Also, EPA voluntarily prepares EISs for a number of actions pursuant to a long-standing statement of Agency policy.

Exhibit 1 identifies EPA's major program areas and indicates which actions are subject to NEPA, which Congress has exempted from NEPA, which have been found to be functionally equivalent to NEPA, and which receive NEPA-like analyses. This guidance is applicable solely to EPA programs and actions subject to NEPA and not those identified as "functionally equivalent" in Exhibit 1. However, this should not preclude its use as reference where "functionally equivalent" programs or actions processes may benefit from the information contained therein.

Exhibit 1. Summary of EPA Program NEPA Requirements and Equivalent or Voluntary Activities

EPA Program Areas	NEPA Requirement	Functional NEPA Equivalent (FE)	Voluntary EIS Policy
Air and Radiation Programs			
Clean Air Act Standard Setting Programs	**Exempt** per ESECA §7(c)(1)	Classification activities are functional equivalent	NSPS and NESHAP
EPA Approvals Under the Clean Air Act	**Exempt** per ESECA §7(c)(1)	SIP/TIP activities are functional equivalent	Not applicable
Atomic Energy Program	**Exempt** on basis of Functional Equivalency	Analyses, documentation, and review procedures	Radiation program.
Clean Water Act Programs			
State/Tribal Water Quality Standards Approvals	**Exempt** per CWA §511(c)(1)	Attainability analysis are functional equivalent	N/A
Nonpoint Source and Clean Lakes Grants	**Exempt** per CWA §511(c)(1)	Not identifiable	N/A
Water Quality Planning	**Exempt** per CWA §511(c)(1)	TMDL process is functional equivalent	N/A
National Water Quality Criteria	**Exempt** per CWA §511(c)(1)	Modification Procedures and Criteria Methodologies are functional equivalent	N/A
Section 404 Wetland Permit Reviews	**Exempt** per CWA §511(c)(1)	Section 404 process is functional equivalent	N/A
Section 404 State/Tribal Program Approval	**Exempt** per CWA §511(c)(1)	Delegated 404 process is functional equivalent	N/A
Municipal Wastewater Treatment Construction Grants (CWA Title II) [Phased out and superseded by State Revolving Loan Fund]	**Required** per CWA §511(c)(1); CEQ regulations, 40 CFR Parts 1500-1508; and 40 CFR Part 6, Subpart E	N/A	N/A
NPDES Permit Program	**Required** per CWA §511(c)(1) for new source NPDES permits.	See NEPA requirement	N/A

Exhibit 1. Summary of EPA Program NEPA Requirements and Equivalent or Voluntary Activities (continued)

EPA Program Areas	NEPA Requirement	Functional NEPA Equivalent	Voluntary EIS Policy
Clean Water Act Programs (continued)			
State Revolving Loan Fund	**NEPA-like review by states required for all** CWA §212 projects receiving federal funds. 40 CFR 35.3140.	N/A	N/A
National Estuary Program	**Exempt** per CWA §511(c)(1)	Environmental review for estuary designation and CCMP development are functional equivalent	N/A
Ocean Discharge Program	**Generally exempt** per CWA §511(c)(1)	§§301(h) and 403 processes are functional equivalent	N/A
Ocean Dumping Program	**Exempt** on basis of functional equivalency	MPRSA activities are functional equivalent	Ocean dumping site designations and revisions to ocean dumping criteria.
Effluent Guidelines Program	**Exempt** per CWA §511(c)(1)	Effluent Guidelines rule-making package is functional equivalent	N/A
Safe Drinking Water Act			
Drinking Water and Underground Injection Control (UIC) Regulations	SDWA procedures are functional equivalent	Regulation development process is functional equivalent	N/A
EPA and Authorized State Permitting - UIC Permits	Permitting process is functional equivalent	The UIC permitting process is functional equivalent.	N/A

(continued)

Exhibit 1. Summary of EPA Program NEPA Requirements and Equivalent or Voluntary Activities (continued)

EPA Program Areas	NEPA Requirement	Functional NEPA Equivalent	Voluntary EIS Policy
Safe Drinking Water Act (continued)			
State and Tribal Program Approvals: Public Water Supply Systems and UIC Primacy	SDWA procedures are functional equivalent	UIC permitting process and PWSS regulation implementation stage is functional equivalent	N/A
Pesticides and Toxic Substances			
Pesticides Regulation		Significant portions of pesticide program are functional equivalent	N/A
Regulation of Toxic Substances		Regulatory rule-making process is functional equivalent	N/A
PCB Permits		PCB permitting program is functional equivalent	N/A
New Chemicals Program		Issuance of §5(e) orders is functional equivalent	N/A
Resource Conservation and Recovery Act Programs (RCRA)			
Standard Setting under RCRA		Standard Setting process is functional equivalent	N/A
EPA Permits for Hazardous Waste Facilities Under RCRA		Permitting process is functional equivalent (see *State of Alabama v. EPA*)	N/A

Exhibit 1. Summary of EPA Program NEPA Requirements and Equivalent or Voluntary Activities (continued)

EPA Program Areas	NEPA Requirement	Functional NEPA Equivalent	Voluntary EIS Policy
CERCLA/SARA (Superfund)			
CERCLA/SARA (Superfund) (CERCLA 1980 as amended by SARA 1986)	**Exempt** per CERCLA requirement that EPA only comply with the substantive, requirements of other environmental laws for on-site responses (see *State of Ohio v. EPA*).	Remedial Investigation/ Feasibility Study (RI/FS)	N/A
EPA Research and Development Activities			
EPA Research and Development Activities	**Subject** per CEQ regulations and 40 CFR 6 Subpart G.	See NEPA requirement	N/A
EPA Facilities			
EPA Facilities Construction	**Subject** per CEQ regulations (40 CFR 1500-1508) and 40 CFR Part 6.	See NEPA requirement	N/A
Other EPA Programs			
International Activities	**Governed by** E.O. 12114, Environmental Effects Abroad of Major Federal Actions (as implemented at 40 CFR Part 6, Subpart J) and, in some cases, NEPA.	See NEPA requirement	US AID-funded projects.
Appropriations Acts may also result in NEPA requirements.			

Source: Adapted from "The National Environmental Policy Act and Environmental Protection Agency Programs," prepared by the EPA Workgroup on NEPA, October 12, 1993.

1.2.2 EPA Review of Proposed Actions Under Clean Air Act §309

As a result of §309 of the Clean Air Act, EPA has a key role in the overall implementation of NEPA. Specifically, §309 mandates that EPA "review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any federal department or agency, (2) newly authorized federal projects for construction and any major federal agency action (other than a project for construction) to which Section 4332(2)(C) of this title applies [subject to Section 102(2)(C) of NEPA], and (3) proposed regulations published by any department or agency of the Federal government. Such written comment shall be made public at the conclusion of any such review" (42 U.S.C. §7609(a)).

In conducting §309 reviews, EPA is further directed by the Presidential Memorandum that accompanied Executive Order 12898 to ensure that agencies fully analyze environmental effects of their proposed actions on minority and low-income communities, including human health, social, and economic effects. As a result of both §309 and the Presidential Memorandum, EPA is able to assist other federal agencies in evaluating proposed actions that are subject to NEPA by identifying possible environmental justice concerns that may result from such actions and by offering alternative solutions and mitigation measures for unavoidable impacts.

Although mention is made here of EPA's responsibilities under §309, this document is not intended to provide guidance for §309 reviews. EPA's §309 guidance should be used for that purpose. This guidance supplements the Council on Environmental Quality's *"Environmental Justice Guidance Under the National Environmental Policy Act"* and is tailored to EPA's conduct in actions for which EPA must comply with NEPA and where EPA has jurisdiction as a cooperating agency. It does not provide guidance related to other federal agencies' actions or for EPA's review of other federal agencies' EISs.

1.3 ORGANIZATION OF THIS GUIDANCE

The remainder of this guidance is organized as follows: **Chapter 2** describes key environmental justice terms and factors and the application of the key definitions and factors in the context of standard NEPA analyses; **Chapter 3** describes key steps in the NEPA process, including both EISs and EAs, where analyses of environmental justice concerns should be incorporated; **Chapter 4** discusses public participation approaches of direct relevance to minority and/or low-income communities; and **Chapter 5** provides a brief overview of methodological tools that can be used to identify and assess potential disproportionately high and adverse effects.

2.0 KEY TERMS AND FACTORS FOR CONSIDERATION IN EVALUATING ENVIRONMENTAL JUSTICE CONCERNS

The purpose of this section is to introduce key terms and concepts to heighten the EPA analyst's awareness of how disproportionately high and adverse effects may be identified. The discussion is based on guidance prepared by a task force of the Interagency Working Group on Environmental Justice (IWG). The IWG was created by Executive Order 12898 and is comprised of the heads (or representatives) of 17 departments and agencies.

The identification and analysis of disproportionately high and adverse human health or environmental effects on minority communities and low-income communities should occur throughout the NEPA process, from the initial phases of the screening analysis through the consideration and communication of all alternatives and associated mitigation techniques.

In conducting an EPA NEPA analysis that is sensitive to environmental justice concerns, the inter-disciplinary team of EPA NEPA analysts should have an understanding of key terms central to environmental justice and should understand what factors need to be considered to ensure that all relevant concerns are identified and evaluated in a direct and explicit manner. The team should include experts familiar with available and appropriate public participation procedures and strategies and, where such concerns may arise, individuals familiar with the unique concerns of Native American Tribes and populations. Developing a keen sensitivity to potential environmental justice concerns and modifying the scope of the analysis can have a dramatic impact on whether environmental justice concerns are identified and addressed adequately and appropriately. Therefore, the EPA NEPA analyst must be sensitive to what issues and factors to look for to avoid the possibility that disproportionately high and adverse effects may be inadvertently missed, incorrectly characterized, or inappropriately minimized. So as to avoid potential oversights of environmental justice concerns, the EPA NEPA analyst should work closely with the affected community in drafting an EIS or EA, and where the community's concerns warrant, EPA should formalize this interaction (e.g., community advisory boards).

Appendix A includes the Council on Environmental Quality's (CEQ's) "Environmental Justice Guidance Under the National Environmental Policy Act" which incorporates the IWG-developed guidance on key terms in Executive Order 12898 that are pertinent to environmental justice analyses. That guidance was developed to assist federal agencies in conducting analyses of disproportionately high and adverse effects of their programs, policies, and activities. The guidance is not static but provides for informed judgment in every case; this means that EPA NEPA analysts will need to make careful decisions to ensure that environmental justice concerns are identified and addressed.

The remainder of this chapter is organized into two sections. The first section addresses terms that should be considered in identifying the existence of minority communities or low-income communities. The second section identifies factors that often are associated with disproportionately high and adverse effects, including cumulative and indirect impacts, on minority or low-income members of the larger community. Methodological approaches for conducting analyses appear in Chapter 5.

2.1 DEFINING MINORITY AND/OR LOW-INCOME POPULATION

The purpose of this section is to assist the analyst in determining whether there is a minority community or low-income community that may be addressed in the scope of EPA's NEPA analysis.

2.1.1 Minority and Minority Population

The first part of the guidance on minority population provided by the IWG provides a numeric measure: over 50 percent of the affected area. The remainder of the guidance calls for the analyst to use his or her best judgment in evaluating the potential for EJ concerns. It is important that the EPA NEPA analyst consider both the circumstances of any groups residing within the affected area, as well as the percentage of the affected community that is composed of minority peoples.

Within its guidance, the IWG explains that a minority population may be present if the minority population percentage of the affected area is "meaningfully greater" than the minority population percentage in the general population or other "appropriate unit of geographic analysis." The term "affected area," although not defined by the guidance, should be interpreted as that area which the proposed project will or may have an effect on. The IWG guidance also advises agencies not to "artificially dilute or inflate" the affected minority population when selecting the appropriate unit of geographic analysis. Clearly, a key element here is the selection of the appropriate level of geographic analysis; that is, selecting a comparison population to which the population in the affected area will be compared to identify if there are "meaningfully greater" percentages. The selection of the appropriate unit of geographic analysis may be a governing body's jurisdiction, a neighborhood census tract, or other similar unit. This is done to prevent artificial dilution or inflation of the affected minority population. In an EPA NEPA analyses, the analyst should use the potentially affected population under various alternatives as a benchmark for comparison wherever possible. In addition, a simple demographic comparison to the next larger geographic area or political jurisdiction should be presented to place population characteristics in context and allow the analyst to judge whether alternatives adequately distinguish among populations. For example, all preliminary locations for a project could fall in minority neighborhoods, therefore, a comparison among them would not reveal any population differences. Consequently, an additional alternative would be necessary to allow any disproportionately high and adverse effects to be identified.

The fact that census data can only be disaggregated to certain prescribed levels (*e.g.*, census tracts, census blocks) suggests that pockets of minority or low-income communities, including those that may be experiencing disproportionately high and adverse effects, may be missed in a traditional census tract-based analysis. Additional caution is called for in using census data due to the possibility of distortion of population breakdowns, particularly in areas of dense Hispanic or Native American populations. In addition to identifying the proportion of the population of individual census tracts that are composed of minority individuals, analysts should attempt to identify whether high concentration "pockets" of minority populations are evidenced in specific geographic areas.

The IWG guidance also advises agencies to consider both groups of individuals living in geographic proximity to one another, or a geographically dispersed/transient set of individuals, where either type of group "experiences common conditions" of environmental exposure or effect within the guidance provided for minority population. This can result from cultural practices, educational backgrounds, or the median age of community residents (*e.g.*, disproportionate numbers of elderly residents, children, or women of child bearing age may be more susceptible to environmental risks).

A factor that should be considered in assessing the presence of a minority community is that a minority group comprising a relatively small percentage of the total population surrounding the project may experience a disproportionately high and adverse effect. This can result due to the group's use of, or dependence on, potentially affected natural resources, or due to the group's daily or cumulative exposure to environmental pollutants as a result of their close proximity to the source. The data may show that a distinct minority population may be below the thresholds defined in the IWG key terms guidance on minority population. However, as a result of particular cultural practices, that population may experience disproportionately high and adverse effects. For example, the construction of a new treatment plant that will discharge to a river or stream used by subsistence anglers may affect that portion of the total population. Also, potential effects to on- or off-reservation tribal resources (e.g., treaty-protected resources, cultural resources and/or sacred sites) may disproportionately affect the local Native American community and implicate the federal trust responsibility to tribes.[5] The EPA NEPA analyst should look at each situation on a case-by-case basis to determine if there may be disproportionately high and adverse effects on a minority population.

The EPA NEPA analyst should make every effort to identify the presence of distinct minority communities residing both within, and in close proximity to, the proposed project, and to identify those minority groups which utilize or are dependent upon natural resources that could be potentially affected by the proposed action. Non-traditional data gathering techniques, including outreach to community-based organizations and tribal governments early in the screening process, may be the best approach for

[5]A distinction must be made between Native American communities that live within their own governmental jurisdictions and those that do not. The CEQ regulations recognize the government-to-government relationship between the federal government and tribal governments, and encourage federal agencies to involve tribal governments in the NEPA process when a proposed project may affect a tribe or tribal lands. See sections 1501.2 [Apply NEPA Early In The Process]; 1501.7(a)(1) [Scoping]; 1502.16 [Environmental Consequences]; 1503.1(a)(2)(ii) [Inviting Comments]; 1506.6(b)(3)(ii) [Public Involvement]; and 1508.5 [Cooperating Agency]. Native American programs include those Federal programs which are to be guided, as appropriate, by the government-to-government relationship, the Federal trust responsibility to federally recognized Indian Tribes, and the role of tribes as governments within the Federal system.

NEPA Compliance Coordinators should consult with the regional Indian Program Coordinator and should request that the Indian Tribes seek participation as a cooperating agency when a tribal government, land, resources, or interest may be affected by a project. While such cases may or may not trigger an environmental justice review, EPA must act consistent with the federal government's trust responsibility to federally recognized Indian Tribes. Each case should be decided individually; if questions arise please consult with the American Indian Environmental Office and the Office of Federal Activities.

identifying distinct minority communities and/or tribal interests within the study area. See Chapter 4 for a discussion of public outreach techniques.

2.1.2 Low-Income Population

This guidance recommends that pursuant to the CEQ guidance, low-income populations in an affected area (that area in which the proposed project will or may have an effect) should be identified with the annual statistical poverty thresholds from the Bureau of the Census' Current Population Reports, Series P-60 on Income and Poverty. In conjunction with census data, the EPA NEPA analyst should also consider state and regional low-income and poverty definitions as appropriate. In identifying low-income populations, agencies may consider as a community a group of individuals living in geographic proximity to one another or set of individuals (such as migrant workers or Native Americans) where either type of group experiences common conditions of environmental exposure.

As with the identification of minority communities, the level of aggregation of available data is an issue of concern when seeking to determine whether one or more low-income communities may be affected by a project. Also, as with minority communities, "pockets" of low-income individuals may be masked by aggregated data. The level of aggregation of data, as well as how current the available data are, should be taken into account by the EPA NEPA analyst.

Determining the existence and location of low-income and minority communities within the reaches of a projects' influence can be a difficult task. Several means of gathering this information are available; however, it is up to the EPA NEPA analyst to ascertain which techniques will best suit the project at hand. Further, the EPA NEPA analyst must be flexible and open to consider additional avenues which may be unique to select projects or geographic areas. The use of national decennial census data in depicting low-income/poverty and minority statistics is one of the most common methods used. While the census provides valuable information for the EPA NEPA analyst, there are often many gaps associated with the information. Therefore, it may be necessary for the EPA NEPA analyst to validate this information with the use of additional sources. The additional methods available in locating the populations of interest include contacting local resources, government agencies, commercial database firms, and the use of locational/distributional tools. (Please see Chapter 5 regarding the use of locational/distributional tools.)

Local resources should be sought for local and up-to-date knowledge of a given area and its inhabitants as well as a lead to other sources of information. Examples of local resources include: community and public outreach groups, community leaders, and state universities (i.e., economic departments).

State government agencies such as the Department of Economic Development, Planning and Development Department, State Minority Business Office, and State Enterprise Zone Offices are also valuable resources to contact. For example, if an area is designated as an "enterprise zone", unique economic and demographic data may exist in that particular area, access to which could enhance the EPA NEPA analyst's ability to assess the economic situation of a given area.

Local resources and state governments can both be contacted for information regarding factors that are characteristic of low-income communities and which may assist in identifying these communities. These factors may include: limited access to health care, an inadequate, overburdened or aged infrastructure, and particular dependence of the community, or components of the community, on subsistence living (*e.g.*, subsistence fishing, hunting, gathering or farming). In some cases, these factors can be evaluated directly from traditional information sources. For example, the age and condition of water treatment facilities and presence of lead service lines should be available from municipal utilities. Outreach to community groups may be the most reliable data collection method in other cases, such as those where the degree to which the cultural and dietary habits of low-income or minority families and their economic condition dictate subsistence living. Consequently, where the community median household income may exceed that of the poverty line, conditions generally associated with low-income communities may be present, resulting in cumulative effects that may meet the threshold for environmental justice concerns.

Commercial database firms are often capable of tailoring census data information of human communities and income/poverty level to specified areas of geographic detail. For example, by manipulating specified census bureau tract data with customized buffer areas, statistics can be generated to accommodate current growth estimates from local government agencies or planning departments. Locational/distributional tools are also capable of determining the locations of certain human communities. Examples include maps, aerial photographs, and geographical information systems (GIS). Further explanations of these tools are presented in Chapter 5.

2.2 CONSIDERING EFFECTS

This section discusses the term "disproportionately high and adverse human health or environmental effects" and provides an overview of some factors that should be considered in assessing the presence of such effects. It also addresses how the concept of environmental justice plays in conducting cumulative and indirect impact analyses in support of NEPA.

Disproportionately High and Adverse Effects

Disproportionately high and adverse effects encompass both human health and environmental effects. The IWG's guidance suggests the need for the analyst to exercise informed judgments as to what constitutes "disproportionate" as well as "high and adverse." This, in turn, suggests some level of comparative analysis with the conditions faced by an appropriate comparison population. As noted in Section 2.1.1, alternatives need to be drawn so that the potentially affected populations under various alternatives are distinctive and allow disproportionality to be assessed.

Cumulative and Indirect Effects

EPA NEPA analyses must consider the cumulative effects on a community by addressing the full range of consequences of a proposed action as well as other environmental stresses which may be affecting the community. Cumulative impacts are defined in 40 CFR 1508.7, as "the incremental impact(s) of the action when added to other past, present, and reasonably foreseeable future actions...." For example, when considering a project that will have a permitted discharge to the surrounding surface waters, it may be of concern to populations who rely on subsistence living patterns (*i.e.,* fishing) and already receive public water through lead service lines; the cumulative effects associated with both the discharge and the lead service lines must be taken into account. In such cases, mitigation measures need to be developed and analyzed to reduce an adverse cumulative effect. In addition, minority populations and low-income populations are often located in areas or environments that may already suffer from prior degradation. EPA analysts need to place special emphasis on other sources of environmental stress within the region, including those that have historically existed, those that currently exist, and those that are projected for the future. Common variables of concern may include:

- Number/concentration of point and nonpoint release sources, including both permitted and non-permitted.
- Presence of listed or highly ranked toxic pollutants with high exposure potential (*e.g.,* presence of toxic pollutants included within EPA's 33/50 program).
- Multiple exposure sources and/or paths for the same pollutant.
- Historical exposure sources and/or pathways.

- Potential for aggravated susceptibility due to existing air pollution (in urban areas), lead poisoning, existence of abandoned toxic sites.

- Frequency of impacts.

Source data, including historical, existing, and projected sources, yielding projected effects in concert with that from the resulting proposed action should be analyzed with respect to minority or low-income receptors. As noted above, these include cultural, health and occupation-related variables such as:

- Health data reflective of the community (*e.g.,* abnormal cancer rates, infant and childhood mortality, low birth weight rate, blood-lead levels).

- Occupational exposures to environmental stresses which may exceed those experienced by the general population.

- Diets, or differential patterns of consumption of natural resources[6], which may suggest increased exposures to environmental pathways presenting potential health risk.

The EPA NEPA analyst may have difficulty in determining the point at which stress levels become too great, exceeding risk thresholds. This lack of a definitive threshold should encourage the EPA NEPA analyst to compare the cumulative effects of multiple actions with appropriate community, regional, state, or national goals, standards, etc. to determine whether the total effect is significant.

With respect to natural resources, analysts should look to the community's dependence on natural resources for its economic base (*e.g.,* tourism and cash crops) as well as the cultural values that the community and/or Indian Tribe may place on a natural resource at risk. Further, it is essential for the EPA NEPA analyst to consider the cumulative impacts from the perspective of these specific resources or ecosystems which are vital to the communities of interest.

Several methods for determining cumulative effects are described within CEQ's January 1997 handbook entitled, "Considering Effects Under the National Environmental Policy Act." The EPA NEPA analyst may wish to consider these methods in assessing cumulative effects on low-income and/or minority communities.

In the process of determining future actions, for example, it is essential for the EPA NEPA analyst to apply judgment and experience, to go beyond the number of projects that are funded in the area, and predict which of the actions in the early planning stage have realistic potential to move forward. The EPA NEPA analyst should use the best available information from similar projects in the region and also consult with local government planning agencies which may have master development plans in the region. In addition, private land-owners and organizations may be willing to disclose their future land use plans.

Although cumulative effects analyses commonly involve assumptions and uncertainties, exhausting all applicable analyses will provide the greatest likelihood of accurately depicting the possibility of disproportionately high and adverse effects on low-income and/or minority communities. Analysts should be as resourceful as possible in addition to seeking information from traditional sources. Decisions should

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[6] The IWG key terms guidance describes differential patterns of consumption of natural resources as relating to "subsistence and differential patterns of subsistence, and means differences in rates and /or patterns of fish, water, vegetation and/or wildlife consumption among minority populations or low-income populations, as compared to the general population."

be supported by the best data currently available and/or the best data gathering techniques in conjunction with all appropriate analyses.

EISs and EAs must also address indirect impacts [40 CFR 1502.16(b), 1508.8(b) 1508.9], which are characterized as those that are caused by the action and are reasonably foreseeable, but that occur later in time and/or at a distance. Indirect effects include growth effects related to induced changes in the pattern of land use; population density and/or changes to infrastructure; or growth rates and related effects to the air, water and other natural systems, including ecosystems.

