



# Federal Register

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**Monday,  
March 8, 2004**

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**Part III**

## **Department of the Interior**

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**National Environmental Policy Act  
Revised Implementing Procedures; Notice**

**DEPARTMENT OF THE INTERIOR**

[516 DM 1-15]

**National Environmental Policy Act Revised Implementing Procedures****AGENCY:** Department of the Interior.**ACTION:** Notice of final revised procedures.

**SUMMARY:** This notice contains the final revised Departmental policies and procedures for compliance with the National Environmental Policy Act (NEPA), as amended, Executive Order 11514, as amended, and the Council on Environmental Quality's (CEQ) regulations. This action is necessary to update these procedures and to make them available to the public on the Department's Internet site. These procedures are final and will be published in part 516 of the Departmental Manual (DM) and will be made available to the public on the Electronic Library of Interior Policies (ELIPS). ELIPS is located at <http://elips.doi.gov/>. The bureaus and offices of the Department of the Interior are required to use these procedures when meeting their responsibilities under the National Environmental Policy Act.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** *General:* These procedures address policy as well as procedure in order to assure compliance with the spirit and intent of NEPA. They update Interior's policies and procedures in order to stay current with changing environmental laws and programs of the Federal government. It is the intent of these procedures to provide one set of broad Departmental directives and instructions to all bureaus and offices of the Department to follow in their NEPA compliance activities. In previous publications of these chapters the Department's bureaus published appendices to chapter 6 to further describe each bureau's compliance program. In order to more efficiently handle these appendices in the ELIPS system, it has been decided to republish them as new chapters to this DM part. Therefore, new chapters 8 through 15 which represent the currently existing bureau appendices will be added to the Departmental Manual. These chapters have already received public review, are final, and are not being republished here today. In

the near future, each bureau will consider revising its chapter to bring it into conformance with the Department's procedures. Any revisions to these chapters will be published in the **Federal Register** for public comment. In accordance with 1507.3 of the CEQ Regulations, this Department submitted these final revisions to CEQ for their review and approval. In a letter, CEQ approved these procedures for final publication. The remaining sections of **SUPPLEMENTARY INFORMATION** will provide background, a synopsis of comments and responses, and procedural requirements. Following the **SUPPLEMENTARY INFORMATION** is the text of the final procedures.

*Background:* On September 4, 2003, the Department published these procedures in draft form and invited the public to make comments. All comments received to date on this publication have been read, analyzed, and considered in the revision process. The procedures have also been circulated in the Department for final clearance by each assistant secretary. In some cases, responses to public comments or changes made as a result of public comments have been further revised during the final, internal review and clearance process.

*Comments and Responses:* The Department received, reviewed, and considered seventeen letters of comment on the September 4, 2003, **Federal Register** notice. There were some comments which focused on certain broad issues, and those comments are addressed immediately below. We have identified these issues with portions of the publication or with a descriptive title. These titles are in all capital letters for easy identification. Following these responses, we have incorporated the outline of each chapter of the final publication for ease of tracking individual comments on specific sections. To find your comment, you should proceed to the section of the manual that you commented on to see the response. For example, if you made a comment in Chapter 3, subpart 4, proceed to the heading 516 DM 3 and find 3.4. In each subpart where there are comments, we have paraphrased the comments in italics followed immediately by our response in regular type. If several reviewers made comments on the same section and a single answer is warranted, it is identified as an answer to multiple comments. If a chapter subpart is not listed, there were no comments received on that subpart.

**Supplementary Information Portion of the September 4, 2003, Publication**

In the **SUPPLEMENTARY INFORMATION** section of the September 4, 2003, **Federal Register** notice, we made the statement that:

They update our policies and procedures in order to stay current with changing environmental laws and programs of the Federal government.

Several reviewers were concerned that this statement needed more clarification and seemed to apply a more formal reading of the statement than did the Department.

We intended the statement in a casual manner since, over the last twenty three years, there have been a number of new and modified environmental requirements at all levels of government. We wish to assure all reviewers that this sentence is only a summary expression reflecting the intent of the revision to take into account the past twenty three years of changing environmental requirements. These Departmental procedures originated in 1980 and have become dated both in reference to and substantive compliance with newer requirements. Agencies often revise their procedures for this reason. Also, the CEQ Regulations require agencies to review their procedures [40 CFR 1507.3(a)]. In addition, the Department has been posting sections of its operating manual on the Internet for easy public access. Before these chapters can be posted, they must be revised to be useful to our bureaus and the public.

Several reviewers expressed concern that the September 4, 2003, **Federal Register** notice did not explain all of the changes or did not provide explicit, highlighted changes.

We believe that we did provide sufficient explanation of the material presented, and we cited the Internet location of the current procedures so that anyone wishing to download them and make their own comparisons could do so. Further, a contact was given for any questions from the public. Any requests for a paper copy of the current chapters would have been honored. No such requests were received.

