The National Environmental Policy Act of 1969, as amended

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

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

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

Purpose

Sec. 2 [42 USC § 4321].

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

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

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

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

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

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

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

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

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

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

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

Sec. 102 [42 USC § 4332].

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall –

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

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

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

(i) the environmental impact of the proposed action,

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

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 103 [42 USC § 4333].

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

Sec. 104 [42 USC § 4334].

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

Sec. 105 [42 USC § 4335].

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201 [42 USC § 4341].

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

Sec. 202 [42 USC § 4342].

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

the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC § 4343].

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

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

Sec. 204 [42 USC § 4344].

It shall be the duty and function of the Council –

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

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

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

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

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

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

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

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

Sec. 205 [42 USC § 4345].

In exercising its powers, functions, and duties under this Act, the Council shall –

1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

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

Sec. 206 [42 USC § 4346].

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

Sec. 207 [42 USC § 4346a].

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

Sec. 208 [42 USC § 4346b].

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC § 4347].

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

The Environmental Quality Improvement Act, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

42 USC § 4372.

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

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation

payable to the Deputy Director of the Office of Management and Budget.

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

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

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;

2. assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;

3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

5. assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

6. assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;

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

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

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

Report.

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

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

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

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

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

42 USC § 4375.

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

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

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

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

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

PART 1500--PURPOSE, POLICY, AND MANDATE

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

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

Sec. 1500.1 Purpose.

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

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

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

Sec. 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

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

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

supported by evidence that agencies have made the necessary environmental analyses.

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

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

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

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

Sec. 1500.3 Mandate.

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

Sec. 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

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

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

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

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

1502.8).

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

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

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

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

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

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

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

(l) Requiring comments to be as specific as possible (Sec. 1503.3).
(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (Sec. 1503.4(c)).

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

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

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

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

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

Sec. 1500.5 Reducing delay.

Agencies shall reduce delay by:

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

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary

comments on a completed document (Sec. 1501.6).

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

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

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

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

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

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

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

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

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

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

Sec. 1500.6 Agency authority.

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

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PART 1501--NEPA AND AGENCY PLANNING

Sec.

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

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

Sec. 1501.1 Purpose.

The purposes of this part include:

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

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

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

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

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

Sec. 1501.2 Apply NEPA early in the process.

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

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

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

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves

unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

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

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

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

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

Sec. 1501.3 When to prepare an environmental assessment.

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

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

Sec. 1501.4 Whether to prepare an environmental impact statement.

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

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

1. Normally requires an environmental impact statement, or

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

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

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

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

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

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

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

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

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

Sec. 1501.5 Lead agencies.

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

1. Proposes or is involved in the same action; or

2. Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

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

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

1. Magnitude of agency's involvement.
2. Project approval/disapproval authority.
3. Expertise concerning the action's environmental effects.
4. Duration of agency's involvement.
5. Sequence of agency's involvement.

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

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

1. A precise description of the nature and extent of the proposed

action.

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

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

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

Sec. 1501.6 Cooperating agencies.

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

(a) The lead agency shall:

1. Request the participation of each cooperating agency in the NEPA process at the earliest possible time.
2. Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.
3. Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

1. Participate in the NEPA process at the earliest possible time.
2. Participate in the scoping process (described below in Sec. 1501.7).
3. Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.
4. Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.
5. Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

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

Sec. 1501.7 Scoping. There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (Sec. 1508.22) in the Federal Register except as provided in Sec. 1507.3(e).

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

1. Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under Sec. 1507.3(c). An agency may give notice in accordance with Sec. 1506.6.
2. Determine the scope (Sec. 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.
3. Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (Sec. 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.
4. Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.
5. Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.
6. Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in Sec. 1502.25.
7. Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

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

1. Set page limits on environmental documents (Sec. 1502.7).
2. Set time limits (Sec. 1501.8).
3. Adopt procedures under Sec. 1507.3 to combine its environmental assessment process with its scoping process.
4. Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

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

Sec. 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the

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

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

(b) The agency may:

1. Consider the following factors in determining time limits:

   (i) Potential for environmental harm.
   (ii) Size of the proposed action.
   (iii) State of the art of analytic techniques.
   (iv) Degree of public need for the proposed action, including the consequences of delay.
   (v) Number of persons and agencies affected.
   (vi) Degree to which relevant information is known and if not known the time required for obtaining it.
   (vii) Degree to which the action is controversial.
   (viii) Other time limits imposed on the agency by law, regulations, or executive order.

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

   (i) Decision on whether to prepare an environmental impact statement (if not already decided).
   (ii) Determination of the scope of the environmental impact statement.
   (iii) Preparation of the draft environmental impact statement.
   (iv) Review of any comments on the draft environmental impact statement from the public and agencies.
   (v) Preparation of the final environmental impact statement.
   (vi) Review of any comments on the final environmental impact statement.
   (vii) Decision on the action based in part on the environmental impact statement.

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

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

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PART 1502--ENVIRONMENTAL IMPACT STATEMENT

Sec.

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

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

Sec. 1502.1 Purpose.

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

Sec. 1502.2 Implementation.

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

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

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

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

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

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

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

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

Sec. 1502.3 Statutory requirements for statements.

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

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

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

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

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

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

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

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

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

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

Sec. 1502.5 Timing.

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

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

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

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

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

Sec. 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter-

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

Sec. 1502.7 Page limits.

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

Sec. 1502.8 Writing.

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

Sec. 1502.9 Draft, final, and supplemental statements.

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

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

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

(c) Agencies:

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

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

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

2. May also prepare supplements when the agency determines

that the purposes of the Act will be furthered by doing so.
3. Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.
4. Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

Sec. 1502.10 Recommended format.

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

(a) Cover sheet.
(b) Summary.
(c) Table of contents.
(d) Purpose of and need for action.
(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).
(f) Affected environment.
(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).
(h) List of preparers.
(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.
(j) Index.
(k) Appendices (if any).

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

Sec. 1502.11 Cover sheet.

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

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

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

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

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

(e) A one paragraph abstract of the statement.

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

in cooperation with EPA under Sec. 1506.10).

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

Sec. 1502.12 Summary.

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

Sec. 1502.13 Purpose and need.

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

Sec. 1502.14 Alternatives including the proposed action.

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

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

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

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

(d) Include the alternative of no action.

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

(f) Include appropriate mitigation measures not already

included in the proposed action or alternatives.

Sec. 1502.15 Affected environment.

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

Sec. 1502.16 Environmental consequences.

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

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

(b) Indirect effects and their significance (Sec. 1508.8).

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

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

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

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

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

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

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

Sec. 1502.17 List of preparers.

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

Sec. 1502.18 Appendix.

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

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

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

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

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

Sec. 1502.19 Circulation of the environmental impact statement.

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

(a) Any Federal agency which has jurisdiction by law or

special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

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

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

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

Sec. 1502.20 Tiering.

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

Sec. 1502.21 Incorporation by reference.

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

Sec. 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant

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

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

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

1. A statement that such information is incomplete or unavailable;

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

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

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

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

[51 FR 15625, Apr. 25, 1986]

Sec. 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental

consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

Sec. 1502.24 Methodology and scientific accuracy.

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

Sec. 1502.25 Environmental review and consultation requirements.

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

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

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PART 1503--COMMENTING

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

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

Sec. 1503.1 Inviting comments.

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

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

2. Request the comments of:

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

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

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

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

3. Request comments from the applicant, if any.

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

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

Sec. 1503.2 Duty to comment.

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

Sec. 1503.3 Specificity of comments.

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

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

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

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

Sec. 1503.4 Response to comments.

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

1. Modify alternatives including the proposed action.

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

3. Supplement, improve, or modify its analyses.

4. Make factual corrections.

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

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

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

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

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

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

Sec. 1504.1 Purpose.

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

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

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

Sec. 1504.2 Criteria for referral.

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

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

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

Sec. 1504.3 Procedure for referrals and response.

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

1. Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.
2. Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.
3. Identify any essential information that is lacking and request that it be made available at the earliest possible time.
4. Send copies of such advice to the Council.

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

(c) The referral shall consist of:

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

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

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

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

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

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

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

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

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the

matter will not go forward in the interim, the Council may grant an extension. The response shall:

1. Address fully the issues raised in the referral.
2. Be supported by evidence.
3. Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response. (f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

1. Conclude that the process of referral and response has successfully resolved the problem.
2. Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.
3. Hold public meetings or hearings to obtain additional views and information.
4. Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.
5. Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.
6. Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).
7. When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

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

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

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

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PART 1505--NEPA AND AGENCY DECISIONMAKING

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

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

Sec. 1505.1 Agency decisionmaking procedures.

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

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

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

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

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

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

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

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

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were

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

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

Sec. 1505.3 Implementing the decision.

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

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

(b) Condition funding of actions on mitigation.

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

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

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PART 1506--OTHER REQUIREMENTS OF NEPA

Sec.

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

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

Sec. 1506.1 Limitations on actions during NEPA process.

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

1. Have an adverse environmental impact; or
2. Limit the choice of reasonable alternatives.

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

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

1. Is justified independently of the program;
2. Is itself accompanied by an adequate environmental impact statement;
   and
3. Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

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

the Administration.

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

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

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

1. Joint planning processes.
2. Joint environmental research and studies.
3. Joint public hearings (except where otherwise provided by statute).
4. Joint environmental assessments.

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

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

Sec. 1506.3 Adoption.

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

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

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an

independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

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

Sec. 1506.4 Combining documents.

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

Sec. 1506.5 Agency responsibility.

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

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

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

Sec. 1506.6 Public involvement.

Agencies shall:

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

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

1. In all cases the agency shall mail notice to those who have requested it on an individual action.
2. In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.
3. In the case of an action with effects primarily of local concern the notice may include:

    (i) Notice to State and areawide clearinghouses pursuant to OMB Circular A- 95 (Revised).

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

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

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

    (v) Notice through other local media.

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

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

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

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

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

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

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

(d) Solicit appropriate information from the public.

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

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

Sec. 1506.7 Further guidance.

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

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

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

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

1. Research activities;
2. Meetings and conferences related to NEPA; and
3. Successful and innovative procedures used by agencies to implement NEPA.

Sec. 1506.8 Proposals for legislation.

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

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

1. There need not be a scoping process.
2. The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; Provided, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by Secs. 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.
(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)).
(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.
(iv) The agency decides to prepare draft and final statements.

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

Sec. 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the U.S. Environmental Protection Agency, Attention: Office of Federal Activities EIS Filing Section, Ariel Rios Building (South Oval Lobby) Mail Code 2252-A, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and §1506.10.

Sec. 1506.10 Timing of agency action.

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

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

1. Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.
2. Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement. An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such

cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published.

This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see Sec. 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

[43 FR 56000, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

Sec. 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

Sec. 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under section 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's

guidelines published in the Federal Register of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

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PART 1507--AGENCY COMPLIANCE

Sec.

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

Source: 43 FR 56002, Nov. 29, 1978, unless otherwise noted.

Sec. 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by Sec. 1507.3 to the requirements of other applicable laws.

Sec. 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

Sec. 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the Federal Register, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the Federal Register for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

1. Those procedures required by Secs. 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

2. Specific criteria for and identification of those typical classes of action:

    (i) Which normally do require environmental impact statements.

    (ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (Sec. 1508.4)).

    (iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in Sec. 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by Sec. 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

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PART 1508--TERMINOLOGY AND INDEX

Sec.

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

Source: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

Sec. 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

Sec. 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

Sec. 1508.3 Affecting.

"Affecting" means will or may have an effect on.

Sec. 1508.4 Categorical exclusion.

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in

procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Sec. 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Sec. 1508.5 Cooperating agency.

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in Sec. 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Sec. 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

Sec. 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Sec. 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Sec. 1508.9 Environmental assessment.

"Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

1. Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

2. Aid an agency's compliance with the Act when no environmental impact statement is necessary.

3. Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Sec. 1508.10 Environmental document.

"Environmental document" includes the documents specified in Sec. 1508.9 (environmental assessment), Sec. 1508.11 (environmental impact statement), Sec. 1508.13 (finding of no significant impact), and Sec. 1508.22 (notice of intent).

Sec. 1508.11 Environmental impact statement.

"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

Sec. 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

Sec. 1508.13 Finding of no significant impact.

"Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

Sec. 1508.14 Human environment.

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (Sec. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental

impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Sec. 1508.15 Jurisdiction by law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

Sec. 1508.16 Lead agency.

"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

Sec. 1508.17 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

Sec. 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

1. Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

2. Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future

agency actions will be based.

3. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

4. Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Sec. 1508.19 Matter.

"Matter" includes for purposes of Part 1504: (a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609). (b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

Sec. 1508.20 Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

Sec. 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

Sec. 1508.22 Notice of intent.

"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

Sec. 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

Sec. 1508.24 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

Sec. 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs.1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

1. Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

   (i) Automatically trigger other actions which may require environmental impact statements.

   (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

   (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

2. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

3. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

1. No action alternative.
2. Other reasonable courses of actions.
3. Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

Sec. 1508.26 Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

Sec. 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

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

3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been

determined to be critical under the Endangered Species Act of 1973.

10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

[43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

Sec. 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site- specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

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Wednesday,
October 15, 2008

Part IV

Department of the Interior

Office of the Secretary

43 CFR Part 46

Implementation of the National Environmental Policy Act (NEPA) of 1969; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 46

RIN 1090–AA95

Implementation of the National Environmental Policy Act (NEPA) of 1969

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (Department) is amending its regulations by adding a new part to codify its procedures for implementing the National Environmental Policy Act (NEPA), which are currently located in chapters 1–6 of Part 516 of the Departmental Manual (DM). This rule contains Departmental policies and procedures for compliance with NEPA, Executive Order (E.O.) 11514, E.O. 13352 and the Council on Environmental Quality's (CEQ) regulations (40 CFR Parts 1500–1508). Department officials will use this rule in conjunction with and supplementary to these authorities. The Department believes that codifying the procedures in regulations that are consistent with NEPA and the CEQ regulations will provide greater visibility to that which was previously contained in the DM and enhance cooperative conservation by highlighting opportunities for public engagement and input in the NEPA process.

The Department will continue to maintain Department's information and explanatory guidance pertaining to NEPA in the DM and Environmental Statement Memoranda (ESM) to assist bureaus in complying with NEPA. Bureau-specific NEPA procedures remain in 516 DM Chapters 8–15 and bureau guidance in explanatory and informational directives. Maintaining explanatory information in the Department's DM chapters and ESM, and bureau-specific explanatory and informational directives will facilitate timely responses to new ideas, new information, procedural interpretations, training needs, and editorial changes to assist field offices when implementing the NEPA process.

EFFECTIVE DATE: November 14, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. Vijai N. Rai, Team Leader, Natural Resources Management, Office of Environmental Policy and Compliance, 1849 C Street, NW., Washington, DC 20240. Telephone: 202–208–6661. E-mail: *vijai_rai@ios.doi.gov*.

SUPPLEMENTARY INFORMATION: As a part of the conversion of the Department's NEPA procedures from 516 DM to regulations, a number of key changes have been made. This rule:

- Clarifies which actions are subject to NEPA section 102(2) by locating all relevant CEQ guidance in one place, along with supplementary Department procedures.
- Establishes the Department's documentation requirements for urgently needed emergency responses. The Responsible Official (RO) must assess and minimize potential environmental damage to the extent consistent with protecting life, property, and important natural, cultural and historic resources and, after the emergency, document that an emergency existed and describe the responsive actions taken.
- Incorporates CEQ guidance that the effects of a past action relevant to a cumulative impacts analysis of a proposed action may in some cases be documented by describing the current state of the resource the RO expects will be affected.
- Clarifies that the Department has discretion to determine, on a case-by-case basis, how to involve the public in the preparation of EAs.
- Highlights that adaptive management strategies may be incorporated into alternatives, including the proposed action.
- Incorporates language from the statute and CEQ guidance that EAs need only analyze the proposed action and may proceed without consideration of additional alternatives when there are no unresolved conflicts concerning alternative uses of available resources.

This rule is organized under subparts A through E, covering the material currently in 516 DM Chapters 1 through 6. The Department is replacing these chapters with new 516 DM Chapters 1–3, which will include explanatory guidance on these regulations. These revised chapters will be available to the public before the effective date of this rule and will be found at *http://www.doi.gov/oepc*. The Department did not include 516 DM Chapter 7 in this rule because it provides internal administrative guidance specific to Department review of environmental documents and project proposals prepared by other Federal agencies. Chapters 8–15 of 516 DM continue to contain bureau-specific NEPA implementing procedures. In addition, other guidance pertaining to the Department's NEPA regulations and the bureaus' NEPA procedures will be contained in explanatory and informational directives. These explanatory and information directives will be contained either in the DM or ESM (for Departmental guidance), bureau NEPA handbooks (for bureau-specific guidance), or both.

The CEQ was consulted on the proposed and final rule. CEQ issued a letter stating that CEQ has reviewed this rule and found it to be in conformity with NEPA and CEQ regulations (per 40 CFR 1507.3 and NEPA section 102(2)(B)).

Comments on the Proposal

This rule was published as a proposed rule in the **Federal Register** (73 FR 126) on January 2, 2008, and there was a 60-day comment period that closed on March 3, 2008. The Department received 100 comments. These comments were in the form of letters, e-mails, and faxes. Of the 100 comments received 50 were substantive; the remaining comments were all variations of a single form letter addressing one or more of three issues, which have been addressed below. The Department very much appreciates the response of the public, which has assisted the Department in improving the clarity of this final rule.

In addition to changes made to the final rule in response to specific comments received, which are noted below, the Department has made minor revisions throughout in order to improve the clarity of the rule. In general, these latter revisions do not change the substance or meaning of any of the provisions proposed on January 2, 2008, except in one or two instances as noted. As contemplated in the preamble to the proposed rule, the Department has added a provision specifying the circumstances in which an Environmental Assessment (EA) may tier to an Environmental Impact Statement (EIS) and in which a bureau may reach a Finding of No Significant Impact (FONSI) or Finding of No New Significant Impact (FONNSI). Please see paragraph 46.140(c).

General Comments on the Proposed Rule

Comment: Several commenters questioned the rationale for moving the Department's NEPA procedures from the DM to regulations and requested further clarification of this rationale.

Response: The Department believes that codifying the procedures in regulation will provide greater visibility to that which was previously contained in the DM and highlight opportunities for public engagement and input in the NEPA process. The Department believes that this greater accessibility of the regulations, when published in the Code of Federal Regulations (CFR), will allow

the public to more easily participate in the NEPA process.

Comment: Some commenters stated that the Department should include the issue of global climate change in all environmental analysis documents. They stated that the Department has a legal obligation under NEPA to analyze the effects of global climate change as shaping the context within which proposed actions take place, as well as the impacts of proposed projects on climate change. Another group recommended that the Department include a mandate that an environmental analysis of climate change impacts be included in the NEPA analysis prepared for Resource Management Plans (RMPs). Several groups suggested that the Department should require planning documents for fossil fuel developments to consider various energy alternatives, including conservation and energy efficiency. They also recommended that the Department analyze greenhouse gas emissions in all decision documents related to energy development on public lands. Another commenter suggested that the Department compile information about landscape changes in response to climate change to use for programmatic NEPA documents.

Response: Climate change issues can arise in relation to the consideration of whether there are direct or indirect effects of the greenhouse gas emissions from a proposed action, the cumulative effect of greenhouse gas emissions, and the effect of climate change on the proposed action or alternatives. The extent to which agencies address the effects of climate change on the aspects of the environment affected by the proposed action depends on the specific effects of the proposed action, their nexus with climate change effects on the same aspects of the environment, and their implications for adaptation to the effects of climate change. Whether and to what extent greenhouse gas emissions and/or climate change effects warrant analysis is the type of determination that Responsible Officials make when determining the appropriate scope of the NEPA analysis. Extensive discussion regarding the role of the Department, as well as the Federal government as a whole, with respect to the effects of greenhouse gas emissions and/or global climate change is beyond the scope of this rule concerning environmental analysis generally. Consequently, the final rule does not contain explicit provisions addressing global climate change.

Comment: One commenter stated that the Department should include a provision that agencies must seek input through the NEPA process from local, regional, State, and tribal health agencies when making decisions that may impact human health. Several groups recommend requiring a Health Impact Assessment (which is a tool used by the World Health Organization) when a project may impact human health.

Response: The Department appreciates this suggestion but does not believe inclusion of a specific requirement in this regard is appropriate in this rule. Individual bureaus of the Department have addressed and will continue to address possible impacts to human health in certain circumstances, such as with respect to subsistence issues in Alaska. Whether or not a Health Impact Assessment is the appropriate means to assess potential impacts on human health with regard to a particular proposal is the type of determination that Responsible Officials make for all manner of possible impacts when determining the appropriate scope of the NEPA analysis.

Responses to Comments on Individual Provisions, Including Analysis of Changes Made

The following paragraphs contain responses to comments made on individual provisions of the proposed rule and incorporate discussion of changes made to the rule as proposed in January 2008.

Subpart A: General Information

Section 46.10 Purpose of this Part. A new paragraph (c) has been added to clarify that, in accordance with CEQ regulations at 40 CFR 1500.3, trivial violations of these regulations are not intended to give rise to any independent cause of action.