Increased urbanization may occur around a new facility due to increased employment or due to transportation system upgrades. This may result in disproportionately high and adverse effects to low-income communities due to increased air pollution, lower housing values, and reduced access to fishing/farming locations. In addition, recreational lands and water may be indirectly affected by government actions. In the case of activities potentially affecting Native Americans, potential impacts, both direct and indirect, can occur to sacred sites and/or other natural resources used for cultural purposes. For example, the loss of a sacred site, or other impacts to larger areas of religious and spiritual importance may be so absolute that religious use of the site abruptly ceases--a direct impact. However, discontinued use may result in other indirect impacts. Proposed actions may also result in business failures, and associated unemployment, erosion of tax bases, and reduced public services. These types of effects may be exacerbated for low-income communities and minority communities due to an inability to relocate, to travel long distances to find alternative means of employment, or to attract new industry or commerce.

The potential for indirect impacts to affect a community is best understood when the analytical team is thoroughly familiar with the local community. It is important that the EPA NEPA analyst gain a full understanding of potential cultural impacts to the community. This is best accomplished through direct communication using effective public participation and consultation. A discussion of public participation approaches appears in Chapter 4.

2.2.3 Environmental Exposure

Executive Order 12898 provides that environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority and low-income populations and workers who may be exposed to substantial environmental hazards. The Executive Order further states that environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

In addressing the term "environmental hazard" for the purpose of research, data collection and analysis provisions in the Executive Order, the IWGKey Terms guidance states that it is "a chemical, biological, physical or radiological agent, situation, or source that has the potential for deleterious effects to the environment and/or human health." The IWG points out that the factors that may be important in defining a *substantial*[7] environmental hazard are the likelihood, seriousness, and the magnitude of the impact. The IWG Key Terms provides guidance for "multiple environmental exposure" and "cumulative environmental exposure."

It should be noted that the factors the IWG is providing for assessing environmental hazard were not necessarily developed in the context of NEPA analyses. These factors are, however, similar to the factors used in determining "significant" physical or natural environmental effects under NEPA.

The EPA NEPA analyst should include individuals who are familiar with collecting and analyzing data that assesses the potential environmental and human health risks potentially borne by minority and low-income communities as a result of the project or activity. EPA NEPA analysts gain a better understanding of potential environmental risks to the community by directly using effective public participation and consultation techniques. An assessment of such potential risks should then be used to determine whether disproportionately high and adverse effects may be borne by minority communities or low-income communities.

2.3 SUMMARY OF FACTORS TO CONSIDER IN ENVIRONMENTAL JUSTICE ANALYSES

This section provides an overview of many of the factors that should be considered when identifying and evaluating environmental justice concerns. Given the subjective nature of some of the elements that are important to environmental justice analyses, some consideration of the *factors* or characteristics that may lead to disproportionately high and adverse effects to a community may prove to be useful when conducting such analyses. EPA's Office of Environmental Justice points out that an understanding of the underlying factors that contribute to environmental justice concerns allows for a more thorough identification of the concerns and the development of more effective mitigation measures.

In focusing the identification of environmental justice concerns, the EPA NEPA analyst may approach the analysis of environmental justice from three vantage points: 1) whether there exists a potential for disproportionate risk; 2) whether communities have been sufficiently involved in the decision-making process; and 3) whether communities currently suffer, or have historically suffered, from environmental and health risks or hazards. The factors listed in this section are provided within the context of these three approaches for identifying potential environmental justice concerns and provide the EPA NEPA analyst with a starting point in determining what factors to consider in an environmental justice assessment. However, almost every situation will have its own nuances. As such, the EPA NEPA analyst should be prepared to apply these factors flexibly to fit a specific situation, just as the IWG guidance provided above may require judgments to ensure that communities are defined in a fair manner (See Exhibit 3 for Summary of Factors).

Exhibit 2. SUMMARY OF FACTORS TO CONSIDER IN ENVIRONMENTAL JUSTICE ANALYSIS

FACTORS ASSOCIATED WITH POTENTIAL EXPOSURE TO/AND RISKS FROM ENVIRONMENTAL HAZARDS

The general factors that should be considered include DEMOGRAPHIC factors, GEOGRAPHIC factors, ECONOMIC factors, and HUMAN HEALTH and RISK factors. For each of these, specific variables for consideration are listed.

DEMOGRAPHIC FACTORS

Demographic factors are one of the key components of environmental justice. Race, ethnicity, and low-income status are some of the primary considerations of the environmental justice movement. However, numerous other demographic factors also may play vital roles in an environmental justice assessment. These include, but are not limited to:

Population Age	Older or younger populations may be more susceptible to risks, when taking into account special health concerns of the elderly and potential for greater exposure in younger populations (*e.g.*, ingestion of soil). In addition, children's immature bodily defense systems may make them more susceptible to toxic effects.
Population Density	High population density may promote a synergistic effect between industrial pollutants and typical urban pollutants (*e.g.*, ground level ozone), especially if industry is located in close proximity (5 miles or less) to high density populations. Low population density may lead the NEPA analyst to underestimate the actual environmental harm to the affected population when conducting a risk assessment.
Population Literacy	If documents are technically complex and not adequately explained communities with lower levels of education may encounter difficulty in its ability to understand or sufficiently identify and interpret risk and other factors.
Population / Economic Growth	Rapid or severe changes in population or economic growth rate may result in potential impacts to existing community or public services and infrastructure. Changes in growth rate may include: (1) an increase in low-income or minority population(s) in an area (*e.g.*, migration), (2) high birth rates, and (3) cumulative impacts due to multiple sources of population increases.

GEOGRAPHIC FACTORS

Certain communities may be at high risk from environmental hazards or exposed to substantial environmental hazards due to geographic factors that isolate them from other surrounding communities or that tend to allow pollutants to accumulate in the environment surrounding the community. Such factors include, but are not limited to:

Climate	Weather patterns (*e.g.*, prevailing winds) that may concentrate pollutants in a certain area, allow pollutants to migrate, increase certain exposure pathways (such as respiration), or cause pollutants to behave in a manner that differs from that expected under normal weather conditions.
Geomorphic Features	Mountains, hills, or other surface features, natural or human in origin, that may affect pollutant dispersal and may focus or funnel pollutants in particular directions or to particular locations.
Hydrophic Features	Presence of surface water and/or aquifers that may provide drinking water, subsistence fisheries, cultural significance and use, and recreational use.

Exhibit 2. SUMMARY OF FACTORS TO CONSIDER IN ENVIRONMENTAL JUSTICE ANALYSIS

ECONOMIC FACTORS

Economic factors can be divided into two categories: the economic condition of the individuals in the community in question, and the overall economic base of the community. The economic condition of the individuals in the population, if poor, may exacerbate risk factors and may preclude avoidance of risk factors. The economic condition of the community at large may result in situations that preclude the local government's ability to adequately protect the population or may promote the acceptance of disproportionately high and adverse effects. Such factors include, but are not limited to:

Individual Economic Conditions **Income Level / Health Care Access**	This includes such issues as whether affordable or free quality health care is available and, whether any cultural barriers exist to seeking health care. Many low-income and/or minority communities lack adequate levels and quality of health care, often due to lack of resources or lack of access to health care facilities.
Infrastructure Conditions	Consideration should be given to whether existing infrastructure provides sufficient protection from adverse impacts (*e.g.*, protection of domestic water supply, especially if the community relies on public or non-public drinking wells or surface water; adequacy of sewage facilities) and the effect that new facilities may have on the ability of existing infrastructure to be reliable and provide adequate protection. In many low-income and/or minority communities, historic allocation of resources has resulted in inadequate infrastructure development and maintenance.
Life-Support Resources	This includes subsistence living situations (*e.g.*, subsistence fishing, hunting, gathering, farming), diet, and other differential patterns of consumption of natural resources. If a community is reliant on consumption of natural resources, such as subsistence fishing, an additional exposure pathway may be associated with the community that is not relevant to the population at large. Similarly, dietary practices within a community or ethnic group, such as a diet low in certain vitamins and minerals, may increase risk factors for that group.
Distribution of Costs	Consideration of the distribution of costs to pay for environmental projects to the extent that regulations and programs are paid for by user fees on necessary goods and services (e.g., sewer and water bills, garbage services, electric bills, gasoline taxes). These have a substantial negative effect on low-income families who must pay a disproportionate fraction of their income for these goods and services, the addition of user fees for another plant or facility may add to the disparate treatment of those individuals.
Community Economic Base **Industrial**	Reliance on polluting industries for jobs and economic development. If the community is reliant on polluting industries for jobs and tax revenue, there may be reluctance to take actions that would avoid risk to health and the environment at a cost to the industry. In addition, minority or low-income communities may not enjoy other benefits in proportion to the risks or impacts they bear.
Brownfields	Communities with low revenues may be unable to finance economic rehabilitation efforts that would improve the physical environment of a community.
Natural Resources	Reliance on natural resources for economic base (*e.g.*, tourism, crops; use of resources to create salable items, such as woven baskets among Native Americans; subsistence and commercial fisheries).
Other	Other indirect effects which a low-income or minority population, due to economic disadvantage, may not be able to avoid, that will have a synergistic effect with other risk factors (*e.g.*, vehicle pollution, lead-based paint poisoning, existence of abandoned toxic sites, dilapidated housing stock).

Exhibit 2. SUMMARY OF FACTORS TO CONSIDER IN ENVIRONMENTAL JUSTICE ANALYSIS

HUMAN HEALTH AND RISK FACTORS

Evaluation of human health and risk factors relevant to environmental justice concerns may prove to be complicated when detailed technical analyses of risk factors and interaction of toxic chemicals are undertaken. However, the following include, but are not limited to, factors which allow for consideration of whether more detailed risk assessments or analyses specific to minority or low-income populations are appropriate:

Emissions	Number of point and nonpoint sources of emissions including permitted and non-permitted (violations) releases.
Toxics	Presence of or exposure to highly toxic pollutants.
Exposures	Multiple exposure sources and/or paths for the same pollutant.
Pollutants	Exposure to multiple pollutants.
Pesticides	Exposure to pesticides by workers and to the misuse of pesticides.
Locations	Exposure through multiple locations (*e.g.*, workplace, home, school, ambient).
Concentrations	Exposure to emissions from concentrated locations of the same type of industry (or industries).
Health Data	Health data for population in question (*e.g.*, abnormal levels of cancers, asthma, emphysema, birth defects, low birth weight, infant and childhood mortality blood-lead levels asbestosis). This data could indicate historical hazards and health risks which, in concert with the effects of the proposed action could cumulatively or indirectly raise environmental justice issues.
Research Gaps	Research gaps (*e.g.*, subsistence consumption, demographics dietary effects, synergistic effects of chemicals).
Data Collection	Data collection/analysis reliability and validity.

Exhibit 2. SUMMARY OF FACTORS TO CONSIDER IN ENVIRONMENTAL JUSTICE ANALYSIS

FACTORS RELATED TO CULTURAL AND ETHNIC DIFFERENCES AND COMMUNICATIONS CONCERNS

When determining whether communities have been afforded opportunity for meaningful involvement, broad factors for consideration include the following. Other considerations for public participation are discussed in Chapter 4 of the "*Guidance on Environmental Justice in EPA's NEPA Compliance Analyses.*"

Public Access	Whether community members have access to the decision-making process (*i.e.*, whether the community is fairly represented on commissions, boards, etc., and whether the community is fairly made aware of their role in the decision-making process).
Cultural Expectations	Cultural expectations and understanding of the decision-making process.
Meaningful Information	Access to meaningful and understandable information, such as clear presentation of what a facility produces, what pollutants it releases, how these are managed, and the potential risk to the population.
Job Security	Potential for fear within the community that participating in the process may jeopardize job security.
Literacy Rate	If a low literacy rate exists, consideration should be given to the clarity and accuracy of presentations to the community and whether non-written materials, such as videos, have been considered for use in presentations.
Translations	Consideration of non-English translations, both written and oral during community presentations or public meetings.
Community Representation	Consideration should be given to whether representatives were selected by community decree or by outside sources without proper consultation with the community. Motives of one person
Community Identification	Whether identification of minority and/or low-income communities took into account all potentially-impacted communities. If communities were geographically defined rather than culturally defined, certain communities that are impacted, given other cultural factors, may be unfairly excluded.
Indigenous Populations	In addition, when projects or activities may affect tribal lands or resources or Native American communities, the NEPA analytical team should include one or more analysts familiar with Native American issues and culture, and the Agency should formally request the affected Indian Tribe(s) to seek participation as a cooperating agency. Specific factors to consider in such situations include, but are not limited to: • The trust responsibility to and treaties, statutes and executive orders with federally-recognized Indian Tribes. • Effect of insufficient financial and technical resources for the development and implementation of tribal environmental programs. • Impacts to treaty-protected resources, cultural use of natural resources, and/or sacred sites. • Government-to-government relationship with affected Indian Tribes as well as meaningful participation of the affected tribal community. • A dispute resolution process may be appropriate to ensure that resources are not diminished. • Health and socioeconomic effects due to cultural, subsistence, and commercial use of natural resources. • Potential for risk assessment to underestimate relationship between environmental degradation and human health concerns, especially in low population density areas. • Fundamental differences in "world view" ; where the values placed on resources vary significantly between cultures (i.e., some Native American cultures dispute the ability to "own" land and other resources.

Exhibit 2. SUMMARY OF FACTORS TO CONSIDER IN ENVIRONMENTAL JUSTICE ANALYSIS

FACTORS RELATED TO HISTORICAL AND POLICY ISSUES Environmental justice assessments may require looking at historical conditions, existing conditions, and the impact of future actions. Many of the factors discussed above, such as cumulative risk, will necessarily address this question, but certain other factors may also require consideration, including:	
Industrial Concentration	Concentration of industries that may create a high risk of exposure to environmental hazards for the community's economic base. Factors that may lead to such a result include government/industry arrangements that may reduce available public funding for adequate protection of low-income or minority populations (*e.g.*, tax breaks provided to certain industries to encourage the location of such industries to a certain area).
Inconsistent Standards	Non-uniformity in enforcement and site-selection standards across communities including methods for pursuing enforcement targeting, compliance actions and compliance initiatives.
Research Gaps	Research gaps and past data collection practices and validity. For example, data relevant to low-income communities may not be adequately collected and analyzed given the potential for inadequate resources within the community to collect and analyze data.
Program Gaps	Program gaps between tribal, state, and federal programs (such as asbestos worker protection programs) that may have subjected communities to high risk of exposure to environmental hazards. Such gaps include the lack of explicit Congressional authorization for tribal participation in and delegation/authorization of certain EPA programs and the sufficiency of funding and technical assistance for the development of tribal environmental programs.
Non-Inclusive Processes	Decision-making and documentation processes that were non-scientific, and/or non-inclusive in nature (*e.g.*, selection of community representatives by potentially-affected industry rather than by community decree).
Past Practices	Adequacy of past resource allocation practices.
Cultural Diversity	Past and present cultural diversity or lack thereof on decision-making boards, within agencies, commissions, etc.
Obligations	Adherence to prior agreements, such as treaties, statutes and executive orders with tribes. EPA should be particularly careful not to diminish tribal resources, including cultural and natural resources and treaty rights, without tribal concurrence and EPA should ensure the protection of such resources from environmental harm.

3.0 INCORPORATING ENVIRONMENTAL JUSTICE INTO THE NEPA PROCESS

3.1 OVERVIEW OF THE NEPA PROCESS

A general framework for implementing NEPA requirements is presented in regulations (40 CFR Parts 1500 through 1508) promulgated by the Council on Environmental Quality (CEQ). Federal agencies, in turn, have developed their own rules for NEPA compliance that are consistent with the CEQ regulations while addressing the specific missions and program activities of each agency. EPA's regulations are found at 40 CFR Part 6. Over the past 25 years, the NEPA framework for environmental review of proposed federal actions has been substantially refined, based on further congressional directives, action by CEQ, and an extensive body of case law.

As stated in Section 1.0, an EIS is required for major federal actions significantly affecting the quality of the human environment. The basic analytical planning process for EISs required under NEPA and its implementing regulations for assessing the environmental impacts that may result from a government action includes:

1 **Definition:** Define the purpose and need for the action.

2. **Screening:** Preliminary delineation of potential impacts.

3. **Scoping:** Outline proposed action; define objectives; define scope; identify decisions that need to be made; focus resources; initiate public participation.

4. **Affected Resources:** Define the resources that may be affected if the action meets the proposed objectives.

5 **Alternatives:** Identify and define practical alternatives for meeting objectives.

6 **Mitigation**: Identify possible mitigation measures to minimize or avoid potential impacts.

7 **Consequences:** Predict the environmental impacts and other consequences of the proposed action and alternatives.

8. **Decisions:** Make decisions regarding a course of action, including mitigation measures developed to address environmental effects threatened by proposed actions.

9. **Monitoring:** Observing, recording, and documenting mitigation measures to evaluate their effectiveness.

CEQ regulations (40 CFR Part 1502) dictate the process that federal agencies must follow for all EISs, except where compliance with the regulations would be inconsistent with statutory requirements or where agency procedures allow for exceptions for national security reasons. Public participation and involvement is required throughout the NEPA process, beginning with scoping.

Proposed actions predicted to present less significant impacts often are analyzed in environmental assessments (EAs). As mentioned in Section 1.0, EAs are important analytical tools, originally intended to aid in the determination of significance of the effects of a proposed action. Compared to EISs, there are

fewer detailed regulatory requirements for EAs as to content, format or public participation. The scale of EAs usually depends on the relative significance of the projected impacts.

Environmental justice issues encompass a broad range of impacts covered by NEPA, including impacts on the natural or physical environment and interrelated social and economic effects. The CEQ implementing regulations define "effects" or "impacts" to include those that are "ecological...aesthetic, historic, cultural, economic, social or health, whether direct, indirect or cumulative." In preparing EISs, NEPA requires EPA to consider both impacts on the natural or physical environment and interrelated social and economic impacts. In analyzing social and economic impacts, unique cultural aspects should also be reviewed. EPA, as a matter of policy, will consider interrelated social and economic impacts in EAs. This serves as a base to further the goals of the Executive Order. Environmental justice concerns may arise from impacts on the natural or physical environment, such as human health or ecological impacts on minority populations and low-income populations, or from inter-related social or economic impacts.

Moreover, EISs and EAs should document the extent to which environmental justice issues have been identified and addressed. The initial step in the analysis of potential effects is to assess whether there indeed will be potential physical or natural environmental impacts. If it is determined by the analytical team that there will be no environmental effects, and thus no disproportionately high and adverse effects, then this finding should be documented and no further analysis of effects is necessary.

If preliminary analysis indicates that there is a potential for environmental effects, then a more detailed assessment is conducted to estimate the level of those effects. There are occasions in which "grey areas" may be encountered. The EPA NEPA analyst may be unsure as to whether the environmental effects are *de minimis*, meaning when there are very small effects, or something greater than *de minimis* yet less than significant natural or physical impacts demanding an EIS. This guidance suggests that when the EPA NEPA analyst is unsure whether these environmental impacts are *de minimis* or something more than *de minimis* but less than significant, the EA should include an analysis of interrelated social and economic effects (and, as described in Section 3.2 below, there now should be an EIS-like scoping process if the screening analysis indicates that there may be disproportionately high and adverse effects on minority and/or low-income communities). The EA should include socioeconomic analyses scaled according to the severity of the impacts.

Following an EIS or EA, the Agency must announce its decision in a Record of Decision (ROD) or a FONSI. The ROD, and where appropriate the FONSIs, should document the conclusion of the findings presented in the EIS or EA (i.e., whether the action will or will not have a disproportionately high and adverse effect on minority and/or low-income communities) and include a description of those mitigation measures that the Agency is committing to implement to reduce or avoid environmental consequences associated with the proposed action.

3.2 INCORPORATING ENVIRONMENTAL JUSTICE CONCERNS INTO THIS PROCESS

One of the most important means by which EPA can ensure that disproportionately high and adverse effects on minority and/or low-income communities are identified and analyzed, is to "institutionalize" the process of identification and analysis. The next sections of this Chapter describe the screening-level analysis that begins the process, and how environmental justice considerations can be integrated into later steps and activities required under CEQ and EPA regulations.

As noted in Chapter 1, one effect of incorporating environmental justice considerations into NEPA analyses will be to more sharply focus these analyses. To do this, it is necessary to assess the distribution of environmental impacts demographically and/or geographically, as well as to assess the overall impacts to the affected communities. As described in Chapter 5, the analytical tools commonly used for analyzing potential impacts may have to be modified to allow this more refined focus. Overall, the evaluation of environmental justice concerns raises a number of issues related to "significance" and to other NEPA procedures. The discussion below describes several issues that are relevant to the determination of significance and the consequent level of analysis; also included are discussions of how consideration of such issues should affect the determination and subsequent analyses. The analytical team should keep in mind that the presence of disproportionately high and adverse effects may or may not necessarily change the final decision, but will change the focus of the analysis and may result in additional mitigation measures.

3.2.1 Environmental Justice Screening Analysis

In preparing for any proposed action, one of the first actions is a preliminary delineation of potential impacts and of the potentially affected area. A screening for environmental justice concerns should be incorporated into this initial NEPA screening analysis. This section describes a two-step screening process, the results of which then guide subsequent actions related to environmental justice.

The first step in identifying potential environmental justice concerns should be a screening-level analysis to determine the existence of a low-income and/or minority population. Depending on the outcome, it may then be necessary to enhance public participation to gain a fuller understanding of the potential environmental justice issues (see Chapter 4), initiate development of alternatives and mitigation options, and/or initiate analyses to identify and assess disproportionately high and adverse human health or environmental effects (see Chapter 5). In addition, if the proposed project may affect tribal lands or resources, then EPA, in keeping with federal and EPA policies of government-to-government relations, will formally request that affected Indian Tribe(s) seek to participate as a cooperating agency.

The screening analysis should occur as soon as the proposed action is well understood, around the time planning for scoping begins for EISs and planning begins for EAs. Although neither the impacts nor the full area to be affected may be fully understood at this point, it is usually possible to make fair approximations. In the screening analysis, two questions should be addressed, as described below.

Question 1

Does the potentially affected community include minority and/or low-income populations?[8]

If yes, this should trigger both an enhanced outreach effort to assure that low-income and minority populations are engaged in public participation and analysis designed to identify and assess the impacts. Also, a positive response to this question should increase the team's sensitivity to the potential for cumulative impacts.

In general, census and other data should be used to characterize the population within the affected area, in terms of minority (*i.e.,* racial or ethnic), economic, and educational demographics. However, it should be noted that census data have been shown to be unreliable in some cases, in part because the level of aggregation may not offer a fine enough mesh to identify the existence of such communities. Also, census data are based on self-reporting. These data are not always consistent and are prone to undercounting minority populations and low-income populations due to a perceived reluctance for certain populations to divulge information (see Section 2.1.1). This is a screening-level analysis, so extensive efforts to validate census data should not be necessary at this stage, unless there is substantial uncertainty in (a) the answer to the screening question or (b) the ability to delineate the affected area at this early stage. Because the applicability of the census data can only be determined on a case-by-case basis, the EPA NEPA analyst should supplement this information with data from other sources. For example, additional information can be obtained from: local resources through questions, interviews, and research; geographical mapping system (GIS) or other similar overlay mapping systems; and economic impact analyses.

Environmental effects are often realized in inverse proportion to the distance from the location or site of the proposed action (i.e., the closer the population is to the action, the greater the potential impacts). As a result, an effort should be made to correlate the demographic analysis to the area most likely to bear environmental effects. On the other hand, depending on the resource affected, and the users of that resource, proximity to the site may not correlate with the likelihood of disproportionately high and adverse effects on minority communities or low-income communities.

It also is important during the initial screening stages to locate all minority communities or low-income communities within the region surrounding a proposed location. The analytical teams should keep in mind that sometimes distinct minority communities or low-income communities may be geographically located within another minority community or low-income community. In some cases, a minority community or low-income community that is surrounded by another minority community or low-income community may bear disproportionately high and adverse effects compared to the surrounding communities. In addition, the EPA NEPA analyst should be sensitive to situations where the affected community represents the majority population over the extended area. For example, locations along the United States-Mexico border include entire counties where minority populations represent a majority of the population in the county. These areas are predominantly Latino, although when the county population is compared to the population of the entire state, the proportion represents a much smaller percentage of the population. Similarly,

[8] Guidance on the terms "minority population" and "low-income population" is contained in Appendix A.

counties in the Mississippi Delta region represent areas where African Americans comprise a majority of the total population.