Several reviewers noted our citation of Executive Order 13212 in the supplemental information and expressed concern that this represented a particular emphasis on expediting energy projects and that the reference to 516 DM 4.16 was incorrect.

This portion of the **SUPPLEMENTARY INFORMATION** was merely intended to display the various procedural requirements that this publication

would have had to address had it been a rulemaking. There was no intention to indicate any emphasis on the application of Executive Order 13212 over any other requirement that applies to the Department. The reference to 516 DM 4.16 was an error in publication, and it should have been 516 DM 4.17 as the reviewer noted. It has been changed in this version.

Relationship of these revised departmental NEPA procedures to current NEPA compliance and Federal financial assistance program activities of the Department's Fish and Wildlife Service.

Several reviewers remain concerned about this publication and its perceived increase in workload under the Federal financial assistance programs of the Fish and Wildlife Service (FWS). The concerns are: (1) Federal aid program activities will be subject to an increasing amount of environmental assessments when categorical exclusions should be able to provide adequate NEPA compliance, (2) EAs should only be used to determine if an EIS is necessary under Federal aid grant programs, (3) Federal aid grants for maintenance work often receive more environmental analysis than is warranted because Federal managers return to the base project for their NEPA analysis when only the maintenance activity should be examined, and (4) Certain additions to Appendix 1—containing the Department's categorical exclusions (CXs) need to be made to further the use of CXs in Federal aid programs.

We appreciate the comments that have been made in this area and have reviewed them for any possible changes to the Departmental Manual. However, these comments and recommendations are the concern of and better answered by the Department's Fish and Wildlife Service. The Departmental NEPA procedures serve as umbrella procedures for all of the bureaus in the Department and do not provide a level of detail sufficient to apply to all the bureaus and their varied mandates, missions, and needs.

The FWS NEPA procedures in the Departmental Manual, which address the requirements set forth in 516 DM 6.5, were last published as final procedures on January 16, 1997. All public comments were considered and were incorporated into the final FWS procedures. The FWS will be reviewing and revising as necessary its NEPA guidance following final publication of the Departmental Manual.

Since these comments and recommendations are concerned with the program activities of the Fish and Wildlife Service, they have been

forwarded to that bureau for their use in any future revision of Chapter 8.

One reviewer expressed concern that the department's procedures should await the completion of CEQ's guidance arising from the CEQ task force report on modernizing NEPA implementation.

During development of the September 4, 2003, publication, the Department was in contact with CEQ staff concerning the new concepts and changes that were being written into the manual chapters. CEQ made suggestions for improvement and generally indicated that the Department's changes were consistent with the information being collected for their report, "Modernizing NEPA Implementation." We believe that it is unnecessary to wait for CEQ to complete any new guidance arising from the report recommendations since the Department maintains its own guidance system to further explain or interpret new guidance from CEQ or elsewhere. Reviewers are referred to our environmental statement memorandum series at <http://www.doi.gov/oepec/ememoranda.html>.

One reviewer was concerned with the chapter 1 references to the department and its officers interpreting and administering the policies, regulations, and public laws of the United States in accordance with NEPA.

We do not believe there is a problem with this language since it is consistent with section 102(1) of NEPA.

One reviewer pointed out that states have public participation processes that may be duplicated by the department and create confusion.

The reviewer indicated that the Department should accept State public participation processes as adequate and move toward use of cooperative agreements to further the Federal/State roles in producing NEPA compliance documents. We agree in general and understand that several States have adequate public participation programs. The CEQ Regulations at 40 CFR 1506.6 require the Department to provide for public involvement and this has been a cornerstone of the Department's NEPA procedures for many years. To address this comment, we have allowed for public involvement to be accomplished through local partnerships in 516 DM 1.2B.

One reviewer commented that DOI should hold its employees fully accountable for their actions when carrying out their responsibilities during consensus-based management. The reference was to our statement concerning Executive Order 12630 in the procedural requirements below.

We appreciate the comment and can assure reviewers that Departmental employees are fully bound by these procedures and Executive Order 12630 and are expected to carry out their responsibilities accordingly.

Several reviewers offered comments on the Bureau of Land Management's willingness to comply fully with the policy statements of 516 DM 1.

All bureaus of the Department are bound by these procedures as well as their NEPA procedures set out in their chapters and handbooks. BLM has participated vigorously in the development of the Department's new procedures and plans to move rapidly toward updating its chapter and handbook to conform to the new Departmental procedures. We have forwarded these specific comments to the bureau for its information and consideration in their revision efforts.

Several reviewers commented that Federal permitting processes remain cumbersome, complex, and unpredictable.