Section 46.30 Definitions. This section supplements the terms found in the CEQ regulations and adds several new definitions. The terms affected are the following: Adaptive management; Bureau; Community-based training; Controversial; Environmental Statement Memoranda; Environmentally preferable alternative; No action alternative; Proposed action; Reasonably foreseeable future actions; and Responsible Official. A definition of consensus-based management has been placed in section 46.110. The definitions of no action alternative and proposed action have been moved to this section for the final rule from proposed section 46.420, as these terms may apply to both EAs and EISs. Comments and responses addressing these terms may be found below, in the discussion of section 46.420.

Comment: Several commenters expressed concern that the definition of ''community'' may be ''misinterpreted in a variety of ways to mean local and county governments affected by a proposed action, or communities of individuals with a common interest in the project who do not necessarily live in the area directly affected by the project.'' Several groups recommended that the Department include and review the definition(s) in Environmental Statement Memorandum No. ESM03–7.

Response: Because of the possibility of confusion noted by the commenter, the Department has included a provision at section 46.110 focusing on ''consensus-based management'' as incorporating the ideas reflected in the emphasis on community involvement in the NEPA process. In developing the provision addressing consensus-based management, the Department relied upon the existing ESM03–7.

Comment: Many commenters expressed concerns with the proposed definition of ''controversial.'' Some stated that the size or nature of a proposed action should not render the action controversial under NEPA. Several individuals are concerned that the proposed definition of ''controversial'' would render all proposed projects on public lands as being controversial and will protract NEPA analyses. One group applauded the Department for defining ''controversial'' in terms of disputes over the bio-physical effects of a project rather than merely opposition to a project.

Response: The language in the proposed rule reflects current case precedent on the meaning of ''controversial'' under NEPA and has been retained, but with modification to address the confusion regarding the reference to ''size'' and ''nature'' in the final rule. Courts have consistently specified that disagreement must be with respect to the character of the effects on the quality of the human environment in order to be considered to be ''controversial'' within the meaning of NEPA, rather than a mere matter of the unpopularity of a proposal. *See Como-Falcon Coalition, Inc.* v. *U.S. Dept. of Labor*, 609 F.2d 342 (8th Cir. 1978), *cert. denied*, 446 U.S. 936 (''Mere opposition to federal project does not make project controversial so as to require environmental impact statement.'')

Comment: Some commenters suggested that the definition of ''environmentally preferable alternatives'' does not make clear whether the requirement applies to Records of Decision (RODs) on projects

analyzed in an EIS or EA or only to those analyzed in an EIS. They recommended adding a sentence at the end of the definition clarifying that the requirement applies to EAs and EISs.

Response: CEQ regulations require the identification of at least one environmentally preferable alternative in a ROD, which is the decision document issued after completion of an EIS. (40 CFR 1505.2(b); *see also* Question 6b of CEQ's ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,'' 46 Fed. Reg. 18026 (Mar. 23, 1981), as amended (hereinafter CEQ's ''Forty Most Asked Questions''). The CEQ regulations do not identify the decision document issued after completion of an EA/FONSI, and bureaus do not issue RODs in this situation. Therefore, the Department has not changed the definition in response to this comment.

Comment: Several commenters expressed reservations about the definition of Preliminary Environmental Impact Statement (PEIS). They suggested that the role of the PEIS be clarified. One commenter wanted the Department to include provisions on how the scoping process and the PEIS will interact. Others wanted to know what level of detail should be included in a PEIS and whether use of a PEIS would introduce an additional requirement for public comment. One commenter strongly disagreed with the use of a PEIS, stating that the use of a PEIS could delay a DEIS or FEIS and could add additional expenses to private proponents that are funding NEPA projects. They recommended that the Department add a provision to the rule that would enforce time restrictions on the PEIS process.

Response: Because of the confusion and concern surrounding the PEIS, and upon further reflection, the Department has decided not to include this provision in the final rule. The definition in the proposed rule found at section 46.30 and description in sections 46.415 and 46.420 have been removed in the final rule. The Department continues to encourage collaboration with the public in an approach to alternative development and decision-making. The implementation of any such approach is determined by the RO. The PEIS was simply an optional tool and its removal from the final rule will not diminish this continuing Departmental emphasis on collaboration. The RO will still be free to involve and inform the public regarding each particular NEPA analysis in a manner that best meets the public and government needs.

Comment: One commenter stated that the Department should add ''agency'' to the definition of ''Reasonably Foreseeable Future Actions'' to ensure the agency covers all reasonably foreseeable actions that flow from proposed actions. Several commenters stated that the proposed definition of ''Reasonably Foreseeable Future Actions'' conflicts with the definition of ''Reasonably Foreseeable Development Scenario'' contained in the Instruction Memorandum 2004–089 issued by the BLM. Another commenter stated that the proposed definition of ''Reasonably Foreseeable Future Actions'' does not follow CEQ guidelines.

Response: The final rule defines ''reasonably foreseeable future actions'' to explain a term used in CEQ's definition for ''cumulative impact'' at 40 CFR 1508.7. The Department has attempted to strike a balance by eliminating speculation about activities that are not yet planned, but including those that are reasonably foreseeable and are expected to occur (for example, based on other development in the area when there has been some decision, funding, or development of a proposal (see 40 CFR 1508.23)). The Department does not believe that the definition of ''reasonably foreseeable future actions'' conflicts with the description of the Bureau of Land Management's analytical tool, the ''reasonably foreseeable development scenario'' or RFD. The RFD is a projection (scenario) of oil and gas exploration, development, production, and reclamation activity that may occur in a specific resource area during a specific period of time; as such, the analysis in the RFD can provide basic information about oil and gas activities that may inform the analysis of reasonably foreseeable future actions.

In order to clarify that reasonably foreseeable future actions include both ''federal and non-federal'' activities, we have added these terms in the definition in section 46.30. This is consistent with 40 CFR 1508.7. The Department has added language to clarify that the existing decisions, funding, or proposals are those that have been brought to the attention of the RO.

In its mention of the ''Responsible Official of ordinary prudence'' the definition also incorporates the reasonableness standard emphasized by the Supreme Court as ''inherent in NEPA and its implementing regulations.'' In *Department of Transportation* v. *Public Citizen*, 541 U.S. 752, 770 (2004), the Court reaffirmed that this ''rule of reason'' is what ensures that agencies include in the analyses that they prepare information useful in the decision-making process. In that case, the Court noted that the agency in question, the Federal Motor Carrier Safety Administration in the Department of Transportation, properly considered the incremental effects of its own safety rules in the context of the effects of the reasonably foreseeable possibility that the President might lift the moratorium on cross-border operations of Mexican motor carriers. *Id.* In those circumstances, the possibility that the President might act in one of several ways was neither an existing decision, matter of funding, or proposal, but was nevertheless a possibility that a person of ordinary prudence would consider when reaching a decision regarding the proposed action of promulgating the rule at issue in that case. Similarly, in some circumstances an RO of ordinary prudence would include analysis of actions that, while not yet proposed, funded, or the subject of a decision, nevertheless are likely or foreseeable enough to provide important information and context within which any significant incremental effects of the proposed action would be revealed.

Subpart B: Protection and Enhancement of Environmental Quality

The proposed rule did not include portions of 516 DM Chapter 1 that are merely explanatory in that they address internal Departmental processes. This information will be retained in the DM or will be issued as additional explanatory information by the Department's Office of Environmental Policy and Compliance in Environmental Statement Memoranda.

In this final rule, this subpart includes the following sections:

Section 46.100 Federal action subject to the procedural requirements of NEPA. This section provides clarification on when a proposed action is subject to the procedural requirements of NEPA. Paragraph 46.100(b)(4), ''The proposed action is not exempt from the requirements of section 102(2) of NEPA,'' refers to those situations where, either a statute specifically provides that compliance with section 102(2) of NEPA is not required, or where, for instance, a bureau is required by law to take a specific action such that NEPA is not triggered. For example, Public Law 105–167 mandates the Bureau of Land Management (BLM) to exchange certain mineral interests. In this situation, section 102(2) of NEPA would not apply because the law removes BLM's decision making discretion. Also, this provision refers to situations where there is a clear and unavoidable conflict

between NEPA compliance and another statutory authority such that NEPA compliance is not required. For example, if the timing requirements of a more recent statutory authority makes NEPA compliance impossible, NEPA must give way to the more recent statute.

Similarly, the final rule clarifies that the proposed action is subject to the procedural requirements of NEPA and the CEQ regulations depending on ''the extent to which bureaus exercise control and responsibility over the proposed action and whether Federal funding or approval will be provided to implement it'' paragraph 46.100(a). The criteria for making this determination include, *inter alia*, ''when the bureau has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal'' paragraph 46.100(b)(1), and ''the effects can be meaningfully evaluated'' and ''the proposed action would cause effects on the human environment'' paragraph 46.100(b)(3).

The clarifications provided in this section have been made, in part, in order to ensure that the rule is consistent with the Supreme Court's decision in *Department of Transportation* v. *Public Citizen*, 541 U.S. 752, 770 (2004). In *Public Citizen*, the Court explained that a ''but for'' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA and the relevant regulations, but that there must be ''a reasonably close causal relationship'' between the environmental effect and the alleged cause and that this requirement was analogous to the ''familiar doctrine of proximate cause from tort law.'' 541 U.S. at 767. The Court reaffirmed that ''courts must look to the underlying policies or legislative intent in order to draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not'' and that inherent in NEPA and its implementing regulations is a ''rule of reason.'' *Id.*

Comment: Some commenters expressed concern regarding the procedural requirements of NEPA. One group stated that the Department's procedural actions should be subject to NEPA requirements regardless of whether or not sufficient funds are available. This group stated that if a proposed action is even being considered by a RO, the procedural requirements of NEPA must apply. Another group suggested the Department add an additional subsection that offers guidance whether an ''action'' is subject to NEPA compliance.

Response: The Department agrees that the procedural requirements of NEPA apply when a proposal consistent with 40 CFR 1508.23 has been developed. Mere consideration of a possible project however does not constitute a proposed action that can be analyzed under NEPA. Rather, under 40 CFR 1508.23, a proposal is ripe for analysis when an agency is ''actively preparing to make a decision.''

When the proposed action involves funding, Federal control over the expenditure of the funds by the recipient is essential to determining what constitutes a ''Federal'' action that requires NEPA compliance. This is consistent with 40 CFR 1508.18(a). The issue of funding does not turn on the sufficiency, or lack thereof, of the funding, but on the degree of Federal control or influence over the use of the funds. The language in the final rule regarding whether a proposal is subject to NEPA compliance has been clarified by addressing the question of whether NEPA applies in paragraph 46.100(a), and when the NEPA analysis should be conducted in paragraph 46.100(b).

Comment: One individual urged the Department to not add additional obligations that are not currently required under NEPA, particularly with respect to the emphasis on public participation.

Response: This final rule adds no additional obligations not currently required under NEPA and the CEQ regulations. Section 46.100 is an effort to consolidate existing requirements in 40 CFR 1508.18, 40 CFR 1508.23, and 40 CFR 1508.25, among others. For instance in 40 CFR 1500.2(d) CEQ requires that Federal agencies ''* * * encourage and facilitate public involvement in decisions which affect the quality of the human environment.'' Consistent with this provision, paragraph 46.305(a) requires that a bureau must, to the extent practicable, provide for public notification and public involvement when an environmental assessment is being prepared. However, the methods for providing public notification and opportunities for public involvement are at the discretion of the RO. Individual bureaus will be able to provide in their explanatory and informational directives descriptions of ways of carrying out public notification and involvement appropriate to different kinds of proposed actions.

Comment: One commenter stated that the proposed rule as written suggests that a NEPA review would only occur to the extent the effects on the human environment could be meaningfully evaluated and that the proposed provision at 46.100 seemed to ''conflict with situations where there are 'unknowns' and the bureau cannot meaningfully evaluate the effects, but it nonetheless is necessary to move ahead with the proposal.'' This commenter suggested that the Department clarify that NEPA review will proceed and will be based on the best available data.

Response: The Department agrees that NEPA analysis takes place when the effects of a proposed action can be meaningfully evaluated, as stated in the revised paragraph 46.100(b). Further, the Department appreciates the commenter highlighting the possibility of confusion resulting from the structure of 46.100 as proposed. As proposed, section 46.100 addressed both the questions of whether and when a proposed action is subject to the procedural requirements of NEPA, but without grouping the provisions addressing these two issues separately. In response to this comment, and upon further review, the Department has restructured section 46.100 to separate these two issues into paragraphs (a) and (b) for the sake of clarity. The revised paragraph 46.100(b) identifies when in its development the proposed Federal action the NEPA process should be applied and, if meaningful evaluation of effects cannot occur, then the proposal is not yet ripe for analysis under NEPA.

That being said, NEPA itself does not require the use of ''best available data;'' rather, CEQ regulations demand information of ''high quality'' and professional integrity. 40 CFR 1500.1, 1502.24. However, the Department's obligations under other authorities, such as the Information Quality Act Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554), do require bureaus to use the best available data. While discussion of the Department's obligations under the Information Quality Act is outside the scope of this rule, the Department concurs that meaningful evaluation must be carried out on the basis of whatever data is available. The Department does not believe that this is inconsistent with CEQ's provision regarding those situations where information is incomplete or unavailable (40 CFR 1502.22). In fact, rather than stating that meaningful evaluation cannot take place when there are ''unknowns'' as the commenter appears to suggest, the CEQ regulations provide steps to take in order that meaningful evaluation can continue when information is lacking; therefore, the Department does not believe

revision of this rule is necessary to address this point.

Comment: Several individuals responded to our request for input regarding the use of FONSIs based on tiered EAs where a FONSI would be, in effect, a finding of no significant impacts other than those already disclosed and analyzed in the EIS to which the EA is tiered. These individuals supported the concept.

Response: The Department appreciates the comment. The Department has added the provision as contemplated. See section 46.140, which provides for the use of tiered documents. See also the detailed response to comments on section 46.140, below. Under this final rule a FONSI or FONNSI (Finding of No New Significant Impact) can be prepared based on an EA that is tiered to an EIS. This approach is consistent with CEQ regulations at 40 CFR 1508.28.

Comment: One group recommended the Department clarify that the National Park Service (NPS) should prepare an EA or EIS as part of its submission to the National Capital Planning Commission.

Response: This comment was specifically referring to situations where a particular type of proposed action may be subject to categorical exclusion (CX or CE) under the Department's NEPA procedures but not under the NEPA procedures of another Federal agency such as, in this case, the NEPA procedures of the National Capital Planning Commission (NCPC). While, as a general rule, each Federal agency is responsible for compliance with NEPA consistent with both CEQ's regulations and its own procedures for implementing NEPA, the particular issue raised concerns a very specific situation involving two Federal agencies acting under very specific and distinct authorities. Therefore, the Department declines to address this comment more specifically and does not believe a specific provision is necessary in general Departmental procedures.

Section 46.105 Using a contractor to prepare environmental documents. This section explains how bureaus may use a contractor to prepare any environmental document in accordance with the standards of 40 CFR 1506.5(c).

Comment: Some commenters wanted the Department to clarify requirements for working with a contractor. Some stated that strict requirements should be put into place for selection of a contractor to ensure the adequacy of documents, independent evaluation, and sound management practices. One individual stated that the Department should adopt existing CEQ guidance on the use and selection of contractors.

Response: The Department complies with CEQ regulations and follows existing CEQ guidance on the selection and use of contractors. Each bureau is responsible for determining how its officials will work with contractors, subject to the CEQ regulations and guidance. In any event, the RO is responsible for, or is the approving official for, the adequacy of the environmental document. The Department does not believe any further clarification of the rule is necessary.

Comment: Another commenter applauded the Department for a ''clear articulation of the use of contractors for NEPA document preparation.''

Response: The Department appreciates the comment.

Section 46.110 Incorporating consensus-based management. This section provides a definition of consensus-based management and incorporates this approach as part of the Department's NEPA processes. Paragraph 46.110(e), requiring bureaus to develop directive to implement section 46.110 has been removed from the final rule as not appropriate for regulatory treatment.

Comment: Most commenters supported the Department's proposed rule on consensus-based management. However, many individuals expressed concerns regarding the breadth of the definition of consensus-based management. Because of the lack of concrete provisions within this section, many individuals suggested the NEPA process could become ''unnecessarily time consuming and costly.'' Several individuals stated that the word ''consensus'' should be taken out of the proposed rule because ''consensus'' suggests interested parties will determine the preferred alternative. Other individuals suggested that the term ''consensus'' has the potential to create ''unreasonable expectations in the public.'' One group suggested replacing ''consensus'' with ''open and transparent community involvement and input.'' Another suggestion for the replacement of the word ''consensus'' was ''collaboration.'' Several individuals stated that the proposal for consensus-based management should be withdrawn and that the Department should continue following the current CEQ regulations on collaboration. Individuals suggested that the Department clearly define what constitutes community.

Response: The Department has revised section 46.110, and added a definition for ''consensus-based management'' to this section. The definition comes from the existing ESM03–7, and expresses existing Department policy. The definition of ''consensus-based management'' has been modified in order to render it in regulatory language. Many of the commenters seem to assume that in the absence of consensus the Department will not take action. This is not the case. While the RO is required to consider the consensus-based management alternative whenever practicable, at all times discretion remains with the RO regarding decisions, if any, to be made with respect to the proposed action. While the Department requires the use of consensus-based management, whenever practicable, we have added a provision that if the RO determines that the consensus-based alternative should not be the preferred alternative, an explanation of the rationale behind this decision is to be incorporated in the environmental document.

Comment: Some commenters stated that the technique of consensus-based management may be impossible to implement. One group was particularly concerned with the definition of ''interested party.'' They believe it may be impossible for the Department to determine who the interested parties are and that the process of managing interested parties may be cumbersome and add expense and time onto NEPA projects. This group suggested that the Department develop a clear and concise definition of ''interested parties.''

Response: The Department acknowledges that consensus may not always be achievable or consistent with the Department's legal obligations or policy decisions. However, the Department requires the use of consensus-based management whenever practicable. CEQ regulations direct agencies to encourage and facilitate public involvement in the NEPA process. 40 CFR 1500.2(d), 40 CFR 1506.6. The Department agrees that use of the term ''interested parties'' may cause confusion. The Department has replaced the term ''interested parties'' with ''those persons or organizations who may be interested or affected'' which is used in the CEQ regulations. See for example 40 CFR 1503.1.

Comment: Several individuals stated that it is vital that the interests of the ''regional community'' be taken into account during the NEPA process. One commenter applauded the Department for including consensus-based management in the proposed rule and for taking additional steps to support the ''cooperative conservation policy.'' One group believed this proposal would ''provide an avenue for impacted local governments and citizens to become

involved in the agency review process, and have their interests acknowledged in a meaningful way, and achieve a win-win final decision.''

Response: The Department appreciates the comment and agrees that the interests of the regional and local community should be taken into account during the NEPA process.

Comment: Several commenters stated that the Department needs to add a provision to the rule that clearly spells out the role of the RO. This provision would include directives on selecting alternatives.

Response: The Department has defined ''Responsible Official'' under section 46.30. The Department has also specified in the definition that the RO is responsible for NEPA compliance (which includes the selection of alternatives). The particular identity of the RO for any given proposed action is determined by the relevant statute, regulation, DM, or specific delegation document that grants the authority for that particular action.

Comment: Some individuals also stated that a process should be included to assure the public that the community's work is reflected in the evaluation of the proposed action and the final decision, even if the community alternative is not eventually selected as the agency's preferred alternative. One group suggested that the Department define what constitutes ''assurance'' that participant work is considered in the decision-making process. Several groups stated that the community alternative must fully comply with NEPA, CEQ regulations, and all Department policies and procedures in order to be considered by the RO. Several groups refer to court cases stating that NEPA ''does not require agencies to consider alternatives that are not feasible or practical.'' Individuals would like the Department to explain what a community alternative consists of, how it will be evaluated, who is the relevant community, and how many community alternatives can be proposed for each project. They also expressed concern that the proposed rule suggests all alternatives submitted must be analyzed in detail.

Response: Section 46.110 provides for the evaluation of reasonable alternatives presented by persons, organizations or communities who may be interested or affected by a proposed action in the NEPA document even if the RO does not select that alternative for implementation. The final rule clarifies that, while all or a reasonable number of examples covering the full spectrum of reasonable alternatives may be considered, a consensus-based management alternative (if there are any presented) may only be selected if it is fully consistent with the purpose of and need for the proposed action, as well as with NEPA generally, the CEQ regulations, and all applicable statutory and regulatory provisions, as well as Departmental and bureau written policies and guidance could be selected. It also provides that bureaus must be able to show that participants' or community's input is reflected in the evaluation of the proposed action and the final decision. Therefore, the Department believes that the final rule adequately addresses these comments.

Comment: Some individuals indicated that NEPA does not require consensus and stated the proposed rule goes against the direction of the CEQ regulations. Some commenters directed the Department to review CEQ's ''Collaboration in NEPA'' handbook. Several groups recommended that the Department include and review the Environmental Statement Memorandum No. ESM03–7.