Question 2

Are the environmental impacts likely to fall disproportionately on minority and/or low-income members of the community and/or tribal resources?

A positive response should trigger both an enhanced outreach effort to assure that low income and minority populations are engaged in public participation and an analysis designed to identify impacts on both the larger population and on minority and/or low-income members of the population. A positive response could result from any of several factors, including the following:

- Within a potentially affected area, minority and/or low-income populations could be unevenly distributed, thus subject to different levels or intensity of impacts than the larger population. This pattern should cause concern for cumulative impacts. An example would be subsistence dependence on an affected resource by members of a community.

- The impacts may affect a cultural, historical, or protected (*e.g.*, treaty) resource of value to an Indian Tribe or a minority population, even when the population is not concentrated in the vicinity.

If the answer to both screening questions is "no," then the environmental justice screening analysis should be documented in scoping notices and in EISs/EAs and RODs/FONSIs. In addition, certain unique cultural, geographic, or economic factors may exist within an area that could warrant additional investigation. Also, later information and analyses may show that the screening analysis was mistaken. Indeed, analysts should re-examine the screening questions (and the key factors identified in Chapter 2) at key steps in the NEPA process (*e.g.*, following scoping, in drafting the EIS/EA, in soliciting comments on draft EISs, in responding to comments, and in preparing RODs and FONSIs).

3.2.2 Environmental Justice and the Determination of Significance

CEQ regulations (40 CFR 1508.27) detail factors that should be considered in making a determination of whether a proposed action is significant, thereby requiring a "detailed statement" (*i.e.*, an EIS). Economic or social effects alone do not trigger an EIS [40 CFR 1508.14].

According to CEQ's *Guidance for Considering Environmental Justice under the National Environmental Policy Act*, the "...Executive Order does not change the prevailing legal thresholds and statutory interpretations under NEPA and existing case law. For example, for an EIS to be required, there must be a sufficient impact on the environment to be "significant' within the meaning of NEPA. Agency consideration of impacts on low-income populations, minority populations or Indian tribes may lead to the identification of disproportionately high and adverse human health or environmental effects that are significant and that otherwise would be overlooked." CEQ requires that significance be evaluated in terms of "intensity" or "severity of impact." Here too, the narrowed focus could affect the determination. Several factors that affect the evaluation of intensity are relevant to situations involving environmental justice issues. These include the degree of scientific controversy, uncertainty (since distributional analysis is relatively new in the NEPA context and this introduces an element of uncertainty in impact assessment), and cumulative significance of related actions.

Environmental justice concerns should sensitize EPA NEPA analysts to the need to focus analyses on relevant contexts. Focusing the analysis may show that potential impacts, which are not significant in the NEPA context, are particularly disproportionate or particularly severe on minority and/or low-income communities. As mentioned previously, disproportionately high and adverse effects should trigger the serious consideration of alternatives and mitigation actions in coordination with extensive community outreach efforts.

3.2.3 Scoping and Planning

Scoping consists of identifying and defining the range of actions, alternatives and impacts that will be considered in an environmental impact statement (40 CFR 1508.25). During the scoping phase of the EIS process, EPA must consider connected, cumulative and similar actions to the proposed action, identify alternatives to the proposed action that may mitigate or avoid potential environmental consequences, and assess potential impacts (direct, indirect, and cumulative). A similar planning process is used for EAs.

The identification of environmental justice concerns and the incorporation of these concerns into the scoping analysis can have implications for the nature and extent of the scoping analysis, the EIS and/or the EA.[9] Indian Tribe representation in the process should be sought in a manner that is consistent with the government-to-government relationship between the United States and tribal governments, the federal government's trust responsibility to federally-recognized tribes, and treaty rights. This will help to ensure that the NEPA process is fully utilized to address concerns identified by tribes and to enhance protection of tribal environments and resources. As defined by treaties, statutes, and executive orders, the federal trust responsibility may include the protection of tribal sovereignty, properties, natural and cultural resources, and tribal cultural practices.

3.2.3.1 Incorporating Environmental Justice Concerns into EA Development

If the environmental justice screening analysis does not identify minority communities or low-income communities, and suggests no disproportionately high and adverse effects on those communities and/or on tribal resources, then the EA and FONSI should describe the analysis and note the conclusion.

If the initial screening analysis identifies an affected community that is minority and/or low-income or identifies a disproportionately high and adverse effect upon a minority community, and/or on tribal resources, or on a low-income community, then a smaller scale scoping analysis (than that undertaken for an EIS) should be conducted and some level of public participation should be designed and implemented to solicit community involvement and input, and to develop alternatives and mitigation measures. Mitigation measures should be developed and alternatives should be crafted so as to allow an evaluation of the relative disproportionality of impacts across reasonable alternatives. The EA also should include a comparative socioeconomic analysis that is scaled and tailored to evaluate the potential effects to the minority and/or low-income community (*i.e.,* in the case of environmental justice concerns, the EA should include socioeconomic analyses scaled according to the severity of the impacts).

3.2.3.2 Incorporating Environmental Justice Concerns in EIS Scoping

If the environmental effects of a project are deemed significant, the scoping notices (including the notice of intent for the EIS) should include a description of the results of the environmental justice screening analysis. If the results of the screening analysis are negative (i.e., any potentially affected population is not

[9] See CEQ "*Environmental Justice Guidance Under the National Environmental Policy Act*" page 10, Helpful Information to Inform the Public During the Scoping Process.

a minority community or low-income community and the effects are not likely to fall disproportionately on a minority and/or low-income community, and/or on tribal resources), then the scoping notice should state this finding and request additional information on whether there may be disproportionately high and adverse effects that were overlooked during the screening analysis.

If the environmental justice screening analysis concludes that there is a potential for disproportionately high and adverse effects, then the EPA NEPA analyst should ensure that the EIS scoping process raises environmental justice concerns and that sufficient data and information are generated to evaluate these potential effects. Prior to the full-scale scoping process, public outreach strategies should be developed and implemented. The public participation process should be used to define and evaluate environmental justice concerns by:

- Consulting with community leaders and members of the surrounding communities to seek their assistance in identifying all minority and/or low-income communities that may be affected by the proposed action.

- Consulting with officials in tribal, state and/or local government agencies over the environmental and human health concerns within the region and who may be familiar with the demographics of the affected populations. Where environments of Indian tribes may be affected, agencies must consider pertinent treaty, statutory or executive order rights and consult with tribal governments in a manner consistent with the government-to-government relationship.

- Soliciting information from the local community on potential environmental justice issues through public participation efforts (see Chapter 4 for a discussion of public participation).

- Soliciting public comment on environmental issues through formal public notice and comment procedures tailored to the community (see Chapter 4).

- If the proposed activity is deemed significant to warrant the development of an EIS, or if the community has raised significant concerns to be addressed in an EA, EPA should establish a community advisory board to work with EPA in the development of the respective NEPA documents.

The public participation efforts designed as part of the scoping effort for an EIS should clearly describe any environmental justice concerns identified by EPA, and should specifically ask the public to suggest alternatives and mitigation measures aimed at reducing or avoiding disproportionately high and adverse effects. The Agency also should design comparative socioeconomic, environmental and health analyses of all reasonable alternatives and mitigation measures that are tailored and/or scaled to evaluate the impacts to the affected minority and/or low-income community and/or tribal resources.

Identification of Affected Resources

CEQ regulations state that an EIS is required only when there is a significant impact on the physical or natural environment. Notwithstanding, early in the EA and/or EIS process, the EPA NEPA analyst should identify the physical environment and all natural resources that could be potentially affected by the proposed action and by alternative actions. The EPA NEPA analyst should develop a full understanding of baseline demographic, socioeconomic, and environmental conditions so that a comprehensive assessment of the types of impacts that may be imposed upon all human and natural resources (*e.g.*, air, water, soils, wildlife) can be conducted and an understanding of how these impacts may translate into human health concerns can be developed. For a detailed discussion on how effects to human health and natural resources might be determined, please reference Section 2.2.

To account for potential environmental justice concerns, EPA NEPA analysts should be sensitive to identifying whether affected resources are used by a minority or low-income community. In addition, analyses of potential effects on all surrounding resources should be focused narrowly or specifically toward how potential effects to these resources may translate into disproportionately high or adverse human health and/or environmental effects on minority and/or low income communities.

The EPA NEPA analyst should use all means available to identify particular natural resources that, if affected by the proposed action, could have a disproportionately high and adverse effect on minority and/or low-income communities. In particular, natural resources that support subsistence living (*e.g.*, hunting, fishing, gathering) should be identified. In addition, Indian Tribes may have treaty-protected resources on or off reservation lands and may hold some natural resources sacred due to religious beliefs and/or social/ceremonial ties. Alternatives and mitigation measures should be explicitly solicited from the affected community early in the process, such as during scoping. Throughout the process, but especially beginning in this phase, the Agency should provide affected communities with technical assistance to ensure that the communities thoroughly understand the proposed action and have meaningful participation and input. All resources that could be affected should be thoroughly developed and documented. A discussion of all findings should be shared with potentially affected communities during public participation phases of the NEPA process to ensure full disclosure and to solicit additional public comment and input.

Identification of Alternatives

NEPA and the CEQ regulations require the identification and development of a reasonable array of alternatives. In addition, CEQ requires that all reasonable alternatives, including a "no action" alternative, must be analyzed rigorously and objectively. The selection of potential alternatives should begin early in the evaluation and, in fact, should be part of the scoping process. In addition, if environmental justice issues are identified, then alternatives should be drawn so as to allow an assessment of the disproportionate nature of the effects, as well as the magnitude of the effects, on the communities of concern.

An evaluation of potential environmental justice issues should be conducted for all reasonable alternatives. In addition, for each alternative that may result in potential environmental justice concerns, mitigation measures aimed specifically at those impacts should be identified and analyzed. The results of all analyses of environmental justice issues, including study results that identify no environmental justice issues, should be described fully in scoping documents, EISs and EAs. All results should be fully disclosed during public participation procedures, and public comment and input on the analyses and conclusions should be solicited. Chapter 2 provides an overview of the factors that should be evaluated to identify and define potential environmental justice concerns. These factors will also be helpful in understanding the need for mitigation or additional alternatives and identifying mitigation or alternative options.

The EPA NEPA analyst should keep in mind that the goal of identifying and developing alternatives for mitigating disproportionately high and adverse effects is not to distribute the impacts proportionally or divert them to a non-minority or higher-income community. Instead, alternatives should be developed that mitigate or avoid effects to both the population at large and any disproportionately high and adverse effects on minority or low-income communities. In other words, the goal of developing reasonable alternatives is not to move the impacts around, but to identify viable alternative actions that meet program goals and avoid or reduce the environmental, socioeconomic, human health and/or ecological effects associated with the preferred action. Generally, the types of alternatives that may potentially lead to the avoidance or reduction of effects include: a) the identification of alternate locations or sites where impacts to susceptible populations or environments will be avoided; b) altering the timing of planned activities or periodic emissions to account for seasonal dependencies on natural resources; c) the adoption of pollution prevention practices and policies to reduce or mitigate emissions and/or impacts; d) reducing the size or intensity of an action; and e) taking no action.

3.2.6 Prediction of Environmental Consequences

CEQ regulations require government agencies to identify, predict and describe reasonably foreseeable beneficial as well as adverse changes to existing conditions that may result from implementing either the proposed action or alternative actions. Impacts across alternatives must be compared. The prediction and description of potential disproportionately high and adverse effects must begin during the screening and scoping stages of the process, as noted above. Throughout the NEPA process, environmental justice concerns should be identified, disclosed, and discussed with affected communities.

In preparing an EIS or EA, ecological and human health risk assessments are conducted to identify and evaluate potential environmental and human health impacts that may be imposed. In addition, interrelated socioeconomic impacts that would result from a proposed action and alternatives are analyzed. Chapter 5 provides an overview of the types of analyses and analytical tools that may be used to analyze these issues and approaches that may be appropriate to assess disproportionately high and adverse effects. Again, throughout the development and public disclosure of EPA NEPA analyses and findings, full discussions of the analytical process undertaken to identify environmental justice concerns and all findings and conclusions should be disclosed to and discussed with all affected and interested parties.

In evaluating the environmental impacts of the proposed action and alternative actions in an EIS, CEQ regulations (40 CFR 1508.25) require EPA to consider: three types of actions (connected actions, cumulative actions, and similar actions); three types of alternatives (no action, other reasonable course(s) of actions, and mitigation measures not in the proposed action); and three types of impacts (direct, indirect, and cumulative). Environmental justice concerns should be identified and analyzed within the context of all actions, alternatives and impacts. Exhibit 4 provides examples of how environmental justice issues could arise and/or be considered for each of these variables.

Exhibit 3. Scoping Considerations and Examples of Environmental Justice (EJ) Issues	
Considerations	**Examples and Approaches to EJ Issues**
TYPE OF ACTION	
Connected	Installation of sewers (*e.g.*, effects on communities affected by installation, communities served) to feed new treatment plant discharge is properly in scope of discharge permit action, since actions and effects are connected. Thus, potentially affected communities would include those along lines and served by lines.
Cumulative	Potential cumulative impacts associated with additive/synergistic effects of pollutant loadings from new discharges and existing sources and reasonably foreseeable future sources could be significant issue.
Similar	Multiple similar actions (*e.g.*, permits) for different industries in "industrial park" in low-income area could need to be addressed in single EA/EIS.
TYPE OF ALTERNATIVE	
No action	Description of existing population, environment, and socioeconomic conditions is necessary for no action alternative. For population, include education, income, racial/ethnic (minority) status.
Other reasonable courses of action	If disproportionately high and adverse effects possible, should identify/develop reasonable alternative(s) that have less impact or less disproportionate impact.
Mitigation measures (not in the proposed action)	Mitigation measures (*e.g.*, timing of actions, medical screening, added communication) may be designed in order to address EJ concerns. Both physical and socioeconomic measures are appropriate.
TYPE OF IMPACTS	
Direct	Immediate and local impacts on affected minority/low-income individuals/communities would be direct.
Indirect	In many instances, social, cultural, and economic impacts would also be indirect, since they are likely to occur over time rather than immediately.
Cumulative	Have to consider historical, current, and reasonably foreseeable future circumstances of minority/low-income communities to assess cumulative impacts of new action.

Source: 40 CFR 1508.25 identifies the types of actions, alternatives, and impacts.

3.2.7 Mitigation Measures

Regulations require that mitigation measures be developed to address environmental effects, including cumulative impacts, threatened by proposed actions (40 CFR 1502.14(f) and 1502.16(h)). In addition, mitigation measures should be developed specifically to address potential disproportionately high and adverse effects to minority and/or low-income communities. When identifying and developing potential mitigation measures to address environmental justice concerns, members of the affected communities should be consulted. Enhanced public participation efforts should also be conducted to ensure that effective mitigation measures are identified and that the effects of any potential mitigation measures are fully analyzed and compared (see Chapter 4). Mitigation measures may include a variety of approaches for addressing potential effects and balancing the needs and concerns of the affected community with the requirements of the action or activity. For example, potential mitigation measures for addressing disproportionately high and adverse effects could include:

1 Reducing pollutant loadings through changes in processes or technologies.

2 Reducing or eliminating other sources of pollutants or impacts to reduce cumulative effects.

3. Planning for and addressing indirect impacts prior to project initiation (*e.g.*, planning for alternative public transportation alternatives if the project may result in increased population growth).

4. Providing assistance to an affected community to ensure that it receives at least its fair (i.e., proportional) share of the anticipated benefits of the proposed action (*e.g.*, through job training, community infrastructure improvements).

5 Relocating affected communities, upon request or with concurrence from the affected individuals.

6 Establishment of a community oversight committee to monitor progress and identify potential community concerns.

7 Changing the timing of impact-causing actions (*e.g.*, noise, pollutant loadings) to reduce effects on minority communities or low-income communities.

8. Conducting medical monitoring on affected communities and providing treatment or other responses if necessary.

If mitigation measures are determined to be necessary to reduce disproportionately high and adverse effects on minority and/or low-income communities, and/or tribal resources, then the measures should be committed to in the FONSI or ROD. This provides an additional avenue for public notice and involvement. Other steps that can be considered to ensure that mitigation measures are effective and are implemented include the following:

- Establishing the mitigation measure as a requirement in the permit or authorizing document.
- Requiring financing at the outset of the project for both implementing the measure and monitoring its effectiveness. Ensure clearly defined monitoring guidelines are in place.
- Requiring monitoring reporting, which should be made available to the public.
- Identifying clear consequences and penalties for failure to implement effective mitigation measures.

3.2.8 Decisions

The two NEPA decision documents identified in CEQ regulations are: 1) a ROD following an EIS and, 2) a FONSI following an EA. All EPA NEPA decision documents should include a concise summary of all steps undertaken to identify environmental justice concerns and the results of those steps. In cases where environmental justice concerns are identified, the decision documents should fully discuss these concerns, explain all alternatives and mitigation options that were analyzed, and explain how environmental justice concerns factored into the decision. In cases where effects to tribal lands or resources have been identified and the Indian Tribe and EPA disagree as to the preferred alternative or mitigation measures, the Indian Tribe may request that the EPA initiate a dispute resolution process to resolve this conflict. In addition, public participation efforts related to environmental justice concerns should be documented in the decision document. Finally, mitigation measures that are evaluated, disclosed to the public, and chosen in conjunction with the alternative to be implemented should be identified and discussed. If no concerns are identified, this finding should be stated along with the basis of EPA's conclusion.

4.0 PUBLIC PARTICIPATION

Adequate public participation is crucial to incorporating environmental justice considerations into EPA's NEPA actions, both to enhance the quality of the analyses and to ensure that potentially affected parties are not overlooked and excluded from the process. Public participation under NEPA involves two-way communications, with EPA receiving information, comments, and advice, as well as disseminating information on possible approaches, analyses, and decisions. This is particularly important when there are potential environmental justice issues involved. To sufficiently and adequately address potential environmental justice concerns and communicate with potentially affected communities, the EPA NEPA analyst should include one or more persons who are familiar with environmental justice issues and appropriate communications strategies. It is important that EPA take steps to encourage and facilitate more active participation by low-income communities and minority communities in its NEPA process. This goal can be accomplished through careful identification of target audiences and aggressive community outreach beyond the traditional forms.

There are established procedures for public participation in NEPA actions and decision-making processes (as in other federal actions). However, these procedures have not always been successful in informing or gaining participation by minority communities and low-income communities. Although they may be most affected, they may be the least informed, simply because of the means of communications used; this can be for any number of obvious reasons, such as language, culture, educational level or geographic location. In most cases, relatively simple approaches--well within the purview of "standard" public participation techniques--can overcome most barriers to informing and seeking involvement of interested or affected communities. This in turn can ensure that federal decisions are consistent with Executive Order 12898 and enhance the actual and perceived fairness of federal actions.

The first subsection below briefly describes public participation that is required during the NEPA process by CEQ and EPA regulations. The next subsection then identifies a number of the special concerns and unique issues that may arise in addressing environmental justice issues, and identifies several mechanisms that may be used in EPA's NEPA process to address those special concerns and issues.

4.1 PUBLIC PARTICIPATION UNDER NEPA

Public participation is one of the hallmarks of NEPA, and is reflected in CEQ's and EPA's NEPA regulations. According to 40 CFR 6.400(a), "EPA shall make diligent efforts to involve the public in the

environmental review process...." There are several clearly defined steps in public participation under NEPA, and these are described below.

Scoping. CEQ regulations require "scoping" following the publication of a notice of intent to prepare an EIS, but before the EIS is prepared. CEQ regulations define scoping as "an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action" (40 CFR 1501.7). In general, scoping has three broad purposes: identifying public and agency concerns with a proposed action, defining issues and alternatives to be examined in detail, and saving time by ensuring that relevant issues are identified early and drive the analyses (see 40 CFR 1500.4(g), 1500.5(d)). A public meeting is held during scoping, with notice of the meeting made in the *Federal Register*, local newspapers, and utilizing other means of announcing public meetings, depending on case-specific circumstances.

Scoping for EAs is not addressed in either CEQ or EPA regulations. In practice, EA scoping can range from a process more or less identical to that used for EISs, to relatively minimal involvement of outside parties.

CEQ has indicated that the scoping process ends "once the issues and alternatives to be addressed in the EIS have been clearly identified," usually "during the final stages of preparing the draft EIS..." (CEQ "Guidance Regarding NEPA Regulations"). It is emphasized that public participation does not end here, but continues throughout the NEPA process, as described below, and even beyond.

Public review of EISs and EAs. As with scoping, CEQ and EPA NEPA regulations clearly specify the means by which the public is involved in reviewing draft and final EISs. EPA regulations require at least one public meeting on all draft EISs (40 CFR 6.400(c)). The meeting is generally announced in the *Federal Register* and in local newspapers and by other means. Regulations also provide other means of soliciting comments and information. Comments must be solicited from other appropriate federal, tribal, state, and local agencies, and from the public, specifically including a request for comments from "those persons or organizations who may be interested or affected" (40 CFR 1503.1(a)(4)).

EPA then has to consider and address all comments received on the draft EIS in preparing the final EIS, and final EISs must include responses to comments. As with draft EISs, final EISs are noticed in the *Federal Register* and elsewhere. Again, interested parties may submit comments on final EISs prior to EPA's final decisions.

EAs must be made available to the public (40 CFR 1506.6: C.E.Q. 40 Questions, #38). A combination of methods may be used to provide notice of availability; the methods should be tailored to the needs of particular cases. Traditionally there has been limited public involvement before and during EA preparation by EPA unless there is a question of significance (*i.e.*, some question as to whether an EIS is necessary) or some particular public interest.

Public review of RODs and FONSIs. Records of Decision on EISs must be disseminated to all those who commented on the draft or final EIS (40 CFR 6.400(e)). No public review is required prior to or after issuance of the ROD. Findings of No Significant Impact on EAs, in contrast, must be made available for public review before they become effective (40 CFR 6.400(d)), and this involves at least local notice and advertising. The FONSI and "attendant publication" must state that comments disagreeing with the decision may be submitted, and any such comments must be considered by EPA (40 CFR 6.400(d)).

4.2 MECHANISMS TO ENHANCE PARTICIPATION

The public participation provision in Executive Order 12898 and its accompanying memorandum are designed to ensure that there is adequate and effective communication between federal decision makers and affected low-income communities and minority communities. This is consistent with the NEPA mandate to involve the public. The involvement of low-income communities and/or minority communities, however, presents some challenges to what has come to be the "normal" pattern of formal public participation under NEPA. In order to establish trust with all types of stakeholders, interaction with the affected community should:

- Encourage active community participation.
- Recognize community knowledge.
- Utilize cross-cultural formats and exchanges.

In all cases where EPA's initial screening indicates that there is a potential for disproportionately high and adverse effects on low-income and/or minority communities, the Agency should make a concerted effort to identify stakeholders in the affected community and include the following groups and organizations in their outreach efforts:

- Environmental organizations and agencies
- Minority businesses, associations and trade organizations
- Civic associations and public interest groups
- Grassroots/community-based social service organizations
- Federal elected officials and agencies
- Homeowners' or tenants' associations, neighborhood watch groups and resident organizations
- Labor unions and organizations
- State and local elected officials and agencies
- News media, the Internet and other electronic media
- Tribal governments and Tribal organizations
- Religious groups and organizations
- Libraries, vocational and other schools, colleges and universities
- Medical community
- Legal aid providers
- Rural cooperatives

- Civil rights organizations
- Senior citizen's groups

Other sources of advice are ethnic and cultural-based environmental justice networks (*e.g.*, Indigenous Environmental Network, Southwest Network for Environmental and Economic Justice, Southern Organizing Committee). The *People of Color Environmental Groups Directory*[10] is a valuable major source of information on such local groups and individuals. Similarly, Historically Black Colleges and Universities, Tribal Colleges and Universities or other higher education institutions located in areas with or serving predominantly minority or low-income areas, may be able to assist EPA in designing (and participating in) public participation strategies. Exhibit 5 identifies a number of particular communications challenges and possible approaches to overcoming these challenges in addressing environmental justice issues. These should be supplemented by case-specific advice--on challenges and on solutions--that are solicited from local experts and others familiar with both the proposed action and the affected community.

Environmental Justice Resource Center. *People of Color Environmental Groups: 1994 - 95 Directory.* Prepared by Dr. Robert D. Bullard, Clark Atlanta University, Atlanta, Georgia. 1994.