We agree and believe that we have addressed many of these problems to the best of our ability in these chapters. The revisions emphasize combining analyses when practicable and, where appropriate, using information from one study in another. Both of these techniques should help decrease the cumbersomeness, complexity, and unpredictability of the NEPA process. The Departmental Manual NEPA chapters provide oversight guidance for eight bureaus with very diverse missions and statutory authorities, and, therefore, must balance both general and specific coverage for a number of issues. Also a specific environmental statement memorandum has been issued covering this topic. Reviewers are referred to our environmental statement memorandum series at: <http://www.doi.gov/oepec/ememoranda.html>.

One reviewer commented directly and others implied in some portions of their comments that the revised procedures were a positive step forward to improve NEPA implementation in the department.

We appreciate these comments.

Several reviewers offered comments proposing no changes to the text of the chapters or comments expressing an opinion on the department's proposed changes.

These comments were all read and considered; and, in some cases, assisted our revision of specific sections of the procedures or supported other reviewers' recommendations. We appreciate the input provided in these comments.

**516 DM 1***1.2 Policy*

One reviewer recommended a wording change to 1.2B and 1.2C concerning references to section 101 of NEPA and to the definition of the human environment in 40 CFR 1508.14.

We agree and have amended both subparts along with subpart 1.2D.

*1.3 General Responsibilities*

One reviewer suggests that our requirements in 1.3D(4) are beyond the scope of NEPA.

We disagree and refer reviewers to sections 102(1), 102(2)(A), 102(2)(G), 102(2)(H), and 104(1).

Several reviewers commented on the concept of consensus-based management in 1.3D(5).

Comments were both for and against our use of the concept and also offered using the term "information-based management" as a substitute. Some concern was voiced about compliance with the Federal Advisory Committee Act (FACA) and that States may have to provide training on Federal laws for which they have no expertise and often have no funds to provide any training. We have reviewed the subpart again and believe that these concerns are unfounded. We also refer the reviewers to our environmental statement memorandum on the Web site noted above under the general comment on the NEPA Task Force Report. We feel that sufficient flexibility is built into these new concepts to make them workable under existing budget conditions at both Federal and State levels. Finally, legal review of our consensus-based management advises that it is compliant with FACA.

Several reviewers spoke in support of tiered and transferred analyses in 1.3D(6).

The support is appreciated.

Several reviewers spoke in support of the adaptive management concept introduced in 1.3D(7).

We appreciate the support.

One reviewer suggest the addition of the CEQ Regulations to 1.3E(1).

We agree and have done so.

One reviewer suggested that collecting baseline data be added to 1.3E(3) and adding a similar passage to 4.17C.

We believe that the general requirement in 1.4A(4) is sufficient to bind Departmental managers on this subject.

*1.4 Consideration of Environmental Values*

One reviewer voiced support for 1.4A(1).

We appreciate the support.

One reviewer voiced support for 1.4A(3).

We appreciate the support.

Several reviewers commented on and suggested wording changes to the baseline data provision in 1.4A(4).

The Department understands that baseline data are both necessary to environmental analysis and can be controversial from the standpoint of determining what the baseline is and how to get those data for a given project. We believe that this subpart is appropriate for the Department and its bureaus as written. We believe that it is best to provide Departmental managers with this overall guidance and let project specific NEPA documents and their public comments determine whether baseline has been properly defined and documented.

Several reviewers commented on 1.4A(5) giving support, concerned about requiring combined EISs in the same area, and concerned that CXs ignore cumulative impacts.

This provision is written with sufficient flexibility to allow Departmental managers to determine the best way to integrate existing environmental analyses and data into their NEPA documents and does not require combined NEPA documents by several agencies unless that is the most efficient and effective method to adequately comply with NEPA. We also call attention to extraordinary circumstance 2.6 in 516 DM 2; Appendix 2 that is intended to assure that cumulative impacts are not ignored when applying CXs.

One reviewer noted that 1.4A(6) does not and should not require completion of all approvals before DOI completes a NEPA document.

This is understood and Departmental EISs have always identified and discussed any remaining approvals needed before an action could be taken.

One comment supported 1.4B.

We appreciate the comment.

*1.5 Consultation, Coordination, and Cooperation With Other Agencies and Organizations*

Several comments were made on 1.5A(1) concerning the applicability of certain laws such as the Patriot Act and the Federal Land Policy and Management Act.

We have reviewed the subpart and have added the qualifier "to the extent allowed by law" in the second sentence. The comments are well founded, but because several other statutes are applicable and applicability can vary depending upon the case at hand, we took a more general approach to fixing

the subpart in a way that provides coverage for both current and future laws.

A reviewer expressed support for 1.5A(3) concerning the use of electronic systems but cautioned against total reliance on them.

We understand the concern that many portions of the public still do not have computers or Internet access. Our guidance memorandum on this topic (see <http://www.doi.gov/oeep/ememoranda.html>) and 1.5A(2) requires our bureaus to continue providing paper copies of NEPA documents to anyone requesting them.