Response: The Department agrees neither NEPA nor the CEQ regulations require consensus. This new regulation requires the use of consensus-based management whenever practicable. Consensus-based management is not inconsistent with the intent of NEPA and the CEQ regulations. The Department has reviewed CEQ's publication ''Collaboration in NEPA—*A Handbook for NEPA Practitioners*'' available at *http://ceq.eh.doe.gov/nepa/nepapubs/Collaboration_in_NEPA_Oct2007.pdf.* While consensus-based management, like collaboration, can be a useful tool, the Department recognizes that consensus-based management may not be appropriate in every case. The final rule does not set consensus-based management requirements, including timelines or documentation of when parties become involved in the process. Similar to collaborative processes, consensus-based management processes, like public involvement and scoping, will vary depending on the circumstances surrounding a particular proposed action. Some situations will require a lot of time and others will not. Regardless of the level or kind of public involvement that takes place, at all times the RO remains the decision maker.

Comment: One group suggested that the Department remove paragraph (b) because it is ''duplicative, ambiguous, and unnecessary.'' They believed this section simply restates the requirement in section 1502.14 of the CEQ regulations that requires agencies evaluate ''all reasonable alternatives.'' They also expressed concern that community-based alternatives may be given preferential weight over the project proponent's alternative.

Response: The Department does not agree that the section is unnecessary and duplicative or that it simply restates the requirement in section 1502.14 of the CEQ regulations. Although there are some common elements to 40 CFR 1502.14 and paragraph 46.110(b), this paragraph requires the use of consensus-based management in NEPA processes and decision-making whenever practicable. The RO is responsible for an analysis of the reasonable alternatives, and the NEPA process allows for the selection of an alternative based on the consideration of environmental effects, as well as the discretionary evaluation of the RO. The intent of this provision is that alternatives presented by those persons or organizations that may be interested or affected, including applicants, be given consideration.

Comment: One group wanted to see a mandate added to the proposed rule that requires the Department to work with tribal governments. One individual suggested that the word ''considered'' should be changed to ''adopted,'' ''accepted,'' or ''implemented'' to ensure consideration is given to an alternative proposed by a tribe.

Response: The Department has a government-to-government relationship with federally-recognized tribes and as such specifically provides for consultation, coordination and cooperation. We consider all alternatives, including those proposed by the tribes, as part of the NEPA process, but cannot adopt, accept, or implement any alternative before full evaluation of all reasonable alternatives. Therefore, the Department declines to adopt the group's recommendation.

Section 46.113 Scope of the analysis. This section, as proposed, addressed the relationships between connected, cumulative, and similar actions and direct, indirect and cumulative impacts. This section has been removed from the final rule.

Comment: Some commenters stated that the proposed rule is not clear with respect to the issue of what projects need to be included in the scope of analysis. One individual suggested that the Department should include language in the proposed rule clarifying that the effects of connected, cumulative and similar actions must be included in the effects analysis as indirect or cumulative effects. These actions do not become part of the proposed action, and alternatives for these actions need not be considered in the analysis.

One individual suggests that the Department change the language to provide guidance that allows bureaus to determine which projects need to be included in a cumulative effects analysis. They recommend clearly defining ''connected,'' ''cumulative,'' ''direct,'' and ''indirect.'' If these changes are made, some believe this rule will provide uniformity, consistency, and predictability to the NEPA process.

Another individual suggested ''should'' be removed from this section. They expressed concern that the current wording implies that connected and cumulative action analysis is optional.

One commenter recommended that this section should be deleted in its entirety because it is inconsistent with CEQ regulations. They recommended that the Department revise the section to reflect the difference between the treatment of connected, cumulative, and similar actions and the treatment of the effects of such actions.

Response: In light of the confusion reflected in several of the comments, as well as upon further consideration, the Department has eliminated this provision from the final rule. Bureaus will continue to follow CEQ regulations regarding scope of analysis at 40 CFR 1508.25, as well as bureau specific directives.

Section 46.115 Consideration of past actions in the analysis of cumulative effects. This section incorporates CEQ guidance issued on June 24, 2005 that clarifies how past actions should be considered in a cumulative effects analysis. The Department has elected not to repeat the specific provisions of the CEQ guidance in the final rule. Responsible Officials are directed to refer to the applicable CEQ regulations and the June 24, 2005 CEQ guidance.

Comment: Several groups commended the Department for its efforts to bring clarity to the NEPA cumulative effects analysis.

Response: The Department appreciates the comments.

Comment: Several groups stated that CEQ regulations do not contain a ''significant cause-and-effect'' filter excluding projects from cumulative impact analysis because the project's effects are minor. One group was concerned that the proposed rule contains measures that would ''constrain the usefulness of agencies' analyses of cumulative impacts,'' and would violate CEQ regulations. This group suggested that the proposed rule would constrain the scope of actions whose effects should be considered in a cumulative impacts analysis.

Some individuals stated that the Department is proposing to curtail the consideration and evaluation of past actions when proposing future activities. They stated that the agencies and public should be informed of potential environmental consequences before decisions are made. Others suggested this section does not provide guidance to the RO on what past actions and proposed future actions should be included in the analysis. Groups stated that a Department field office has no inherent expertise in determining which actions are relevant to a cumulative impacts analysis and should therefore not be vested with such discretion. Several groups suggested that the entire section should be removed from the proposed rule, and that the Department should conduct environmental analyses pursuant to CEQ regulations. One individual stated ''NEPA is intended to ensure that bureaus make sound decisions informed by the ''cumulative and incremental environmental impacts'' of the proposed projects and how those impacts will actually affect the environment.'' Several groups stated that vague language for past actions to be included in cumulative impact analysis will result in more confusion and litigation.

Response: At section 46.115, this final rule incorporates guidance on the analysis of past actions from the June 24, 2005 CEQ *Guidance on the Consideration of Past Actions in Cumulative Effects Analysis,* which may be found at *http://ceq.eh.doe.gov/nepa/regs/Guidance_on_CE.pdf.* This section is consistent with existing CEQ regulations, which use the terms ''effects'' and ''impacts'' synonymously and define cumulative impact as ''the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions'' (40 CFR 1508.7).

The focus of the CEQ guidance incorporated in this final rule is on the consideration of useful and relevant information related to past actions when determining the cumulative effects of proposals and alternatives. Bureaus will conduct cumulative effects analyses necessary to inform decision-making and disclose environmental effects in compliance with NEPA. A ''significant cause-and-effect'' filter is specifically provided for in the CEQ guidance.

To clarify the Department's commitment to follow CEQ guidance concerning consideration of past actions, the final rule at section 46.115 is revised to state, ''When considering the effects of past actions as part of a cumulative effects analysis, the Responsible Official must analyze the effects in accordance with 40 CFR 1508.7 and in accordance with relevant guidance issued by the Council on Environmental Quality, such as 'The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis' dated June 24, 2005, or any superseding Council on Environmental Quality guidance.'' The Department believes that by incorporating CEQ's guidance we have included sufficient specificity in the rule; any other ''how to'' information may be provided through the Departmental chapters in the DM, environmental statement memoranda series, or bureau-specific explanatory and informational directives.

Comment: Groups expressed concern over the definition of ''reasonably foreseeable future actions'' and suggested this definition should be removed from the final proposal. They understood that the Department cannot conduct a ''crystal ball'' analysis but that actions should be considered in the analysis even if decisions and funding for specific future proposals does not exist.

Response: The Department agrees. In response, the Department has added specificity and provided guidance on what should be considered a reasonably foreseeable future action in order to ensure that speculative activities or actions are not incorporated into the analysis while actions that may inform the RO's analysis of cumulative impacts for the proposed action are included, even if they are not yet funded, proposed, or the subject of a decision identified by the bureau. This approach is consistent with CEQ regulations.

Section 46.120 Using existing environmental analyses prepared pursuant to NEPA and the Council on Environmental Quality regulations. This section explains how to incorporate existing environmental analysis previously prepared pursuant to NEPA and the CEQ regulations into the analysis being prepared.

Comment: Several individuals agreed that using existing documentation will reduce lengthy analysis and duplication of work and applaud the Department for including this section in the proposed rule. However, commenters would like a provision added to the section to ensure the supporting documentation is provided to the public online and in the bureau's office.

Response: The Department agrees that any information relied upon in a NEPA analysis should be publicly available, either independently or in connection with the specific proposed action at

issue, and has so stated in section 46.135.

Section 46.125 Incomplete or unavailable information. CEQ regulations at 40 CFR 1502.22 provide ''When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking'' and sets out steps that agencies must follow in these circumstances. This section clarifies that the overall costs of obtaining information referred to in 40 CFR 1502.22 are not limited to the estimated monetary cost of obtaining information unavailable at the time of the EIS, but can include other costs such as social costs that are more difficult to monetize. Specifically, the Department requested comments on whether to provide guidance on how to incorporate non-monetized social costs into its determination of whether the costs of incomplete or unavailable information are exorbitant. The Department also requested comments on what non-monetized social costs might be appropriate to include in this determination; *e.g.*, social-economic and environmental (including biological) costs of delay in fire risk assessments for high risk fire-prone areas.

Comment: Many commenters expressed concern with the incomplete or unavailable information section. They stated that the rule does not provide guidance to bureaus on how to address ''non-monetized social costs.'' Some individuals stated that critical information is missing from this section, such as an exclusive list of non-monetized social costs. Several groups suggested the Department expand on CEQ regulation section 1502.22 which addresses agency procedure in the face of incomplete or unavailable information. Groups stated that the Department should ''direct its bureaus to specifically evaluate the risks of proceeding without relevant information, including risks to sensitive resources.'' Some suggested the Department provide their findings to the public so the public can provide meaningful comment and scrutiny. They stated that this approach would be more consistent with case law and with CEQ regulations. Groups stated that if the section remains ''as is,'' the Department has provided ''the bureaus with an incentive to cease collecting information and providing it to the public.'' One group stated that the proposed rule encourages agencies to find reasons not to obtain information that they have already acknowledged is relevant to reasonably foreseeable significant impacts and that this message is contrary to NEPA and CEQ regulations. Several other commenters noted that the proposed rule provides clarity in assessing the monetary costs of gathering information and is consistent with CEQ regulations.

Response: The Department believes that section 46.125 provides guidance sufficient to implement 40 CFR 1502.22 in so far as CEQ's regulation addresses this issue of costs. The Department has added some language in response to comments regarding what sorts of considerations constitute ''non-monetized social costs.'' However, the Department believes that other factors that may need to be weighed include the risk of undesirable outcomes in circumstances where information is insufficient or incomplete. Paragraph 1502.22(b) specifically provides for the steps the Department will take if the overall cost of obtaining the data is exorbitant or the means to obtain the data are not known.

Comment: One commenter suggested that the Department must ''utiliz[e] public comment and the best available scientific information'' and recommended including a provision to this effect in the final rule.

Response: There is no question that public involvement is an integral part of the NEPA process and can take a variety of forms, depending on the nature of the proposed action and the environmental document being prepared; therefore the final rule includes several provisions addressing public involvement. There is, however, some level of confusion regarding the data standard applicable to the type of information NEPA requires. The assertion is frequently made in court cases, as the commenter suggests here, that NEPA analyses must use the ''best available science'' to support their conclusions. In fact, the ''best available science'' standard comes from section 7 of the Endangered Species Act, specifically 16 U.S.C. 1536(a)(2), which requires that ''each agency shall use the best scientific and commercial data available'' when evaluating a proposed action's impact on an endangered species. In addition, the ''best available science'' standard is used by the United States Department of Agriculture Forest Service's regulations implementing the National Forest Management Act of 1976, 16 U.S.C. 1600 *et seq.* (see Final Rule and Record of Decision, National Forest System Land Management Planning Part III, 73 Fed. Reg. 21468 (Apr. 21, 2008) (to be codified at 36 CFR Part 219)). NEPA imposes a different standard: rather than insisting on the best scientific information available, CEQ regulations demand information of ''high quality'' and professional integrity. 40 CFR 1500.1, 1502.24. Therefore, the Department declines to accept the commenter's recommendation.

Section 46.130 Mitigation measures in analyses. This section has been clarified from the proposed rule. The revision clarifies how mitigation measures and environmental best management practices are to be incorporated into and analyzed as part of the proposed action and its alternatives.

Comment: Most individuals stated that the Department should address mitigation measures in the proposed rule. These individuals explained that, in order to provide interested parties an accurate portrayal of potential effects, it is necessary to include all mitigation measures in the impacts analysis. Several individuals indicate the language in the proposed rule is broad and unclear. Several groups opposed the proposed rule in its current form and suggested that the Department should revise and narrow the rule to ''clarify that possible mitigation measures are discussed in NEPA documents in order to help inform an agency's decision, but reflect the well-settled legal principle that the agency need not guarantee that particular mitigation measures be implemented or that such mitigation measures be successful.'' One group suggested that the Department revise the proposed rule to clarify that NEPA does not require agencies to adopt particular mitigation measures or to guarantee the success of the mitigation plans. One group stated that avoiding significant environmental effects should be the primary goal in the development of any proposed action and mitigation should be a final course of action when all other attempts to avoid impacts have been exhausted.

Response: The Department agrees with the comments about the importance of mitigation; the provision addressing mitigation is carried forward into this final rule. The Department has, however, refined the language of the provision for clarity. The Department agrees that NEPA does not require bureaus to adopt particular mitigation measures and that it is not possible to guarantee the success of mitigation plans, but does not believe revision to the final rule reflecting this understanding is necessary.

Comment: One group argued that including mitigation measures in the effects analysis is crucial to demonstrate that potential effects can be mitigated through the use of stipulations,

conditions of approval, and best management practices. They did not believe it necessary to ''strip'' mitigation measures or best management practices from an applicant's proposal just for the sake of analyzing the stripped down version.

Response: It was not the Department's intent that applicants' proposals be stripped of all best management practices or mitigation measures. The Department has included language to clarify this point. Independent of NEPA, any application must provide a proposal that includes any ameliorative design elements (for example, stipulations, conditions, or best management practices) required to make that proposal conform to legal requirements. In addition, the applicant's proposal presented to the bureau for decision-making will include any voluntary ameliorative design element(s) that are part of the applicant's proposal. Therefore, the analysis of the applicant's proposal, as an alternative, includes, and does not strip out, these elements. Should the bureau wish to consider and/or require any additional mitigation measures other than the design elements included in the applicant's proposal, the effects of such mitigation measures must also be analyzed. This analysis can be structured as a matter of consideration of alternatives to approving the applicant's proposal or as separate mitigation measures to be imposed on any alternative selected for implementation.

Section 46.135 Incorporation of referenced documents into NEPA analysis. This section establishes procedures for incorporating referenced documents as provided for in the CEQ regulations at 40 CFR 1502.21.

No comments were received on this section, but clarifying changes have been made in this final rule.

Section 46.140 Using tiered documents. This section clarifies the use of tiering. As contemplated in the preamble to the rule, and in response to favorable comments, the Department has added a new subsection clarifying that an environmental assessment may be prepared, and a finding of no significant impact reached, for a proposed action with significant effects, whether direct, indirect, or cumulative, if the environmental assessment is tiered to a broader environmental impact statement which fully analyzed those significant effects. Tiering to the programmatic or broader-scope environmental impact statement would allow the preparation of an environmental assessment and a finding of no significant impact for the individual proposed action, so long as any previously unanalyzed effects are not significant. The finding of no significant impact, in such circumstances, would be, in effect, a finding of no significant impact other than those already disclosed and analyzed in the environmental impact statement to which the environmental assessment is tiered. The finding of no significant impact in these circumstances may also be called a ''finding of no *new* significant impact.'' In addition, the provision requiring bureaus to review existing directives addressing tiering, and listing topics that must be included in such directives has been removed from the final rule as not appropriate for regulatory treatment. The numbering of the subsections has been adjusted accordingly.

Comment: One group supported using existing analyses to avoid duplication of effort and to minimize costs. However, they stated that the Department should clearly indicate that existing data does not need to be supplemented with new data if there is no evidence that the current conditions differ from the conditions in which the existing data was developed.

Response: The Department concurs with the comment, but believes that it has been addressed in paragraph 46.140(a). As contemplated in the preamble to the rule, and in response to favorable comments, the Department has added a new paragraph 46.140(c).

Section 46.145 Using adaptive management. This section incorporates adaptive management as part of the NEPA planning process.

Comment: Most commenters supported the concept of adaptive management. However, they stated that the Department has not clearly explained how adaptive management will be incorporated into the NEPA process. One individual believed adaptive management could be a useful tool in allowing ''mid-course corrections'' without requiring new or supplemental NEPA review. Several groups suggest that the Department clarify that adaptive management is only appropriate where risk of failure will not cause harm to sensitive resources. Also, they stated that a requirement for a sufficient inventory of current conditions of affected resources should be included in the adaptive management plan. A detailed monitoring plan should be developed with specific indicators that will serve to define the limits of acceptable change. They also requested a ''fallback'' plan, which would be implemented if adaptive management, monitoring, or funding is not available. Several commenters suggested the Department include sufficient detail and commitments as to how impacts will be measured, avoided, and mitigated. They urged the Department to make this plan available for public comment. Another group suggested that the Department clearly delineate the scope, duration, and availability of funding for any planned monitoring programs before they are implemented. One individual suggested that the Department include additional detail that will clarify how and when it is appropriate to evaluate the effects of adaptive management in subsequent NEPA analysis. Another commenter suggests the Department develop a manual to demonstrate to managers circumstances where adaptive management has worked on-the-ground.

Many groups were concerned that adaptive management is a costly practice and will result in accruing additional costs for project proponents. One group was concerned that lack of information may be used to excuse and allow actions to proceed without sufficient protective measures in place. Some commenters expressed concern that it would be impossible to adequately analyze impacts of adaptive management ''since those actions rely on future conditions that could be complicated and cumulative.'' Modifications to requirements and conclusions in decision documents must be allowed to ensure appropriate adjustments to management actions, according to one group. One commenter was concerned that the Department may misuse adaptive management with regard to on-the-ground monitoring due to lack of funding. Another group suggested the project proponent should play a role in defining the adaptive management strategy and ensuring funding will be available. They also suggested the Department clarify that public involvement is welcome but adaptive management strategies and implementation are the full responsibility of the agency.

Groups questioned adaptive management's consistency with current case law, NEPA, and CEQ regulations. Several commenters suggested that this section should be eliminated due to its inconsistencies with NEPA and CEQ. Due to lack of CEQ framework and no guidance for implementation, one group suggested that the Department should remove this section from the proposed rule.

Response: The Department has made minor wording changes to this section. Adaptive Management (AM) is an approach to management; however, it can be integrated with the NEPA process. The establishment of specific provisions with respect to the use of AM

is beyond the scope of this rule. The intent of this provision is only to clarify that the use of an AM approach is not inconsistent with NEPA. That is, proposed actions must be analyzed under NEPA. Each proposed action, including possible changes in management resulting from an AM approach, may be analyzed at the outset of the process, or these changes in management may be analyzed when actually implemented.

Section 46.150 Emergency responses. This section clarifies that ROs, in response to the immediate effects of emergencies, can take immediate actions necessary to mitigate harm to life, property, or important resources without complying with the procedural requirements of NEPA, the CEQ regulations, or this rule. Furthermore, ROs can take urgent actions to respond to the immediate effects of an emergency when there is not sufficient time to comply with the procedural requirements of NEPA, the CEQ regulations, or this rule by consulting with the Department (and CEQ in cases where the response action is expected to have significant environmental impacts) about alternative arrangements.

Comment: Some commenters expressed concern regarding the broad definitions provided in the emergency response section. They stated the section is ''written too broadly and could potentially lead to the misuse of the provision that would allow a bureau to bypass the preparation of an environmental document.'' One group objected to the lack of specificity in terms provided in this section, such as ''emergency,'' ''emergency actions,'' ''immediate impact,'' and ''important resources,'' leaves uncertainty as to how this provision may be implemented by the Department.

Response: There is no special meaning intended for the term ''emergency'' beyond its common usage as ''an unforeseen combination of circumstances or the resulting state that calls for immediate action'' (*Webster's Third New International Dictionary Of The English Language* 1961 and *Merriam-Webster's Collegiate Dictionary* (11th ed. 2004)); ''a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action'' (*Random House Dictionary Of The English Language* (2ed. 1987)); ''a state of things unexpectedly arising, and urgently demanding immediate action'' (*The Oxford English Dictionary 2ed. 1991*) and ''[a] situation that demands unusual or immediate action and that may allow people to circumvent usual procedures * * *'' (*Black's Law Dictionary 260, 562* (8th ed. 2004)). The proposed regulation, as revised in this final rule, recognizes that responsible officials can take immediate actions to control the immediate impacts of an emergency to mitigate harm to life, property, or important natural or cultural resources.

The final rule, at section 46.150, replaces ''other important resources'' with ''important natural, cultural, or historic resources'' to more clearly identify the type of resources impacted by the emergency. The Department has not defined an emergency because it is impossible to list all circumstances that constitute an emergency; it is up to the RO to decide what constitutes an emergency.