Exhibit 4. Communications Issues of Particular Concern in Low-Income and/or Minority Communities

Challenge	Possible Approaches to Overcoming
Language or Communication barriers	• Provide assistance to hearing or sight impaired individuals • Provide simultaneous translation of meetings • Use local translators where possible • Translate key documents in entirety (notices, summaries, etc.) • Establish "comment line" (*e.g.*, 800 number) for callers to leave recorded comments • Advertise meetings/process in alternative-language medium • Design communication strategy to reach all segments of population • Use facilitated meeting rather than conventional stand-up comments to encourage comments
Distance to meeting or inconvenient access (e.g., rural or cross-town)	• Arrange for "comment line" (*e.g.*, 800 number) to provide remote access to meeting or to allow callers to leave recorded comments • Arrange for telephone tie-in from several locations (*e.g.*, from several schools, religious centers) • Hold series of shorter meetings (down to 1-2 hours each) in multiple locations • Arrange for alternative transportation (possibly through proponent) • Ensure location is accessible to public transportation and identify itinerary in notices • Use local cable-channel broadcast with telephone call-in • Have proponent provide transportation vouchers • Seek advice of local groups/individuals • Arrange for satellite link-up (perhaps funded by proponent)
Unfamiliar surroundings (government buildings, luxury hotel, etc.)	• Use schools or other local facilities including religious centers, churches, temples, mosques • Have several smaller decentralized meetings, including open-air meetings (possibly with tent backup) in season • Seek advice from local groups/individuals • Use local facilitator • Establish "comment line" (*e.g.*, 800 number) for callers to leave recorded comments or to participate from remote locations
Outside normal EPA communications loops (i.e., *Federal Register*, newspapers)	• Use pro-active approach to identify stakeholder (both groups and affected individuals). Consult with local advocates/public interest groups to identify outreach mechanisms and refer to the *People of Color Environmental Groups Directory*. • Disseminate information through alternative media (neighborhood organization newsletters, religious centers, fliers, local cable access channel, local radio broadcasts, etc.). • Co-sponsor public meetings with local community groups to nurture trust and credibility. • Make announcements to those on the mailing list; make follow-up phone calls to encourage attendance. • Direct consultation with tribal governments and public meetings at tribal facilities or on/near tribal lands.
Format of Meetings	• Use town hall type meetings. • Avoid "panel of experts" • Use small focus-group seminars or workshops. • Use community "experts" and comments as part of communication strategy • Seek advice of local groups. • Use a trained facilitator who is sensitive to environmental justice issues.
Schedule conflicts (i.e., conflict with working hours, working days)	• Conduct personal interviews using audio or video recording devices • Hold after-hours and/or weekend meetings or sessions • Hold meetings on successive days • Hold multiple shorter meetings at diverse times/days • Establish "comment line" (*e.g.*, 800 number) for callers to leave recorded comments • Arrange for child-care (possibly funded by proponent)
Technically complex issues	• Provide sufficient background explanations beyond the usual means • Use plain language in meetings and printed material • Seek advice of local groups/individuals • Provide hands-on demonstrations/participation (*e.g.*, tours of similar facilities/locations) • Use visual presentations (*e.g.*,pictures, videos) • Provide two-way communication - Q & A • Use background summary reports, fact sheets, and abstracts • Provide technical and/or financial assistance to community, local organization, and/or tribal government to review, evaluate, and comment on the NEPA documents and provide meaningful input throughout the NEPA process.
Trust	• Clearly present goals of NEPA, the proposed action, the public involvement process, and what is expected to be gained from the process • Do not oversell: present uncertainties and limitations • Goals should be written and in clear language • Present experiences and track record, successes and failures

EPA-anticipated impacts and community perceptions of those impacts (and their fairness) can be very different, so both must be considered. When perceptions are the concern, an effort to involve and inform the community can go a long way toward building confidence that EPA's analyses and actions are well-intended and balanced. When actual impacts (i.e., disproportionately high and adverse human health or environmental effects) are the concern, the participation can serve to educate the Agency and help identify the means to identify alternatives and/or mitigate the impacts.

Although EPA and CEQ public participation regulations focus primarily on public meetings, there are other mechanisms that can also facilitate public input. Once community leaders and stakeholders have been identified and a dialogue established, a mailing list should be assembled so that information can be sent to this group, as well as formal announcements of a public meeting.

Another mechanism for providing information to the public is the establishment of information repositories which are accessible to members of the affected community. Locations can include libraries, churches, community centers, etc. Technical documents should contain a summary written to the lay public and translated, if necessary, into the dominant language of the affected community.

Meaningful public participation is based on the proposition that people should have a say in decisions which affect their lives in a significant way. Thus, for the public participation process to be effective, it must:

- Seek out and facilitate the involvement of those potentially affected;
- Contain the implicit commitment by decision makers to seriously consider the input of the public; and
- Communicate to participants how their advice was or was not utilized.

Minority communities and low-income communities are no different than any other in that there are nearly as many opinions as there are people. Thus, it is important not to focus exclusively on one mechanism (or one person or one group) for disseminating or soliciting information. Rather, it is important to use as many avenues as possible to solicit participation and to disseminate information. For example, when there are formal or informal representatives that purport to speak for a wider population, it is always advisable to seek divergent opinions.

Dr. Robert Bullard, Director of the School of Arts and Sciences at Clark Atlanta University, provides a framework for public participation when addressing environmental justice concerns during the NEPA process. Dr. Bullard points out that effective public involvement strategies have four common characteristics: inclusiveness, representation, parity, and communication. Inclusiveness refers to the assurance that all affected communities and stakeholders are represented and involved in the decision-making process. In terms of representation, he points out that it is crucial that the persons who are representing a specific community or stakeholder group truly reflect that community's, stakeholder's, and constituent's views, values, and norms. Parity involves all stakeholder groups having equal opportunity

and capacity to provide input and full participation, as well as an equal voice in the decision-making process. Dr. Bullard further points out that an effective communications strategy accounts for different groups weighing and acting upon government actions and policies differently. An effective communications strategy recognizes, respects, and values cultural diversity of communities and stakeholders that represent a specific race, ethnic group, gender, age, geographic region, and a host of other characteristics.

As mentioned above, a recommended approach to ensure adequate public participation by minority and/or low-income communities when the screening analysis indicates there may be disproportionately high and adverse effects is to include a person familiar with environmental justice public participation issues on the "project review team." CEQ "Guidance Regarding NEPA Regulations" recommends that an interagency project review team be used when appropriate, with the team functioning as a source of information, a coordination mechanism, and an expert review team. When environmental justice issues must be faced, the review team should consult with the local community (including but not limited to organized groups concerned with environmental justice) during and following scoping, and should provide specialized expertise to EIS preparers.

The following are additional mechanisms for enhancing participation in the NEPA process: 1) allow public review of RODs; 2) government-to-government consultation with tribal governments, including formal requests for Indian Tribes to seek participation as cooperating agencies; 3) Community Advisory Boards for the development of NEPA documents; 4) community consultants; and 5) technical assistance to affected communities to enhance understanding of proposed action, technical documents, and full range of potential alternatives and mitigation measures.

In general, the effort expended in actively soliciting community involvement after the initial screening process should reflect the potential significance of the effects. As noted above, however, there should be some effort to communicate with stakeholders in all cases, including EAs, where the screening analysis identifies potential disproportionately high and adverse effects. Although the health or environmental impacts analyzed in EAs may not be "significant," from the NEPA standpoint, they may be perceived as significant by affected parties. Although this concern would not trigger an EIS, it should trigger more EIS-like scoping and public participation prior to and following EA preparation. To the extent practicable and consistent with regulations, an EIS-like public participation process should be undertaken for EAs when social or economic impacts will be or are perceived to be substantial, even when the impacts are not expected to be significant.

5.0 METHODS AND TOOLS FOR IDENTIFYING AND ASSESSING DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS

A fundamental step for incorporating environmental justice concerns into EPA NEPA compliance activities is identifying minority and/or low-income communities that may bear disproportionately high and adverse effects as a result of a proposed action. Once these minority and/or low-income communities are identified and located, the potential for disproportionately high and adverse effects to these communities must be assessed. It is important to understand where such communities are located and how the lives and

livelihoods of members of these communities may be impacted by proposed and alternative actions. Minority communities and low-income communities are likely to be dependent upon their surrounding environment (*e.g.*, subsistence living), more susceptible to pollution and environmental degradation (*e.g.*, reduced access to health care), and are often less mobile or transient than other populations (*e.g.*, unable to relocate to avoid potential impacts). Each of these factors can contribute to minority and/or low-income communities bearing disproportionately high and adverse effects. Therefore, developing an understanding of where these communities are located and how they may be particularly impacted by government actions should be a fundamental aspect of the EA and EIS development process.

Currently, EAs and EISs generally evaluate and compare potential environmental, ecological, economic and/or human health risk impacts among and between broadly defined affected areas and populations. Potential impacts to smaller populations, individual communities, neighborhoods, census tracts, or environments (*e.g.*, single lake or watershed within a larger affected area) are not generally isolated, or disassociated from total impacts.

Minority and/or low-income communities are often concentrated in small geographical areas within the larger geographically and/or economically defined population center targeted for study. Minority communities and low-income communities may comprise a very small percentage of the total population and/or geographical area. Therefore, the assumptions and inputs used in conjunction with traditional analytical tools for studying potential impacts under NEPA, and the results of the analyses, may not fully reflect the impacts that may be borne by these smaller communities or populations. An analysis of disproportionate impacts will develop an understanding of how the total potential impacts vary across individual communities. This allows analysts to identify and understand what portion of the total impacts may be borne by minority or low-income communities, to assess whether they are disproportionately high and adverse, and to develop alternatives and mitigation measures if necessary.

As described in Chapter 3, the first step in identifying the potential for environmental justice concerns is to characterize the population affected by the proposed action in terms of racial and ethnic composition and in terms of relative income distribution. The composition of the population should then be compared to the characteristics of the population (*e.g.*, percentage of minority populations residing near a proposed project versus the percentage of minority populations located within a single or multiple-county area surrounding the proposed project). Populations surrounding the proposed project should be characterized in terms of income distribution levels, as well as in terms of racial and ethnic diversity.

Many of the potential effects that may be borne by minority and/or low-income communities may be analyzed or assessed using the same analytical tools that are currently used in the development of EAs and EISs. However, once a potential environmental justice issue is identified, these tools may need to be modified or more likely, the scope of the analyses may need to be narrowed to focus on a smaller affected area or population.

Several types of analytical tools are currently available and are being refined and/or modified to assist analysts and decision makers in identifying potential environmental justice concerns and assessing potentially disproportionately high and adverse effects on minority and low-income communities. The

following sections provide an overview of some of the available tools and the types of analyses that may be useful for identifying and assessing disproportionately high and adverse effects (by evaluating both total effects and effects on a smaller scale). It is not an exhaustive listing of available tools, since many tools for identifying and assessing environmental justice concerns are still being developed, and it is not meant to promote or endorse one type of tool or analysis over any other. The application of any tool is dependent upon the type of study, the particular attributes of the area under study, and the data available to undertake the study.

5.1 LOCATIONAL/DISTRIBUTIONAL TOOLS

Maps, aerial photographs, and geographical information systems (GIS) can be used to locate geographical areas where potential environmental justice issues may exist. Local maps and aerial photographs may provide a "snap shot," or general overview, of the locations of minority or low-income populations or communities and the proximity of the proposed project to these populations or communities. They also can identify key natural resources that may be affected. Although such tools are relatively simplistic, they may be useful for identifying distinct communities within a geographical area surrounding a candidate site, and for identifying clusters of facilities or sites that may contribute to cumulative impacts to a given region or community. By consulting maps or photographs that depict the locations of minority or low-income communities, as well as maps of the same geographical area that depict the locations of hazardous waste facilities, Superfund sites, Toxics Release Inventory facility sites, and/or wastewater discharges, analysts and EPA decision makers can gain a general understanding of the spatial relationships between the proposed project and the surrounding communities. These tools can assist the EPA NEPA analyst in identifying existing sources of environmental pollution and their proximity to minority and/or low-income communities.

By consulting maps or photographs that depict the locations of minority or low-income communities, as well as maps of the same geographical area that depict the locations of hazardous waste facilities, Superfund sites, Toxics Release Inventory facility sites, and/or wastewater discharges, analysts and EPA decision makers can gain a general understanding of the spatial relationships between the proposed project and the surrounding communities. Aerial photographs can be used to effectively depict the boundaries of an identified community and the spatial relationship that exists between the community and natural resources and known pollutant sources.

Geographic information systems provide a much more powerful tool for identifying and locating populations of concern. GIS technologies are useful for characterizing environmental justice issues by identifying the locations of minority communities that potentially may be affected by proposed actions and providing a visual understanding of how potential impacts may be distributed within a geographical area. GIS provides the technology for displaying and overlaying locational information and population and site characterization information on one or more maps. GIS allows for the visual display of vast amounts of spatially oriented information. In addition, GIS systems can be used to display alternative "what if" scenarios and provide for relatively quick and easy general comparisons of the potential impacts presented by alternative locations.

Several EPA Headquarters and Regional offices are using and/or investigating the use of GIS technologies for identifying and analyzing environmental justice issues. GIS systems such as ARCINFO and Landview II are geographic references or computerized atlases. These systems can create maps using digitized geographical boundary files such as the U.S. Census Bureau TIGER/Line '92 files, and other commercially available digitized boundary files (*e.g.*, zip code boundaries, county boundaries, water body boundaries) to display locational information and geographical areas. GIS systems also can incorporate, and graphically display on computer-generated maps, other population and demographic information that is available in digitized format. Landview II includes 1990 demographic and economic data from the Bureau of Census, including population and housing characteristics and summary information on income, education levels, employment, race, and age. The census data are available in two databases, STF1A and STF3A, which contain digitized data files. The census databases are then spatially linked to the TIGER files that contain geographic and political boundaries. Each county in the census database is divided into several census tracts that are subdivided into census blocks. The blocks are aggregated into block groups containing between 250 to 550 housing units. This level of data aggregation allows the user to identify locations of relatively small, homogeneous communities and to visualize, on the computer screen, the relative proximity of these communities to the proposed project and mitigation activities.

GIS allows users to easily display, on a single map, general locational and demographic information (*e.g.*, zip code boundaries, proposed facility site locations, pollutant concentrations, income level, ethnic background, population density). GIS also will allow a user to display data in terms of policy or decision criteria. For example, income distribution data for individual census tracts may be segregated by percent of population below the poverty level (*e.g.*, census blocks shaded differently to correspond to areas where 0 - 25 percent of the population is below the poverty level, 25 - 50 percent is below the poverty level, etc.). GIS also can integrate additional census information on education, employment, race, and age to produce graphic depictions of all of this information on a single map to obtain a comprehensive profile of the communities surrounding the proposed project. More than one project can be displayed on a single map to allow for a comparison of population characteristics surrounding the proposed project. Again, the maps generated by the GIS are useful tools for identifying minority and/or low-income communities that should be targeted for further study due to potential environmental justice concerns.

Although the availability of census demographic information in digitized format can significantly enhance NEPA analytical capabilities, and can be particularly useful for environmental justice analyses, the EPA NEPA analyst should keep in mind that there are limitations associated with the accuracy of census information due to the manner in which the data are collected and tabulated. Census data are useful for screening analyses, but results should always be validated through public participation mechanisms, other data sources, or by touring the community and talking with local officials and community leaders.

Many other types of information pertinent to NEPA project evaluations also are available for use in GIS systems. For example, EPA has made available portions of the Toxics Release Inventory (TRI) database (including facility locations), the Biennial Reporting System (BRS) database, the Aerometric Information Retrieval System (AIRS), the CERCLA Information System (CERCLIS), and the Permit Compliance System (PCS), in digitized data files for use in GIS applications. DOT's chemicals in transit information is also available for GIS applications.

To enhance the applicability of GIS technologies to NEPA assessments, including the assessment of potential cumulative impacts from existing and proposed projects, the geographical and demographic information provided in Census databases can be integrated with other available EPA information (*e.g.*, facilities located within particular zip codes or counties that reported releases or emissions of a particular chemical in TRI reports, locations of NPL sites, etc.) and integrated with other NEPA factors using digitized data sets on soils, power lines, roads, streams, sources of electricity, locations of threatened and endangered species, and existing archaeological sites. These additional data sets are readily available from the U.S. Forest Service, the U.S. Geological Survey, the Department of Commerce, and state and local government agencies. Additional maps depicting community-specific issues (*e.g.*, locations of subsistence farmers and locations of water bodies supporting subsistence fishing activities) also can be compiled, digitized and incorporated into a GIS system to further depict and analyze more specific environmental justice issues and concerns.

Other GIS, or computer mapping, systems that may enhance NEPA analyses of environmental justice concerns include CAMEO (Computer-Aided Management of Emergency Operations), ALOHA (Aerial Locations of Hazardous Atmospheres) and AILESP (American Indian Lands Environmental Support Project). CAMEO includes chemical-specific information, facility-specific information from EPA's Chemical Inventory database and TRI database, and transportation information. CAMEO integrates MARPLOT, a mapping application tool that generates maps from U.S. Bureau of Census TIGER files. ALOHA is a modeling tool for estimating the movement and dispersion of gases and estimating pollutant concentrations downwind from the source of a potential spill or emission. ALOHA files can be saved and used in a format compatible with CAMEO. AILESP includes permitted facilities on or near Indian lands from various EPA databases (e.g., AIRS, BRS, NCDB, PCS, RCRIS, TRI, CERCLIS), pounds of chemicals released, 1994 spill and one time release data, pesticide use by county, toxic weighting factors for TRI chemicals, two year inspection and compliance information, 1990 population and census statistics, and stream reaches with fish advisories, contaminated sediments and contaminated fish tissue.

5.2 Ecological and Human Health Risk Assessments

Executive Order 12898 provides for agencies to determine if a proposed action will result in disproportionately high and adverse effects to minority or low-income populations. Due to the fact that the characteristics of these populations may differ significantly from the characteristics of the larger affected population, analyses should address both the minority or low-income population and the comparison populations. See Chapter 2 for a discussion of the environmental and socioeconomic factors that should be considered in identifying and assessing disproportionately high and adverse effects.

EPA has a formal risk analysis process which consists of two related, but separate, processes: risk assessment and risk management. Risk assessment characterizes the likelihood for a chemical or substance to cause adverse health effects to humans and can provide a means for assessing the possible impacts on a population, if exposure occurs. Risk assessment provides an estimate of the probability that human exposure to a chemical agent will result in an adverse health effect to the exposed individual, or an estimate of the incidence of the effect upon an exposed population. Risk management is the process whereby it is decided what actions are appropriate, given an estimate of potential risks and due consideration to other

relevant factors. Information developed in the risk assessment process is used to guide decision makers in determining the appropriate action to take within the risk management process. When making risk management decisions in the context of environmental justice concerns, a number of factors should be considered along with human health risk calculations or evaluations. These include social concerns, economic concerns, and acceptance of the proposed action by the affected communities. Within the context of risk management, there is an opportunity to consider relevant environmental justice issues. In the risk management process, decisions are made regarding acceptable levels of exposure and risk.

Risk assessment, as conducted by EPA, conforms to the Agency's published guidelines that include four distinct parts: Hazard Identification, Dose-Response Analysis, Exposure Assessment, and Risk Characterization. These four parts provide the analytical tools for identifying disproportionately high and adverse effects. During the risk management process, criteria must be developed to guide the weighing of information. These criteria provide the basis for risk-based decisions with regard to disproportionately high and adverse effects. For example, risk assessments usually do not account for exposure traits of racial and ethnic groups or accurately account for actual environmental harm to human health where the population density is low (*e.g.*, rural communities, Indian Country). Human activity patterns governed by customs, social class, and ethnic and racial cultures may be introduced and considered during the risk management process to allow for the identification of disproportionately high and adverse effects.

To ensure that environmental justice concerns are considered within the risk management process, risk assessments should be conducted to determine exposure pathways and potential effects and the affected community should be involved in the development and implementation of the process. This can then be overlaid with information obtained from locational analyses using GIS and census data during the risk management process to identify minority or low-income populations that are located within the identified exposure pathways. Racial, ethnic, and cultural information can then be used to further refine the risk management process to account for disproportionately high and adverse effects.

To enhance the analysis of disproportionately high and adverse effects within EPA's health assessment studies, several efforts are underway to make relevant health and exposure information available to these studies. EPA's Office of Research and Development is currently developing the National Human Exposure Assessment Survey (NHEXAS). This survey is designed to generate a human exposure database to address some of the geographic and demographic questions relevant to environmental justice issues. NHEXAS will address exposure concerns by providing information on the magnitude, extent, and causes of human exposure.

EPA's Office of Policy, Planning, and Evaluation is currently developing an environmental justice database that will integrate health effects data from the National Health and Nutrition Examination Survey III (NHANES-III), demographic data from the 1990 Census, environmental data from air monitoring stations, and the Toxic Release Inventory database. This database integration will assist EPA staff in developing disease correlations with air exposure data in high impact populations.

Ecological assessments conducted as components of EAs and EISs generally involve identifying the natural resources (*e.g.*, air, water, soils) that will be used by proposed project or activity and the potentially

affected environments (*e.g.,* watersheds, wetlands, wildlife habitats) that may be impacted by the proposed project (including alternatives). After a general cataloging and description of the surrounding environmental and ecological resources is compiled, the potential changes and impacts of the proposed action and alternative actions are assessed. Often, these analyses do not fully substantiate the beneficial or adverse effects on the surrounding geographical area or communities within the area. Instead, impacts may be described generally, with an assumption that they are distributed equally across all communities or residents within the affected region or area. As a consequence, the analysis may overlook or ignore environmental justice concerns. If adverse impacts are not quantified, then special consideration should be given to whether potential impacts could be borne by minority communities or low-income communities residing within the larger area and, if necessary, separate analyses should be designed and conducted to assess this. As discussed above, GIS systems can sometimes be used to identify such populations and to characterize the environments where the populations reside. In addition, county and state planning agencies and housing authorities may be useful sources of information for characterizing the unique aspects and vulnerabilities of these populations.

If environmental, ecological, or human health impacts to the affected geographical area are quantified, the distribution of such impacts should be assessed. The study should attempt to estimate the proportion of impacts borne by low-income and/or minority populations within the area of a project's impact compared to the general population in and around the project, or the project's region of influence. While traditional risk modeling may not always be used in the NEPA process, impact assessments and risk management tools should be tailored to reflect the characteristics of these communities and study assumptions should reflect the characteristics of the individuals residing in low-income communities and minority-populated communities (*i.e.,* model assumptions should reflect the general health of these individuals and their general living conditions and unique locations relative to pollutant sources). When tailoring risk management tools to consider the distribution of impacts to low-income and/or minority communities, differential patterns of subsistence consumption of natural resources should be considered, including differences in rates of consumption for fish, vegetation, water, and wildlife among ethnic groups and among cultures. Further, it should be recognized that land and water resources not predominantly used by the general population may be important sources of consumption , economy, cultural use, and/or recreation for minority and/or low-income communities. Degradation of these resources may result in direct and disproportionately high and adverse effects to minority and/or low-income communities.

5.3 SOCIOECONOMIC ANALYSES

The analysis and understanding of potential socioeconomic impacts is also important. CEQ regulations note that economic or social effects alone do <u>not</u> trigger an EIS (40 CFR §1508.14). However, if environmental justice concerns are identified during the screening analysis or during the development of an EA, the potential interrelated socioeconomic impacts to both the total affected population (or a "control" population) and to the low-income and/or minority communities of concern should be evaluated, to the extent practicable. Cultural or Social Impact Assessments are additional tools that can be used for analyzing specific socioeconomic impacts to a community that shares a common cultural or spiritual environment.

In the development of EAs and EISs, deterministic models are generally used to predict potential impacts that a particular action may have upon particular economic indicators (*e.g.*, the level of employment and changes to income distribution or property values) for the community surrounding the proposed project. Standard models provide for analyses of the potential effects that an action may have upon the local economy in both the short term, due to transient or temporary activities (*e.g.*, construction, facility planning and startup activities), and the long term, due to sustained impacts to the area (*e.g.*, permanent employment opportunities, reduction in housing quality, degradation of existing environment). Generally, NEPA modeling activities measure potential shifts in indicators such as income distribution and employment levels across general income distribution categories (*e.g.*, percentage change in annual income to portion of affected population earning less than $15,000, between $15,000 to $20,000, etc.). Standard socioeconomic models also can be used to predict impacts that proposed actions and alternatives may have upon available housing stock, housing quality, and property values.