Two different comments were received on 1.5B(3). One concerned the potential exclusion of certain interested parties in projects involving international considerations. The other was that DOI would consider global implications such as climate change and deforestation in its decision-making.

There is no intent to exclude appropriate interested parties in this subpart, and the subpart has been revised accordingly. The subpart is a broad statement that the Department will play an appropriate role in international environmental issues to the extent it is authorized to do so. The subpart recognizes the concepts set forth in section 102(2)(F) of the Act and further embodied in Executive Order 12114 (Environmental Impacts Abroad of Major Federal Actions).

*1.6 Public Involvement*

A reviewer commented that this section should only be an issue if the Federal agency can demonstrate that a State has no public participation program.

As noted above in the general discussion of State public participation programs, public participation is required of all Federal agencies. It is not our intent to ignore the efforts of State governments to fully involve the public nor should our efforts duplicate State efforts. The Department is fully aware of 40 CFR 1500.4(n) which calls for eliminating duplication with State and local procedures. Departmental managers are expected to combine their efforts with States when it is appropriate, as determined by both governments.

One reviewer supported 1.6B on NEPA status reporting.

We appreciate the comment.

**516 DM 2***2.1 Purpose*

A reviewer has commented on the seemingly restrictive character of the often used phrase: Federal, State, and

local agencies (including Tribal governments) in this chapter. The concern is that other interested parties may not qualify for joint lead and cooperating agency roles or for general involvement in NEPA compliance activities.

NEPA is a Federal statute and its provisions, as well as the Departmental and bureau procedures, govern DOI's implementation. However, this does not preclude the involvement of interested parties that are not local governments from participating in scoping and in the development of NEPA analyses and documents. The CEQ Regulations at 40 CFR 1501.2(d)(2) require that Federal agencies consult early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when such involvement is reasonably foreseeable. There are a number of other places in the regulations and this Departmental Manual that provide for public involvement and stress public involvement as an important part of full NEPA compliance. See also 2.2D and 2.6B. Finally, it is noted that the Department did not fairly paraphrase in footnote 4 the meaning of the July 1999, September 2000, and January 2002 CEQ guidance on the topic of cooperating agencies. We have reviewed our footnote and the CEQ guidance and believe that we have properly portrayed CEQ's meaning by paraphrasing their discussion urging Federal agencies to more actively solicit participation from State and local agencies.

## 2.2 Apply NEPA Early

A county reviewer is concerned that 2.2A does not explicitly include counties for consultation purposes.

Please see the response given above in 2.1 to a similar concern. Counties are included as units of local government.

One reviewer has indicated support for subpart 2.2A.

We appreciate the support.

One reviewer has indicated support for subpart 2.2B.

We appreciate the support.

Several reviewers commented on subpart 2.2D concerned that consensus should not be required on any part of the process beyond identification of issues and concerned that interested parties who decline their participation early may not enter the process at a later date.

We have reviewed the subpart and determined that only minor adjustments were needed. The subpart currently handles the subject with a moderate approach both promoting the use of consensus-based management while recognizing the limits on its use due to

statutory, regulatory, and policy constraints. Concerning the late introduction of issues, we believe the current language is satisfactory and allows the individual manager to handle the late introduction of issues and alternatives in an appropriate manner. Another specific comment requested specific timelines and notice for comment. Again, we believe that these procedures should not usurp the local manager's ability to work out arrangements with interested parties that fit the individual situation.

One reviewer recommended a new 2.2F that would clearly indicate that NEPA applied only to Federal actions.

We have made this addition.

## 2.3 Whether To Prepare an EIS

One reviewer recommended that subpart 2.3A(1) be revised in (b) to read as follows:

Unresolved conflicts concerning alternative uses of available resources will not be a sole reason to disallow the use of an otherwise acceptable categorical exclusion.

This arises from a general concern from several reviewers that unresolved conflicts should not be a reason for not applying a specific categorical exclusion as expressed in extraordinary circumstance 2.3 or that unresolved conflicts should even be a criterion for establishing a category. There was additional comment that our reference to section 102(2)(E) of NEPA was also a misinterpretation of the Act.

We considered these concerns and removed the unresolved conflicts criterion in 2.3A(1)(b) but have not removed that same portion of extraordinary circumstance 2.3. At least one bureau has indicated that this addition to the extraordinary circumstance is necessary in the successful application of their categorical exclusions. Finally, we believe that our reference to section 102(2)(E) is appropriate and is further confirmed in 40 CFR 1507.2(d).

A reviewer suggested that 2.3A(3) concerning documentation of categorical exclusions not include extensive review and documentation as noted in the CEQ NEPA Task Force report.

The subpart calls for “\* \* \* sufficient environmental review to determine whether it meets any of the extraordinary circumstances. \* \* \*” We believe that this is satisfactory language to cover this issue.

One reviewer expressed support for 2.3D.