Only such actions required to address the ''immediate impacts of the emergency that are urgently required to mitigate harm to life, property, or important natural, cultural, or historic resources'' may be taken without regard to the procedural requirements of NEPA or the CEQ regulations. Thus, there are no NEPA documentation requirements for these types of situations and the final rule requires NEPA to apply to any and all subsequent proposed actions that address the underlying emergency (paragraphs 46.150 (c) and (d)). The provisions of section 46.150 codify the existing Department practice and CEQ guidance for emergency actions.

Comment: Another group suggested that the Department add a sentence that states ''the RO shall document in writing the action taken, any mitigation, and how the action meets the requirements of this paragraph.'' Several commenters stated that this section does not comply with Congress' mandate to comply with NEPA and CEQ regulations. Several groups believed the proposed rule would allow a bureau to implement any action at any time and avoid the NEPA planning process. Others stated that the ''important resources'' clause should be removed from this section. Several commenters were concerned that the Department is implementing emergency response in order to preclude analysis of fire suppression activities.

Response: The Department agrees that the RO should document the determination of an emergency and have modified the final rule to require this. The Department will continue to act to protect lives, property, and important natural, cultural, or historic resources through means including the use of fire suppression. The Department notes that fire suppression alternatives are addressed in plans that are subject to NEPA analysis.

Section 46.155 Consultation, coordination, and cooperation with other agencies. This section describes the use of procedures to consult, coordinate, and cooperate with relevant State, local, and tribal governments, other bureaus, and Federal agencies concerning the environmental effects of Department plans, programs, and activities. The Department deleted the reference to organizations since this section will deal only with Federal, State, and tribal governmental entities. Material related to consensus-based management has been moved to section 46.110 in order to consolidate all provisions related to consensus-based management. Paragraph 46.155(b), directing bureaus to develop procedures to implement this section, has been deleted as not appropriate for regulatory treatment.

Comment: Many commenters supported this section and stated collaboration would benefit all interested parties.

Response: The Department appreciates the comments.

Comment: Some individuals pointed out that consensus is often unachievable and unnecessary. One group stated that the Department should put federal project reviews into a consensus building process to ensure that opinions and experience are captured in the NEPA process.

Response: Please see our response above to comments on section 46.110.

Comment: Many groups suggested the Department require bureaus to work with cooperating agencies, such as the U.S. Fish and Wildlife Service. One commenter indicated that the Department should ensure that enhanced involvement does not add unnecessary cost or burden to project proponents. They also stated that ''memorializing cooperative conservation in regulations, rather than policy guidance, will result in unnecessary burdens and litigation.''

Response: The Department requires that the RO of the lead bureau consider any request by an eligible government entity to participate in a particular EIS as a cooperating agency. The Department recognizes that an emphasis on the use of cooperating agencies may result in additional steps in the NEPA process, but is likely to lead to improved cooperative conservation and enhanced decision making. Executive Order 13352 on Facilitation of Cooperative Conservation requires all federal agencies to implement cooperative conservation in their programs and activities. Cooperative conservation is consistent with the CEQ requirement that agencies should

encourage and facilitate public involvement in the NEPA process. See 40 CFR 1500.2(d), 1506.6.

Comment: Several tribes expressed concern that the proposed rule will negate the government-to-government consultation with tribes. The tribes believed that the Department should include a provision to ensure Indian tribes are given the opportunity to fully participate in the NEPA process and address concerns that are unique to each action.

Response: See our response above with respect to government-to-government consultation under section 46.110.

Section 46.160 Limitations on actions during the NEPA analysis process. This section incorporates guidance to aid in fulfilling the requirements of 40 CFR 1506.1.

Comment: Several individuals agreed with the proposed rule and believe there is legal authority to support this section. One individual suggested that the Department should address actions that can be taken while a ''project'' is underway, specifically ''actions taken by a private project applicant that are outside the jurisdiction of the bureau are not an irreversible or irretrievable commitment of agency resources.'' They suggested the Department add a provision to this section to clarify the Department's commitment to projects. Although the direction is clear in the provision, one group stated bureau field offices are not adhering to this policy and that an additional provision should be added to this section regarding the use of existing NEPA documents for major federal actions. Another group wanted the Department to add an additional sentence clarifying that a particular action must be justified independently of the program and will not prejudice the ultimate decision of the proposed program.

Response: The Department appreciates the support expressed for this provision. The Department believes that this provision is clear and consistent with 40 CFR 1506.1 and does not believe any additional statement to this effect need be added to the final rule. The requested addition is not required because the provision here at section 46.160 only addresses situations where the major Federal action is within the scope of and analyzed in an existing NEPA document supporting the current plan or program. With respect to current practice within the Department, as explained in the preamble to the proposed rule, see 73 FR 126 (Jan. 2, 2008), the Department believes that one of the benefits of establishing this final rule is greater transparency in the NEPA process. Such transparency is likely to improve consistency of implementation across the Department, as well.

Section 46.165 Ensuring public involvement. This section has been removed from the final rule. CEQ regulations include requirements for public involvement in the preparation of an EIS. Section 46.305 of this final rule addresses public involvement in the EA process. The requirement in paragraph 46.305(a), that the bureau must, to the extent practicable, provide for public notification and public involvement when an EA is being prepared, includes an element of timeliness. The RO has the discretion to choose method(s) of public notification and public involvement that ensure that, if practicable, the public receives timely information on the proposed action.

Comment: One commenter stated that this provision does not provide clarity in the role of public participation. They suggested the Department add additional language to explain the timing, processes and opportunities this provision will provide.

Response: CEQ regulations implementing NEPA direct agencies to encourage and facilitate public involvement in the NEPA process ''to the fullest extent possible.'' 40 CFR 1500.2(d); see also 40 CFR 1506.6. Bureaus conduct a wide variety of actions under various conditions and circumstances. Therefore, the Department has determined that the best approach is for individual bureaus to provide direction as to how ROs should exercise their discretion in ensuring that this involvement takes place in a manner practicable in the particular circumstances of each proposed action, but that it is not appropriate to provide specifics as to how this should occur in this final rule. The Department has provided some information regarding public involvement in ESM 03–4 and may address this topic in future ESMs.

Section 46.170 Environmental effects abroad of major Federal actions. This section describes procedures the bureaus must follow in implementing EO 12114, which ''represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.''

No comments were received on this provision.

Subpart C: Initiating the NEPA Process

In the conversion from 516 DM 2 to 43 CFR Part 46, Subpart C, we have restructured the Department's requirements for initiating the NEPA process. We have put into regulations the essential parts of the NEPA process that are unique to the Department and which require further clarification of the CEQ regulations. This rule clarifies the requirements for applying NEPA early, using categorical exclusions (CEs), designating lead agencies, determining eligible cooperating agencies, implementing the Department's scoping process, and adhering to time limits for the NEPA process.

Section 46.200 Applying NEPA early. This section emphasizes early consultation and coordination with Federal, State, local, and tribal entities and with those persons or organizations who may be interested or affected whenever practical and feasible. A new paragraph 46.200(e) has been added to clarify that bureaus must inform applicants as soon as practicable of any responsibility they will bear for funding environmental analyses associated with their proposals. Any cost estimates provided to applicants are not binding upon the bureau. This provision had already been included with respect to the preparation of EISs, but should also have been included with respect to EAs. Therefore, the provision has been moved from 46.400 (EISs) to 46.200.

Comment: Some commenters supported this section of the proposed rule as it is currently written.

Response: The Department appreciates the comments.

Comment: Some commenters stated that the proposed rule is not clear with respect to how community-based training will be conducted and what the content of the training will include. These commenters suggested the proposed rule should provide a detailed discussion of the purpose of such training, as well as when it is warranted.

Response: The Department has determined that this topic is most appropriately addressed in the environmental statement memoranda. Community-based training, including the content of the training, is included in ESM03–7 and, if appropriate, will be expanded in future ESMs or bureau-specific explanatory and informational directives. No change to the proposed rule has been made.

Comment: Some commenters also recommended that the proposed rule should clarify that it does not expand the amount of information required for applications under the relevant substantive statute.

Response: The final rule does not expand the amount of information required beyond what is required by NEPA and CEQ regulations, which may be more than the information required for applications under the relevant substantive statute. This provision simply provides that the bureaus be forthcoming with descriptions of information that the applicant may need.

Comment: A few commenters stated that public involvement should be limited to submitting comments on the scoping notice, attending public meetings, and submitting comments on the final version of draft NEPA documents. Various commenters suggest that the proposed rule require early consultation with applicants. Others proposed additional changes to the proposed rule to further facilitate early coordination between the Department and applicants. These commenters recommended that the proposed rule distinguish between public involvement in the EA process and the EIS process.

Response: As noted above, CEQ regulations implementing NEPA direct agencies to encourage and facilitate public involvement in the NEPA process ''to the fullest extent possible.'' 40 CFR 1500.2(d); see also 40 CFR 1506.6. The Department is encouraging enhanced public involvement and broad-based environmental coordination early in the NEPA process. The purpose is to facilitate better outcomes by encouraging dialogue among the affected parties. Public involvement is encouraged during the EA and EIS process. CEQ regulations prescribe the manner in which the minimum level of public involvement must be carried out under the EIS process; the manner of conducting public involvement in the EA process is left to the discretion of RO.

Section 46.205 Actions categorically excluded from further NEPA review. This section provides Department-specific guidance on the use of categorical exclusions.

Comment: Many commenters supported this section of the proposed rule as it is currently written. These commenters supported the position that NEPA does not ''apply to statutorily created categorical exclusions,'' such as those created by Congress in 2005.

Response: The Department concurs that legislation governs the application of statutory categorical exclusions. For example, the Energy Policy Act of 2005 (EPAct) establishes how NEPA applies with respect to these categorical exclusions.

Comment: Several groups suggested that the Department ''ensure that its bureaus involve the public in the development and application of CEs and clearly state that extraordinary circumstances need to be provided for unless Congress specifically exempts an agency from doing so.'' These groups maintained that CE disagreements could be reduced through greater transparency in their application. Some of these comments recommended the deletion of paragraph 46.205(d) from the proposed rule. Overall, commenters generally believed it is important to articulate the extraordinary circumstance under which a CE will not apply.

Response: As noted above, CEQ regulations include specific requirements for the establishment of procedures, including CEs, for implementing NEPA. When established as part of the DM, the categories listed in the final rule and the extraordinary circumstances language were approved by CEQ and subject to public review and comment, in accordance with 40 CFR 1507.3, by publication in the **Federal Register**, March 8, 2004 (69 FR 10866). The final CEs, as originally published in the DM, and as presented in this final rule, were developed based on a consideration of those comments. The Department has provided for extraordinary circumstances in the application of its CEs. Each bureau has a process whereby proposed actions are evaluated for whether particular CEs are applicable including whether extraordinary circumstances exist. As noted above, part of the Department's intent in publishing its NEPA procedures as regulations is to increase transparency in their implementation.

By moving its NEPA procedures, including CEs and the listing of extraordinary circumstances from the DM to regulations, the Department does not intend to alter the substance of these CEs or extraordinary circumstances. In paragraph 46.205(d) the Department is merely acknowledging the fact that Congress may establish CEs by legislation, in which case the terms of the legislation determine how to apply those CEs.

Section 46.210 Listing of Departmental Categorical Exclusions. This section includes a listing of the Department's CEs (currently 516 DM Chapter 2, Appendix B–1). The CEs are in paragraphs (a) through (l). These CEs were all published for public comment prior to inclusion in the DM. This section includes the same number of CEs as were in the DM and the wording in the CEs is unchanged, with five exceptions. Four of those changes are made between the rule as proposed and final because of minor editorial changes from how the categorical exclusions appeared in the DM.

First, § 46.210(b) has been revised from ''Internal organizational changes and facility and office reductions and closings'' as it appeared in the DM to ''Internal organizational changes and facility and bureau reductions and closings'' to conform to the definition of ''bureau'' in the final rule, at § 46.30, which includes ''office.'' The DM had not provided a definition of ''bureau'' and so used both ''bureau'' and ''office.'' Second, the word ''development'' was inadvertently added, so that the parenthetical in the proposed rule at § 46.210(c) read ''(*e.g.*, in accordance with applicable procedures and Executive Orders for sustainable development or green procurement).'' This change has been deleted from this final rule.

Third, the numbering system has been changed in the CE § 46.210(k) from the DM, originally published as final on June 5, 2003 (68 FR 33814), in order to more clearly set out the requirements for use of the CE for hazardous fuels reduction activities. The meaning of the CE has not changed. And fourth, in paragraphs 46.210(k) and (l), the citations to the ESM series, which appeared in parentheticals in the DM, but as footnotes in the Notice published on March 8, 2004 (69 FR 10866), have been placed in the text itself for ease of reference.

Finally, paragraph 46.210(i), which replaces 516 DM Chapter 2, Appendix B–1, Number 1.10, has been changed to correct an error during the finalization of the revision to these DM chapters in 2004. Prior to 1984, and up until 2004, this CE, as established and employed by the Department, covered ''Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or the environmental effects of which 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.'' 49 FR 21437 (May 21, 1984); 516 DM 2, Appendix 1 (June 30, 2003) (Archived versions of 516 DM chapters, including the 1984, 2003, and 2004 versions of 516 DM 2, may be accessed at *http://elips.doi.gov/app_dm/index.cfm?fuseaction=ShowArchive*). No problems with the use of the CE were brought to the attention of the Department during this period. It is the version of the CE that was in place prior to 2004 that was proposed in the Department's January 2, 2008 Notice of Proposed Rulemaking (73 FR 126, 130), and is announced as final in the rule published today.

From 2004, however, a slightly different version of the CE appeared in the DM chapters. In 2000, the Department proposed revisions to 516 DM, including 516 DM 2. 65 FR 52212, 52215 (Aug. 28, 2000). No change was proposed to this CE at that time, and no comments were received regarding this CE. No further action was taken on the 2000 proposal until 2003, when the Department again published the proposed revision to the 516 DM chapters at issue; however, as proposed this revision included an erroneous change to this CE. 68 FR 52595 (Sept. 4, 2003). No comments were received regarding this CE in response to the 2003 Notice. As a result, although no change had been intended, the following version was published as final in 2004 (69 FR 10866, 10877–78 (Mar. 8, 2004)), and incorporated into 516 DM 2, Appendix 1.10: ''Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.''

As noted in the preamble to the proposed rule, published January 2, 2008 (73 FR 126, 130), the Department is correcting an unintended drafting error in the 2004 Rule. The text which previously described two categories of policies, directives, regulations and guidelines (''* * * that are of an administrative, financial, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process * * *''), was replaced with a more restrictive category of 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 * * *''). During the Departmental review beginning in 2006, in preparation for this rulemaking, the Department discovered the drafting error that infected both the 2003 proposal and the 2004 final revision to the DM. This error has made it difficult to use the CE as originally intended, and has engendered confusion in the Department. It is now clear that the erroneous version that became final in 2004, though inadvertent, had resulted in a substantive difference in meaning. For example, the use of the word ''and'' made it difficult to apply the CE to an agency action, such as a procedural rule, that has no individual or cumulative significant environmental effects. With the correction effectuated by this 2008 rulemaking (no comments were received with respect to this proposed correction), this CE has now been replaced with its original version. As such, actions such as procedural rules with no individual or cumulative significant environmental effects are covered by the categorical exclusion, as well as circumstances where the action will later be subject to NEPA compliance.

Comment: One commenter stated that the bureau-specific CEs should be included in the proposed rule. Comments also suggest the addition of a new category in the proposed rule which allows the bureaus the discretion to establish other Departmental CEs which are consistent with 43 CFR 46.205. One group suggests revising the proposed rule to cross-reference bureau-specific CEs. This group maintained that this cross-reference will provide better information for the public, as well as promote greater transparency in the NEPA process.

Response: Bureau specific CEs are listed separately in the 516 DM Chapters 8–15 to reflect bureau specific mission and activities. Those DM Chapters remain in effect. Bureaus have specific resource management and environmental conservation responsibilities and their CEs are tailored to these unique missions and mandates. The Departmental CEs are general and are applicable throughout the Department and across all bureaus. Bureaus have the discretion to propose additional CEs that apply in a bureau specific context and which are included in the bureau specific chapters of the DM. If appropriate, bureaus can also propose to the Department additional CEs to augment those already in this rule for future consideration. Such additional proposed CEs would have to be consistent with the broad nature of the already existing Departmental CEs. Cross referencing is unnecessary because bureau specific CEs are unique to that particular bureau and do not apply to other bureaus.

Comment: Several groups cited 40 CFR 1508.27(b), and stated that the Department ''must also perform a cumulative effects analysis prior to promulgation of the CE.'' These groups stated that impacts analysis at the project level does not relieve the Department from the obligation to ensure that the CE has no cumulative impacts. These groups were concerned that the proposed rule on CEs does not comply with NEPA requirements and would violate recent court rulings.

Response: The requirements for establishing agency procedures for implementing NEPA—such as the procedures set forth in this rule, and including CEs—are set forth in CEQ's regulations at 40 CFR 1505.1 and 1507.3. These provisions require agencies to consult with CEQ while developing procedures and to publish the procedures in the **Federal Register** for public comment prior to adoption. The CEQ regulations do not direct agencies to prepare a NEPA analysis or document before establishing agency NEPA procedures. This means that agencies are not required to prepare a NEPA analysis to establish their NEPA procedures; however, agencies must have a basis for determining that actions covered by proposed CEs do not have individual or cumulative impacts.

Agency NEPA procedures assist agencies in fulfilling agency responsibilities under NEPA and are not, themselves, actions or programs that may have effects on the human environment. Moreover, agency NEPA procedures do not dictate what level of NEPA analysis is required for a particular proposed action or program. Thus, such procedures are not federal actions subject to the requirements of NEPA. The determination that establishing agency NEPA procedures does not itself require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd* 230 F.3d 947, 954–55 (7th Cir. 2000).

By including the Department's CEs in this rule, the Department is merely moving established categories and language addressing extraordinary circumstances from their current location in the DM to the new 43 CFR Part 46. When established as part of the DM, these categories and extraordinary circumstances language were approved by CEQ and subject to public review and comment, in accordance with 40 CFR 1507.3. The substantiation for those actions included the bases for determining that the actions covered by the CE do not ''individually or cumulatively have a significant effect on the human environment.''(40 CFR 1508.4). This final rule does not add any new categories or—apart from one clarifying addition (explained below)—alter existing language regarding extraordinary circumstances. Therefore, the Department does not believe that this final rule fails to comply with NEPA or the CEQ regulations and believes that the existing procedural

framework established by the statute, CEQ regulations, and existing Department procedures is maintained.

In *Sierra Club* v. *Bosworth,* 2007 U.S. App. LEXIS 28013 (9th Cir., Dec. 5, 2007), the case cited by commenters, the Ninth Circuit determined, in part, that the U.S. Forest Service's establishment of a CE constituted establishment of a program for which a cumulative effects analysis was required. Because this litigation involves a CE that is analogous to a CE used by the Department, the Department has determined that the category in question will remain in the final rule, with the understanding and written direction that it will not be used by the individual bureaus in areas within the jurisdiction of the Ninth Circuit. If, at a later date, the Department determines changes must be made to sections 210 and 215 of part 46, those changes will similarly undergo CEQ review as well as public review and comment. Further, in such event, the Department will comply with all applicable requirements for rulemaking.

Comment: Some groups also suggested that this section of the proposed rule is ''extremely vague and broad.'' These commenters recommended removal of, or expanded limits on, the portions of the CE that authorize mechanical treatment to reduce fuels, as well as those portions which authorize post-fire rehabilitation. Commenters maintain that the allowance of these authorizations would be ''environmentally disastrous.'' Furthermore, these groups recommended implementation of strict measures to ensure that ''temporary roads'' remain temporary.

Response: As explained above, by including the Department's CEs in this rule, the Department is merely moving established categories and language addressing extraordinary circumstances from their current location in the DM to the new 43 CFR Part 46. When established as part of the DM, these categories and extraordinary circumstances language were approved by CEQ and subject to public review and comment, in accordance with 40 CFR 1507.3 (for example, see 68 **Federal Register** 33813 published on June 5, 2003). This final rule does not add any new categories or alter existing language regarding extraordinary circumstances, with the exceptions noted above with respect to the language of the CEs, including the correction of the typographical error in paragraph 46.210(i) and the clarification in section 46.215 noted below.

Comment: Some commenters suggested modification of the proposed rule in such a way that the collection of small samples for mineral assessments be included within educational CEs. Other commenters recommended the proposed rule be modified to incorporate CEs for the Fish and Wildlife Service. Another commenter recommended that the Department adopt its own CE relating to the installation, maintenance, or restoration of artificial water developments used in the conservation of wildlife. In addition, this commenter suggests clearly defining small water control structures in the proposed rule.

Response: See responses above.