Generally, standard socioeconomic models are employed to predict shifts and changes in particular socioeconomic indicators such as employment, income levels, and housing quality upon a large geographical area or population center, often a standard, pre-defined economic trade area. The data and information provided as inputs to the model and assumptions made in employing the model (including economic conditions and multipliers) broadly characterize the entire population of the large geographical area or population center surrounding the proposed project. The results of these modeling efforts may include potential impacts to various categories within the overall population characterized by income level or by housing category. However, these models generally do not allow (or at least have not been used so as to allow) for a distributional analysis of potential impacts to specific communities, individual populations, or to small geographical areas.

To predict or characterize more accurately the potential disproportionately high and adverse effects to minority or low-income communities and account for potential environmental justice concerns, standard socioeconomic models currently used for EAs and EISs may have to be modified or specifically tailored to account for an array of new variables, such as subsistence living, treaty-protected resources, cultural use of natural resources, sacred sites, dependence on public transit, community cohesion, and a relatively unskilled labor base. Environmental justice issues and concerns may be integrated into some traditional socioeconomic analyses by first employing scoping activities and screening tools to identify potential minority and/or low-income communities prior to the employment of specific modeling techniques. It then may be possible to tailor modeling assumptions and input data on specific populations or targeted communities, rather than apply standard modeling techniques to large economic trade areas or standard metropolitan areas and using average input parameters that may not reflect adequately the characteristics of minority or low-income communities (*i.e.*, alter model assumptions to characterize the population affected by the environmental justice concern, rather then characterize the average individual in the entire study area). As noted above, Census databases contain demographic information (*e.g.*, income levels, race, age, employment levels) at the census tract and census block levels. Other potential sources of information include tribal, state and local planning agencies, and state housing, commerce, and welfare agencies. EPA analysts should keep in mind that some information on the characteristics of local communities and environments may be available only from community leaders, local government offices, and/or members of the community. Some information may be available from transcripts of public concerns raised at

hearings for other government projects within the same region. In some cases, analysts may need to conduct interviews of local community leaders and members of the targeted population.

One option for modifying or tailoring socioeconomic analyses to identify and evaluate environmental justice concerns is to develop index or ranking systems for identifying and scoring potential disproportionately high and adverse effects to minority and/or low-income communities. Such an index or ranking system could be applied to specifically defined or targeted areas and used as a screening tool to identify environmental justice concerns in communities surrounding one or more candidate locations. Candidate locations that result in high index scores or rankings can either be dropped from consideration, targeted for additional and more thorough socioeconomic and risk analyses to investigate further potential disproportionately high and adverse effects, or development of additional alternative actions or projects designed to mitigate identified impacts.

An environmental justice screening index may be as simple as defining several levels or categories of potential impacts (*e.g.*, changes in employment levels, changes in income levels, and changes in overall health levels) or defining and scoring several socioeconomic indicators (*e.g.*, dependence on subsistence farming or fishing, percent of population below poverty level, average property value) and weighing each category of impact as to its importance to contributing to environmental justice issues. Decision criteria (*e.g.*, undertake further detailed social impact analyses, drop candidate location from consideration) could then be set for different ranges of index scores or rankings. The index also may combine preliminary information on potential economic impacts with information on other potential impacts (*e.g.*, environmental degradation, air emissions) to assign decision criteria for additional targeted analyses or studies.

EPA Region 6[11] developed a relatively sophisticated ranking scheme to determine whether an environmental justice indicator exists. The formula provides a means for determining whether an environmental justice situation exists and includes factors such as population exposed, degree of impact and degree of vulnerability.

Region 6 evaluates sites using an environmental justice formula and ranks facilities or actions on a scale of 0 to 100. Regional officials point out that although higher scores can indicate greater potential environmental justice concerns, the population density, percent minority population, and percent of economically depressed household data are the more important analytical factors. When evaluated independently, they often provide greater insight into potential environmental justice concerns and can be used alone to rank sites. Also, the user should realize that even a location with an index ranking of zero can have significant environmental justice concerns. For example, an unpopulated area will rank a zero, but if owned and/or used by minority and/or low-income groups, the site may have significant environmental justice importance. Recent examples of EPA's use of the EJ index include the draft EIS for Eagle Pass Mine, in Maverick County, Texas, and the Supplemental Draft EIS for Expansion of the Oak Hill Surface Lignite Mine into the DIII Area, Rusk County, Texas. Utilizing the EJ index on a scale of 1

11 U.S. EPA Region 6, Office of Planning and Analysis. "Computer Assisted Environmental Justice Index Methodology." July, 1994.

to 100 wherein higher values indicate more concern, neither EIS warranted a closer examination into EJ issues.

APPENDIX A
Council on Environmental Quality
Guidance for Addressing
Environmental Justice Under the National Environmental Policy Act

APPENDIX B
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APPENDIX C
References

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EXCEPTION CHECKLIST FOR BIA CATEGORICAL EXCLUSIONS

Project:_____ Date:_____

Nature of Proposed Action:

516 DM 10.4
Exclusion category and number:

Evaluation of Exceptions to use of Categorical Exclusion:

1.	This action would have significant adverse effects on public health or safety.	No_____	Yes_____
2.	This action would have an adverse effect on unique geographical features, such as wetlands, wild or scenic rivers, refuges, floodplains, rivers placed on nationwide river inventory, or prime or unique farmlands.	No_____	Yes_____
3.	The action will have highly controversial environmental effects.	No_____	Yes_____
4.	The action will have highly uncertain environmental effects or involve unique or unknown environmental risks.	No_____	Yes_____
5.	This action will establish a precedent for future actions.	No_____	Yes_____
6.	This action is related to other actions with individually insignificant, but cumulatively significant environmental effects.	No_____	Yes_____
7.	This action will affect properties listed or eligible for listing in the National Register of Historic Places.	No_____	Yes_____
8.	This action will affect a species listed, or proposed to be listed as endangered or threatened.	No_____	Yes_____
9.	This action threatens to violate federal, state, local or tribal law or requirements imposed for protection of the environment.	No_____	Yes_____

10.	This action will have a disproportionately high and adverse effect on low income or minority populations.	No____	Yes____
11.	This action will limit access to, and ceremonial use of Indian sacred sites on federal lands by Indian religious practitioners, or significantly adversely affect the physical integrity of such sacred sites.	No____	Yes____
12.	This action will contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or may promote the introduction, growth, or expansion of the range of such species.	No____	Yes____

A "yes" to any of the above exceptions will require that an EA be prepared.

NEPA Action - - - CE_____ EA_____

Preparer's Name and Title:_____

Regional Archeologist Concurrence with Item 7_____

Concur:_____ Date:_____
Regional Director/Superintendent

Concur:_____ Date:_____
Regional Office/Agency Environmental Coordinator

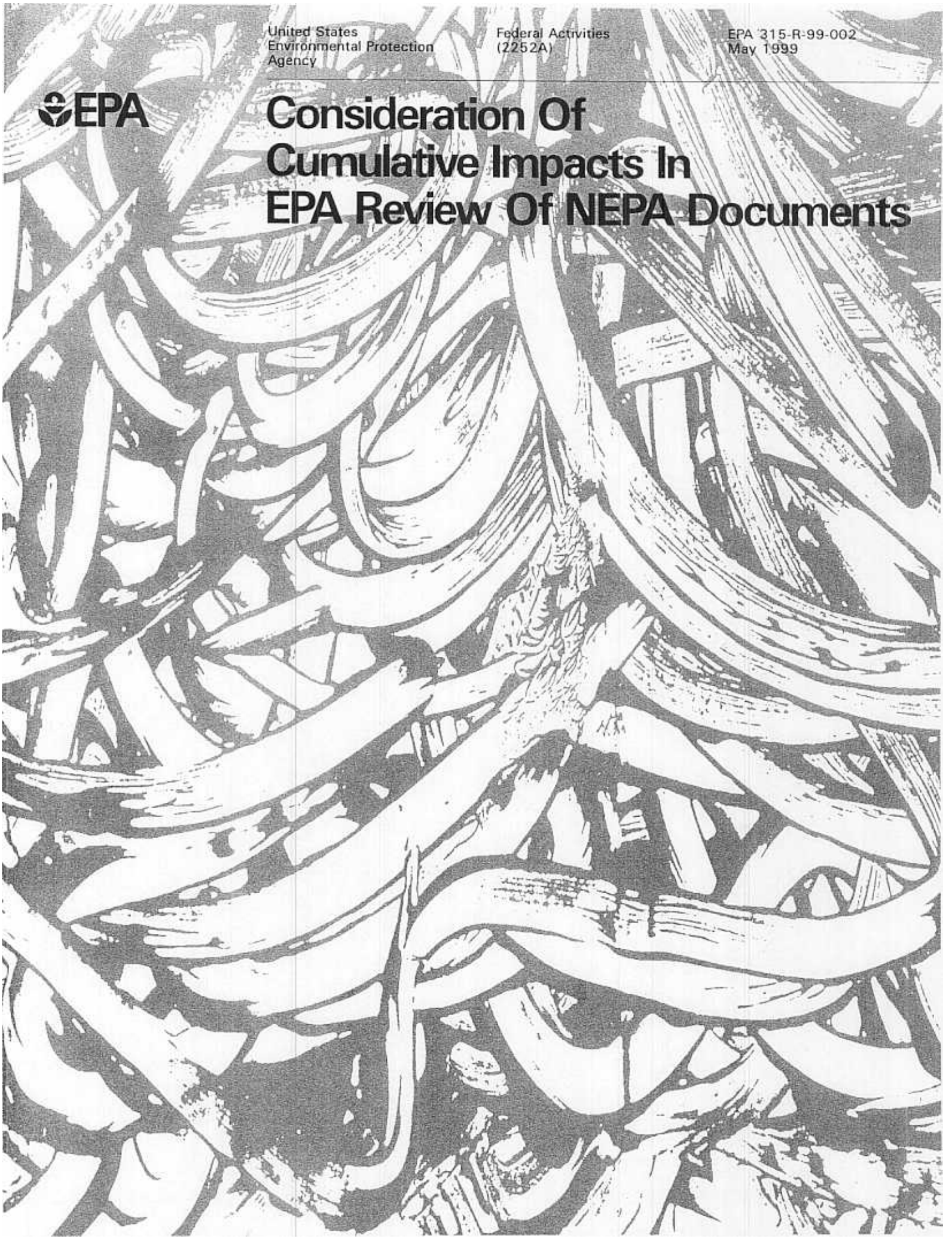
United States
Environmental Protection
Agency

Federal Activities
(2252A)

EPA 315-R-99-002
May 1999

EPA

Consideration Of Cumulative Impacts In EPA Review Of NEPA Documents



1. INTRODUCTION

The combined, incremental effects of human activity, referred to as cumulative impacts, pose a serious threat to the environment. While they may be insignificant by themselves, cumulative impacts accumulate over time, from one or more sources, and can result in the degradation of important resources. Because federal projects cause or are affected by cumulative impacts, this type of impact must be assessed in documents prepared under the National Environmental Policy Act (NEPA). The purpose of this guidance is to assist EPA reviewers of NEPA documents in providing accurate, realistic, and consistent comments on the assessment of cumulative impacts. The guidance focuses on specific issues that are critical in EPA's review of NEPA documents under Section 309 of the Clean Air Act. While there is no "cookbook" method of assessing cumulative impacts, the guidance offers information on what issues to look for in the analysis, what practical considerations should be kept in mind when reviewing the analysis, and what should be said in EPA comments concerning the adequacy of the analysis.

The assessment of cumulative impacts in NEPA documents is required by Council on Environmental Quality (CEQ) regulations (CEQ, 1987). Cumulative impacts, however, are not often fully addressed in NEPA documents due to the difficulty in understanding the complexities of these impacts, a lack of available information on their consequences, and the desire to limit the scope of environmental analysis. To improve how cumulative impacts are assessed in environmental impact analysis, CEQ developed a handbook entitled "Considering Cumulative Effects under the National Environmental Policy Act" (CEQ 1997). CEQ's handbook offers the most comprehensive and useful information to date on practical methods for addressing cumulative effects in NEPA documents. Consequently, the concepts presented in the handbook serve as the foundation for this guidance. Reviewers are urged to use this guidance and the CEQ handbook simultaneously.

The guidance has four sections including this introduction. Section 2 *What are Cumulative Impacts* briefly summarizes the definition and basic concepts used in this guidance. Section 3 *EPA's Review of Cumulative Impacts* addresses several fundamental questions concerning EPA's review of cumulative effects in a NEPA analysis. Section 4 *Major Review Areas* discusses several of the key areas that should be considered to adequately analyze cumulative impacts and offers practical suggestions on how to prepare comments to address cumulative impacts in NEPA documents. References are cited in a bibliography.

2. WHAT ARE CUMULATIVE IMPACTS?

Cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis. While impacts can be differentiated by direct, indirect, and cumulative, the concept of cumulative impacts takes into account all disturbances since cumulative impacts result in the compounding of the effects of all actions over time. Thus the cumulative impacts of an action can be viewed as the total effects on a resource, ecosystem, or human community of that action and all other activities affecting that resource no matter what entity (federal, non-federal, or private) is taking the actions . Consistent with the CEQ regulations (CEQ, 1987), effects and impacts are used synonymously in the guidance.

CEQ's regulations (CEQ, 1987) explicitly state that cumulative impacts must be evaluated along with the direct effects and indirect effects of each alternative. By mandating the consideration of cumulative impacts, the regulations ensure that the range of actions that is considered in NEPA documents includes not only the project proposal but also all actions that could contribute to cumulative impacts. Federal agencies prepare cumulative impact analysis using different terms and approaches. To avoid arguing over semantic differences, EPA reviewers should avoid conflicts over terminology and pursue a common sense approach. The concept of cumulative impacts as total impacts provided above is meant to facilitate discussion in this document, but it is not intended to replace other usages that meet the intent of good cumulative effects analysis.

3. EPA'S REVIEW OF CUMULATIVE IMPACTS

This section addresses fundamental questions concerning EPA's review of cumulative impact analysis in NEPA documents.

Q. How should EPA review cumulative impacts analyses in NEPA documents?

A. The assessment of cumulative impacts is not substantially different from the assessment of direct or indirect impacts. The same type of considerations are made to determine the environmental consequences of the alternatives for direct, indirect, or cumulative impacts. One possible difference is that cumulative impact assessment entails a more extensive and broader review of possible effects. Reviewers should recognize that while no "cookbook" approach to cumulative impacts analysis exists, a general approach is described in the CEQ handbook. As with the review of direct or indirect impacts, EPA review of cumulative impacts analysis is most effective if done early in the process, especially in the scoping phase.

Federal agencies have the responsibility of determining how and the extent to which cumulative impacts are assessed in NEPA documents and documenting that effort. In reviewing the analysis, the EPA reviewer should determine if the information presented is commensurate with the impacts of the project, i.e., a greater degree of detail is needed for more potentially serious impacts. In addition, in making its rating determinations, EPA will consider cumulative impacts when determining the environmental impact of the action and the adequacy of the analysis. EPA comments should identify significant cumulative impacts that may affect resources of concern and suggest mitigation measures that will avoid or minimize adverse effects to the environment. While this guidance emphasizes the effects of projects on ecological resources, other resources and areas that should be considered include socioeconomic resources, human health, recreation, quality of life issues, and cultural and historical resources.

Q. Should EPA reviewers expect that cumulative impact analysis be done in all NEPA documents?

A. NEPA documents do not necessarily require cumulative impact assessments in every case. However, EPA expects that the action agency consider whether cumulative impacts is a significant issue that should be addressed every time a NEPA document is prepared. NEPA documents in this context includes both environmental assessments and environmental impact statements. As with most NEPA assessments, the analysis should be commensurate with the project's impacts and the resources affected. In all phases of the cumulative impact assessment, EPA should ensure that the level of analysis and scope are commensurate with the potential impacts, resources affected, project scale, and other factors. While projects that have long-lasting and widespread effects in environmentally sensitive areas should receive close scrutiny, some projects may not require in-depth consideration of cumulative impacts. For example, small scale projects that have minimal impacts that are of short-duration would not likely contribute significantly to cumulative impacts.

Q. Can cumulative impacts be the basis for adverse ratings?

A. Cumulative impacts that result in significant impacts can be the basis for adverse ratings. EPA will consider cumulative impacts when determining the rating for the environmental impacts of the proposed project. Ratings should be based on the overall environmental impact of the proposed project or action, which includes cumulative impacts. When the NEPA document does not contain sufficient information, the determination of potential, total project impacts may be based on other documents, information, or on-site surveys. In these situations, the reviewer should identify the source of information that is the basis for EPA comments including those related to cumulative impact analysis.

Q. Should EPA comments suggest mitigation measures to address cumulative impacts?

A. The EPA's manual on reviewing and commenting on federal actions under NEPA and section 309 of the Clean Air Act (EPA, 1984) states that EPA's comments should include mitigation measures "...to avoid or minimize damage to the environment, or to protect, restore, and enhance the environment". It is appropriate for EPA comments to include recommendations for mitigation that address the cumulative impacts of the project. The comments should suggest a range of mitigation that addresses differing sources of the cumulative impacts. At a minimum, the mitigation should address the proposed project's contribution to the cumulative impacts. In addition, it is appropriate to suggest mitigation to address cumulative impacts that are caused by activities other than the proposed project. For example, mitigation could include forming partnerships among the different governmental agencies and private organizations to work on environmental restoration when those entities have contributed to cumulative impacts over a long period of time. It is important to note that EPA suggestions for mitigation are not necessarily constrained by whether the action agency has jurisdiction to implement the measures but the measures should be realistic and technically feasible.

Q. Do EPA reviewers have to prove that cumulative impacts are occurring if the issue of cumulative impacts is raised by a proposed project?

A. Ultimately, the action agency is responsible for determining whether cumulative impacts will occur. However, EPA reviewers should provide enough information in their comments to show the likelihood that cumulative impacts will occur. In order to make the case that the NEPA documents should include cumulative impact analysis, EPA comments need only to show the potential for cumulative impacts to occur, not absolute proof that such impacts will take place. EPA reviewers should use existing data to support an argument for considering cumulative impacts in the document.

4. MAJOR REVIEW AREAS

Several key areas of information should be considered by EPA reviewers in determining whether the cumulative impacts assessment in a NEPA document is adequate. These areas, as described below, expand on the approach presented in the CEQ handbook. Each subsection presents background information on one of five areas and offers guidance on what EPA reviewers should look for in the assessment of cumulative impacts.

4.1 Resources and Ecosystem Components

EPA Review Approach

In reviewing cumulative impacts analysis, EPA reviewers should focus on the specific resources and ecological components that can be affected by the incremental effects of the proposed action and other actions in the same geographic area. EPA

reviewers should determine whether the NEPA analysis has identified the resources and ecosystem components cumulatively impacted by the proposed action and other actions. The reviewer can determine which resources are cumulatively affected by considering:

(1) whether the resource is especially vulnerable to incremental effects;

(2) whether the proposed action is one of several similar actions in the same geographic area;

(3) whether other activities in the area have similar effects on the resource

(4) whether these effects have been historically significant for this resource; and

(5) whether other analyses in the area have identified a cumulative effects concern.

Three documents that can provide useful information when considering important resource components include the 1993 EPA report, "Habitat Evaluation: Issues in Environmental Analysis Review", the 1993 CEQ report, "Incorporating Biodiversity Considerations Into Environmental Impact Analysis Under the National Environmental Policy Act", and the 1994 EPA report "Evaluation of Ecological Impacts from Highway Development".

Cumulative impacts can affect a broad array of resources and ecosystem components. In addition to considering the biological resources that are the staple of NEPA analysis, examples of other resources that should be considered include historic and archaeological sites, socioeconomic services and issues, and community structure and character. While a broad consideration of resources is necessary for the adequate assessment of cumulative impacts, the analysis should be expanded for only those resources that are significantly affected. In similar fashion, ecosystem components should be considered when they are significantly affected by cumulative impacts. The measure of cumulative effects is any change to the function of these ecosystem components.

Discussion

NEPA documents generally consider only a limited number of resources that may be potentially affected by cumulative impacts. In addition, assessments of impacts to biological resources generally have been limited to selected game species, federally or state listed threatened and endangered species, and wetlands habitats. These approaches are too limited and should be expanded to consider other valuable resources which could be affected, while also considering a broader array of potential effects.

As an example, federal assessment and mitigation for the loss of wetlands often focus primarily on the acreage affected rather than the function of the wetland within the broader ecosystem. In such a case, the impact to the wetland might not be deemed significant if the wetland had no immediate wildlife values or other notable characteristics. However, by expanding the assessment to consider the full array of wetland functions and their importance with a broader context, cumulative impacts could be more fully assessed. For example, important functions to focus on could include the wetlands' role as a nursery for recreationally and/or commercially valuable aquatic species; its ability to minimize downstream flooding; and its ability to improve water quality.

To ensure the inclusion of the resources that may be most susceptible, cumulative impacts can be anticipated by considering where cumulative effects are likely to occur and what actions would most likely produce cumulative effects. A framework for this consideration for forested areas is modified from Bedford and Preston (1988). Certain types of forests are more likely to be affected by cumulative effects as described by the following examples:

1) forests downwind from major sources of air pollution that contain plant organisms that are susceptible to ozone and other airborne pollutants;

2) forested areas lower in a watershed because they are often closer to development and pollutants follow the movement of water;

3) forests that are susceptible to fragmentation because, with increasing fragmentation, areas will have a large perimeter in relation to their area; and

4) areas experiencing development pressure.

Resources of concern may also be identified by considering actions that alter ecological processes and therefore can be expected to produce cumulative effects. Changing hydrologic patterns, for example, is likely to elicit cumulative effects. Bedford and Preston (1988) offered the following alterations that would likely initiate cumulative effects in wetlands or watersheds:

1) changes in sediment transport;

2) alteration of discharge and retention rates of water;

3) changes in velocity of water moving through the system;

4) disposal of organic pollutants where uptake is controlled by biological processes;

5) disposal of chemicals that easily separate from sediment and other materials to which they are attached; and

6) filling of wetlands that results in increased pollutant loadings.

The NEPA document should identify which resources or ecosystem components of concern might be affected by the proposed action or its alternatives within the project area. Once these resources have been identified, consideration should be given to the ecological requirements needed to sustain the resources. It is important that the NEPA document consider these broader ecological requirements when assessing how the project and other actions may cumulatively affect the resources of concern. Often these ecological requirements may extend beyond the boundaries of the project area, but reasonable limits should be made to the scope of the analysis.

NEPA Example: Several examples exist of agency NEPA documents that have included a thorough consideration of resources. The Supplemental Information Report for the Trail Creek Timber Sale, Wisdom Ranger District, Beaverhead National Forest, MT was prepared by the Forest Service (Forest Service, 1991) to consider two important resources (ecosystem components) that were not included in the FEIS for the project. The two resources were (1) the value of the Trail Creek area as a biological corridor between adjacent wilderness and roadless areas and (2) the biodiversity of the Trail Creek area and surrounding lands as it might be affected by habitat fragmentation. The report considered potential impacts in the context of the natural disturbance process, such as fire and insects, that have continually altered the distribution and abundance of mature forest and associated wildlife and plant species in the Trail Creek area since the retreat of the Pleistocene glaciers about 10,000 years ago.

Ecosystem processes at the landscape level have traditionally been overlooked, but are now considered among the resources most likely to be affected cumulatively by multiple activities. The Forest Service and other agencies are now applying an ecosystem approach to many NEPA analyses to better consider these resources. Other examples include the Draft Supplemental EIS on Management of Habitat for Late-Successional and Old-Growth Forest Related Species (Forest Service and BLM, 1993) and the current Draft EISs for the Interior Columbia Basin Management Project (Forest Service and BLM, 1997). The Federal Highway Administration (1996) is also beginning to apply an analogous system approach to the impact assessment of human communities.

4.2 Geographic Boundaries and Time Period

EPA Review Approach

Geographic boundaries and time periods used in cumulative impact analysis should be based on all resources of concern and all of the actions that may contribute, along with the project effects, to cumulative impacts. Generally, the scope of analysis will be broader than the scope of analysis used in assessing direct or indirect effects.

To avoid extending data and analytical requirements beyond those relevant to decision making, a practical delineation of the spatial and temporal scales is needed. The selection of geographic boundaries and time period should be, whenever possible, based on the natural boundaries of resources of concern and the period of time that the proposed action's impacts will persist, even beyond the project life. EPA reviewers should determine whether the NEPA analysis has used geographic and time boundaries large enough to include all potentially significant effects on the resources of concern. The NEPA document should delineate appropriate geographic areas including natural ecological boundaries, whenever possible, and should evaluate the time period of the project's effects.