We appreciate the support.

One reviewer expressed support for 2.3F.

We appreciate the support.

## 2.4 Lead Agencies

One reviewer suggested that 2.4E needs to list statutes in which lead agency designations may be required.

We have researched this and were advised that the Natural Gas Act is one statute where the lead agency is designated to be the Federal Energy Regulatory Commission. We do not believe that a change is warranted because these statutes will surface in any NEPA proceeding where they may have an impact and will not be overlooked. Further, these procedures necessarily refrain from publishing lists and other specific data which may change periodically and would thereby require the Department to revise these procedures. Instead, the Department has an environmental guidance memorandum system where data such as this may be made available (see <http://www.doi.gov/oepc/ememoranda.html>).

## 2.5 Cooperating Agencies

Several reviewers commented on 2.5D from the standpoint of needing high level clearance, use of specific wording from the CEQ Regulations, and lack of funding at the local level.

We have considered these comments and made some changes to the subpart to be more specific about what should happen between bureaus and cooperating agencies. We believe the subpart now reflects the regulations to the best extent possible. As a practical matter, cooperating agency arrangements are best made at the local manager's level so that work can begin and proceed efficiently without requiring and waiting for clearance from higher levels. In the event that cooperating agencies do not meet their commitments, higher level managers can be brought in at the appropriate time to help resolve any differences. On the subject of funding raised by one of the reviewers, it is recognized that local governments qualifying for cooperating agency status may not always have sufficient funds to participate. The CEQ Regulations allow for this in 40 CFR 1501.6(b)(5) and this is taken into account in the factors provided with the January 2002 guidance memorandum from CEQ, but, unfortunately, some opportunities may be missed due to resource limitations.

## 2.6 Scoping

A reviewer commented in 2.6A that counties with limited budgets and staff should be able to receive direct invitations to scoping meetings.

We understand the budget constraints that governments may have from time to

time but believe that notices of intent to do an EIS and hold scoping meetings are now easily obtained from the **Federal Register** online. Local notifications are often published in newspapers and newsletters.

Several reviewers offered support for 2.6B, made a suggested revision to include State, local, and Tribal governments, and called attention to the applicability of a previous comment made on 1.5A(1).

We appreciate the support and have made the suggested change to the extent we felt was necessary. Regarding subpart 1.5A(1), we refer the reviewer to the response made there.

A reviewer offered support for 2.6C. Again, we appreciate the support.

### 2.7 Time Limits

Several reviewers recommended that 2.7A be strengthened to require time limits.

We believe that the subpart as written best complies with the CEQ Regulations on this topic. In 40 CFR 1501.8, CEQ recognized that prescribed time limits would be too inflexible. Further, our experience with prescribed time limits for the preparation of NEPA analyses and documents as well as other Departmental matters show that unforeseen events can cause missed deadlines, but that progress continues to be made.

In subpart 2.7B it is recommended that staff should be assembled and trained in the type of project to be analyzed.

We have made minor changes to this subpart to reinforce this concept.

### Appendix 1

One reviewer indicated continued opposition to CXs 1.11 and 1.12 concerning fuels reduction and rehabilitation.

The comment is noted, but no change will be made since these CXs were the subject of previous notice and comment prior to their adoption.

It was also recommended that CX 1.8 be narrowed to exclude minor boundary changes and land titles.

Again, no change will be made since the historical exercise of this CX has not uncovered systemic abuse of its use or any reason to re-evaluate its use.

### Appendix 2

Several reviewers commented on the need for objective standards in the extraordinary circumstances and recommended re-wording of several of them.

We have reviewed the extraordinary circumstances with these comments in mind and have made several changes to

bring about more continuity and objectivity. Particularly, we have used the word significant as used in the definition of categorical exclusion in 40 CFR 1508.4. We have also made direct changes to some of them as recommended by the public comments. On those recommended word changes where we disagreed, we have made no changes. Following are specific responses to comments on each extraordinary circumstance.

2.1—We have substituted the term “significant impacts” for the term “significant adverse affects.” This change acknowledges the fact that a categorical exclusion may not be warranted if the proposed action may have affects that are largely positive or negative.

2.2—We have used the phrase “significant impacts,” at the beginning to help create consistency. We have added migratory birds. We have not added the phrase, under Federal ownership or jurisdiction, as suggested, because project effects may impact areas adjacent to Federal lands.

2.3—No change.

2.4—No change. One reviewer did suggest deletion of this extraordinary circumstance. However, we have determined that it should be retained because our experience has shown that it is sometimes needed and used.

2.5—No change.

2.6—We revised this to be more consistent with the other extraordinary circumstances.

2.7—We have used the phrase “significant impacts,” at the beginning to help create consistency.

2.8—We have used the phrase “significant impacts,” throughout to help create consistency. We have retained the phrase, proposed to be listed, because it is contained in the Endangered Species Act and serves to alert analysts, reviewers, proponents, and decision makers of the pending possibility of listing.