Section 46.215 Categorical Exclusions: Extraordinary circumstances. This section contains a listing of the Department's CEs: Extraordinary Circumstances (currently 516 DM Chapter 2, Appendix B–2). This section includes the same number of CEs: Extraordinary Circumstances as were in the DM, and the wording in the CEs: Extraordinary Circumstances is essentially unchanged. Similar to the listing of CEs, each of the Extraordinary Circumstances was published for public comment prior to inclusion in the DM. The CEs: Extraordinary Circumstances are in paragraphs (a) through (l). In the proposed rule, and in this final rule, the only change from the way the Extraordinary Circumstances appeared in the DM is the addition of the following sentence to section 46.215: ''Applicability of extraordinary circumstances to categorical exclusions is determined by the Responsible Official.'' This is not a substantive change to the extraordinary circumstances themselves, but reflects the authority and the responsibility of the RO. Similarly, the phrase ''as determined by the bureau'' (which appears in the DM) was inadvertently left out of the proposed rule at paragraph 46.215(g); the final rule therefore reads: ''Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.'' While the DM provision (*see* 69 FR 19866, Mar. 8, 2004) that is being replaced by this rule read ''as determined by either the bureau or office,'' only ''bureau'' is used here, to be consistent with the definition of ''bureau'' in the final rule, at section 46.30.

Comment: Another commenter believed that the Executive Order on Facilitation of Hunting Heritage and Wildlife Conservation should form the basis of extraordinary circumstances and should be added to the proposed rule.

Response: As noted above, no new CEs or extraordinary circumstances are being added at this time. That being said, the Department is aware of the referenced Executive Order and will incorporate in Departmental directives, as appropriate, any plan developed under the Executive Order for the management of resources under the Department's jurisdiction.

Comment: Some commenters stated that lands found to have ''wilderness characteristics,'' such as citizen proposed wilderness areas, do not constitute extraordinary circumstances. Many commenters suggested that the Department revise this section of the proposed rule to clarify that the term ''highly controversial environmental effects'' does not include instances where there is merely a public controversy.

Response: The Departmental list of extraordinary circumstances specifies wilderness areas or wilderness study areas but not wilderness characteristics or citizen proposed wilderness areas. As noted above, no new extraordinary circumstances are being added as part of this initiative. That being said, just as with any other resource value, there may be circumstances where the issue of effects on areas with wilderness characteristics may be captured under the existing extraordinary circumstances.

Comment: One commenter requested, ''where an Interior agency proposes to categorically exclude a decision from review under NEPA, that the agency include the proposed decision on NEPA registers available on the agency's Web site.'' This commenter also requested eliminating the adoption of regulations and policies from the list of Departmental CEs, as found in paragraph (i).

Response: The Department declines to adopt the commenter's recommendation regarding making the proposed decisions supported by CEs available on bureau *Web site*(s). From a practical standpoint, many thousands of proposed actions annually are categorically excluded. To list each use of a CE on a NEPA register or bureaus' Web sites would prove overly burdensome. The Department declines to adopt the commenter's recommendation regarding eliminating the adoption of regulations and policies from the list of Departmental CEs, as found in paragraph (i). As explained above, the Department is not changing the language of the CEs or the extraordinary circumstances in the final rule, but is merely moving them from the DM to regulations.

Comment: Some groups stated that the proposed rule severely narrows the definition of extraordinary

circumstances. These groups also believed the proposed rule allows the Department to illegally manipulate NEPA's threshold question.

Response: This final rule simply moves established categories and language on extraordinary circumstances from the Department's NEPA procedures previously located in 516 DM 2, Appendix 1 and 2; no change was proposed or is made to the extraordinary circumstances themselves in the final rule. As noted above, these categories and requirements were established following public review and comment, in consultation with CEQ and with CEQ's concurrence, pursuant to 40 CFR 1507.3. The final rule does not add any new categories, nor does it substantively alter existing requirements regarding review for extraordinary circumstances. The Department notes that contrary to the commenter's assertion that the threshold question with respect to the extraordinary circumstances review is altered, the prefatory statement to the list of extraordinary circumstances was, and remains ''Extraordinary circumstances (see § 46.205(c)) exist for individual actions within CXs that *may* meet any of the criteria listed in paragraphs (a) through (l) of this section.'' (Emphasis added.)

Section 46.220 How to designate lead agencies. This section provides specific detail regarding the selection of lead agencies.

Comment: Some commenters stated that the proposed rule needs to address how a lead agency will be designated when more than one federal agency is involved. These commenters recommended that the Department consider requiring the consent of an agency before it can be named the lead agency. In addition, commenters suggested that the Department may want to recognize in the proposed rule that the RO would need to comply with any applicable statutory or regulatory requirements in the designation of the lead agency.

Response: CEQ regulations at 40 CFR 1501.5 establish guidelines on the designation of a lead agency, including resolution of the question of designation, in the event of dispute. The RO complies with this rule in the designation of a lead agency.

Section 46.225 How to select cooperating agencies. This section establishes procedures for selecting cooperating agencies and determining the roles of non-Federal agencies, such as tribal governments, and the further identification of eligible governmental entities for cooperating agency relationships. Criteria for identifying, and procedures for defining, the roles of cooperating agencies and the specific requirements to be carried out by cooperators in the NEPA process are set forth in this section.

Comment: Several commenters supported consensus-based management for resolving competing government interests.

Response: The Department appreciates the comments.

Comment: Some commenters suggested that lead NEPA agencies must collect the ''best available information,'' with the decision-making process based on this information. These commenters also proposed modification of the proposed rule to ''encourage'' the use of this section in preparing an EA.

Response: The Department collects the high quality information, and that information supports the NEPA analysis which contributes to the decision-making process. This is consistent with CEQ requirements. The Department declines to make the recommended change to paragraph 46.225(e); ROs are given the latitude to exercise discretion in this regard.

Comment: Many commenters supported the use of memoranda of understanding (MOU) and recommended revision of the proposed rule to include clarification on cooperating agency status and limitations, as well as a schedule for the environmental document.

Response: Paragraph 46.225(d) provides for the use of memoranda of understanding (MOU) between the lead and cooperating agencies. The MOU provides a framework for cooperating agencies to agree to their respective roles, responsibilities and limitations, including, as appropriate, target schedules. The requirement with respect to memoranda of understanding in paragraph 46.225(e) may apply to EAs also.

Section 46.230 Role of cooperating agencies in the NEPA process. This section provides specific detail regarding the responsibilities of cooperating agencies.

No comments were received for this section.

Section 46.235 NEPA scoping process. This section discusses the use of NEPA's scoping requirements to engage the public in collaboration and consultation for the purpose of identifying concerns, potential impacts, relevant effects of past actions, possible alternatives, and interdisciplinary considerations. The regulatory language encourages the use of communication methods (such as using the Internet for the publications of status of NEPA documents on bulletin boards) for a more efficient and proactive approach to scoping.

Comment: Some organizations stated that the Department has offered no explanation for the lack of required scoping when preparing an EA or applying a CE, as compared with scoping for an EIS. These organizations maintained that this lack of scoping contradicts the proposed guidance found in paragraph 46.200(b). These commenters stated that federal agencies are required to ensure proper public involvement when implementing NEPA and suggested public scoping assists in making an informed decision.

Response: Although scoping is not required for the preparation of an EA (CEQ regulations at 40 CFR 1501.7 specifically reference the preparation of an EIS), the Department encourages the use of scoping where appropriate as it does represent a form of public involvement, which is a requirement of EAs. The Department has added language to clarify the relationship between this section and section 46.305. In addition, in contrast to the rule as proposed, the Department has also clarified that while public notification and public involvement are required to the extent practicable in the preparation of an EA, the RO has the discretion to determine the manner of this public notification and public involvement. See paragraph 46.305(a). Scoping is not a step necessary to document a CE. The Department recognizes and acknowledges the importance of scoping as a form of public involvement and participation in the NEPA process, wherever it is appropriate, in that it can serve the purpose of informed decision making.

Comment: One commenter recommended clarification of ''interdisciplinary considerations'' in the proposed rule.

Response: This rule ensures that the use of the natural, social, and the environmental sciences as required under section 102(2)(A) of NEPA. As recommended by the commenter, we have clarified this provision by replacing the phrase ''interdisciplinary considerations'' in paragraph 46.235(a) with the phrase ''interdisciplinary approach'' as provided in 40 CFR 1502.6.

Section 46.240 Establishing time limits for the NEPA process. The section requires bureaus to establish time limits to make the NEPA process more efficient.

Comment: One commenter pointed out that the proposed rule does not explain why time limits should be established. This commenter recommended the addition of specific

guidance and direction to the proposed rule so bureau staff can process NEPA documents with minimal delay.

Response: CEQ regulations at 40 CFR 1501.8 encourage federal agencies to set time limits appropriate to individual actions. This rule requires individual bureaus to establish time limits, as appropriate, to expedite the NEPA process and to ensure efficiency, especially when project completion may be time sensitive or when statutory or regulatory timeframes may be applicable. The Department believes individual bureaus are best situated to establish time frames on a case-by-case basis, and does not deem it necessary to implement specific additional guidance to ensure that delays are not encountered in the NEPA process.

Comment: Another commenter stated that the proposed rule appears to be focused solely on internal administrative factors and fails to acknowledge that complex projects and potential impacts could seriously affect timelines. Commenters also suggested that the availability of the public to participate in the process needs to be considered and accounted for when setting time limits. Multiple commenters supported establishing time limits for the NEPA process on a case-by-case basis, as long as the time limits do not impose a schedule that cannot facilitate the project proponent's goals and objectives for the proposed action.

Response: The Department does not have a prescribed time limit for each proposed step in the NEPA process. In each case, time limits are set based on a consideration of factors such as funding, staff availability, public needs, and the complexity of the proposed action. The Department realizes that the proponent's goals and objectives are a consideration in scheduling the time considerations, as well as the factors mentioned above.

Comment: Several commenters requested an addition to the proposed rule ''that cooperating agencies represent that they have sufficient qualified staff and necessary resources to participate as a cooperating agency on the project and meet project deadlines.'' Several commenters also recommended several additions to the proposed rule to strengthen time limit requirements.

Response: The MOU as required under paragraph 46.225(d) is a mechanism for establishing that such cooperating agencies represent that they have sufficient qualified staff to participate on the project and meet project deadlines. The Department does not believe any change to the final rule is necessary.

Subpart D: Environmental Assessments

In the conversion from 516 DM Chapter 3 to 43 Part 46 Subpart D, we have written this rule to incorporate procedural changes, expand upon existing procedures, give greater discretion and responsibilities to bureaus, and provide clarity in the EA process.

Section 46.300 Purpose of an EA and when it must be prepared. This section clarifies that the action being analyzed is a ''proposed'' action. It expands upon the purpose and clarifies when to prepare an EA.

Comment: One group recommended that the Department add a provision to assure that all decisions made by the RO after preparing an EA or an EA and FONSI are in writing and include the Official's reasoning behind that decision.

Response: This rule addresses the Department's NEPA procedures and not the Department's decision-making authorities. The Department has decided that documentation requirements for decisions on proposed actions made on the basis of preparation of EAs and FONSIs are outside the scope of this rule. That is, bureau decision making itself is governed by Department and bureau-specific authorities. Section 46.325 describes the culmination of the EA process rather than documentation of a final decision on the proposed action and has been edited to ensure this point is clearly made.

Comment: Another group stated that wording in paragraph (a), in the context of the Bureau of Indian Affairs, may be misleading since many EAs are prepared by a tribal government agency. These commenters suggested that paragraph (a) be revised as follows: ''A bureau must ensure that an EA is prepared for all proposed Federal actions * * *''

Response: The Department concurs and has revised the language at paragraph 46.300(a) to reflect the suggested change.

Section 46.305 Public involvement in the EA process. This section incorporates procedural changes and differentiates the requirements for public involvement in the EA and EIS processes. This section has been revised from the proposed to require bureaus, to the extent practicable, to provide for public notification and public involvement when an environmental assessment is being prepared. This represents a change from the rule as proposed, which had included a requirement that ''The bureau must provide for public notification when an EA is being prepared.'' The Department has made this change in order to be more consistent with CEQ regulations, which do not require bureaus to provide such notice in each and every instance, but only require that Federal agencies ''shall to the fullest extent possible encourage and facilitate public involvement in decisions which affect the quality of the human environment.'' 40 CFR 1500.2(d). With respect to EAs, CEQ regulations require that agencies provide notice of the availability of such environmental documents, but are otherwise quite general in approach to public involvement in EAs. *See* 40 CFR 1501.4(b) and 1506.6. As the Department's bureaus prepare thousands of EAs each year—many times for routine matters for which there are not categorical exclusions, but for which there is no interest on the part of the public—a categorical public notification requirement would prove a fairly substantial burden. Therefore, discretion is left to the RO in each case to determine how best to involve the public in a decision that affects the quality of the human environment.

This section has also been expanded to give bureaus the discretion to provide cooperating agency status for EAs. It specifies that the publication of a draft EA for public comment is one method available for public involvement, but it is not required.

Comment: Some commenters supported this section of the proposed rule as it is currently written. These commenters believed that the proposed rule is consistent with CEQ regulations, which only require public involvement in EAs to the extent practicable.

Response: The Department appreciates the comments and has clarified that because notification is a means of public involvement, it too is subject to the qualifier ''practicable'' and has revised the final rule as described above.

Comment: This section of the proposed rule directs bureaus to consider comments that are ''timely'' received. One commenter maintained that the proposed rule did not adequately define ''timely.'' This commenter also recommended stating in the rule ''that if no comments are received during this 30-day comment period, the decision is made using the content of the draft document.''

Response: Publication of a ''draft'' EA is not required. The RO has the discretion whether to invite comments on an EA. If an RO requests comments, there will be a stated time limit to the comment period. Comments not received within this stated time limit may be deemed untimely by the RO. It

is left to the discretion of the RO to take action when comments have been received after the end of the comment period.

Comment: Several commenters also supported the proposed provision which would allow cooperating agencies to participate in the development of EAs. They recommended rewording of the proposed rule to ''encourage'' cooperating agency participation, not merely ''permit'' this participation.

Response: The rule has used ''may allow'' rather than the term ''encourage,'' because cooperating agency involvement in an EA is a matter of discretion for the RO; no change is made to the final rule.

Comment: Many commenters supported publication of draft EAs and recommended modification of the proposed rule to support publication of draft EAs. These commenters believed that this section of the proposed rule is in violation of CEQ direction and that public review of environmental documents has the potential to identify information about impacts or resource uses that would be otherwise unknown.

Response: The manner of public involvement, including the publication of a draft EA, is a matter of discretion for the RO; this provision is consistent with 40 CFR 1501.3.

Comment: Several commenters expressed disappointment that ''the language in the Department's NEPA proposed rule focuses on how not to provide public involvement opportunities in section 46.305.'' This group maintained that it is essential that the public effectively be involved in the NEPA process, that public participation is a fundamental component of NEPA, and that public involvement extends to all ''environmental documents,'' including EAs. These commenters urged the Department to include positive language in the proposed rule to involve the public in the preparation of an EA, including requiring publishing of draft EAs for public comment, and establishing clear and specific guidelines for public involvement in the EA process.

Response: The Department strongly encourages public involvement and participation in the NEPA process at all stages. However, consistent with CEQ regulations, the Department's final rule distinguishes between ''public involvement'' and ''public comment.'' With respect to EISs, CEQ's regulations specify that the public must have the opportunity to comment on a draft EIS. By contrast, the CEQ regulations do not specify that public involvement should take any particular form for EAs, as recognized by every court that has decided the issue. Therefore, the Department's final rule clarifies that the RO has the discretion to determine how public involvement in the preparation of an EA is to occur, depending on the particular circumstances surrounding the proposed action. Bureaus engage in a wide variety of routine actions, for which EAs are prepared (*e.g.*, approval of replacement of culverts, erection of fences, etc.). Therefore, it is neither necessary nor practical for public comment to be required for each of these EAs. Public involvement can take a variety of forms, ranging from notification on bureau or field office Web sites to the holding of public meetings. Some of the bureaus provide more specific direction on facilitating public involvement (see 516 DM Chapters 8–15 and bureau handbooks).

Comment: Another commenter recommends that the proposed rule should ensure that communities and tribes potentially impacted by the proposed action have adequate opportunities to participate in the development of an EA.

Response: See response above regarding the CEQ requirement respecting public involvement. The circumstances surrounding each proposed action may interest a variety of members of the public, including, but not limited to, communities and tribes potentially impacted by the proposed action. The RO has the discretion to implement public notification and public involvement measures appropriate to the proposed action, and affected communities. In addition, as noted above, and independent of its responsibilities under NEPA, the United States has a government-to-government relationship with federally-recognized tribes. In accordance with this responsibility, the Department specifically provides for consultation, coordination and cooperation within the framework of government-to-government consultation.

Section 46.310 Contents of an EA. This section establishes new language outlining what information must be included in an EA. It describes the requirements for alternatives, if any, and provides for incorporating adaptive management strategies in alternatives. Sections on tiered analysis, from 516 DM Chapter 3, are found in subpart B of this rule, since this information pertains to both EISs and EAs.

Comment: Several commenters supported this section of the proposed rule as it is currently drafted. These commenters maintained that CEQ regulations only require that an EA contain a brief discussion of the environmental impacts of the proposed action and alternatives.

Response: The Department appreciates the comments.

Comment: Other commenters stated that this section of the proposed rule should be removed because it conflicts with NEPA, CEQ regulations, and existing case law.

Response: The Department disagrees. This section fully complies with NEPA and CEQ regulations, as well as CEQ guidance. On September 8, 2005, the CEQ issued EA guidance to Federal agencies entitled ''Emergency Actions and NEPA'' that explained language at section 102(2)(E) of NEPA ''unresolved conflicts concerning alternative uses of available resources'' (42 U.S.C. 4332(2)(E)). The CEQ guidance states: ''When there is consensus about the proposed action based on input from interested parties, you can consider the proposed action and proceed without consideration of additional alternatives. Otherwise, you need to develop reasonable alternatives to meet project needs'' (Attachment 2 ''Preparing Focused, Concise and Timely Environmental Assessments'', *http://ceq.eh.doe.gov/nepa/regs/Preparing_Focused_Concise_and_Timely_EAs.pdf*).

Comment: Several commenters stated that the proposed rule calls for a superficial analysis of impacts, which creates the potential for inadequate research. These commenters were concerned that this superficial analysis will not provide an adequate analysis of impacts, will only serve to exacerbate conflict and will result in poor decision-making and possible litigation.

Response: The Department disagrees. CEQ regulations describe EAs as ''concise'' documents that ''briefly'' provide information sufficient to determine whether preparation of an EIS is required. CEQ has issued guidance consistent with this idea (see September 8, 2005 CEQ guidance referenced above). The Department does not believe that conciseness necessarily leads to a superficial analysis.

Comment: These commenters therefore suggested that ''consensus'' be changed to ''unanimity'' to assure that there is no confusion about the limited circumstances in which paragraph 46.310(b) applies.

Response: ''Unanimity'' is not required; therefore, the Department declines to make the suggested alteration to the final rule.

Comment: One commenter suggested that the cumulative effects of the proposed action and other previous actions should be included in the list of things that must be discussed in an EA.

Response: This rule does not attempt to alter the requirements of the CEQ regulations. Rather, paragraph 46.310(a)(3) of the Department's final rule requires that EAs include brief discussions of the environmental impacts of the proposed action. Environmental impacts include direct, indirect and cumulative impacts (40 CFR 1508.7 and 1508.8). A separate listing of the requirement to include discussion of any cumulative impacts is not necessary.

Section 46.315 How to format an EA. This section provides clarification on the EA format.

No comments were received on this provision.

Section 46.320 Adopting EAs prepared by another agency, entity, or person. In this section, the term ''and other program requirements'' has been added to the compliance stipulations. It also expands the requirements of the RO in adopting another agency's EA.

Comment: One commenter suggested that a new section be added to the proposed rule which includes the requirement that the RO ''consults with other agencies that have regulatory authority over the project'' when adopting an EA prepared by another agency. This commenter maintained this will help ensure that other affected agencies agree with the adoption. Another organization suggested that this section of the proposed rule should state that an Indian tribe may be the applicant.

Response: The determination to adopt another agency's EA is left solely to the discretion of the RO. However, the Department expects that the RO will consult with any other agency that has regulatory authority over the project that is the subject of a bureau's proposed action and environmental analysis. In fact, this final rule provides at section 46.155: ''The Responsible Official must whenever possible consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of bureau plans, programs, and activities within the jurisdictions or related to the interests of these agencies.'' This provision applies to proposed actions supported by both EAs and EISs. As such no change has been made to section 46.320.

The Department recognizes generally that an Indian tribe may be an applicant, as well as a State or other unit of government; paragraph 46.300(a) has been modified to read: ''A bureau must ensure that an EA is prepared for all proposed Federal actions'' in order to reflect that it may be the applicant who is preparing the EA, especially when a tribe is the applicant. No other change in this respect has been made to the final rule.

Section 46.325 Conclusion of the EA process. Documentation requirements for decisions made on the basis of EAs and FONSIs are beyond the scope of this rule. After a bureau has completed an EA for a proposed action, the bureau will make a finding of no significant impact, or will determine that it is necessary to prepare an EIS, in which case, the bureau will publish a Notice of Intent in the **Federal Register** or will take no further action on the proposal.

Comment: Several commenters ''suggested that the requirement that a decision be documented also include a requirement that the document be made public.''

Response: Bureau decision documents are public documents. While some bureaus routinely publish these documents (for instance on bureau or field office Web sites), the Department is not including a requirement that all decision documents be published. Decision documents are available from bureaus upon request.