Discussion

Spatial and temporal boundaries should not be overly restricted in cumulative impact analysis. Agencies tend to limit the scope of their analyses to those areas over which they have direct authority or to the boundary of the relevant management area or project area. This is often inadequate because it may not cover the extent of the effects to the area or resources of concern. The most common temporal scope is the life of the project. This may not be appropriate if the effects last longer than the project's useful life.

The EPA reviewer can determine an appropriate spatial scope of the cumulative impact analysis by considering how the resources are being affected. This determination involves two basic steps:

(1) identifying a geographic area that includes resources potentially affected by the proposed project and

(2) extending that area, when necessary, to include the same and other resources affected by the combined impacts of the project and other actions.

In practice, the areas for several target species or components of the ecosystem can often be captured by a single ecoregion or watershed. For example, an impact assessment for a forest plan modification may have to be expanded beyond its administrative forest management unit. Instead, the scope of the assessment might consider the entire watershed for the area covering portions of wilderness areas, national or state parks, other federal lands, and private holdings. Boundaries would be based on the resources of concern and the characteristics of the specific area to be assessed. Examples include stream sections important for salmonid feeding or spawning that are within or downstream of the administrative unit; maintenance of disturbance patterns to ensure structural and functional integrity of regional forests; and biological corridors and wildlife habitat that connect public and private lands. For practical purposes, ecological boundaries may need to be combined with political boundaries to adequately delineate the assessment area.

NEPA Example: The Final Supplemental EIS on Management of Habitat for Late-Successional and Old-Growth Forest Related Species (Forest Service and BLM, 1994) is an important example of study boundaries combining administrative units with natural regions. The planning area for the EIS included all lands administered by the Forest Service and the Bureau of Land Management within the range of the northern spotted owl. This species range matched well with the ecosystem consisting of late-successional and old-growth forest in the region.

EPA reviewers should recommend that the proper spatial scope of the analysis include geographic areas that sustain the resources of concern. Importantly, the geographical boundaries should not be extended to the point that the analysis becomes unwieldy and useless for decision-making. In many cases, the analysis should use an ecological region boundary that focuses on the natural units that constitute the resources of concern. Three examples of classifications of ecological regions that may be useful for large geographic areas include Omernik's EPA ecoregions (Omernik, 1989), Bailey's Forest Service ecoregions (Bailey, 1978), and the USGS hydrologic units or watersheds. The Natural Resources Conservation Service uses delineated areas termed Major Land Resources Areas that are based on soil types, climate, geology, topography, and hydrology. For non-ecological resources, other geographic areas, such as historic districts (for cultural resources) or metropolitan areas (for economics), should be used.

NEPA Example: The Draft EIS on the Special Area Management Plan (SAMP) for the Hackensack Meadowlands District, NJ (EPA and Army Corps of Engineers, 1995) is another example of creating a study area that considers both political boundaries and natural boundaries for both management utility and resource relevance. The plan covers an area with 14 municipalities in two counties that are experiencing continual pressure for development. Prepared by the U.S. EPA, U.S. Army Corps of Engineers, and Hackensack Meadowlands Development Commission, the draft EIS assesses the cumulative impacts of development scenarios within an area that includes 8,500 acres of wetlands that, because of their position in the landscape, "perform a number of significant ecological functions and support a diverse community of associated wildlife."

Determining the temporal scope requires estimating the length of time the effects of the proposed action will last. More specifically, this length of time extends as long as the effects may singly, or in combination with other anticipated effects, be significant on the resources of concern. At the point where the contribution of effects of the action, or combination of all actions, to the cumulative impact is not significant the analysis should stop. Because the important factor in determining cumulative impact is the condition of the resource (i.e., to what extent it is degraded), analysis should extend until the resource has recovered from the impact of the proposed action.

For example, an impact assessment of ground water withdrawals to cool power

plant turbines should go beyond determining whether the capacity of the aquifer is adequate to provide water for the life of the power plant. The analysis should also consider the long-term effects of lowering the aquifer level. Should municipal drinking water and agricultural irrigation withdrawals increase in the future, the cumulative effect of the power plant withdrawals may lower aquifer levels to the point where, at predictable intervals in the future, droughts will eliminate all supply. The NEPA document may, therefore, have to consider time periods beyond the life of the power plant.

NEPA Example: The Final Supplemental EIS on Management of Habitat for Late-Successional and Old-Growth Forest Related Species (Forest Service and BLM, 1994) looked sufficiently forward in time to address the probability of restoring or maintaining sustainable ecosystem conditions. The forest draft EIS determined that previous alterations to the regional ecosystem prevented a return to pre-settlement landscape condition or recovery of aquatic resources within the next 100 years, but that the selected alternative would reverse a 50-year trend toward degradation.

There are no set or required formulas for determining the appropriate scope of the cumulative impact analysis. Both geographic boundaries and time periods need to be defined on a case-by-case basis. Determining the boundaries and periods depends on the characteristics of the resources affected, the magnitude and scale of the project's impacts, and the environmental setting. In practice, a combination of natural and institutional boundaries may be required to adequately consider both potential impacts and possible mitigation measures. Ultimately, the scope of the analysis will depend on an understanding of how the effects are occurring in the assessment area.

4.3 Past, Present, and Reasonably Foreseeable Future Actions

EPA Review Approach

The adequacy of cumulative impact analysis depends on how well the analysis considers impacts that are due to past, present, and reasonably foreseeable actions. EPA reviewers should determine whether the cumulative analysis adequately considered the following:

1) whether the environment has been degraded, and if so, to what extent;

2) whether ongoing activities in the area are causing impacts; and

3) the trends for activities and impacts in the area.

Considering the past, present, and reasonable foreseeable future actions provides a needed context for assessing cumulative impacts. The inclusion of other actions

occurring in proximity to the proposed action is a necessary part of evaluating cumulative effects. Agencies should identify activities occurring outside of their jurisdiction that are affecting the same resources being affected by their actions. Consultation with other agencies potentially affecting the resources of concern is not usually done and a consideration of private activities seldom occurs. In addition, agencies may not always include other actions taken by their agency. EPA reviewers should determine whether the NEPA document considered all past, present, and future actions that contribute to significant cumulative effects on the resources of concern. The analysis should include the use of trends information and interagency analyses on a regional basis to determine the combined effects of past, present, and future actions. NEPA documents should only consider those past, present, and future actions that incrementally contribute to the cumulative effects on resources affected by the proposed action. Actions affecting other resources, or with cumulatively insignificant effects on the target resources, do not add to the value of the analysis.

Discussion

To successfully assess cumulative impacts, NEPA documents should consider a broad range of activities and patterns of environmental degradation that are occurring in the vicinity of the project . The following considerations (as modified from Klein and Kingsley, 1994) can assist in identifying actions that may relate to the project under review:

1) the proximity of the projects to each other either geographically or temporally;

2) the probability of actions affecting the same environmental system, especially systems that are susceptible to development pressures;

3) the likelihood that the project will lead to a wide range of effects or lead to a number of associated projects; and

4) whether the effects of other projects are similar to those of the project under review.

5) the likelihood that the project will occur -- final approval is the best indicator but long range planning of government agencies and private organizations and trends information should also be used;

6) temporal aspects, such as the project being imminent;

As an example, the cumulative effect of transportation projects and other development in an urban setting often results in alteration of topography, habitat fragmentation, changes in water flows and water quality, increased sediment and

contaminant runoff, and direct mortality from road kills. To address these issues, the actions included should start with the proposed project but also include other present, past, and future actions. Other current development should include related construction such as shopping malls within proximity of the new road construction or upgrades undertaken on connecting roads within the area of study. Past actions that should be considered include, for example, any housing and commercial development, alteration of hydrologic flows to control flooding, filling of wetlands, construction of other highways, and upstream development. The analysis should also extend further back in time to include previous changes to the area and region such as resource extraction or agricultural activities. Future actions should include any planned communities or commercial areas, induced growth and accompanying infrastructure, projected increase in population and traffic, and road expansion.

The identification of the effects of past actions is critical to understanding the environmental condition of the area. Knowing whether the resource is healthy, declining, near collapse, or completely devastated is necessary for determining the significance of any added impacts due to the proposed project. The NEPA document should consider how past activities have historically affected and will continue to detrimentally affect the resources of concern. How far back in time to consider depends on how long the resources of concern have been affected. Trends analysis, or how the resource condition has changed over time, is the most useful tool for looking at the accumulated effect of past actions. For example, if 50% of the wetland functions in a basin have been lost due to both agriculture and urban development, any present or future impacts should be taken into account in determining impacts to flood storage capacity and other important wetland functions.

Other present actions that may be detrimentally affecting the resources of concern need to be considered at the same time impacts of the proposed action are considered. NEPA documents should consider information on all other relevant activities in the study area including other actions of the proposing agency, actions of other federal agencies, actions of state and local governments, and private actions. While EPA already monitors federal activities on a regional basis, state and county resources should be used to monitor local and private activities.

The identification of future actions is also important. According to the response for question 18 of the "Forty Most Asked Questions concerning CEQ's NEPA Regulations" (CEQ, 1981), the NEPA document "must identify all the indirect effects that are known, and make a good faith effort to explain the effects that are not known but are 'reasonably foreseeable'." The critical question is "What future actions are reasonably foreseeable?". Court decisions on this topic have generally concluded that reasonably foreseeable future actions need to be considered even if they are not specific proposals. The criterion for excluding future actions is whether they are "speculative." The NEPA document should include discussion of future actions to be taken by the action agency. The analysis should also incorporate information based on

the planning documents of other federal agencies, and state and local governments. For example, projects included in a 5-year budget cycle might be considered likely to occur while those only occurring in 10-25 year strategic planning would be less likely and perhaps even speculative. For private actions, the analysis should use regional and local planning documents. In the absence of these plans (and to refine expectations where activities have diverged from the plans), the analysis should refer to projected development trends. In all of these cases, the best information should be used to develop scenarios that predict which future actions might reasonably be expected as a result of the proposal.

NEPA Example: The Commencement Bay Natural Resource Damage Assessment: Restoration Plan and Final Programmatic EIS (FWS and NOAA, 1997) addressed the problem of including the many and various past actions by quantifying the previous loss of 98% of mudflat and marsh habitat through a combination of historical records and photographic evidence. The Final EIS for the Castle Mountain Project, San Bernardino County, CA (BLM 1990) considered 26 other existing and proposed activities that might cumulatively affect 12 resources of concern. The potential impact of activities in the categories of utilities/services, commercial and residential, recreation, mining, and grazing were evaluated based on their location and which resources they might affect. The Draft EIS for the Disposal and Reuse of Naval Base, Philadelphia, PA (Department of the Navy, 1995) addressed "connected, cumulative, and similar existing and potential actions," including general growth trends in South Philadelphia, other land use development initiatives, related actions by other DoD services, realignment of the Naval Base, proposed leasing of shipyard facilities to private shipbuilders, and significant, proposed off-base transportation improvements.

4.4 Describing the Condition of the Environment

EPA Review Approach

The NEPA analysis should establish the magnitude and significance of cumulative impacts by comparing the environment in its naturally occurring state with the expected impacts of the proposed action when combined with the impacts of other actions. Use of a "benchmark" or "baseline" for purposes of comparing conditions is an essential part of any environmental analysis. "The concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process." (CEQ, 1997) To determine how the project will affect the resource's ability to sustain itself, the NEPA document should include a description of the baseline condition that considers "...how conditions have changed over time and how they are likely to change in the future without the proposed action". (CEQ, 1997) If it is not possible to establish the "naturally occurring" condition, a description of a modified but ecologically sustainable condition can be used in the analysis. In this context, ecologically sustainable means the system supports biological processes, maintains its level of biological productivity, functions with minimal external management, and repairs itself when stressed.

While a description of past environmental conditions is usually included in NEPA documents, it is seldom used to fully assess how the system has changed from previous conditions. The comparison of the environmental condition and expected environmental impacts can be incorporated into the environmental consequences or affected environment sections of NEPA documents. EPA reviewers should determine whether the NEPA analysis accurately depicts the condition of the environment used to assess cumulative impacts. In addition, reviewers should determine whether NEPA documents incorporate the cumulative effects of all relevant past activities into the affected environment section. For the evaluation of the environmental consequences to be useful, it is important that the analysis also incorporate the degree that the existing ecosystem will change over time under each alternative.

Discussion

Often the current condition is used as the benchmark for comparing the environmental effects of the alternatives. However, the current condition typically may not adequately represent how actions have impacted resources in the past and present or how resources might respond to future impacts. Designating existing environmental conditions as a benchmark may focus the environmental impact assessment too narrowly, overlooking cumulative impacts of past and present actions or limiting assessment to the proposed action and future actions (McCold and Saulsbury 1996). For example, if the current environmental condition were to serve as the condition for assessing the impacts of relicensing a dam, the analysis would only identify the marginal environmental changes between the continued operation of the dam and the existing degraded state of the environment. In this hypothetical case, the affected environment has been seriously degraded for more than 50 years with accompanying declines in flows, reductions in fish stocks, habitat loss, and disruption of hydrologic functions. If the assessment took into account the full extent of continued impacts, the significance of the continued operation would more accurately express the state of the environment and thereby better predict the consequences of relicensing the dam.

For the purposes of section 309 reviews, different methods of depicting the environmental condition are acceptable. The condition of the environment should, however, address one or more of the following:

1) how the affected environment functions naturally and whether it has been significantly degraded;

2) the specific characteristics of the affected environment and the extent of change, if any, that has occurred in that environment; and

3) a description of the natural condition of the environment or, if that is not available, some modified, but ecologically sustainable, condition to serve as a benchmark.

Two practical methods for depicting the environmental condition include use of the no-action alternative and an environmental reference point. Historically, the no-action alternative (as reflecting existing conditions) has usually been used as a benchmark for comparing the proposed action and alternatives to existing conditions. The no-action alternative can be an effective benchmark if it incorporates the cumulative effects of past activities and accurately depicts the condition of the environment.

Another approach for describing the environmental condition is to use an environmental reference point that would be incorporated into the environmental consequences and affected environment sections of the document. The natural condition of the ecosystem, or some modified but sustainable ecosystem condition, can be described as the environmental reference point. In analyzing environmental impacts, this environmental reference point would not necessarily be an alternative. Instead, it would serve as a benchmark in assessing the environmental impacts associated with each of the alternatives. Specifically, the analysis would evaluate the degree of degradation from the environmental reference point (i.e., natural ecosystem condition) that has resulted from past actions. Then the relative difference among alternatives would be determined for not only changes compared to the existing condition but also changes critical to maintaining or restoring the desired, sustainable condition.

Determining what environmental condition to use in the assessment may not be immediately clear. Choosing and describing a condition should be based on the specific characteristics of the area. In addition, the choice of condition can be constrained by limited resources and information. For these reasons, the environmental condition described by the environmental reference point or no-action alternative should be constructed on a case-by-case basis so that it represents an ecosystem able to sustain itself in the larger context of activities in the region. In this respect, there is no predetermined point in time that automatically should represent the environmental condition. In addition, it may not be practical to use a pristine condition in situations of intensive development. For example, it may not be very useful to use a pre-development condition to assess the extent of degradation in a heavily urbanized setting. It may be more useful in this situation to consider the condition of several important resources of concern (i.e., water quality, air quality, or quality of life) in comparison with expected environmental consequences of the action. Since most ecosystems can be delineated and have distinct characteristics, determination of the environmental condition does not need to be a subjective process leading to speculation about the condition of the environment before it was degraded.

Depending on whether the information is reasonably obtainable, the environmental condition chosen may be a pristine environment, or at the very least, a minimally functioning ecosystem that will not further degrade. The use of the environmental condition to compare alternatives is not an academic exercise, but one that can most effectively modify alternatives and help decision making. Examples of

conditions might include before project, before "substantial" development, or a reference ecosystem that is comparable to the project area. Selecting the best environmental condition for comparative purposes can be based on the following:

1) consider what the environment would look like or how it would behave without serious human alteration;

2) factor in the dynamic nature of the environment;

3) define the distinct characteristics and attributes of the environment that best represent that particular type of environment (focus on characteristics and attributes that have to do with function); and

4) use available or reasonably obtainable information.

For example, in a hypothetical case of harbor dredging and disposal, the existing condition of the aquatic ecosystem is highly modified from natural conditions. Human settlement along major waterways spans hundreds of years and commercial development has become very intense in many areas. Following practices used in some NEPA analyses, the degraded condition of the benthic communities and shoreline vegetation would be considered the condition for assessing the impacts of sediment dredging and disposal. By using this environmental condition, the analysis would not recognize the full extent of the degradation and would possibly underestimate the actual impacts of the proposed action. The environmental condition for this case could be set at pre-development (or at least at early development) or, if historical data are not available, use a reference point constructed from an understanding of how a similar ecosystem would behave in a natural state. The affected environment section should include a discussion of the extent of degradation that the current condition has experienced when compared to the characteristics of an undisturbed harbor environment. And finally, the extent of change and future trends should be considered in each alternative.

NEPA Example: The Forest Service's Snowmass Ski Area Final Environmental Impact Statement (Forest Service, 1994) and the Army Corps of Engineers Elk Creek Lake Final Evironmental Impact Statement (Army Corps of Engineers, 1991) both define baseline conditions for comparison of alternatives. In assessing the potential environmental impacts of the Snowmass Ski Area expansion, the Forest Service established a "pre-development" reference point from which all past, present, and reasonably foreseeable future environmental impacts were examined. Consequently, the EIS presented a comprehensive discussion of the cumulative impacts upon various resources. The Elk Creek Lake Final EIS also identified a "pre-development" reference point, defined by the Corps as "base conditions", for specific resources along the Rogue River and Elk Creek. The assessment then explored the alteration of resource conditions with respect to other actions, including the proposed project.

Issue 4.5 Using Thresholds to Assess Resource Degradation

EPA Review Approach

Qualitative and quantitative thresholds can be used to indicate whether a resource(s) of concern has been degraded and whether the combination of the action's impacts with other impacts will result in a serious deterioration of environmental functions. In the context of EPA reviews, thresholds can be used to determine if the cumulative impacts of an action will be significant and if the resource will be degraded to unacceptable levels. EPA reviewers should determine whether the analysis included specific thresholds required under law or by agency regulations or otherwise used by the agency. In the absence of specific thresholds, the analysis should include a description of whether or not the resource is significantly affected and how that determination was made.

Discussion

If adequate data and analytical procedures are available, specific thresholds that indicate degradation of the resources of concern should be included in the NEPA analysis . The thresholds should be practical, scientifically defensible, and fit the scale of the analysis. Thresholds may be set as specific numerical standards (e.g., dissolved oxygen content to assess water quality), qualitative standards that consider biological components of an ecosystem (e.g., riparian condition and presence of particular biophysical attributes), and/or desired management goals (e.g., open space or unaltered habitat). Thresholds should be represented by a measurement that will report the change in resource condition in meaningful units. This change is then evaluated in terms of both the total threshold beyond which the resource degrades to unacceptable levels and the incremental contribution of the proposed action to reaching that threshold. The measurement should be scientifically based. For example, thresholds for determining adverse change in the functioning of a wetland could include the percentage of historic wetland loss in the region, occurrence of species at risk, ambient water quality data that exceed standards, and estuarine pollution susceptibility index.

Since cumulative impacts often occur at the landscape or regional level, thresholds should be developed at similar scales whenever possible. Indicators at a landscape level can be used to develop thresholds as well as assess the condition of the environment. By using the following landscape indicators as modified from O'Neil et al. (1997) and Jones et al. (1996), thresholds can be crafted by determining the levels, percentages, or amount of each that indicate a significant impact for a particular area. Examples of thresholds include:

The total change in land cover is a simple indicator of biotic integrity; thresholds for areas with high alterations would generally be lower than

areas that are not as degraded; if open space or pristine areas are a management goal then the threshold would be a small percentage change in land cover.

Patch size distribution and distances between patches are important indicators of species change and level of disturbance. Thresholds would be set to determine the characteristics of an area needed to support a given plant or animal species.

Estimates of fragmentation and connectivity can reveal the magnitude of disturbance, ability of species to survive in an area, and ecological integrity. Thresholds would indicate a decrease in cover pattern, loss of connectivity, or amount of fragmentation that would significantly degrade an area.

Indicators of water quality and watershed integrity can be used to set thresholds. Specific concentrations and levels of nitrogen, phosphorous, turbidity, dissolved oxygen, and temperature can be used.

Thresholds for a decline in water quality can take the form of size and amount of riparian buffer zones. Condition of riparian zones and changes in percent of buffer areas can indicate a decline in water quality due to soil erosion, sediment loading, and contaminant runoff.

In a hypothetical project to develop a skiing resort to be constructed on federal lands, thresholds would be developed for several resources of concern. The impacts of road construction and use, ski runs, housing development, and water use would have wide ranging effects on resources such as riparian condition, water quality, wildlife habitat, and vegetation. Thresholds for cover and loss of connectivity could be developed to determine the significance of impacts to wildlife and vegetative cover. For example, thresholds could be developed from known information on the amount of habitat necessary for successful ungulate breeding. Numerical standards for dissolved oxygen and water temperature could be used to determine significance of impacts to coldwater fisheries. Narrative standards of stream condition would be used to determine thresholds for successful fish spawning.

NEPA Example: NEPA analyses have examined actions where the cumulative effects exceed a threshold which is tied to a national air quality or water quality standard. In the Final EIS for Hydroelectric Development in the Upper Ohio River Basin (FERC, 1988), the Federal Energy Regulatory Commission determined the point at which dissolved oxygen fell below the standard by modeling the reduced spillage and aeration caused by adding turbines to additional dams in succession. Setting thresholds to represent the carrying capacity of an ecosystem is more difficult. In the Draft EIS on Cumulative Impacts of Recreational Boating on the Fox River and Chain O'Lakes Area in Lake and McHenry Counties, IL, the U.S. Army Corps of Engineers assessed the impacts of boat traffic on the carrying capacity of aquatic life by setting a threshold of water clarity needed for vegetation growth. At the same time, they set a social carrying capacity threshold of the number of boats that made people feel crowded. While the concept of translating exceedences of thresholds to significant impacts on carrying capacities of both ecological and human resources is being applied more extensively, analysts still often face situations where there are limits to scientifically exact thresholds, and have to use other methods to develop thresholds. For example, in the Draft Supplemental EIS on Management of Habitat for Late-Successional and Old-Growth Forest Related Species (Forest Service and BLM, 1993), it was necessary to rely on expert opinion from panels to assess the "probability of ensuring the viability of species."

Determining a threshold beyond which cumulative effects significantly degrade a resource, ecosystem, or human community is sometimes very difficult because of a lack of data. Without a definitive threshold, the NEPA practitioner should compare the cumulative effects of multiple actions with appropriate national, regional, state, or community goals to determine whether the total effect is significant. These desired conditions can best be defined by the cooperative efforts of agency officials, project proponents, environmental analysts, non-governmental organizations, and the public through the NEPA process. The integrity of historical districts is an example of a threshold that is goal related. These districts, especially residential and commercial historic districts in urban areas, are particularly vulnerable to clearance programs carried out by local governments, usually with use of federal funds. Though individual structures of particular architectural distinction are often present, such districts are important because they are a collection of structures that relate to one another visually and spatially; the primary importance of each building is the contribution that it makes to a greater whole. Often in conjunction with code enforcement programs to remove blighting influences and /or hazards to public safety, local governments condemn and demolish properties. Viewed in isolation as an individual action, such demolition of an individual structure does not significantly diminish the historic and architectural character of the district and indeed may be beneficial to the overall stability of the district. But the cumulative effect of a whole series of such demolitions can significantly erode the district. Continued loss of historic structures, often with resultant vacant lots and incompatible new construction, can reach a point where the visual integrity of the district is lost. Once this threshold is passed, subsequent demolitions become increasingly difficult to resist and ultimately the qualities of the historic district are lost.

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Finding of No Significant Impact

Pima Freeway (Loop 101) Project
Salt River Pima-Maricopa Indian Community

Based on the attached final Environmental Assessment (EA) for the Pima Freeway (Loop 101) project for a proposal to grant an easement for a 183 acre right-of-way for the development of a two-lane, three mile freeway across the Salt River Pima-Maricopa Indian Community lands in Maricopa County, Arizona, I have determined that by implementation of the agency proposed action and environmental mitigation measures as specified in the EA, the proposed Pima Freeway (Loop 101) will have no significant impact on the quality of the human environment. In accordance with Section 102 (2) ©) of the National Environmental Policy Act of 1969, as amended, an Environmental Impact Statement will not be required.