2.9—We have made minor modifications.

2.10—We have made minor modifications.

2.11—We have added the phrase, on Federal lands, to clarify this point.

2.12—We have made minor modifications.

Several reviewers expressed continued concern that we do not require the presence of an extraordinary circumstance to halt the use of a CX but allow the phrase “\* \* \* have significant adverse effects on \* \* \*” to be the determining factor.

Experience has shown that the Department must have some leeway in this matter to allow local managers to

make a determination on whether to use a CX. There are those who wish to have no CXs applied and those who wish to have more CXs and less EAs and EISs produced. The varied missions of the Department call for balancing these competing interests to serve the public in the best possible way. We have retained the spirit of this section while changing the wording to “significant impact.”

### 516 DM 3

#### 3.3 Public Involvement

Several reviewers made comments from differing points of view on 3.3B.

We believe that our revised wording is now consistent with the CEQ Regulations and the policy statements made earlier in chapter 1 of this part.

### 516 DM 4

#### 4.3 Timing

One reviewer supports 4.3A.

We appreciate the support.

Several reviewers requested a change in 4.3B concerning the offshore minerals example.

Based on the comments and the cited court cases, we have made the change.

#### 4.10 Alternatives Including the Proposed Action

One reviewer recommended the addition of an item on the human environment.

We have made a reference to 40 CFR 1508.14 in subpart 1.2D. Such an addition in 4.10A would not be consistent with the intent of the subpart which describes the commonly used terms when dealing with NEPA alternatives.

One reviewer suggests a revision to 4.10A(2), reasonable alternative.

We decline to make the change since the language was derived from Question 2 in CEQ’s “Forty Most Asked Questions” guidance document.

One reviewer suggested a change for 4.10A(4), preferred alternative.

We have changed the definition to conform more precisely with that given in the “Forty Most Asked Questions.”

One reviewer recommended that 4.10A(5), environmentally preferred alternative be omitted from the subpart. Further the reviewer indicated that the term does not appear in NEPA documentation.

We disagree and have not omitted the subpart. Both 40 CFR 1505.2(b) and the “Forty Most Asked Questions” discuss the term.

A reviewer recommends defining the term, participating communities in 4.10D.

We have opted to change the word “communities” to the phrase

“interested parties” which is more consistent with other references to this topic throughout the chapters.

#### 4.12 Tiering

One reviewer supports 4.12B.  
We appreciate the support.

#### 4.15 Methodology and Scientific Accuracy

A reviewer recommended that we add language to 4.15 to identify the information quality requirements that were established by Section 515 of the Treasury and General Government Appropriation Act for Fiscal Year 2001.

We have made this addition.

#### 4.16 Adaptive Management

One reviewer commented that they support the concept of a working group on adaptive management to be set up under the CEQ NEPA Task Force report and suggests that DOI wait for the outcome before incorporating adaptive management activities into bureau activities.

We have indicated above in a general comment on the NEPA Task Force report that we have the flexibility to react to any changes that arise from the working group’s recommendations. Some of the Department’s bureaus already have experience in the use of adaptive management in their programs dating back a number of years. The Department is comfortable with this addition to the procedures and believes that the subpart provides the basics of adaptive management so that any future adjustments can be made through our environmental guidance memoranda series.

Another reviewer noted that adaptive management could be used to make multiple decisions without doing additional environmental analysis and offered a number of references describing adaptive management and how it should be used.

We appreciate the information and will continue to consider it as we apply adaptive management. The Department is well aware of the possibility that adaptive management could be used to confuse environmental issues and lead to possible multiple decisions (piecemealing). However, our experience shows that DOI has properly used adaptive management to achieve better mitigation in the absence of a full knowledge of impacts at the time the analysis is performed.

A final comment endorsed the change in management approach when anticipated mitigation outcomes are not being met.

We agree.

#### 4.17 Environmental Review and Consultation Requirements

A reviewer noted support for 4.17C but cautioned that not all approvals had to be in place before completing the EIS.

The text has been modified to show this.

#### 4.19 Response to Comments.

*A reviewer commented that 4.19A and B contradicted other subparts, particularly 2.2B and D on involving interested parties early and eliminating late input to the NEPA process.*

We have reviewed these subparts, modified both of them, and related 4.19B to 2.2D. We wish to point out, however, that 2.2D is primarily aimed at the late introduction of issues and alternatives and that 4.19A and B are discussing any late comments regardless of their content.

#### 4.25 Proposals for Legislation

*A reviewer expressed support for 4.25B.*

We appreciate the support.