Subpart E: Environmental Impact Statements

This subpart takes the place of 516 DM Chapter 4, with following exceptions.

The language from 516 DM Chapter 4 that simply reiterates the CEQ regulations is not included in subpart E of this rule. Those DM sections are: statutory requirements, cover sheet, summary, purpose and need, appendix, methodology and scientific accuracy, proposals for legislation, and time periods.

Sections on tiering, incorporation of referenced documents into NEPA analysis, incomplete or unavailable information, adaptive management, and contractor prepared environmental documents, from 516 DM Chapter 4 are found in subpart B of this rule since that information pertains to EISs and EAs.

The phrase ''environmentally preferable alternative'' is found in the definitions, subpart A. This phrase expands on the definition that currently exists in 516 DM 4.10(A)(5).

This rule also incorporates procedural changes, clarifies the extent of discretion and responsibility that may be exercised by bureaus and provides clarity in the EIS process.

Section 46.400 Timing of EIS development. This section describes when an EIS must be prepared.

Comment: One commenter recommended revising the definition of ''environment'' within the proposed rule to avoid disputes.

Response: Neither the Department's proposed nor final rule includes a definition of ''environment.'' Neither NEPA nor the CEQ regulations define this term; however, the CEQ regulations do define ''human environment,'' and the definitions in the CEQ regulations apply (see sections 46.20 and 46.30). The Department does not believe that a definition is required.

Comment: One commenter stated that it is important to note that the RO should not have the authority to mandate whether an applicant must pay for environmental analyses. The commenter recommended that the applicant should be given the opportunity to voluntarily fund the NEPA analysis. Others recommended that any reference to who pays for the analysis be deleted from the proposed rule.

Response: The provision in the Department's final rule specifies only that the RO ''must inform applicants as soon as practicable of any responsibility they will bear for funding environmental analyses associated with their proposal.'' This provision refers specifically to the responsibility of the RO to inform the applicant of any such requirements in each instance. (As noted above in the introduction to section 46.200, this provision has been moved from section 46.400 to section 46.200 because it applies to EAs as well, and the application to EAs was inadvertently left out of the proposed rule.) The question of whether an RO may require an applicant to pay for NEPA analysis is outside the scope of this rule because programs and bureaus have different payment requirements, for example, under their cost recovery authority, if applicable.

Section 46.405 Remaining within page limits. This section encourages bureaus to keep EISs within the page limits described in the CEQ regulations using incorporation of referenced documents into NEPA analysis and tiering.

No comments were received on this provision.

Section 46.415 EIS Content, Alternatives, Circulation and Filing Requirements. This section provides direction for the development of alternatives, establishes language on the documentation of environmental effects with a focus on NEPA statutory requirements, and provides direction for circulating and filing the draft and final EIS or any supplement(s) thereto. The Department changed the title of this section and added a sentence to address

Federal Advisory Committee Act (FACA) implications.

Comment: Some commenters supported this portion of the proposed rule as it is written.

Response: The Department appreciates the comments.

Comment: One group stated that the term ''interested parties'' is too broadly defined, resulting in significant delays in agency decision-making. Consequently, standing would be given to parties that otherwise would lack standing to pursue future legal action.

Response: The Department agrees that the meaning of ''interested parties'' is potentially ambiguous and has revised this term to match the language used in the CEQ regulations. Please see the final rule at section 46.110, as well as the responses to comments on that section.

Comment: Some commenters believed that the cumulative effects of the proposed action and other previous actions must also be disclosed in an EIS. Consequently, these commenters recommended adding cumulative effects to the list of terms that must be disclosed in the contents of an EIS.

Response: Paragraph 46.415(a)(3) of the Department's final rule requires that an EIS disclose ''the environmental impact of the proposed action.'' Environmental impact includes direct, indirect and cumulative impacts (40 CFR 1508.7 and 1508.8). The Department does not believe that a separate listing of the requirement to include discussion of cumulative impacts is necessary.

Comment: Several commenters commented on paragraph (c), which provides ''the RO shall make those preliminary draft and final EISs available to those interested and affected persons and agencies for comment.'' The main concern discussed by commenters is that the word ''shall'' implies that the RO will be required to circulate preliminary drafts of EISs. These commenters recommended that the proposed rule should allow public circulation of preliminary EISs when the RO determines that such circulation would be beneficial, but public disclosure should not be required. Other commenters stated it is inappropriate for agencies to share preliminary EISs that represent preliminary agency thoughts. They were concerned that public release of a preliminary document would hinder internal discussion regarding innovative management options available for consideration and analysis.

Response: The Department has elected not to include a ''preliminary environmental impact statement'' in the final rule. Please see the response above to comments on section 46.30.

Comment: One group recommended clarification of the proposed rule by stating that the human environment changes over time, regardless of the action being assessed under NEPA. They recommended this clarification should ''explicitly exclude the idea that nothing changes over time, so the no action alternative means no change.''

Response: The Department acknowledges that some clarification was needed and added language to the final rule. Natural systems evolve over time. The ''no action'' alternative is not the alternative that results in ''no change'' to the environment; rather it represents the state of the environment without the proposed action or any of the alternatives. When the proposed action involves a proposed change in management then, under the no action alternative, what does not change is management direction or level of intensity.

Comment: Another commenter stated ''it is not clear from the proposed rule how or why ''incremental changes'' will be considered as alternatives'' and asked for additional detail regarding the ''incremental process'' and how it interacts with the alternative discussion.

Response: The Department appreciates this comment. The intent of this provision is that modifications to alternatives developed through a collaborative process, may, themselves, be considered alternatives to a proposed action. To avoid confusion, the final rule no longer uses the term ''incremental'' when dealing with alternatives.

Comment: Many commenters fully supported and encouraged analysis of the no action alternative. Several recommended clarification in the proposed rule on how the tenets of adaptive management will work with the requirements for clearly articulating and pre-specifying the adjustments and the respective environmental effects that might later occur. Another commenter encouraged the Department to specify in the proposed rule that alternatives considered throughout the NEPA process must be capable of achieving the project goals.

Response: The Department believes that no further clarification is necessary. The intent of the provision respecting adaptive management is to clarify that the use of an adaptive management approach does not preclude the necessity of complying with NEPA. Each proposed action, including possible changes in management made as a result of an adaptive management approach may be analyzed at the outset of the process or the changes in management made may be analyzed when implemented.

Comment: Several commenters strongly opposed the idea that the RO, with or without input from any interested parties, would be permitted to make modifications to a proponent's proposed action. These commenters recommend eliminating this language in its entirety from the proposed rule.

Response: Bureaus would analyze reasonable alternatives that would meet the purpose and need for action. In determining the range of reasonable alternatives, the range may in some cases be limited by the proponent's proposed action, but the RO must still evaluate reasonable alternatives within that range. As such the RO may include additional alternatives for analysis, including those which represent different modifications of the proposed action. No change to the provision has been made.

Comment: Some commenters requested clarification on the public comment opportunity that follows the publication of a final EIS. They maintained the rule should explain that the public can submit comments on a final EIS prior to an agency's final decision.

Response: CEQ regulations at 40 CFR 1506.10(b)(2) require a 30-day waiting period between publication of the final EIS and signing of a ROD. CEQ guidance states: ''During that period, in addition to the agency's own internal final review, the public and other agencies can comment on the final EIS prior to the agency's final action on the proposal. CEQ's ''Forty Most Asked Questions.'' Therefore, while this period is not a formal comment period, the public may comment after the publication of the final EIS.

Section 46.420 Terms used in an EIS. This section describes terms that are commonly used to describe concepts or activities in an EIS, including: (a) Statement of purpose and need, (b) Reasonable alternatives, (c) Range of alternatives, (d) Proposed action, (e) Preferred alternative, and (f) No action alternative. Definitions for proposed action and no action alternative have been moved to the definitions in section 46.30 as they may both be applicable to EAs as well as EISs. Comments and responses on these terms, however, are below. In order to clarify that it is the bureau's exercise of discretion that constitutes a proposed action that is subject to NEPA requirements, not just that the bureau might have a statutory role over a non-Federal entity's planned activity, the final rule has been changed to read ''discretion'' rather than

''authority'' in proposed paragraph 46.420(d), which is now in section 46.30. Section 46.30 explains that a ''proposed action'' includes ''the bureau's exercise of discretion over a non-Federal entity's planned activity that falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal approvals, funding, or regulatory instruments.''

Comment: Several commenters stated that the proposed rule should clarify that, in order for an alternative to be reasonable, it must also be technically and economically feasible based upon input from the project proponent. These commenters stated that the term ''range of alternatives'' is defined without regard to the technical and economic feasibility of the alternatives.

Response: The Department's final rule, at paragraph 46.420(b), specifies that the term ''reasonable alternative'' includes alternatives that are technically and economically practical or feasible and that satisfy the purpose and need. The Department agrees that the project proponent, as a member of the public, may provide input to the bureau with respect to the technical and economic feasibility of alternatives. Ultimately, however, the bureau determines whether an alternative is technically and economically practical or feasible and meets the purpose and need of the proposed action. The Department did not include a reference to technical and economic feasibility in the definition of ''range of alternatives.'' Consistent with CEQ's regulations, 40 CFR 1505.1(e), and as explained in CEQ's ''Forty Most Asked Questions'' document, the range of alternatives includes all or a reasonable number of examples covering the full spectrum of reasonable alternatives, each of which must be rigorously explored and objectively evaluated, as well as those other alternatives which are eliminated from detailed study with a brief discussion of the reasons for eliminating them. This includes alternatives that may not be technically and economically feasible. The Department's final rule, at paragraph 46.420(c), maintains this broad meaning of ''range of alternatives.''

Comment: Many commenters recommended that the rule expressly state that the applicant's goals should be the primary consideration in the development of the statement of purpose and need. These commenters stated the Department should remove language in the proposed rule that requires agencies to consider the public interest in approving an application.

Response: The Department agrees that the bureau should consider the needs and goals of the parties involved, including the applicant. However, the public interest is also a key consideration under NEPA. As such the Department has not changed the language of this provision in the final rule.

Comment: One group recommended using the definition in paragraph 46.420(b) for the feasibility requirement throughout the proposed rule because it is the most complete definition.

Response: The Department concurs with the intent of this recommendation and has implemented this recommendation by changing 46.415(b) to read ''range of alternatives'' rather than ''reasonable alternatives,'' as ''range of alternatives'' as defined at paragraph 46.420(c) incorporates the definition of ''reasonable alternatives'' at paragraph 46.420(b).

Comment: One commenter stated that the definition of ''range of alternatives'' is circular and should be revised.

Response: The Department agrees and has clarified that the phrase ''rigorously explored and objectively evaluated'' in the CEQ regulations applies only to reasonable alternatives.

Comment: One commenter recommended that the Department distinguish the proposed federal action from the proposed project or activity for which the federal action is necessary.

Response: The Department agrees and has clarified the language of section 46.30 (formerly proposed as paragraph 46.420(d)). Paragraph 46.420(d) explains that a ''proposed action'' includes ''the bureau's exercise of discretion over a non-Federal entity's planned activity that falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal approvals, funding, or regulatory instruments.''

Comment: A commenter agreed with the statement that no action can mean either no action or no change and that the proposed rule should acknowledge that the effect of the no action alternative is not always maintenance of the status quo.

Response: As specified in proposed paragraph 46.420(f) and now at section 46.30, the Department agrees that the no action alternative has two interpretations—''no change from a current management direction or level of management intensity'' or ''no project.'' Natural systems evolve over time. The ''no action'' alternative is not the alternative that results in ''no change'' to the environment; rather it represents the state of the environment without the proposed action or any of the alternatives. The Department has made minor edits to this section to clarify this point.

Comment: One individual recommended inserting ''national policies'' after ''giving consideration to'' in paragraph (e).

Response: The Department does not believe it is necessary to specifically include ''national policies'' as one of the factors that the bureau considers in identifying the preferred alternative. Proposed paragraph (e), now (d), refers to ''other factors,'' which is broad enough to include a variety of considerations, including, if appropriate, national policies.

Comment: One commenter stated that it is unclear whether the terms ''practical'' and ''feasible'' are intended to be synonymous within the proposed rule.

Response: These terms are not intended to be synonymous. CEQ's ''Forty Most Asked Questions'' explains ''reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense.'' Any given reasonable alternative could be practical, feasible, or both.

Comment: One commenter encouraged the Department to revise the proposed rule to clarify and reflect established NEPA precedent that agencies need not conduct a separate analysis of alternatives that have substantially similar consequences.

Response: The Department agrees that bureaus need not separately analyze alternatives that have been shown to have substantially similar environmental consequences. This is a well-established principle; no change to the final rule is necessary.

Section 46.425 Identification of the preferred alternative in an EIS. This section clarifies when the preferred alternative must be identified.

Comment: Several groups questioned why more than one preferred alternative would be necessary and recommend that only one preferred alternative be allowed to avoid confusion.

Response: The Department's final rule is consistent with CEQ regulations, which expressly contemplate situations in which more than one preferred alternative may exist. 40 CFR 1502.14(e). Rather than confusing the public, the Department believes that in certain circumstances presentation of more than one preferred alternatives may encourage public involvement in the process.

Section 46.430 Environmental review and consultation requirements. This section establishes procedures for an EIS that also addresses other

environmental review requirements and approvals. It should be noted that this section allows for the completion of the NEPA analysis prior to obtaining all permits. However, if the terms of the permit are outside of the scope of analysis, additional NEPA analysis may be required.

Comment: One commenter commented that CEQ is currently undertaking a project to integrate review under NEPA and the National Historic Preservation Act (NHPA). This commenter recommended that the Department assure effective integration of that project's results with the proposed rule. In order to protect statutory rights of Indian tribes, another group recommended integration of regulations from the Advisory Council on Historic Preservation in this section of the proposed rule.

Response: Regulations implementing the National Historic Preservation Act (NHPA) at 36 CFR Part 800 encourage Federal agencies to coordinate compliance with section 106 of the NHPA with steps taken to meet the requirements of NEPA (36 CFR 800.8(a)). The Department is aware of the CEQ initiative to develop guidance to integrate review under NEPA and the NHPA, as called for in both the NHPA and the CEQ regulations (40 CFR 1502.25(a)) and will work with CEQ to integrate any such guidance in the Department's directives as appropriate. Please see response to comments addressing section 46.110 above regarding the Department's fulfillment of its responsibilities toward Indian tribes.

Comment: One group strongly supported consolidation of processes whenever possible to reduce delays and eliminate duplication of effort. This group proposed revision of the proposed rule to promote the consolidation of processes ''to the extent possible and otherwise not prohibited by law.'' This group also recommended the establishment of an exemption for mining operations based on the ''functional equivalence doctrine.'' They maintained that other laws and regulations applicable to the mining operations provide a rigorous framework for providing a ''harder look'' at environmental consequences than NEPA.

Response: The Department appreciates the support for its efforts to encourage consolidation of processes whenever possible. However, the Department does not believe the revision proposed by the commenter to paragraph 46.430(b) is necessary. The Department does not believe such an exemption for mining operations as advocated by the commenter is warranted, as it addresses matters beyond the scope of this rulemaking.

Comment: One commenter recommended revision of ''Paragraph (a) to clarify that an EIS need only identify and discuss studies relied upon for other consultation and review processes if the EIS is intended to serve as the NEPA compliance for those review processes.''

Response: The Department believes no revision to the final rule is necessary. When paragraph 46.430(a) states ''An EIS that also addresses other environmental review and consultation requirements. * * *'' this means that it is precisely when the EIS in question is to serve as the NEPA compliance (in whole or in part) for the other environmental review and consultation requirements that the EIS needs to identify and discuss studies relied upon for these other review and consultation processes.

Section 46.435 Inviting comments. This section requires bureaus to request comments from Federal, State, and local agencies, or tribal governments, and the public at large. This section also clarifies that bureaus do not have to delay a final EIS because they have not received comments.

Comment: One group proposed revisions to the proposed rule, which include: (1) Requesting comments from any potentially affected tribal government, (2) recognizing the federal government's continuing obligation to consult with tribal governments prior to making decisions which may impact tribal rights, (3) revising paragraph (c) to include all lands and waters within the boundaries of tribal lands, (4) inserting language to explicitly include Alaska Native tribes, and (5) including additional clauses covering various situations in which the Department must invite comments from a tribe. This group proposed these revisions because it believes the current language could be interpreted too narrowly by the Department bureaus, resulting in bureaus deciding not to request comments from tribal governments, even though a proposed action may affect tribal rights or interests.

Response: CEQ regulations at 40 CFR 1503.1(a)(4) require that agencies shall request the comments on a draft EIS from ''the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.'' This would necessarily include ''any potentially affected tribal government'' regardless of whether 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, as specified in 46.435(c). In view of the CEQ regulations, the Department does not believe it is necessary to include the commenter's proposed language in this final rule. For instance, under 40 CFR 1503.1(a)(4), the bureaus would need to request comments from those persons or organizations affected by impacts to the resources noted by the commenters, including ''one or more historic properties to which the tribe attaches religious and cultural significance'' or ''wildlife or plant species that are important to the tribe for cultural purposes.'' Likewise, if any member of the public specifically requests information regarding the analysis of effects of a proposed action on a specific identified area, the bureau would provide that information.

This being said, the requirement to engage in government-to-government consultation with Indian tribes is a requirement apart from NEPA, and, in effect, broadens any consultation that needs to take place as a function of compliance with NEPA. The Department has other, more specific directives addressing government-to-government consultation, as well as how the Department is to fulfill its trust responsibilities. See, *e.g.*, 512 DM 2: ''Departmental Responsibilities for Indian Trust Resources''; ECM97–2 ''Departmental Responsibilities for Indian Trust Resources and Indian Sacred Sites on Federal Lands''.

Comment: One commenter encouraged the Department to provide for better coordination with permit applicants when the federal action being examined involves the issuance of a federal permit or authorization.

Response: Please see discussion, above, regarding paragraph 46.430(a).

Section 46.440 Eliminating duplication with State and local procedures. This section allows a State agency to jointly prepare an EIS, if applicable.

No comments were received addressing this provision.

Section 46.445 Preparing a legislative EIS. This section ensures that, when appropriate, a legislative EIS will be included as a part of the formal transmittal of a legislative proposal to the Congress.

No comments were received addressing this provision.

Section 46.450 Identifying the environmentally preferable alternative. This section provides for identifying the environmentally preferable alternative in the ROD.

Comment: One commenter supported this part of the proposed rule as it is written. Multiple commenters oppose

this section of the proposed rule and urge the Department to delete this section from the proposed rule. They believed ''that this provision is not necessary in light of the existing CEQ regulation found at 40 CFR 1505.2.'' In the event that Department does not remove this section from the proposed rule, these commenters recommended that the Department revise this section to include clarification that this rule in no way obligates agencies to identify and select an ''environmentally preferable alternative'' during its NEPA analysis.

Response: The Department appreciates these comments, but believes this provision is necessary to distinguish between ''identifying'' and ''selecting'' an environmentally preferable alternative, both for Departmental personnel and members of the public. Although the environmentally preferable alternative must be identified in the ROD, the RO is not required to select the environmentally preferable alternative as the alternative that will be implemented. No change is made in the final rule.

Procedural Requirements

Regulatory Planning and Review (E.O. 12866)

This is a significant rule and has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. This rule:

(1) Is not an economically significant action because it will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments.

(2) Will not interfere with an action taken or planned by another agency.

(3) Will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

(4) Raises novel policy and legal issues. It is a significant rulemaking action subject to OMB review because of the extensive interest in Department planning and decision making relating to NEPA.

In accordance with the Office of Management and Budget (OMB) Circular A–4, ''Regulatory Analysis,'' the Department has conducted a cost/benefit analysis. The analysis compared the costs and benefits associated with the current condition of having Departmental implementing procedures combined with Departmental explanatory guidance in the DM and the condition of having implementing direction in regulations and explanatory guidance in the DM.

Many benefits and costs associated with the rule are not quantifiable. Some of the benefits of this rule include collaborative and participatory public involvement to more fully address public concerns, timely and focused environmental analysis, and flexibility in preparation of environmental documents. These will be positive effects of the new rule.

Moving NEPA procedures from the DM to regulations is expected to provide a variety of potential beneficial effects. This rule would meet the requirements of 40 CFR 1507.3 by placing the Department's implementing procedures in their proper regulatory position. The Department will maintain Department- and bureau-specific directives in the DM and bureau handbooks to assist field offices. This will facilitate timely bureau responses to procedural interpretations, training needs, and editorial changes to addresses and Internet links to assist bureaus when implementing the NEPA process. Finally, the changes to the Department NEPA procedures are intended to provide the Department specific options to meet the intent of NEPA through increased emphasis on collaboration and the use of a consensus-based approach when practicable.

Thus, while no single effect of this rule creates a significant quantifiable improvement, the benefits outlined above taken together create the potential for visible improvements in the Department's NEPA program. Further discussion of the costs and benefits associated with the rule is contained in the economic analysis which is incorporated in the administrative record for this rulemaking and may be accessed on the Department's Office of Environmental Policy and Compliance Web site located at: *http://www.doi.gov/oepc*.