This determination is supported by the following findings:

1. Agency and public involvement was conducted and environmental issues related to development of Pima Freeway (Loop 101) were identified. Alternative courses of action and mitigation measures were developed in response to environmental concerns and issues.

2. The EA discloses the environmental consequences of the proposed action and three potentially viable alternatives, which include the "no action" alternative.

3. Protective measures will be levied to protect air, noise and water quality, as outlined in Chapter V, Mitigation Measures.

4. The proposed action is planned not to jeopardize threatened and endangered species. See Chapter V, Section E.

5. There are no adverse effects on historic properties for the purpose of 36 CFR 800.9 (b) by preserving archeological value through conduct of appropriate research in accordance with applicable standards and guidelines. Should undiscovered archeological remains be encountered during project ground-disturbing activities, work will stop in the area of discovery and the stipulations 36 CFR 800.11 be followed.

6. Impacts to public health and safety are mitigated through implementation of safety measures described in Chapter V, Section A (6).

7. Impacts to flooodplains affected by the proposed alternative have been evaluated in accordance with E.O. 11988. A wetland area would be affected, however, mitigation has been established in the form of a land exchange to compensate for the loss of habitat. See Chapter V, Section A (4), Section LB (2) and Section C (6).

8. The cumulative effects to the environment are mitigated to avoid or minimize effects of implementation of the proposed project.

9. The proposed action would improve the economic and social conditions of the affected Indian community.

_____ _____

Agency Superintendent Date
Salt River Agency
Bureau of Indian Affairs
U.S. Department of the Interior

[Accounting number]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Skull Valley Goshute Tekoi Balefield Landfill Project, Tooele County, Utah

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice. ***[No additional wording necessary.]***

SUMMARY: This notice advises the public that the Bureau of Indian Affairs as Lead Agency, with the Skull Valley Band of Goshute Indians as a Cooperating Agency, will be gathering information needed for an Environmental Impact Statement (EIS). The information on the EIS will be used to support a lease to a private company to construct and operate a landfill and to develop the necessary infrastructure. The purpose of this project is to help provide an economic base for the tribe while helping the Salt Lake City area to dispose of non-hazardous wastes. This notice also announces public scoping meetings to identify potential issues and content for inclusion in the EIS.

[Keep this section brief. Note any cooperating agencies, include statement on purpose/need for the proposed action and announce any public scoping meeting(s). Save project details for SUPPLEMENTARY INFORMATION section.]

DATES: Written comments on the scope and implementation of this proposal must arrive by October 10, 2003. The public scoping meetings will be held on September 24 and 25, 2003, from 6:30 p.m. to 8:30 p.m. ***[Dates <u>only</u> in this section, addresses <u>only</u> in the next.]***

NOTE: A set time period for scoping comments is <u>optional</u>.. 30 days is recommended, but <u>not mandatory</u>. The comment period may be set at any reasonable length, or left open throughout the development of the draft EIS. Where the period is left open, the DATES section should state

the estimated date for completion of the draft EIS and the ADDRESSES section provide the address to which to send comments.

ADDRESSES: You may mail, hand carry or telefax written comments to either (1) Amy L. Heuslein, Regional Environmental Protection Officer, Bureau of Indian Affairs, Western Regional Office, P.O. Box 10, Phoenix, Arizona 85001, telefax (602) 379-3833; or (2) Chester Mills, Superintendent, Bureau of Indian Affairs, Unitah and Ouray Agency, P.O. Box 130, Fort Duchesne, Utah 84026, telefax (435) 722-2323. ***[One party is enough here, but multiple parties are allowable.]***

The September 24, 2003, public scoping meeting will be held at the Utah State Extension Auditorium, 151 North Main Street, Tooele, Utah. The September 25, 2003, meeting will be held at the Little America Hotel, 500 South Main Street, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Amy Heuslein, (602) 379-6750, or Chester Mills, (435) 722-4300. ***[Name and telephone number <u>only</u> in this section.]***

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of BIA approval of a proposed lease between the CR Group, the lessee, and the Skull Valley Band of Goshute Indians (Band), the lessor, of approximately 500 acres in the southwest Section 18, Range 8W, Township 5S, NAD 27, Tooele County, Utah. This section is approximately 2 miles west of Skull Valley Road on the reservation. The leased property will occupy the southwest 75 percent of the section. The property is located approximately 50 miles southwest of Salt Lake City, Utah. The CR Group intends to construct and operate a solid waste landfill on this property for a period of 25 years, with an option to renew the lease for another 25 years.

The proposed landfill will meet or exceed all applicable criteria of the Environmental Protection Agency (EPA) for such landfills, including, without limitation, the design criteria set

forth in 40 CFR Part 258. The landfill will be constructed with the appropriate impermeable lining material, and will only accept non-hazardous municipal and/or industrial solid waste. Limited ancillary facilities consisting of a truck scale, scale house and small administrative office will be constructed at the site, and an approximately 3-mile long road on the reservation constructed to provide access to and from the landfill.

The solid waste will be compressed, de-watered and baled before transportation to the landfill. The baled solid waste will be transported to the landfill in containers, using primarily flatbed trucks. It is anticipated that the majority of the waste will come from the Salt Lake City, Utah area. The transportation route is expected to be via Interstate 80 westward from the Salt Lake City area, then southward approximately 27 miles on Skull Valley Road to the proposed landfill site on the reservation.

The proposed landfill will consist of separate cells. The baled solid waste will be stacked in the cells. Separate cells will be used for municipal and industrial waste. As individual cells are filled and closed, they will be covered with lining and soil and re-vegetated consistent with EPA regulations and with BIA and tribal requirements. The CR Group will provide construction and reclamation bonds suitable to both the BIA and the Band.

Water for construction and operation of the landfill will be obtained from wells drilled on the reservation. These wells will be within 1 mile of the proposed site. Electricity will be generated using the collected landfill gas in an internal combustion engine-generator set.

Significant issues to be covered during the scoping process may include, but not be limited to, air quality, geology and soils, surface and groundwater resources, biological resources, cultural resources, socioeconomic conditions, land use, aesthetics, environmental justice and Indian trust resources.

Public Comment Availability ***[Required boilerplate.]***

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the ADDRESSES section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority ***[Required boilerplate.]***

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), and the Department of the Interior Manual (516 DM 1-6), and is in the exercise of authority delegated to the Assistant Secretary - Indian Affairs by 209 DM 8.

Dated:

(Name)
Assistant Secretary - Indian Affairs

[4310-W7-P]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Corrections to Notice of Availability of the Draft Environmental Impact Statement for the Proposed (Name of Project), (County, State)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public of a correction to the Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the proposed (Name of Project), (County, State), which was published in the Federal Register on November 14, 2003 (68 FR 72226-72227), and which described the proposed action. The date of the public hearing on the DEIS announced in the notice, November 28, 2003, was incorrect. The correct date for the hearing is December 2, 2003.

DATES: The public hearing will be held Tuesday, December 2, 2003.

ADDRESSES: The time and location for the public hearing remain unchanged.

FOR FURTHER INFORMATION CONTACT: (Name and telephone number only)

SUPPLEMENTARY INFORMATION: This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et. Seq.), and the Department of the Interior Manual (516 DM 1-6), and is in the exercise of authority delegated to the Assistant Secretary - Indian Affairs by 209 DM 8.

Dated:

Name

Assistant Secretary - Indian Affairs

[4310-W7-P]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Cancellation of the Environmental Impact Statement for the Proposed (Name of Project), (County, State)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) intends to cancel all work on the Environmental Impact Statement (EIS) for the proposed (Name of Project), (County, State). The Notice of Intent to prepare the EIS, which included a description of the proposed action, was published in the Federal Register on November 7, 2003 (68 FR 64127-64128). **(If applicable)** The Draft EIS was published in the Federal Register on _____.

DATES: This cancellation is effective **(Insert date 30 days from date notice will be published in the Federal Register)**. Written comments must arrive **(Insert date [no addresses] 30 days from date notice will be published).**

ADDRESSES: You may mail or hand carry written comments to **(Name and address)**.

FOR FURTHER INFORMATION CONTACT: (Name and telephone number only)

SUPPLEMENTARY INFORMATION: The BIA is canceling work on this EIS because ____ **(Sample reasons:** [1] the project applicant has withdrawn. [2] analysis completed to date indicated that the proposed action would have unacceptably adverse environmental consequences. [3] analysis completed to date showed that the proposed action would have no significant impact on the environment, therefore the EIS is being converted to an Environmental Assessment (EA). A Notice of Availability of the Finding of No Significant Impact for this EA, which will include

information on how to obtain a copy of the EA, will be published/posted in the same places (except the Federal Register) as the Notice of Intent to prepare the EIS and **(if applicable)** sent to all parties on the mailing list to receive copies of the Draft EIS.**)**

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the ADDRESSES section, during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et. Seq.), and the Department of the Interior Manual (516 DM 1-6), and is in the exercise of authority delegated to the Assistant Secretary - Indian Affairs by 209 DM 8.

Dated:

Name
Assistant Secretary - Indian Affairs

SCOPING PACKAGE

TEKOI BALEFULL PROJECT
SKULL VALLEY INDIAN RESERVATION, UTAH
ENVIRONMENTAL IMPACT STATEMENT

Prepared for:

Bureau of Indian Affairs
Western Regional Office
Phoenix, Arizona

On Behalf of:

Skull Valley Band of Goshute Indians
Skull Valley, Utah

Prepared by:

488 Environmental
PO Box 2731
Gallup, NM 87305

November 2003

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Scoping Summary

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Section 1
Scoping Summary for the Proposed Skull Valley Goshute Tekoi Balefill Landfill Project

1.1 Introduction

The Council on Environmental Quality Regulations at 40 CFR 1501.7 requires an early and open process to determine the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process is termed "scoping." The scoping process is used to learn the concerns of individuals, groups, and agencies about a proposed project. Scoping is an integral part of the National Environmental Policy Act (NEPA) review process because it allows interested parties an opportunity to participate in developing a list of issues that will be discussed in an Environmental Impact Statement (EIS). As stated in the Bureau of Indian Affairs NEPA handbook, 30 BIAM Supplement 1, paragraph 6.3B, the preparation of an EIS begins with the scoping process. Paragraph 6.3B further states that the required public notice for the scoping process be included in the Notice of Intent to prepare an EIS.

1.2 Notice of Intent

A Notice of Intent (NOI) to prepare an EIS was published in the Federal Register on October 7, 2003 with a 30-day comment period. Public notices were also published in the Tooele Transcript Bulletin on October 9, 2003, and the Salt Lake Tribune on October 13, 2003. During the scoping period, comments on the project and EIS could be sent to the Bureau of Indian Affairs (BIA) or could be submitted during the public informational meetings that were held during the scoping period.

In addition to publishing the NOI, letters were sent out on October 9, 2003, to a mailing list of federal, state and local entities.

Copies of the NOI, the mailing list and the affidavits for the newspaper publishing are included in Section 2.

1.3 Public Information Meetings

Public information meetings were held Tuesday October 21, 2003 at the Utah State Extension Library, 151 North Main Street in Tooele, Utah and Wednesday October 22, 2003 at the Little America hotel, 500 South Main Street, Salt Lake City, Utah. The meetings were announced in the notice published in the federal register, newspapers and mailing list. Notices were posted at the reservation and are included in Section 3. The meetings were held from 6:30 p.m. to 8:30 p.m. The purpose of the meetings was to solicit public comments, views and suggestions to be addressed in the EIS. Meetings were held in a "classroom format" style with a short formal presentation to provide the public with ample project information and a maximum opportunity to voice their concerns or ideas by oral comments during the meeting.

Attendees were asked to sign in and four (4) informational handouts were provided. The handouts provided information about the proposed balefill (landfill) project, the Tribe and the BIA. Copies of the sign-in sheets and handouts are included in Section 3. Three (3) display boards were utilized to present project details and process to the public and solicit input. During formal presentation, these display boards were used as visual aids. The display boards, copies of which are provided in Section 3, included the following information:

- Map Showing General Vicinity of the Reservation and Proposed Project Area
- Photo of an Existing Balefill
- Map of the Proposed Project Area

The formal presentation began at 6:30 p.m. Ms. Amy L. Heuslein, BIA Western Regional Environmental Protection Officer, acted as moderator, advised attendees of the court reporter, and explained that the purpose of the meeting was to accept comments and concerns, which the EIS would analyze for the public. She introduced all of the project representatives, outlined the structure of the meetings, described the opportunities for public input and explained the role of the BIA in the EIS process.

Each formal presentation consisted of representatives of the Tribe, BIA, Reese Chambers Systems Consultants and 488 Environmental. A brief description of the role of each representative was explained during the presentation and is provided below:

- Skull Valley Band of Goshute Indians – Tribal background and objectives.
- BIA (Western Regional Office, Phoenix, Arizona) – Compliance with NEPA and describe role of the Unitah and Ouray Agency as the liaison between Tribe and BIA.
- Reese - Chambers System Consultants – Provide Project Informational Summary
- 488 Environmental – Contractor to the Skull Valley Tribe to prepare the EIS and review NEPA procedures and project timelines.

At both public informational meetings, a certified court reporter was available for participants to provide comments orally. A summary of these comments is provided in Table 1 and the transcripts are provided in Section 4.

A comment form was available at the sign-in table. Those comment forms could be completed and either handed in during the public informational meetings or mailed to the appropriate recipients anytime during the scoping period. The comments received on comment forms are included in typed form in Table 2 and in copy form in Section 5.

1.4 Other Comments

In response to the notices mailed out to the mailing list, three written comments were received during the scoping period. These comments are summarized in Table 3 and copies are included in Section 6.

Table 1. Summary of Comments Received Verbally During Scoping Meetings

Date	Originator	Summary of Scoping Comment
October 21, 2003, Tooele, Utah	Larry "Red" Bear Skull Valley Resident Gene White County Commissioner, Tooele County	1. Wanted to know from where waste was being shipped. 2. Wanted to know if waste was going to be baled on site. 3. Wanted to know how many bales per flatbed and how many flatbed loads per day. 4. Wanted to know if road could handle that much weight from that many trucks. 5. Had same concerns as Mr. Bear.
October 22, 2003, Salt Lake City, Utah	NO VERBAL COMMENTS RECEIVED	BIA received a call on September 25, 2003, to add the following person to our mailing list: Leilani Hao PO Box 24333 Federal Way, Washington 98093 (253) 838-538

Table 2. Detail of Comment Forms Received

Date	Originator	Comments
October 21, 2003	None	None
October 22, 2003	None	None

Table 3. Summary of Scoping Comments Received in Letter Form

Date	Originator	Summary of Scoping Comments
October 30, 2003	State of Utah Department of Environmental Quality 288 North 1446 West Salt Lake City, UT 84114-4880	1. Wish to be added to "interested party" list and receive all notices related to the project.
November 5, 2003	Private Fuel Storage 7677 East Barry Avenue Englewood, CO 80111	2. Affirm that Private Fuel Storage is an "interested party" and wish to receive all notices related to project. 3. Issues listed in Notice of Intent are important issues and should be addressed.
November 7, 2003	US Environmental Protection Agency 999 18th Street- Suite 300 Denver, CO 80202-2466	5. Want EIS to discuss how the Balefill will be regulated and overseen during siting, design, construction, operation, closure and post-closure. 6. State who will provide regulatory oversight form the Balefill, including permitting, inspections and enforcement. 7. Want to know who will conduct technical review of Balefill design. 8. Want to know who will monitor Balefill operations and maintenance. 9. What is planned if operational problems occur such as leachate discharge or lack of daily balefill cover. 10. EIS should discuss typical components of the Tribal Solid Waste Regulatory Program. 11. EIS should include enough information to determine if the facility is likely to meet the requirements of 40 CFR 258. 12. EIS should state if materials from other states/municipalities can be disposed of in the Balefill. 13. EIS should state if unbaled and/or unsorted waste can be disposed of in balefill. 14. EIS should state any contractual or environmental review required before

		balefill can be sold or transferred. 15. EIS should state procedure for a temporary or permanent shutdown if customer base becomes insufficient. 16. EIS should state how the facility will guarantee financial assurance or bonding for reclamation, closure and post-closure. 17. The cumulative impacts section should cover the many solid and hazardous waste and military activities in Tooele County. 18. For water resources, the EIS should address hydrogeologic conditions, depth to groundwater, current and potential uses of groundwater, location of springs, impacts to alluvial areas, the amount of groundwater to be used by the project during construction and operation. 19. EIS should include summaries of operating and closure plans and an analysis of visual impacts. 20. EIS should address methane generation, its potential impacts and actions to be taken to mitigate the potential impacts. 21. EIS should state difficulties in reclaiming desert areas and plans for the balefill. 22. EIS should include discussion on birds as wildlife recourses and nuisance factors especially realed to leachate evaporation. 23. Flight paths using Dugway Proving Grounds and the Air Force test facility should be investigated.

Section 2
Notice of Intent

Department of the Interior, Bureau of Indian Affairs, Published Notice of Intent October 7, 2003, in the Federal Register, Volume 68, Number 194

Scoping Comment Solicitation Letter
Mailing List

Affidavit and Proof of Publication in the Tooele Transcript Bulletin, October 9, 2003

Affidavit and Proof of Publication in the Salt lake Tribune, October 13, 2003

Section 3
Public Information Meeting Materials

Notice of Public Meeting Posting for October 21 and 22, 2003 Meetings

Sign-in Sheets from October 21, 2003, Meeting

Sign-in Sheets form October 22, 2003, Meeting

Bureau of Indian Affairs Handout

BIA Mission Statement, Vision and Guiding Principals Handout

488 Environmental Handout

General Meeting Handout
- Agenda
- Tekoi Balefill Project Description
- Skull Valley Band of Goshite Indians Background
- CR Group Background
- Tekoi Balefill Contact List
- Comment Form
- Map of Skull Vazlley Area
- Photo of Balefill in Operation
- Map of Proposed Site

Display Boards

Section 4
Public Information Meeting Transcripts

Reporter's Transcript from October 21, 2003 Public Hearing

Reporter's Transcript from October 22, 2003 Public Hearing

Section 5
Comment Forms Received

No Comment Forms Received

Section 6
Written Comments Received

DISCLOSURE (Disclaimer) STATEMENT

DISCLOSURE

Pursuant to the requirements of 40 CFR Part 1506.5, the Consultant declares under oath that it has no interest, financial or otherwise, in the outcome of this project.

_____

Name Date
Title
Company
Company Location (City & State)

Record of Decision

Truckee River Water Quality Settlement Agreement – Federal Water Rights Acquisition Program

U.S. Department of the Interior
Bureau of Indian Affairs
November 2002

[Cover sheet optional.]

BUREAU OF INDIAN AFFAIRS
Western Regional Office

AGENCY: Bureau of Indian Affairs, Western Regional Office

ACTION: Record of Decision for the Truckee River Water Quality Settlement Agreement – Federal Water Rights Acquisition Program in Washoe, Storey, Lyon, and Churchill Counties, Nevada.

SUMMARY: The Truckee River Water Quality Settlement Agreement – Federal Water Rights Acquisition Program was originally proposed by the Bureau of Indian Affairs (BIA) in a Draft Environmental Impact Statement (EIS) issued for public review on October 5, 2001. The Final EIS, issued October 11, 2002, analyzed the potential effects of implementing various strategies for acquiring $12 million worth of Truckee River water rights. With the issuance of this Record of Decision (ROD), BIA announces that Alternative 2, an option allowing acquisition of water rights from willing sellers in the Truckee Meadows, Truckee River corridor, and the Truckee Division of the Newlands Project, is the action to be implemented. The BIA decision is based on its review of the Draft EIS, the Final EIS, and comments received from the public, federal agencies, state agencies, local governmental entities, and potentially affected Tribes.

FOR FURTHER INFORMATION CONTACT: ***[Only one contact is required. Others are optional.]***

Mr. (Name)
Bureau of Indian Affairs
Western Nevada Agency
1677 Hot Springs Road
Carson City, NV 89706
(775) 887-3500 Phone
(775) 887-3531 Fax

Ms. (Name)
Bureau of Indian Affairs
Western Regional Office
P.O. Box 10
Phoenix, AZ 85001
(602) 379-6750 Phone
(602) 379-3833 Fax

Introduction

On October 10, 1996, the U.S. Department of Justice, Environmental Protection Agency (EPA), and Department of the Interior (DOI) joined Nevada Division of Environmental Protection (NDEP), Washoe County, City of Reno, City of Sparks, and the Pyramid Lake Paiute Tribe (Tribe) in signing the Truckee River Water Quality Settlement Agreement (WQSA). This agreement resulted in dismissal of litigation brought by the Tribe against Reno, Sparks, the State of Nevada, and the United States over approval and operation of the Reno-Sparks wastewater treatment facility, now called Truckee Meadows Wastewater Reclamation Facility. WQSA does not establish water quality goals or identify water quality standards to be met; rather, it establishes a joint program to improve water quality by increasing flows in the Truckee River through the purchase and dedication of Truckee River water rights for instream flow. According to terms of the agreement, the United States is obligated to acquire $12 million worth of Truckee River water rights and negotiate storage agreements for WQSA water in federally owned and operated reservoirs in the Truckee River Basin. The agreement also provides for the use of treatment plant effluent in place of river water for certain purposes. This ROD documents the decision and rationale for selecting an acquisition strategy to comply with the terms of WQSA.

Bureau of Indian Affairs (BIA), Bureau of Reclamation (BOR), and Fish and Wildlife Service (FWS), all bureaus within DOI, will be responsible for implementing the federal commitments identified in WQSA. BIA has received appropriated funds for the federal acquisition program, and, accordingly, was the lead agency in preparing the EIS.

Public scoping meetings to gather information to be used to prepare the EIS were held in September, 1995 and March 1997. A Notice of Intent to prepare an EIS was published in the Federal Register (Volume 62, Number 50, pages 12245-12246) on March 14, 1997. A Draft EIS was issued for public review on October 5, 2001. In addition to comments received at public hearings, written comments on the Draft EIS were received from 18 parties; responses to those comments were included in a chapter of the Final EIS and relevant information in the Draft EIS was revised as appropriate to address those comments. The Final EIS was issued on October 11, 2002. Comments on the Final EIS were received timely from the United States Environmental Protection Agency and Nevada State Clearinghouse (representing Nevada Office of Historic Preservation and Division of Water Resources). Copies of those comments are included in an appendix to this document and responses to those comments are included herein; no text in the Final EIS has been revised in response to those comments.

Description of Alternatives

Alternative 1 – No Action Alternative

The No Action Alternative analyzed in the EIS represents a continuation of existing water management operation for the Truckee River and water use trends for the next 10 years. It differs from the action alternatives by assuming no new efforts would be initiated to increase Truckee River flow during months that are characterized by low flow (primarily June through September). The No Action Alternative represents annual water management in the Truckee River basin expected to occur if WQSA were not implemented. No Action assumes urbanization would continue with a corresponding increase in demand for M&I water in the study area.

Alternative 2 – Acquire Truckee River Water Rights (Proposed Action and Preferred Alternative)

Alternative 2, the Proposed Action and Preferred Alternative, evaluated an acquisition strategy that would enable the acquisition of water rights from willing sellers with properties located in the Reno-Sparks

metropolitan area (known locally as Truckee Meadows), Truckee River corridor from Vista to Wadsworth, and the Truckee Division of the Newlands Project. Alternative 2 assumed that a majority of the federally acquired water rights would come from the Truckee Division due to the substantially lower cost per acre-foot in the Division compared to other locations in the study area. Some water rights, however, are expected to be acquired from both the Truckee Meadows and Truckee River corridor. Although the actual location of acquisitions would most likely be guided by cost and opportunity, Alternative 2 estimated approximately 8,500 acre-feet of water rights would be acquired with federal funds and analyzed the following acquisition distribution: 6,300 acre-feet from the Truckee Division; approximately 750 acre-feet from the Vista to Wadsworth segment of the Truckee River corridor; and approximately 1,450 acre-feet from the Truckee Meadows. While this acquisition distribution is realistic and appropriate for the analysis, it is one of many variations that could occur, and was not intended to predict or direct the number of water rights that would be acquired from each geographic section of the study area.