#### 4.26 Time Periods

*A reviewer has recommended the retention of the 60 day review period for draft EISs.*

This subpart was changed to mesh properly with the EPA filing process. Forty five (45) days is the minimum public comment period for draft EISs prescribed by the CEQ Regulations and is counted from the publication of EPA’s notice of availability. This often means that an EIS has been printed and sent to the public as much as five to seven days prior to the EPA notice appearing in the **Federal Register**. So receipt by the public is usually coincident with the EPA publication. On complex or controversial projects, our bureaus have provided longer comment periods (e.g., 60 to 90 days), and they retain this flexibility. Therefore, no change has been made.

#### 516 DM 5

##### 5.5 Implementing the Decision

*It was recommended that the word natural be deleted from the subpart.*

We disagree and have not made the change. The definition of human environment in 40 CFR 1508.14 clearly says that human environment is to include the natural and physical environment.

##### 5.8 Emergencies

*A suggestion was made that the phrase: serious resource losses be struck from the discussion in this subpart.*

The topic of emergencies was reviewed in the Department in 1997,

and further guidance was developed for bureaus which included additional CEQ guidance on the topic. This guidance is available in an environmental statement memorandum, ESM97–3, that is available on the Web site noted earlier in this manual. We decided, based upon actual emergency experience in the Department in 1997, that the two most important points to address in the manual were: (1) Take the action if life, property, and resources are threatened and (2) immediately consult with the Department and CEQ if there are significant impacts. The guidance contained in ESM97–3 uses the phrase, important resource, and indicates that importance may reflect economic, social, or cultural values. We have changed the subpart to use the term, important resources.

#### 516 DM 7

##### 7.4 Types of Reviews

*One reviewer has recommended that the National Historic Preservation Act be added to 7.4K.*

We have made this change.

*Procedural Requirements:* The following list of procedural requirements has been assembled and addressed to contribute to this open review process. Today’s publication is a notice of final, internal Departmental action and not a rulemaking. However, we have addressed the various procedural requirements that are generally applicable to proposed and final rulemaking to show how they would affect this notice if it were a rulemaking.

#### Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) it has been determined that this action is the implementation of policy and procedures applicable only to the Department of the Interior and not a significant regulatory action. These policies and procedures would not impose a compliance burden on the general economy.

#### Administrative Procedures Act

This document is not subject to prior notice and opportunity to comment because it is a general statement of policy and procedure [(5 U.S.C. 553(b)(A)]. However, notice and opportunity to comment is required by the CEQ Regulations [40 CFR 1507.3(a)].

#### Regulatory Flexibility Act

This document is not subject to notice and comment under the Administrative Procedures Act, and, therefore, is not subject to the analytical requirements of the Regulatory Flexibility Act (5 U.S.C.

601 *et seq.*). This document provides the Department with policy and procedures under NEPA and does not compel any other party to conduct any action.

#### **Small Business Regulatory Enforcement Fairness Act**

These policies and procedures do not comprise a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The document will not have an annual effect on the economy of \$100 million or more and is expected to have no significant economic impacts. Further, it will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions and will impose no additional regulatory restraints in addition to those already in operation. Finally, the document does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign based enterprises.

#### **Unfunded Mandates Reform Act**

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this document will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. The document does not require any additional management responsibilities. Further, this document will not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a significant regulatory action under the Unfunded Mandates Reform Act. These policies and procedures are not expected to have significant economic impacts nor will they impose any unfunded mandates on other Federal, State, or local government agencies to carry out specific activities.

#### **Federalism**

In accordance with Executive Order 13132, this document does not have significant Federalism effects; and, therefore, a Federalism assessment is not required. The policies and procedures will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially, directly affected. Therefore, the document does not have

significant effects or implications on Federalism.

#### **Paperwork Reduction Act**

This document does not require information collection as defined under the Paperwork Reduction Act. Therefore, this document does not constitute a new information collection system requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### **National Environmental Policy Act**

The Council on Environmental Quality does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are internal procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action.

#### **Essential Fish Habitat**

We have analyzed this document in accordance with section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and determined that issuance of this document will not affect the essential fish habitat of Federally managed species; and, therefore, an essential fish habitat consultation on this document is not required.

#### **Consultation and Coordination With Indian Tribal Governments**

In accordance with Executive Order 13175 of November 6, 2000, and 512 DM 2, we have assessed this document's impact on tribal trust resources and have determined that it does not directly affect tribal resources since it describes the Department's procedures for its compliance with NEPA.

#### **Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use**

Executive Order 13211 of May 18, 2001, requires a Statement of Energy Effects for significant energy actions. Significant energy actions are actions normally published in the **Federal Register** that lead to the promulgation of a final rule or regulation and may have any adverse effects on energy supply, distribution, or use. We have explained above that this document is an internal Departmental Manual part which only affects how the Department conducts its business under the National Environmental Policy Act. This manual

part is not a rulemaking; and, therefore, not subject to Executive Order 13211.