Regulatory Flexibility Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under 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.

Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Takings (E.O. 12630)

This rule has been analyzed in accordance with the principles and criteria contained in E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the rule does not pose the risk of a taking of Constitutionally protected private property.

Federalism (E.O. 13132)

The Department has considered this rule under the requirements of E.O. 13132, Federalism. The Department has concluded that the rule conforms to the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system;

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity, and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

In accordance with E.O. 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.

Paperwork Reduction Act

This rule does not contain information collections subject to OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

National Environmental Policy Act

The CEQ 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 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. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. III. 1999), aff'd 230 F.3d 947. 954–55 (7th Cir. 2000).

Data Quality Act

In developing this rule we did not conduct or use a study requiring peer review under the Data Quality Act (Pub. L. 106–554).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Rule

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

—Be logically organized;
—Use the active voice to address readers directly;
—Use clear language rather than jargon;
—Be divided into short sections and sentences; and
—Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments as instructed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

List of Subjects in 43 CFR part 46

Environmental protection, EISs.

Dated: September 30, 2008.

James E. Cason,

Associate Deputy Secretary.

■ For the reasons given in the preamble, the Office of the Secretary is adding a new part 46 to Subtitle A of title 43 of the Code of Federal Regulations to read as follows:

PART 46—IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Sec.

Authority: 42 U.S.C. 4321 *et seq.* (The National Environmental Policy Act of 1969, as amended); Executive Order 11514, (Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977)); 40 CFR parts 1500–1508 (43 FR 55978) (National Environmental Policy Act, Implementation of Procedural Provisions).

Subpart A—General Information

§ 46.10 Purpose of this part.

(a) This part establishes procedures for the Department, and its constituent bureaus, to use for compliance with:

(1) The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); and

(2) The Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508).

(b) Consistent with 40 CFR 1500.3, it is the Department's intention that any trivial violation of these regulations will not give rise to any independent cause of action.

§ 46.20 How to use this part.

(a) This part supplements, and is to be used in conjunction with, the CEQ regulations except where it is inconsistent with other statutory requirements. The following table shows the corresponding CEQ regulations for the sections in subparts A—E of this part. Some sections in those subparts do not have a corresponding CEQ regulation.

Subpart A 40 CFR

46.10 Parts 1500–1508

46.20 No corresponding CEQ regulation
46.30 No corresponding CEQ regulation

Subpart B

46.100 1508.14, 1508.18, 1508.23
46.105 1506.5
46.110 No corresponding CEQ regulation
46.115 1508.7
46.120 1502.9, 1502.20, 1502.21, 1506.3
46.125 1502.22
46.130 1502.14
46.135 1502.21
46.140 1502.20
46.145 No corresponding CEQ regulation
46.150 1506.11
46.155 1502.25, 1506.2
46.160 1506.1
46.170 No corresponding CEQ regulation

Subpart C

46.200 1501.2
46.205 1508.4
46.210 1508.4
46.215 1508.4
46.220 1501.5
46.225 1501.6
46.230 1501.6
46.235 1501.7
46.240 1501.8

Subpart D

46.300 1501.3
46.305 1501.7, 1506.6
46.310 1508.9
46.315 No corresponding CEQ regulation
46.320 1506.3
46.325 1501.4

Subpart E

46.400 1502.5
46.405 1502.7
46.415 1502.10
46.420 1502.14
46.425 1502.14
46.430 1502.25
46.435 1503
46.440 1506.2
46.445 1506.8
46.450 1505.2

(b) The Responsible Official will ensure that the decision making process for proposals subject to this part includes appropriate NEPA review.

(c) During the decision making process for each proposal subject to this part, the Responsible Official shall consider the relevant NEPA documents, public and agency comments (if any) on those documents, and responses to those comments, as part of consideration of the proposal and, except as specified in paragraphs 46.210(a) through (j), shall include such documents, including supplements, comments, and responses as part of the administrative file.

(d) The Responsible Official's decision on a proposed action shall be within the range of alternatives discussed in the relevant environmental document. The Responsible Official's decision may combine elements of alternatives discussed in the relevant environmental document if the effects of such combined elements of alternatives are reasonably apparent from the analysis in the relevant environmental document.

(e) For situations involving an applicant, the Responsible Official should initiate the NEPA process upon acceptance of an application for a proposed Federal action. The Responsible Official must publish or otherwise provide policy information and make staff available to advise potential applicants of studies or other information, such as costs, foreseeably required for later Federal action.

§ 46.30 Definitions.

For purposes of this part, the following definitions supplement terms defined at 40 CFR parts 1500–1508.

Adaptive management is a system of management practices based on clearly identified outcomes and monitoring to determine whether management actions are meeting desired outcomes; and, if not, facilitating management changes that will best ensure that outcomes are met or re-evaluated. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain.

Bureau means bureau, office, service, or survey within the Department of the Interior.

Community-based training in the NEPA context is the training of local participants together with Federal participants in the workings of the environmental planning effort as it relates to the local community(ies).

Controversial refers to circumstances where a substantial dispute exists as to the environmental consequences of the proposed action and does not refer to the existence of opposition to a proposed action, the effect of which is relatively undisputed.

Environmental Statement Memoranda (ESM) are a series of instructions issued by the Department's Office of Environmental Policy and Compliance to provide information and explanatory guidance in the preparation, completion, and circulation of NEPA documents.

Environmentally preferable alternative is the alternative required by 40 CFR 1505.2(b) to be identified in a record of decision (ROD), that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources. The environmentally preferable alternative is identified upon consideration and weighing by the Responsible Official of long-term environmental impacts against short-term impacts in evaluating what is the best protection of these resources. In some situations, such as when different alternatives impact different resources to different degrees, there may be more than one environmentally preferable alternative.

No action alternative.

(1) This term has two interpretations. First ''no action'' may mean ''no change'' from a current management direction or level of management intensity (*e.g.*, if no ground-disturbance is currently underway, no action means no ground-disturbance). Second ''no action'' may mean ''no project'' in cases where a new project is proposed for implementation.

(2) The Responsible Official must determine the ''no action'' alternative consistent with one of the definitions in paragraph (1) of this definition and appropriate to the proposed action to be analyzed in an environmental impact statement. The no action alternative looks at effects of not approving the action under consideration.

Proposed action. This term refers to the bureau activity under consideration. It includes the bureau's exercise of discretion over a non-Federal entity's planned activity that 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:

(1) Is not necessarily, but may become, during the NEPA process, the bureau preferred alternative or (in a record of decision for an environmental impact statement, in accordance with 40 CFR 1505.2) an environmentally preferable alternative; and

(2) Must be clearly described in order to proceed with NEPA analysis.

Reasonably foreseeable future actions include those federal and non-federal activities not yet undertaken, but sufficiently likely to occur, that a Responsible Official of ordinary prudence would take such activities into account in reaching a decision. These federal and non-federal activities that must be taken into account in the analysis of cumulative impact include, but are not limited to, activities for which there are existing decisions, funding, or proposals identified by the

bureau. Reasonably foreseeable future actions do not include those actions that are highly speculative or indefinite.

Responsible Official is the bureau employee who is delegated the authority to make and implement a decision on a proposed action and is responsible for ensuring compliance with NEPA.

Subpart B—Protection and Enhancement of Environmental Quality

§ 46.100 Federal action subject to the procedural requirements of NEPA.

(a) A bureau proposed action is subject to the procedural requirements of NEPA if it would cause effects on the human environment (40 CFR 1508.14), and is subject to bureau control and responsibility (40 CFR 1508.18). The determination of whether a proposed action is subject to the procedural requirements of NEPA depends on the extent to which bureaus exercise control and responsibility over the proposed action and whether Federal funding or approval are necessary to implement it. If Federal funding is provided with no Federal agency control as to the expenditure of such funds by the recipient, NEPA compliance is not necessary. The proposed action is not subject to the procedural requirements of NEPA if it is exempt from the requirements of section 102(2) of NEPA.

(b) A bureau shall apply the procedural requirements of NEPA when the proposal is developed to the point that:

(1) The bureau has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal; and

(2) The effects of the proposed action can be meaningfully evaluated (40 CFR 1508.23).

§ 46.105 Using a contractor to prepare environmental documents.

A Responsible Official may use a contractor to prepare any environmental document in accordance with the standards of 40 CFR 1506.5(b) and (c). If a Responsible Official uses a contractor, the Responsible Official remains responsible for:

(a) Preparation and adequacy of the environmental documents; and

(b) Independent evaluation of the environmental documents after their completion.

§ 46.110 Incorporating consensus-based management.

(a) Consensus-based management incorporates direct community involvement in consideration of bureau activities subject to NEPA analyses, from initial scoping to implementation of the bureau decision. It seeks to achieve agreement from diverse interests on the goals of, purposes of, and needs for bureau plans and activities, as well as the methods anticipated to carry out those plans and activities. For the purposes of this Part, consensus-based management involves outreach to persons, organizations or communities who may be interested in or affected by a proposed action with an assurance that their input will be given consideration by the Responsible Official in selecting a course of action.

(b) In incorporating consensus-based management in the NEPA process, bureaus should consider any consensus-based alternative(s) put forth by those participating persons, organizations or communities who may be interested in or affected by the proposed action. While there is no guarantee that any particular consensus-based alternative will be considered to be a reasonable alternative or be identified as the bureau's preferred alternative, bureaus must be able to show that the reasonable consensus-based alternative, if any, is reflected in the evaluation of the proposed action and discussed in the final decision. To be selected for implementation, a consensus-based alternative must be fully consistent with NEPA, the CEQ regulations, and all applicable statutory and regulatory provisions, as well as Departmental and bureau written policies and guidance.

(c) The Responsible Official must, whenever practicable, use a consensus-based management approach to the NEPA process.

(d) If the Responsible Official determines that the consensus-based alternative, if any, is not the preferred alternative, he or she must state the reasons for this determination in the environmental document.

(e) When practicing consensus-based management in the NEPA process, bureaus must comply with all applicable laws, including any applicable provisions of the Federal Advisory Committee Act (FACA).

§ 46.115 Consideration of past actions in the analysis of cumulative effects.

When considering the effects of past actions as part of a cumulative effects analysis, the Responsible Official must analyze the effects in accordance with 40 CFR 1508.7 and in accordance with relevant guidance issued by the Council on Environmental Quality, such as ''The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis'' dated June 24, 2005, or any superseding Council on Environmental Quality guidance.

§ 46.120 Using existing environmental analyses prepared pursuant to NEPA and the Council on Environmental Quality regulations.

(a) When available, the Responsible Official should use existing NEPA analyses for assessing the impacts of a proposed action and any alternatives. Procedures for adoption or incorporation by reference of such analyses must be followed where applicable.

(b) If existing NEPA analyses include data and assumptions appropriate for the analysis at hand, the Responsible Official should use these existing NEPA analyses and/or their underlying data and assumptions where feasible.

(c) An existing environmental analysis prepared pursuant to NEPA and the Council on Environmental Quality regulations may be used in its entirety if the Responsible Official determines, with appropriate supporting documentation, that it adequately assesses the environmental effects of the proposed action and reasonable alternatives. The supporting record must include an evaluation of whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects.

(d) Responsible Officials should make the best use of existing NEPA documents by supplementing, tiering to, incorporating by reference, or adopting previous NEPA environmental analyses to avoid redundancy and unnecessary paperwork.

§ 46.125 Incomplete or unavailable information.

In circumstances where the provisions of 40 CFR 1502.22 apply, bureaus must consider all costs to obtain information. These costs include monetary costs as well as other non-monetized costs when appropriate, such as social costs, delays, opportunity costs, and non-fulfillment or non-timely fulfillment of statutory mandates.

§ 46.130 Mitigation measures in analyses.

(a) Bureau proposed action. The analysis of the proposed action and any alternatives must include an analysis of the effects of the proposed action or alternative as well as analysis of the effects of any appropriate mitigation measures or best management practices that are considered. The mitigation measures can be analyzed either as elements of alternatives or in a separate discussion of mitigation.

(b) Applicant proposals (*i.e.*, bureau decision-making on such proposals is the proposed action). An applicant's

proposal presented to the bureau for analysis must include any ameliorative design elements (including stipulations, conditions, or best management practices), required to make the proposal conform to applicable legal requirements, as well as any voluntary ameliorative design element(s). The effects of any mitigation measures other than the ameliorative design elements included in the applicant's proposal must also be analyzed. The analysis of these mitigation measures can be structured as a matter of consideration of alternatives to approving the applicant's proposal or as separate mitigation measures to be imposed on any alternative selected for implementation.

§ 46.135 Incorporation of referenced documents into NEPA analysis.

(a) The Responsible Official must determine that the analysis and assumptions used in the referenced document are appropriate for the analysis at hand.

(b) Citations of specific information or analysis from other source documents should include the pertinent page numbers or other relevant identifying information.

(c) Publications incorporated into NEPA analysis by reference must be listed in the bibliography. Such publications must be readily available for review and, when not readily available, they must be made available for review as part of the record supporting the proposed action.

§ 46.140 Using tiered documents.

A NEPA document that tiers to another broader NEPA document in accordance with 40 CFR 1508.28 must include a finding that the conditions and environmental effects described in the broader NEPA document are still valid or address any exceptions.

(a) Where the impacts of the narrower action are identified and analyzed in the broader NEPA document, no further analysis is necessary, and the previously prepared document can be used for purposes of the pending action.

(b) To the extent that any relevant analysis in the broader NEPA document is not sufficiently comprehensive or adequate to support further decisions, the tiered NEPA document must explain this and provide any necessary analysis.

(c) An environmental assessment prepared in support of an individual proposed action can be tiered to a programmatic or other broader-scope environmental impact statement. An environmental assessment may be prepared, and a finding of no significant impact reached, for a proposed action with significant effects, whether direct, indirect, or cumulative, if the environmental assessment is tiered to a broader environmental impact statement which fully analyzed those significant effects. Tiering to the programmatic or broader-scope environmental impact statement would allow the preparation of an environmental assessment and a finding of no significant impact for the individual proposed action, so long as any previously unanalyzed effects are not significant. A finding of no significant impact other than those already disclosed and analyzed in the environmental impact statement to which the environmental assessment is tiered may also be called a ''finding of no *new* significant impact.''

§ 46.145 Using adaptive management.

Bureaus should use adaptive management, as appropriate, particularly in circumstances where long-term impacts may be uncertain and future monitoring will be needed to make adjustments in subsequent implementation decisions. The NEPA analysis conducted in the context of an adaptive management approach should identify the range of management options that may be taken in response to the results of monitoring and should analyze the effects of such options. The environmental effects of any adaptive management strategy must be evaluated in this or subsequent NEPA analysis.

§ 46.150 Emergency responses.

This section applies only if the Responsible Official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and documentation in accordance with the provisions in subparts D and E of this part.

(a) The Responsible Official may take those actions necessary to control the immediate impacts of the emergency that are urgently needed to mitigate harm to life, property, or important natural, cultural, or historic resources. When taking such actions, the Responsible Official shall take into account the probable environmental consequences of these actions and mitigate foreseeable adverse environmental effects to the extent practical.

(b) The Responsible Official shall document in writing the determination that an emergency exists and describe the responsive action(s) taken at the time the emergency exists. The form of that documentation is within the discretion of the Responsible Official.

(c) If the Responsible Official determines that proposed actions taken in response to an emergency, beyond actions noted in paragraph (a) of this section, are not likely to have significant environmental impacts, the Responsible Official shall document that determination in an environmental assessment and a finding of no significant impact prepared in accordance with this part, unless categorically excluded (see subpart C of this part). If the Responsible Official finds that the nature and scope of the subsequent actions related to the emergency require taking such proposed actions prior to completing an environmental assessment and a finding of no significant impact, the Responsible Official shall consult with the Office of Environmental Policy and Compliance about alternative arrangements for NEPA compliance. The Assistant Secretary, Policy Management and Budget or his/her designee may grant an alternative arrangement. Any alternative arrangement must be documented. Consultation with the Department must be coordinated through the appropriate bureau headquarters.

(d) The Department shall consult with CEQ about alternative arrangements as soon as possible if the Responsible Official determines that proposed actions, taken in response to an emergency, beyond actions noted in paragraph (a) of this section, are likely to have significant environmental impacts. The Responsible Official shall consult with appropriate bureau headquarters and the Department, about alternative arrangements as soon as the Responsible Official determines that the proposed action is likely to have a significant environmental effect. Such alternative arrangements will apply only to the proposed actions necessary to control the immediate impacts of the emergency. Other proposed actions remain subject to NEPA analysis and documentation in accordance with this part.

§ 46.155 Consultation, coordination, and cooperation with other agencies.

The Responsible Official must whenever possible consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of any Federal action within the jurisdictions or related to the interests of these entities.

§ 46.160 Limitations on actions during the NEPA analysis process.

During the preparation of a program or plan NEPA document, the Responsible Official may undertake any

major Federal action in accordance with 40 CFR 1506.1 when that action is within the scope of, and analyzed in, an existing NEPA document supporting the current plan or program, so long as there is adequate NEPA documentation to support the individual action.

§ 46.170 Environmental effects abroad of major Federal actions.

(a) In order to facilitate informed decision-making, the Responsible Official having ultimate responsibility for authorizing and approving proposed actions encompassed by the provisions of Executive Order (EO) 12114 shall follow the provisions and procedures of that EO. EO 12114 ''represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.''

(b) When implementing EO 12114, bureaus shall coordinate with the Department. The Department shall then consult with the Department of State, which shall coordinate all communications by the Department with foreign governments concerning environmental agreements and other arrangements in implementing EO 12114.

Subpart C—Initiating the NEPA Process

§ 46.200 Applying NEPA early.

(a) For any potentially major proposed Federal action (40 CFR 1508.23 and 1508.18) that may have potentially significant environmental impacts, bureaus must coordinate, as early as feasible, with:

(1) Any other bureaus or Federal agencies, State, local, and tribal governments having jurisdiction by law or special expertise; and

(2) Appropriate Federal, State, local, and tribal governments authorized to develop and enforce environmental standards or to manage and protect natural resources or other aspects of the human environment.

(b) Bureaus must solicit the participation of all those persons or organizations that may be interested or affected as early as possible, such as at the time an application is received or when the bureau initiates the NEPA process for a proposed action.

(c) Bureaus should provide, where practicable, any appropriate community-based training to reduce costs, prevent delays, and facilitate and promote efficiency in the NEPA process.

(d) Bureaus should inform private or non-Federal applicants, to the extent feasible, of:

(1) Any appropriate environmental information that the applicants must include in their applications; and

(2) Any consultation with other Federal agencies, or State, local, or tribal governments that the applicant must accomplish before or during the application process.

(e) Bureaus must inform applicants as soon as practicable of any responsibility they will bear for funding environmental analyses associated with their proposals.

§ 46.205 Actions categorically excluded from further NEPA review.

Categorical Exclusion means a category or kind of action that has no significant individual or cumulative effect on the quality of the human environment. See 40 CFR 1508.4.

(a) Except as provided in paragraph (c) of this section, if an action is covered by a Departmental categorical exclusion, the bureau is not required to prepare an environmental assessment (see subpart D of this part) or an environmental impact statement (see subpart E of this part). If a proposed action does not meet the criteria for any of the listed Departmental categorical exclusions or any of the individual bureau categorical exclusions, then the proposed action must be analyzed in an environmental assessment or environmental impact statement.

(b) The actions listed in section 46.210 are categorically excluded, Department-wide, from preparation of environmental assessments or environmental impact statements.

(c) 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 and require additional analysis and action. Section 46.215 lists the extraordinary circumstances under which actions otherwise covered by a categorical exclusion require analyses under NEPA.

(1) Any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances in section 46.215; if it does, further analysis and environmental documents must be prepared for the action.

(2) Bureaus must work within existing administrative frameworks, including any existing programmatic agreements, when deciding how to apply any of the section 46.215 extraordinary circumstances.

(d) Congress may establish categorical exclusions by legislation, in which case the terms of the legislation determine how to apply those categorical exclusions.

§ 46.210 Listing of Departmental categorical exclusions.

The following actions are categorically excluded under paragraph 46.205(b), unless any of the extraordinary circumstances in section 46.215 apply:

(a) Personnel actions and investigations and personnel services contracts.

(b) Internal organizational changes and facility and bureau reductions and closings.

(c) Routine financial transactions including such things as salaries and expenses, procurement contracts (*e.g.*, in accordance with applicable procedures and Executive Orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

(d) 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).

(e) Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

(f) 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).

(g) 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.)

(h) 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.

(i) Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal,

technical, or procedural nature; or 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.

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

(k) 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:

(1) Shall be limited to areas—

(i) In wildland-urban interface; and

(ii) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface;

(2) 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;''

(3) Shall be conducted consistent with bureau and Departmental procedures and applicable land and resource management plans;

(4) Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and

(5) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction. (Refer to the ESM Series for additional, required guidance.)

(l) Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities must comply with the following (Refer to the ESM Series for additional, required guidance.):

(1) Shall be conducted consistent with bureau and Departmental procedures and applicable land and resource management plans;

(2) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and

(3) Shall be completed within three years following a wildland fire.