Water rights acquired pursuant to WQSA would be transferred in accordance with applicable State law and procedures from the then-current purpose (most likely irrigated agriculture) and place of use to that of water quality and instream flow for use in the lower Truckee River and Pyramid Lake. Because there is very little surface water return flow to the Truckee River from water diverted to serve Truckee Division water rights (i.e., all water is considered to be consumed), water rights acquired from the Truckee Division would be transferred to storage or to the lower Truckee River and Pyramid Lake at the full duty of 4.5 acre-feet/acre/year. Water rights acquired from properties along the Truckee River corridor and in Truckee Meadows are not completely consumed and thus would be transferred at the consumptive use rate. As noted by the Nevada Division of Water Resources in comments on the FEIS, the amount allowed to be transferred and the consumptive use factor are decisions for the Nevada State Engineer.

Water associated with the exercise of water rights acquired by DOI pursuant to WQSA would be stored, when possible, in Truckee River reservoirs owned and managed by BOR, primarily Stampede and Prosser Creek Reservoirs. DOI has agreed that WQSA water associated with the exercise of water rights acquired jointly by Reno, Sparks, and Washoe County would also be stored in these federal reservoirs. Storage of water was included as a component of Alternative 2.

The decision to divert WQSA water to storage in the federal reservoirs would depend in large part on hydrologic conditions. Diversion to storage would be accomplished in two ways:

1. Exchanging a quantity of Stampede or Prosser Creek Reservoir project water which would be scheduled for release for the benefit of Pyramid Lake fishes for an equal quantity of water in the lower river associated with the exercise of WQSA water rights – the project water in storage is reclassified as Water Quality Credit Water and WQSA water in the river then becomes project water and flows to Pyramid Lake.

2. Storing (as Water Quality Credit Water) a portion of the water in excess of Floriston rates and not needed to serve other Orr Ditch Decree water rights which would otherwise pass through either of the federal reservoirs and flow to Pyramid Lake.

When WQSA water could not be diverted to storage as Water Quality Credit Water, it would remain in the river and flow undiverted to Pyramid Lake.

Water associated with water rights acquired through the WQSA program would be managed by the Joint Program Parties, defined as the parties acquiring water rights under WQSA and the Pyramid Lake Paiute Tribe. DOI, the Tribe, and the Truckee Meadows communities would provide a release schedule, in

accordance with the cooperative management measures, to the Federal Water Master (or the Truckee River Administrator if TROA is implemented) according to the following priority order, to:

1. Meet water quality standards in the river from Vista to Pyramid Lake;
2. Improve water quality in the river from Vista to Pyramid Lake when sufficient water is not available to meet water quality standards;
3. Maintain aquatic and riparian habitat in the river downstream from Derby Dam; and,
4. Promote aesthetic and recreational purposes through the Reno/Sparks area, continuing to Pyramid Lake.

Because the possible real-time permutations for water management are virtually limitless (depending on a number of hydrologic, meteorologic, and socioeconomic variables) and to provide objective criteria for comparison among alternatives, the EIS analysis assumed that water would be released during June through September to supplement existing flow to achieve, in every year possible, a flow of 275 cfs at the Sparks gage and 135 cfs at the Nixon gage during those months. These flow targets are designed to address WQSA flow enhancement goals, and assist in achieving water quality standards for the Truckee River in Nevada.

Alternative 3 – Acquire Truckee Division Water Rights

Alternative 3 proposes an acquisition strategy different from Alternative 2 and focuses on acquiring all active and transferable Truckee River water rights in the Truckee Division of the Newlands Project. Due to the lower estimated cost of Truckee Division water rights, $12 million would not be fully expended currently if acquisitions were limited exclusively to the Truckee Division. Thus, Alternative 3 also includes acquisition of some rights from properties located in the Truckee River corridor, but no Truckee Meadows water rights would be acquired.

Alternative 3 differs from Alternatives 2 and 4 only in the location of water rights acquisitions and the volume of water rights anticipated to be acquired. Alternative 3 represents the strategy that would acquire the largest quantity of water rights with the available $12 million, and could result in the acquisition of approximately 13,350 acre-feet. Water that accrues from implementation of Alternative 3 would be managed in the same manner as described for Alternative 2. It would be stored in federal reservoirs according to applicable storage agreements and procedures, and released to augment flows in June through September using the release schedule developed cooperatively by the Joint Program Parties. As discussed for Alternative 2, the schedule would be provided to the Federal Water Master for implementation, and the priorities for release would be identical to those described for Alternative 2. Also, as was the case for Alternative 2, DOI would negotiate reasonable terms and conditions with Reno, Sparks, and Washoe County to allow for storage of water which accrues from the water rights acquired by the local governments to satisfy their WQSA obligations.

Alternative 4 – Acquire Truckee Meadows Water Rights

Under Alternative 4, Truckee River water rights would only be acquired from the Truckee Meadows, an area in the basin from the California-Nevada state line downstream to Vista. No water rights would be acquired from the Truckee Division of the Newlands Project or the Truckee River corridor if this alternative were implemented. Approximately 3,600 acre-feet of water rights would be acquired with implementation of this alternative.

Alternative 4 differs from Alternatives 2 and 3 only in terms of the location of water rights acquisitions and the volume of water rights anticipated to be acquired. Water that accrues from implementation of Alternative 4 would be managed in the same manner as water in Alternative 2. It would be stored in federal reservoirs according to relevant storage agreements and procedures, and released to augment flows from June through

September. The release schedule would be developed cooperatively by the Joint Program Parties and provided to the Federal Water Master for implementation. The priorities for release would be identical to those described for Alternative 2. As was the case for Alternatives 2 and 3, DOI would negotiate reasonable terms and conditions with Reno, Sparks, and Washoe County to allow for storage of water which accrues from the water rights acquired by the local governments to satisfy their WQSA obligations.

Issues Evaluated

A number of issues were raised during the scoping process and public review of the draft EIS. Each of the alternatives considered in the FEIS was evaluated relative to these and other issues. The most substantive issues were:

- Water resources, including ground water quality and quantity, groundwater recharge, and surface water quality and quantity;
- Air quality, specifically the potential for an increase in the level of inhalable particulates (PM_{10});
- Wetlands, particularly those wetlands dependent on seepage or irrigation drainage in the Truckee Division of the Newlands Project;
- Endangered and threatened fish species of Pyramid Lake;
- Agricultural activities in the Truckee Division of the Newlands Project and the impacts of reduced agricultural activity;
- Water rights and the value of water rights transactions in the community and possible changes to the local tax base;
- Population growth in the area, along with subdivision of agricultural lands to residential lots; and,
- Potential cumulative effects of a variety of known proposals, including rehabilitation of the lower Truckee River, implementation of the Truckee River Operating Agreement (TROA), and acquisition of water rights by Fernley, Reno, Sparks, and Washoe County.

Comments on the Final EIS addressed planned urban growth, land use, protection of historic properties, local water supplies, and administrative procedures for transfer of water rights.

When compared to No Action, unavoidable adverse impacts attributed to implementing WQSA are expected to be minor and localized, and potentially negligible, or be mitigated through specific agreement as identified in the "Implementation" section below.

Air Quality -- Implementation of the proposed action is likely to result in some short-term additional sources of fugitive dust depending on changes in the amount of actively irrigated land, primarily in the Truckee Division of the Newlands Project, amount of vegetative cover, and rate of transition from irrigated to native desert vegetation, but would not result in violations of existing air quality standards (PM_{10}) or affect attainment status of the region. Appropriate measures to minimize the generation of blowing dust would depend on the size and location of the affected parcels; review of the Naval Air Station Fallon (NASF) dust and debris control program could assist in identifying effective dust control measures.

Water Supply -- Reservoir storage and releases are not anticipated to be adversely affected; changes would be within the range of historic volumes. (As noted in a Nevada Division of Water Resources comment on the Final EIS, the Nevada Lake Tahoe basin water demand is satisfied primarily by pumping of surface water, not groundwater as stated in the EIS.) The acquisition and transfer of water rights from parcels in the Truckee Division is likely to result in a decrease in groundwater recharge of the local, shallow aquifer. No mitigating measures are identified to address this issue because there are no attendant water rights for Truckee Canal

seepage water. Property owners located near the Truckee Canal are not likely to be affected to the same degree as those with wells located more distant as the canal would continue to seep as long as water is diverted to Lahontan Reservoir; those more distant from the canal may be required to deepen their wells if recharge diminishes and the distance to groundwater increases.

Water Quality -- Truckee River flows are anticipated to be enhanced during the summer months when flows have historically been lowest. Additional flow in the river would allow greater dilution of pollutants and moderate summer water temperatures, improving water quality, particularly downstream from Vista.

Vegetation -- As irrigated acres are acquired and water rights transferred, the volume of water moving through the irrigation conveyance system and applied to agricultural fields would be reduced, leaving less water available to these wetlands from canal seepage and drain water. The intermittent wetlands are not expected to disappear as long as the Truckee Canal remains in use and effluent from the local wastewater treatment facility continues to be discharged to secondary wetlands. FWS and other agencies are implementing a water rights acquisition program to benefit Lahontan Valley wetlands.

Cultural Resources -- Cultural resources in the reservoirs likely have already been damaged by historic operations and drought and flood, and so any WQSA impacts to these resources are anticipated to be minor and localized. BIA has engaged in consultation with the Nevada State Historic Preservation Office, as well as Bureau of Reclamation, Advisory Council on Historic Preservation, and Pyramid Lake Paiute Tribe, regarding the federal water rights acquisition program pursuant to WQSA. Consultation has focused on the possible change in the historic landscape of the farming communities that may occur as a result of purchase of water rights and subsequent conversion of farmland to other uses. Because WQSA precludes the federal government from retaining land acquired through the water rights acquisition program, the consultation is considering the effect of transferring historic properties out of federal ownership and control. The consulting parties are developing a programmatic agreement that will address identification and evaluation of historic properties and procedures to avoid or reduce any adverse effects to satisfy Section 106 consultation requirements.

Socio-economics -- Acquisition of water rights for WQSA would result in the conversion of farmland to other uses, including developed parcels and desert habitat. Overall, socio-economic impacts anticipated under any of the action alternatives would likely be overshadowed by impacts attributed to extant and projected growth and urbanization in the study area. Acquisition and transfer of water rights for water quality purposes would not promote population growth and the dispersed locations of any lands likely to be acquired would not promote urbanization. As noted above, the purpose of WQSA is to acquire water rights in order to improve water quality; land acquisition would occur only to the extent necessary to facilitate acquisition of water rights and is not the focus of the proposed action. The involvement of local governments in the planning and implementation phases of the water rights acquisition program as well as in the role of Joint Program Parties for the adaptive management of water associated with the water rights would ensure that maximum benefits to lower Truckee River water quality would accrue from WQSA.

Cumulative – Analysis of cumulative projects identified the following potential effects:

- Air Quality -- The additional dust that could result from the WQSA program along with that from other cumulative projects is not expected to result in violations of the PM_{10} air quality standard. Measures to minimize generation of fugitive dust from affected parcels would not eliminate blowing dust in the region.

- Water Resources -- WQSA would enhance surface water supply for the Truckee River and Pyramid Lake slightly by increasing the volume of water stored in Truckee River reservoirs.

Once released, this stored water would supplement Truckee River flows and increase inflow to Pyramid Lake. Reductions in Newlands Project demand could increase lower Truckee River flow, depending on hydrologic conditions in the Truckee and Carson River basins. Overall, groundwater levels would likely decline throughout the Truckee Division in the Cumulative Case, and domestic wells would need to be deepened in order to continue to serve as a water source for affected residences. Alternatively, groundwater wells could be abandoned if a municipal water supply system were available to residents of the Truckee Division. Combining the potential effects of WQSA with those of other reasonably foreseeable projects would result in improved water quality in the Truckee River, either directly (i.e. increased flow) or indirectly (elimination of septic tank contamination of ground water). Urban growth would likely require additional wastewater treatment facilities and increase point source discharges, potentially increasing the quantity of nutrients in the Truckee River. Increased growth could also cause increased water quality impacts through erosion and runoff attributed to new developments.

- Vegetation -- A number of reasonably foreseeable projects are expected to have positive effects on vegetation within the Truckee River floodplain by enhancing seasonal flow or reducing flow variability. Enhanced or stabilized river flows would benefit riparian vegetation and encourage expansion of the riparian plant community. Wetlands located within the floodplain would also benefit from enhanced or stabilized river flows; secondary wetlands in the Truckee Division could be diminished in area and quality to the extent that drain water or subsurface flows are diminished by reduction of application of irrigation water. Several projects will result in the replacement of agricultural crops throughout Truckee Meadows and the Truckee Division by drought-tolerant species, possibly noxious weed species that are able to colonize disturbed soils more quickly than native desert species, or by ornamental vegetation commonly found in an urban setting.

- Fish and Wildlife -- A number of projects could provide additional benefits to reservoir and stream fish populations, particularly in the upper Truckee River basin, by allowing additional WQSA and other categories of credit water to be stored in Truckee River reservoirs, providing opportunities for credit water to be exchanged among reservoirs, and identifying minimum release and storage targets for fish and wildlife resources. Recovery of cui-ui and LCT and enhancement of local fish populations would be facilitated variously by habitat improvement and fish passage programs. Projects related to demographic change (i.e., urban growth) are likely to create conditions in the basin that are inimical to fish, such as deterioration of water quality from point and nonpoint sources, increase in storm runoff, and expanded utilization for recreation. The potential cumulative impacts to wildlife are very similar to those anticipated for vegetation because wildlife diversity and abundance are dependent on availability of suitable habitat. There appears to be a number of opportunities to enhance wildlife habitat through expansion of wetland and riparian communities in the Truckee River floodplain.

- Endangered, Threatened, and Sensitive Species -- Recovery efforts for cui-ui and LCT would benefit from habitat improvement and fish passage programs. In particular, implementation of flow regimes to promote the lower river cottonwood forest would improve habitat for associated wildlife species. Projects related to demographic change (urban growth) are likely to increase the threats to endangered, threatened and special status species associated with aquatic and riparian habitats.

- Socioeconomic Resources -- It is unlikely that any identified cumulative action would

individually or collectively contribute directly to population increases or demographic shifts in the study area beyond that already anticipated. Projected land use patterns will continue to change as the population in the study area shifts from a rural landscape to a more urban pattern with residential developments, parks and open space, and commercial and industrial complexes. As agricultural properties are sold and acquired by the various entities, such lands may be kept as open space, or converted to residential, commercial, or industrial properties, conditional on each community's or individual county's master plan dictates. As agricultural lands are displaced, there would be a societal shift from an agrarian community, and open space and farmland preservation values would be affected.

- Cultural Resources -- Cultural resources in the reservoirs likely have already been damaged by historic operations and drought and flood. With WQSA impacts to these resources anticipated to be minor and localized, adding the impacts of other cumulative projects would not increase the severity of impacts.

- Indian Trust Assets -- Trust assets associated with the Pyramid Lake Indian Reservation – generally water supply, water quality, fish, and endangered, threatened, and sensitive species -- would be affected in a manner similar to that described above for those resources. Trust assets of the Reno-Sparks Indian Colony or Fallon Paiute Shoshone Indian Reservation would not be materially affected by cumulative projects.

Environmentally Preferred Alternative

A comparison of alternatives indicated that Alternative 3 – Acquisition of Truckee Division Water Rights would best enhance and protect the natural environment and natural resources. If implemented, the acquisition strategy considered by Alternative 3 would accumulate more water rights than any other alternative, provide more water to enhance Truckee River flows and thus, provide the greatest benefit to the lower Truckee River environment. Over the long run, Alternative 3 would do more to enhance the ecological health and integrity of the lower Truckee River by assisting in the stabilization of river flows, particularly during the period June through September. Consequently, Alternative 3 has been identified as the environmentally preferred alternative.

Decision

Based on a thorough review of the alternatives, their potential environmental impacts, and comments received from the public, the Pyramid Lake Tribe, interest groups, and federal, state, local agencies, it is my intention to adopt and implement the acquisition strategy proposed in Alternative 2 – Acquisition of Truckee River Water Rights to fulfill the federal obligations identified in WQSA. Water rights will only be acquired from willing sellers; adopting Alternative 2 allows the federal acquisition process the flexibility to secure water rights throughout the study area. Also, Alternative 2 is anticipated to acquire a sufficient volume of water rights to enhance Truckee River flow and achieve the primary goal of WQSA.

Alternative 2 is preferable to the No Action Alternative because No Action would acquire no water rights and do nothing to enhance flow in the Truckee River during low flow months. The federal obligations identified in WQSA would not be met, thereby nullifying the agreement. Such inaction would lead to a renewal of litigation and a significant level of distrust directed at the federal government by the Pyramid Lake Paiute Tribe, the State of Nevada, and the local governments. Further, without the enhanced flow anticipated by WQSA, water quality of the Truckee River would be diminished in the summer months as there would be little flow available to dilute effluent from TMWRF or various non-point pollution sources, such as agricultural runoff.

Although Alternative 2 would acquire fewer water rights than Alternative 3, it is preferable to Alternative 3 because it allows the necessary flexibility to acquire available water rights anywhere in the study area. In comparison, the acquisition strategy proposed by Alternative 3 narrowly focuses on acquiring water rights from the Truckee Division. By focusing primarily on the Truckee Division, Alternative 3 is at risk for not achieving WQSA goals due to the character of the water rights market in the Division. Compared to Truckee Meadows and the Truckee River corridor, the majority of water-righted properties in the Truckee Division are smaller than 10 acres. As was noted in the EIS, Alternative 3 is anticipated to acquire approximately 2,800 acres. Given the small average size of individual parcels, the acquisition program would require a large number of transactions and it is possible a large percentage of water right owners would elect not to sell. The strategy proposed by Alternative 3 offers no option for seeking water rights at locations outside of Truckee Division.

The strategy proposed by Alternative 4 is similar to Alternative 3 insofar that location for acquiring water rights is restricted – in this case to water rights in Truckee Meadows. A noteworthy difference is that even though Alternative 4 focuses on acquisition of Truckee Meadows water rights, it is more likely to expend $12 million than is Alternative 3. This is not due to a greater availability of water rights in the Truckee Meadows but to the substantially higher cost of water rights in Truckee Meadows. Truckee Meadows water rights are generally senior to those of the Truckee Division and thus considered more valuable. Truckee Meadows water rights are estimated to be approximately three times the cost of Truckee Division water rights. The acquisition strategy proposed by Alternative 4 would acquire the fewest water rights of any of the action alternatives and would result in the smallest change to Truckee River flow.

While a number of local issues were described in public comments, no significant impacts requiring mitigation were identified in the Final EIS or the endangered species consultation process.

[Section on Mitigation Measures may be inserted here if applicable.]

Implementation

BIA administers the funds appropriated by Congress to support federal acquisition of Truckee River water rights through a contract with the Pyramid Lake Paiute Tribe. The Tribe has entered into an agreement with Great Basin Land and Water (a land and water rights contractor) to acquire water rights. Ultimate responsibility for implementing the federal obligations of WQSA rests with BIA. This responsibility will require BIA to work closely with the Pyramid Lake Paiute Tribe and its contractor until the federal acquisition funds are fully expended.

BIA will participate as part of the DOI team with the other Joint Program Parties in monitoring water quality in the lower Truckee River and developing cooperative adaptive management measures to accomplish the purpose of WQSA. DOI, the Tribe, and the Truckee Meadows communities will identify a flow management strategy including a release schedule for dedicated stored WQSA water to meet water quality standards, improve Truckee River water quality, benefit resident fish populations, enhance riverine habitat, and promote aesthetic and recreational purposes in priority order, depending on water availability.

Based on the provisions of section 7 of the Endangered Species Act, potential effects to listed species would be re-evaluated if:

- The proposed action is changed such that it could affect listed species in a manner or to an extent not considered in the EIS;
- New biological information becomes available concerning listed species and is potentially affected by the proposed action; or,

- A new species is listed or critical habitat is designated that could be affected by the proposed action.

Lands acquired in the Truckee River corridor through the federal WQSA program and identified to be resold will first be offered for sale to local governments and certain non-government organizations to incorporate into ongoing efforts to restore and enhance flood control features and riparian habitat of the corridor, consistent with Smart Growth planning principles for the middle and lower river area as recommended by EPA. Any lands not so utilized and lands in the Truckee Division will be offered for sale to private or commercial interests. Because no water rights would be associated with such lands, potential urban development would require acquisition and transfer of additional water rights, and local governments would address planning and zoning for those areas. To prevent potential revenue loss to the Irrigation District, DOI will continue to pay O&M fees on acquired Truckee Division water rights until a lump sum payment or other mutually acceptable arrangement is negotiated to terminate future O&M assessments.

The Farmland Policy Protection Act (FPPA) directs federal agencies to consider project alternatives or mitigation to minimize such conversion. While the EIS determined that there is no alternative to minimize the conversion of farmland that would occur with WQSA because most, if not all, water rights available to WQSA are coincident with agricultural lands, BIA will comply with applicable requirements of FPPA as the WQSA water rights acquisition program proceeds. In those instances where acquired properties are re-sold to private interests, local ordinances could require control of blowing sand and dust. BIA will comply with applicable local dust and sand control ordinances during implementation of the WQSA program, as well as with applicable local ordinances pertaining to control of noxious weeds as long as acquired properties are retained by the program. The process to control noxious weeds would depend on the area involved, condition of local vegetation, and effectiveness of measures available.

BIA will comply with applicable federal, tribal, state, and local regulations, including the National Historic Preservation Act, to ensure that cultural resources are conserved and potential adverse impacts are minimized. In response to comments on the Final EIS by and BIA discussions with the Nevada State Historic Preservation Officer, the actions that may be necessary to protect these sites will be determined based upon conditions identified in a programmatic agreement among BIA, Bureau of Reclamation, Pyramid Lake Paiute Tribe, Advisory Council on Historic Preservation, and the Nevada State Historic Preservation Officer.

This decision may be appealed to the Interior Board of Indian Appeals (IBIA) at 801 N. Quincy Street, #300, Arlington, Virginia, 22203, in accordance with the regulations set forth at 43 CFR Parts 4.310-4.340. The notice of appeal to IBIA must be signed and mailed within thirty days of the date of this decision is received. The notice of appeal should clearly identify the decision being appealed and a copy of the decision should be attached to the notice of appeal. Copies of the notice of appeal must be sent to the Assistant Secretary for Indian Affairs, MS 4140-MIB, U.S. Department of the Interior, 1849 C Street, N.W., Washington, D.C., 20240, as well as to my office and all other interested parties known to the person appealing the decision. The notice of appeal to the IBIA must also certify that the appealing party sent copies to each of these parties. The IBIA will notify an appealing party of further appeal procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior.

By my signature, I indicate my decision to implement Alternative 2 – Acquisition of Truckee River Water Rights, the Preferred Alternative and Proposed Action identified in the Truckee River Water Quality Settlement Agreement – Federal Water Rights Acquisition Program Final EIS.

(Name), Regional Director
Western Regional Office
Bureau of Indian Affairs

AFFECTED ENVIRONMENT

The "Affected Environment" section should succinctly describe the areas in which the proposed action would occur. The components of the environment which should be considered in preparing the EA are listed below. While all of these should be considered, <u>only those components which will be affected by the proposed action need to be discussed.</u>

1. LAND RESOURCES

(a) Topography (land forms, drainage, gradients)

(b) Soils (types, characteristics)

(c) Geologic Setting and Mineral Resources

2. WATER RESOURCES (quality, use, rights)

3. AIR (quality, visibility, etc.)

4. LIVING RESOURCES

(a) Wildlife (terrestrial, aquatic, threatened/endangered)

(b) Vegetation (terrestrial, aquatic, riparian, threatened/endangered)

(c) Ecosystems and Biological Communities

(d) Agriculture (livestock, crops, prime and unique farmland)

5. CULTURAL RESOURCES

(a) Historic, Cultural, and Religious Properties

(b) Archeological Resources

6. SOCIO-ECONOMIC CONDITIONS

(a) Employment and Income

(b) Demographic Trends

(c) Attitudes, Expectations, Lifestyle and Cultural Values

(d) Community Infrastructure

7. RESOURCE USE PATTERNS

(a) Hunting, Fishing, Gathering

(b) Timber Harvesting

(c) Agriculture

(d) Mining

(e) Recreation

(t) Transportation Networks

(g) Land Use Plans

8. OTHER VALUES

(a) Wilderness

(b) Sound and Noise

(c) Public Health and Safety

NOTE: This list may be printed double-sided on heavy stock for use in the field as a guide to gathering data on the affected environment.