



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

AUG 17 1994

PEP - ENVIRONMENTAL REVIEW MEMORANDUM NO. ERM94-3

To: Heads of Bureaus and Offices
From: Director, Office of Environmental Policy and Compliance
Subject: Guidance on Referrals to CEQ of Proposed Federal Actions Found to be Environmentally Unsatisfactory

This memorandum supplements 516 DM 7.5 and transmits 40 CFR 1504 (Predecision Referrals to the Council of Proposed Federal Actions Determined to be Environmentally Unsatisfactory).

Summary comments on draft environmental statements prepared pursuant to 516 DM 7.5A(e) shall, when appropriate, include early notification of the intention to refer a proposal the Council.

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

Bureaus attempting to refer an action solely on the basis of an inadequate EIS should recognize that such basis alone may not pass the criteria for a referral set forth in Section 1504.2 of the CEQ Regulations.

Procedures for Referral of Environmentally Unsatisfactory Proposals to CEQ.

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

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

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

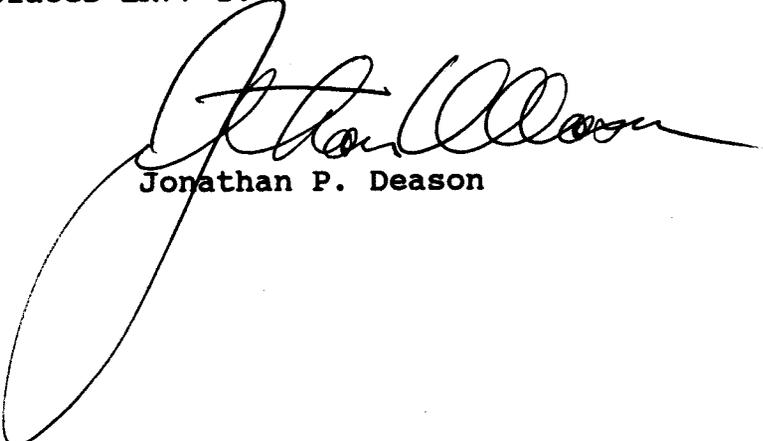
In consultation with the involved assistant secretary and bureaus, the OEA shall recommend and the Assistant Secretary-- Policy, Management and Budget shall determine whether or not to refer the proposal to the Council. Documentation of this decision must be made as soon as possible and placed in the appropriate project file.

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

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

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

This memorandum replaces ER77-2.



Jonathan P. Deason

Attachment

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

August 11, 1977

INTERIM GUIDANCE TO FEDERAL AGENCIES ON REFERRALS
TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS
FOUND TO BE ENVIRONMENTALLY UNSATISFACTORY

1. Purpose

This guidance establishes procedures for the referral to the Council on Environmental Quality of interagency disagreements over proposed major federal actions that might cause unsatisfactory environmental effects. The purpose of this guidance is to provide a basis for the early resolution of such disagreements.

Under Section 309 of the Clean Air Act, the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of proposed federal actions, including actions for which environmental impact statements are prepared under the National Environmental Policy Act. If at the conclusion of this review the Administrator determines that the proposed action is "unsatisfactory from the standpoint of public health or welfare or environmental quality," he is directed by Section 309 to refer the matter to the Council on Environmental Quality.

Similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts, are made by other federal agencies under Section 102(2)(C) of NEPA and the Council's Section 102(2)(C) guidelines, 40 C.F.R. §§ 1500.9 - 1500.11. Under NEPA, these reviews must be made available to the President, the Council and the public.

This guidance provides procedures for EPA or other federal agencies to refer to the Council proposed major federal actions which the referring agency believes to be environmentally unsatisfactory. The guidance establishes procedures for the early notice of possible referral, for the timing and content of referrals, for any response by the proposing agency, and for Council action.

It is the Council's policy that these environmental referrals should reflect an agency's careful determination that the proposed action raises significant environmental issues of national importance. In determining what kinds of environmental objections to a proposal are appropriate to refer to the Council, agencies should weigh the proposal's feared environmental impacts in terms of their possible violation of national

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Environmental standards and policies (where they exist) and their severity, geographical scope, duration and precedential importance. Referrals should only be made to the Council after concerted, timely, but unsuccessful attempts to resolve differences with the proposing agency. The nature of the Council's response to referrals will be commensurate with the significance of the proposed actions and their possible impacts.

2. Definitions

The following definitions apply to these guidelines:

- (a) "Council" means the Council on Environmental Quality.
- (b) "Lead agency" means the federal agency which has prepared or has taken the lead role among federal agencies in preparing the environmental impact statement (EIS).
- (c) "Referring agency" means the federal agency which has referred any proposal to the Council after a determination that the proposal is unsatisfactory from the standpoint of public health or welfare or environmental quality.
- (d) "Proposal" includes:
 - (1) 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, and
 - (2) with respect to all other agencies, any proposed major federal action to which Section 102(2)(C) of the National Environmental Policy Act applies.

3. Procedure for referrals and response

All agencies subject to NEPA or Section 309 of the Clean Air Act shall comply with the following procedures in making referrals to the Council:

- (a) The referring agency shall advise the lead agency at the earliest possible time that it intends to refer a proposal to the Council unless the proposal is changed as the referring agency recommends. Such advice shall be included in the referring agency's comments on the lead agency's draft EIS in all cases except where the draft EIS contains insufficient information to permit an assessment of the proposal's environmental acceptability. (Where such needed information is not contained in draft EIS, the referring agency shall identify the needed information and request that it be made available by the lead agency at the earliest possible time.) Copies of such advice shall be sent to the Council.

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(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final EIS has been made available to the Council, commenting agencies, and the public. Except where an extension has been granted by the lead agency, the Council will not accept a referral subsequent to that date.

(c) The referral shall consist of:

(i) A copy of the letter signed by the head of the referring agency which has been delivered to the lead agency informing the lead agency of the referral, the reasons for it, and requesting the lead agency take no action to implement the proposal until the referral is acted upon by the Council. The letter shall include a copy of the document referred to in paragraph 3(c)(ii) below.

(ii) A statement supported by evidence as to the specific facts, or controverted facts, leading to the conclusion that the proposal is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall (A) identify any material facts in controversy as well as incorporate (by reference if appropriate) agreed upon facts, (B) identify any existing environmental laws or policies which would be violated by the proposal, (C) present the reasons the referring agency believes the proposal is environmentally unsatisfactory, (D) contain a finding by the agency as to whether the issue raised is one of national importance because of the threat to national environmental resources or policies or for some other reason, (E) 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 (F) give the referring agency's recommendations as to what mitigation, alternatives, further study, or other course of action (including abandonment of the proposal) are necessary to remedy the situation.

(d) Not later than twenty (20) days after the delivery of the referral to the Council, the lead agency may deliver a response to the Council and the referring agency. Upon application to the Council by the lead agency and upon assurance that the proposal will not go forward in the interim, the Council may extend this period of time. The response shall address fully the issues raised in the referral, shall be supported by evidence, and shall give the lead agency's response to the referring agency's recommendations.

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(f) After receipt of the referral and any response, the Council may take one or more of the following actions:

- (i) conclude that the process of referral and response has successfully resolved the problem;
- (ii) initiate discussions with the agencies with the objective of mediation with referring and lead agencies;
- (iii) hold public meetings or hearings to obtain additional views and information;
- (iv) publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency); or
- (v) on matters of clear national importance, submit the referral and the response together with the Council's recommendations to the President for decision.