#### **Actions To Expedite Energy-Related Projects**

Executive Order 13212 of May 18, 2001, requires agencies to expedite energy-related projects by streamlining internal processes while maintaining safety, public health, and environmental protections. Today's publication is in conformance with this requirement as it promotes existing process streamlining requirements and revises the text to emphasize this concept (see chapter 4, subpart 4.17).

#### **Government Actions and Interference With Constitutionally Protected Property Rights**

In accordance with Executive Order 12630 (March 15, 1988) and part 318 of the Departmental Manual, the Department has reviewed today's notice to determine whether it would interfere with constitutionally protected property rights. Again, we believe that as internal instructions to bureaus on the implementation of the National Environmental Policy Act, this publication would not cause such interference.

(Authority: NEPA, the National Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); E.O. 11514, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and CEQ Regulations 40 CFR 1507.3)

**P. Lynn Scarlett,**

*Assistant Secretary—Policy, Management and Budget.*

#### **Department of the Interior— Departmental Manual**

*Effective Date:*

*Series:* Environmental Quality.

*Part 516:* National Environmental Policy Act of 1969.

*Chapter 1:* Protection and Enhancement of Environmental Quality.

*Originating Office:* Office of Environmental Policy and Compliance.

#### **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)

(1) 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<sup>1</sup> and community-based NEPA training<sup>2</sup> to the extent possible in all NEPA compliance activities. Will ensure that the Department's collaborative efforts under this part comply with the Federal Advisory Committee Act (FACA), 5 U.S.C., appendix.<sup>3</sup>

(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

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

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.

## Department of the Interior— Departmental Manual

*Effective Date:*

*Series:* Environmental Quality.

*Part 516:* National Environmental Policy Act of 1969.

*Chapter 2:* Initiating the NEPA Process.

*Originating Office:* Office of Environmental Policy and Compliance.

## 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 1.5(A)(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 § 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 § 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.<sup>4</sup>

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.

<sup>4</sup> 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.

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.

## CHAPTER 2; 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 Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

1.6 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).

1.7 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.)

1.8 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.

1.9 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.

1.10 Activities which are educational, informational, advisory, or consultative to other agencies, public and private entities, visitors, individuals, or the general public.

1.11 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.<sup>5</sup>

1.12 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

<sup>5</sup> Refer to the Environmental Statement Memoranda Series for additional, required guidance.

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.<sup>6</sup>

## CHAPTER 2; 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).

### Department of the Interior— Departmental Manual

*Effective Date:*

*Series:* Environmental Quality.

*Part 516:* National Environmental Policy Act of 1969.

*Chapter 3:* Environmental Assessments.

*Originating Office:* Office of Environmental Policy and Compliance.

#### 516 DM 3

##### 3.1 Purpose

This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to EAs.

##### 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.

### Department of the Interior— Departmental Manual

*Effective Date:*

*Series:* Environmental Quality.

*Part 516:* National Environmental Policy Act of 1969.

*Chapter 4:* Environmental Impact Statements.

*Originating Office:* Office of Environmental Policy and Compliance.

#### 516 DM 4

##### 4.1 Purpose

This chapter provides supplementary instructions for implementing those

<sup>6</sup>Ibid.

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” interpretation 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 use 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 Web site at <http://www.doi.gov/oepec>.

#### 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 EISs 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.

### CHAPTER 4, 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)<sup>7</sup>.

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).

<sup>7</sup> 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/>.

##### 1.4 Office of Insular Affairs

A. Economic and Political Development of the Territories and the Trust Territory of the Pacific Islands (15.875).

#### Department of the Interior— Departmental Manual

##### Effective Date:

Series: Environmental Quality.

Part 516: National Environmental Policy Act of 1969.

Chapter 5: Relationship to Decision Making.

Originating Office: Office of Environmental Policy and Compliance.

#### 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.

### Department of the Interior— Departmental Manual

*Effective Date:*

*Series:* Environmental Quality.

*Part 516:* National Environmental

Policy Act of 1969.

*Chapter 6:* Managing the NEPA

Process.

*Originating Office:* Office of Environmental Policy and Compliance.

### 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.* The Director, OEPC, reporting to the 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) Fish and Wildlife Service (chapter 8; formerly appendix 1).

(2) 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 Web site at <http://www.doi.gov/oepec>.

#### Department of the Interior— Departmental Manual

*Effective Date:*

*Series:* Environmental Quality.

*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.

#### 516 DM 7

##### 7.1 Purpose

A. These procedures implement the policy and directives of the National Environmental Policy Act of 1969 (Pub. L. 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 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, 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 E.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, FONSI's 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 Web site 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 Web site 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 Web site 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 Web site 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 Web site 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 capsule 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. 552) and the Departmental procedures established by 43 CFR 2. Upon receipt of such requests and in addition to following the procedures above in A., 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 Web site at <http://www.doi.gov/oepec> and consult with the OEPC for the most current review guidance.

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