§ 46.215 Categorical Exclusions: Extraordinary circumstances.

Extraordinary circumstances (see paragraph 46.205(c)) exist for individual actions within categorical exclusions that may meet any of the criteria listed in paragraphs (a) through (l) of this section. Applicability of extraordinary circumstances to categorical exclusions is determined by the Responsible Official.

(a) Have significant impacts on public health or safety.

(b) 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 (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

(c) Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)].

(d) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

(e) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

(f) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

(g) Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.

(h) 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.

(i) Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

(j) Have a disproportionately high and adverse effect on low income or minority populations (EO 12898).

(k) 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 (EO 13007).

(l) 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 EO 13112).

§ 46.220 How to designate lead agencies.

(a) In most cases, the Responsible Official should designate one Federal agency as the lead with the remaining Federal, State, 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 NEPA document will meet their needs for adoption and application to their related decision(s).

(b) In some cases, a non-Federal agency (including a tribal government) must comply with State or local requirements that are comparable to the NEPA requirements. In these cases, the Responsible Official may designate the non-Federal agency as a joint lead agency. (See 40 CFR 1501.5 and 1506.2 for a description of the selection of lead agencies, the settlement of lead agency disputes, and the use of joint lead agencies.)

(c) In some cases, the Responsible Official may establish a joint lead relationship among several Federal agencies. If there is a joint lead, then one Federal agency must be identified as the agency responsible for filing the environmental impact statement with EPA.

§ 46.225 How to select cooperating agencies.

(a) An ''eligible governmental entity'' is:

(1) Any Federal agency that is qualified to participate in the development of an environmental impact statement as provided for in 40 CFR 1501.6 and 1508.5 by virtue of its jurisdiction by law, as defined in 40 CFR 1508.15;

(2) Any Federal agency that is qualified to participate in the development of an environmental impact statement by virtue of its special expertise, as defined in 40 CFR 1508.26; or

(3) Any non-Federal agency (State, tribal, or local) with qualifications similar to those in paragraphs (a)(1) and (a)(2) of this section.

(b) Except as described in paragraph (c) of this section, the Responsible Official for the lead bureau must invite eligible governmental entities to participate as cooperating agencies

when the bureau is developing an environmental impact statement.

(c) The Responsible Official for the lead bureau must consider any request by an eligible governmental entity to participate in a particular environmental impact statement as a cooperating agency. If the Responsible Official for the lead bureau denies a request, or determines it is inappropriate to extend an invitation, he or she must state the reasons in the environmental impact statement. Denial of a request or not extending an invitation for cooperating agency status is not subject to any internal administrative appeals process, nor is it a final agency action subject to review under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

(d) Bureaus should work with cooperating agencies to develop and adopt a memorandum of understanding that includes their respective roles, assignment of issues, schedules, and staff commitments so that the NEPA process remains on track and within the time schedule. Memoranda of understanding must be used in the case of non-Federal agencies and must include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the bureau of any NEPA document, including drafts.

(e) The procedures of this section may be used for an environmental assessment.

§ 46.230 Role of cooperating agencies in the NEPA process.

In accordance with 40 CFR 1501.6, throughout the development of an environmental document, the lead bureau will collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise. Cooperating agencies may, by agreement with the lead bureau, help to do the following:

(a) Identify issues to be addressed;

(b) Arrange for the collection and/or assembly of necessary resource, environmental, social, economic, and institutional data;

(c) Analyze data;

(d) Develop alternatives;

(e) Evaluate alternatives and estimate the effects of implementing each alternative; and

(f) Carry out any other task necessary for the development of the environmental analysis and documentation.

§ 46.235 NEPA scoping process.

(a) Scoping is a process that continues throughout the planning and early stages of preparation of an environmental impact statement. Scoping is required for an environmental impact statement; scoping may be helpful during preparation of an environmental assessment, but is not required (see paragraph 46.305(a) Public involvement in the environmental assessment process). For an environmental impact statement, bureaus must use scoping to engage State, local and tribal governments and the public in the early identification of concerns, potential impacts, relevant effects of past actions and possible alternative actions. Scoping is an opportunity to introduce and explain the interdisciplinary approach and solicit information as to additional disciplines that should be included. Scoping also provides 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. The Responsible Official shall determine whether, in some cases, the invitation requirement in 40 CFR 1501.7(a)(1) may be satisfied by including such an invitation in the notice of intent (NOI).

(b) In scoping meetings, newsletters, or by other communication methods appropriate to scoping, the lead agency must make it clear that the lead agency is ultimately responsible for determining the scope of an environmental impact statement and that suggestions obtained during scoping are only options for the bureau to consider.

§ 46.240 Establishing time limits for the NEPA process.

(a) For each proposed action, on a case-by-case basis, bureaus shall:

(1) Set time limits from the start to the finish of the NEPA analysis and documentation, consistent with the requirements of 40 CFR 1501.8 and other legal obligations, including statutory and regulatory timeframes;

(2) Consult with cooperating agencies in setting time limits; and

(3) Encourage cooperating agencies to meet established time frames.

(b) Time limits should reflect the availability of Department and bureau personnel and funds. Efficiency of the NEPA process is dependent on the management capabilities of the lead bureau, which must assemble an interdisciplinary team and/or qualified staff appropriate to the type of project to be analyzed to ensure timely completion of NEPA documents.

Subpart D—Environmental Assessments

§ 46.300 Purpose of an environmental assessment and when it must be prepared.

The purpose of an environmental assessment is to allow the Responsible Official to determine whether to prepare an environmental impact statement or a finding of no significant impact.

(a) A bureau must ensure that an environmental assessment is prepared for all proposed Federal actions, except those:

(1) That are covered by a categorical exclusion;

(2) That are covered sufficiently by an earlier environmental document as determined and documented by the Responsible Official; or

(3) For which the bureau has already decided to prepare an environmental impact statement.

(b) A bureau may prepare an environmental assessment for any proposed action at any time to:

(1) Assist in planning and decision-making;

(2) Further the purposes of NEPA when no environmental impact statement is necessary; or

(3) Facilitate environmental impact statement preparation.

§ 46.305 Public involvement in the environmental assessment process.

(a) The bureau must, to the extent practicable, provide for public notification and public involvement when an environmental assessment is being prepared. However, the methods for providing public notification and opportunities for public involvement are at the discretion of the Responsible Official.

(1) The bureau must consider comments that are timely received, whether specifically solicited or not.

(2) Although scoping is not required, the bureau may apply a scoping process to an environmental assessment.

(b) Publication of a ''draft'' environmental assessment is not required. Bureaus may seek comments on an environmental assessment if they determine it to be appropriate, such as when the level of public interest or the uncertainty of effects warrants, and may revise environmental assessments based on comments received without need of initiating another comment period.

(c) The bureau must notify the public of the availability of an environmental assessment and any associated finding of no significant impact once they have been completed. Comments on a finding of no significant impact do not need to be solicited, except as required by 40 CFR 1501.4(e)(2).

(d) Bureaus may allow cooperating agencies (as defined in § 46.225) to participate in developing environmental assessments.

§ 46.310 Contents of an environmental assessment.

(a) At a minimum, an environmental assessment must include brief discussions of:

(1) The proposal;

(2) The need for the proposal;

(3) The environmental impacts of the proposed action;

(4) The environmental impacts of the alternatives considered; and

(5) A list of agencies and persons consulted.

(b) When the Responsible Official determines that there are no unresolved conflicts about the proposed action with respect to alternative uses of available resources, the environmental assessment need only consider the proposed action and does not need to consider additional alternatives, including the no action alternative. (See section 102(2)(E) of NEPA).

(c) In addition, an environmental assessment may describe a broader range of alternatives to facilitate planning and decision-making.

(d) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(e) 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.

(f) Bureaus may choose to provide additional detail and depth of analysis as appropriate in those environmental assessments prepared under paragraph 46.300(b).

(g) An environmental assessment must contain objective analyses that support conclusions concerning environmental impacts.

§ 46.315 How to format an environmental assessment.

(a) An environmental assessment may be prepared in any format useful to facilitate planning, decision-making, and appropriate public participation.

(b) An environmental assessment may be accompanied by any other planning or decision-making document. The portion of the document that analyzes the environmental impacts of the proposal and alternatives must be clearly and separately identified and not spread throughout or interwoven into other sections of the document.

§ 46.320 Adopting environmental assessments prepared by another agency, entity, or person.

(a) A Responsible Official may adopt an environmental assessment prepared by another agency, entity, or person, including an applicant, if the Responsible Official:

(1) Independently reviews the environmental assessment; and

(2) Finds that the environmental assessment complies with this subpart and relevant provisions of the CEQ Regulations and with other program requirements.

(b) When appropriate, the Responsible Official may augment the environmental assessment to be consistent with the bureau's proposed action.

(c) In adopting or augmenting the environmental assessment, the Responsible Official will cite the original environmental assessment.

(d) The Responsible Official must ensure that its bureau's public involvement requirements have been met before it adopts another agency's environmental assessment.

§ 46.325 Conclusion of the environmental assessment process.

Upon review of the environmental assessment by the Responsible Official, the environmental assessment process concludes with one of the following:

(1) A notice of intent to prepare an environmental impact statement;

(2) A finding of no significant impact; or

(3) A result that no further action is taken on the proposal.

Subpart E—Environmental Impact Statements

§ 46.400 Timing of environmental impact statement development.

The bureau must prepare an environmental impact statement for each proposed major Federal action significantly affecting the quality of the human environment before making a decision on whether to proceed with the proposed action.

§ 46.405 Remaining within page limits.

To the extent possible, bureaus should use techniques such as incorporation of referenced documents into NEPA analysis (46.135) and tiering (46.140) in an effort to remain within the normal page limits stated in 40 CFR 1502.7.

§ 46.415 Environmental impact statement content, alternatives, circulation and filing requirements.

The Responsible Official may use any environmental impact statement format and design as long as the statement is in accordance with 40 CFR 1502.10.

(a) *Contents.* The environmental impact statement shall disclose:

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

(2) A description of the proposed action;

(3) The environmental impact of the proposed action;

(4) A brief description of the affected environment;

(5) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(6) Alternatives to the proposed action;

(7) The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(8) Any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented; and

(9) The process used to coordinate with other Federal agencies, State, tribal and local governments, and persons or organizations who may be interested or affected, and the results thereof.

(b) *Alternatives.* The environmental impact statement shall document the examination of the range of alternatives (paragraph 46.420(c)). The range of alternatives includes those reasonable alternatives (paragraph 46.420(b)) that meet the purpose and need of the proposed action, and address one or more significant issues (40 CFR 1501.7(a)(2–3)) related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed. In addition to the requirements in 40 CFR 1502.14, the Responsible Official has an option to use the following procedures to develop and analyze alternatives.

(1) The analysis of the effects of the no-action alternative may be documented by contrasting the current condition and expected future condition should the proposed action not be undertaken with the impacts of the proposed action and any reasonable alternatives.

(2) The Responsible Official may collaborate with those persons or organization that may be interested or affected to modify a proposed action and alternative(s) under consideration prior to issuing a draft environmental impact statement. In such cases the Responsible Official may consider these

modifications as alternatives considered. Before engaging in any collaborative processes, the Responsible Official must consider the Federal Advisory Committee Act (FACA) implications of such processes.

(3) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(c) *Circulating and filing draft and final environmental impact statements.* (1) The draft and final environmental impact statements shall be filed with the Environmental Protection Agency's Office of Federal Activities in Washington, DC (40 CFR 1506.9).

(2) Requirements at 40 CFR 1506.9 ''Filing requirements,'' 40 CFR 1506.10 ''Timing of agency action,'' 40 CFR 1502.9 ''Draft, final, and supplemental statements,'' and 40 CFR 1502.19 ''Circulation of the environmental impact statement'' shall only apply to draft, final, and supplemental environmental impact statements that are filed with EPA.

§ 46.420 Terms used in an environmental impact statement.

The following terms are commonly used to describe concepts or activities in an environmental impact statement:

(a) *Statement of purpose and need.* In accordance with 40 CFR 1502.13, the statement of purpose and need briefly indicates the underlying purpose and need to which the bureau is responding.

(1) In some instances it may be appropriate for the bureau to describe its ''purpose'' and its ''need'' as distinct aspects. The ''need'' for the action may be described as the underlying problem or opportunity to which the agency is responding with the action. The ''purpose'' may refer to the goal or objective that the bureau is trying to achieve, and should be stated to the extent possible, in terms of desired outcomes.

(2) When a bureau is asked to approve an application or permit, the bureau should consider the needs and goals of the parties involved in the application or permit as well as the public interest. The needs and goals of the parties involved in the application or permit may be described as background information. However, this description must not be confused with the bureau's purpose and need for action. It is the bureau's purpose and need for action that will determine the range of alternatives and provide a basis for the selection of an alternative in a decision.

(b) *Reasonable alternatives.* In addition to the requirements of 40 CFR 1502.14, this term includes alternatives that are technically and economically practical or feasible and meet the purpose and need of the proposed action.

(c) *Range of alternatives.* This term includes all reasonable alternatives, or when there are potentially a very large number of alternatives then a reasonable number of examples covering the full spectrum of reasonable alternatives, each of which must be rigorously explored and objectively evaluated, as well as those other alternatives that are eliminated from detailed study with a brief discussion of the reasons for eliminating them. 40 CFR 1502.14. The Responsible Official must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents, but may select elements from several alternatives discussed. Moreover, the Responsible Official must, in fact, consider all the alternatives discussed in an environmental impact statement. 40 CFR 1505.1 (e).

(d) *Preferred alternative.* This term refers to the alternative which the bureau believes would best accomplish the purpose and need of the proposed action while fulfilling its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. It may or may not be the same as the bureau's proposed action, the non-Federal entity's proposal or the environmentally preferable alternative.

§ 46.425 Identification of the preferred alternative in an environmental impact statement.

(a) Unless another law prohibits the expression of a preference, the draft environmental impact statement should identify the bureau's preferred alternative or alternatives, if one or more exists.

(b) Unless another law prohibits the expression of a preference, the final environmental impact statement must identify the bureau's preferred alternative.

§ 46.430 Environmental review and consultation requirements.

(a) Any environmental impact statement that also addresses other environmental review and consultation requirements must clearly identify and discuss all the associated analyses, studies, or surveys relied upon by the bureau as a part of that review and consultation. The environmental impact statement must include these associated analyses, studies, or surveys, either in the text or in an appendix or indicate where such analysis, studies or surveys may be readily accessed by the public.

(b) The draft environmental impact statement must list all Federal permits, licenses, or approvals that must be obtained to implement the proposal. The environmental analyses for these related permits, licenses, and approvals should be integrated and performed concurrently. The bureau, however, need not unreasonably delay its NEPA analysis in order to integrate another agency's analyses. The bureau may complete the NEPA analysis before all approvals by other agencies are in place.

§ 46.435 Inviting comments.

(a) A bureau must seek comment from the public as part of the Notice of Intent to prepare an environmental impact statement and notice of availability for a draft environmental impact statement;

(b) In addition to paragraph (a) of this section, a bureau must request comments from:

(1) Federal agencies;

(2) State agencies through procedures established by the Governor of such state under EO 12372;

(3) Local governments and agencies, to the extent that the proposed action affects their jurisdictions; and

(4) The applicant, if any, and persons or organizations who may be interested or affected.

(c) The bureau must request comments from the tribal governments, unless the tribal governments have designated an alternate review process, when the proposed action may affect the environment of either:

(1) Indian trust or restricted land; or

(2) Other Indian trust resources, trust assets, or tribal health and safety.

(d) A bureau does not need to delay preparation and issuance of a final environmental impact statement when any Federal, State, and local agencies, or tribal governments from which comments must be obtained or requested do not comment within the prescribed time period.

§ 46.440 Eliminating duplication with State and local procedures.

A bureau must incorporate in its directives provisions allowing a State agency to jointly prepare an environmental impact statement, to the extent provided in 40 CFR 1506.2.

§ 46.445 Preparing a legislative environmental impact statement.

When required under 40 CFR 1506.8, the Department must ensure that a legislative environmental impact statement is included as a part of the formal transmittal of a legislative proposal to the Congress.

§ 46.450 Identifying the environmentally preferable alternative(s).

In accordance with the requirements of 40 CFR 1505.2, a bureau must identify the environmentally preferable alternative(s) in the record of decision. It is not necessary that the environmentally preferable alternative(s) be selected in the record of decision.

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Chapter 1: Protection and Enhancement of Environmental Quality

Originating Office: Office of Environmental Policy and Compliance

516 DM 1

1.1 **Purpose**. This chapter provides instructions for implementing 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), and the Department of the Interior (DOI) regulations (43 CFR Part 46). It supplements the CEQ and DOI regulations and must be read in conjunction with both.

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 cooperate with and assist the CEQ; and

C. To implement Cooperative Conservation (see E.O. 13352).

1.3 **Statutory Requirements**. NEPA requires that in certain circumstances an Environmental Impact Statement (EIS) or other environmental document 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 or other environmental document will accompany the proposal through existing review processes.

1.4 **General Responsibilities**. The following responsibilities reflect the Secretary’s decision that the officials responsible for making program decisions are also responsible for taking the requirements of NEPA into account in those decisions and will be held accountable for that responsibility:

A. Assistant Secretary - Policy, Management and Budget (AS/PMB).

(l) Is the Department's focal point on NEPA matters and is responsible for overseeing the Department's implementation of NEPA and Departmental regulations at 43 CFR Part 46.

(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 pertaining to the Department's compliance with NEPA, CEQ regulations, 43 CFR Part 46, and this Part.

C. Program Assistant Secretaries.

(1) Are responsible for compliance with NEPA, Executive Order 11514, as amended, Executive Order 12114, the CEQ Regulations, 43 CFR Part 46, 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, 43 CFR Part 46 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 Office of 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.

E. Heads of Regional, Field, or Area Offices, or Responsible Officials.

(1) Must comply with the provisions of NEPA, Executive Order 11514, as amended, Executive Order 12114, the CEQ Regulations, 43 CFR Part 46 and this Part.

(2) Shall use information obtained in the NEPA process, including pertinent information provided by those persons or organizations that may be interested or affected, 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.

1.5 **Consideration of Environmental Values**.

A. In Departmental Management.

(1) In the management of natural, cultural, historic, 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, historic, and human resources within

technological, budgetary, and legal constraints. Various Departmental conflict resolution mechanisms are available to assist this balancing effort.

(2) 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.

(3) 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.

(4) 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 persons, organizations or communities who may be interested or affected to consult with the Department and provide their comments, recommendations, and suggestions for improvement.

1.6 **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 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 the Federal Advisory Committee Act (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 practicable 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 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 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 tribal governments; institutions; and other entities as appropriate.

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, tribal governments; other bureaus and Federal agencies; and those persons or organizations that may be interested or affected, 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, historic 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.

1.7 **Public Involvement**.

A. Bureaus and offices, in accordance with 301 DM 2, 43 CFR Part 46, 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 appropriate 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 persons, organizations, or communities who may be interested or affected. 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 tribal governments in developing and using similar procedures for informing the public concerning their activities affecting the quality of the environment.

1.8 **Mandate**.

A. The provisions of Part 516 are intended to establish guidelines to be followed by the Department and its bureaus, 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. Instructions supplementing the CEQ Regulations are provided in Departmental regulations at 43 CFR Part 46.

C. 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, Departmental regulations at 43 CFR 46 and 516 DM 1 - 4 shall govern.

1.9 **Lead Agencies** (40 CFR 1501.5; 43 CFR 46.220).

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 1.9A.

C. To eliminate duplication with State and local procedures, a non-Federal agency (including tribal governments) may be designated as a joint lead agency when it has a duty to comply with non-Federal 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, tribal governments, and local agencies assuming the role of cooperating agency. In this manner, the other Federal agencies, as well as State, tribal, 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.

1.10 **Cooperating Agencies** (40 CFR 1501.6 and 1508.5; 43 CFR 46.225).

A. Upon the request of a bureau, the OEPC will assist bureaus in determining cooperating agencies and coordinating requests from non-Interior agencies.

B. Bureaus will inform the OEPC of any requests to become a cooperating agency or any declinations to become a cooperating agency pursuant to 40 CFR 1501.6(c).

C. 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.

D. An agency meeting the requirements of 43 CFR 46.225(a) is defined as an eligible governmental entity for the purposes of designation as a cooperating agency.

1.11 **Scoping** (40 CFR 1501.7; 43 CFR 46.235). 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.

1.12 **Environmental Assessments** (40 CFR 1501.3; 43 CFR 46.120, 46.140, 46.320).

A. 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.

B. If such an EA is adopted or augmented, responsible officials must prepare their own notice of intent (NOI) or Finding of No Significant Impact (FONSI) that acknowledges the origin of the EA and takes full responsibility for its scope and content.

1.13 **Environmental Impact Statements** (40 CFR 1501.4, 1502.3; 43 CFR 46.100(b), and Subpart E).

A. If an agency's assessment of the environmental effects of a proposed action reveals that such action may significantly affect the quality of the human environment, and the agency elects to go forward with the proposed action, an 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 (43 CFR 46.200(e)).

1.14 **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.

1.15 **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. 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.

D. 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.

1.16 **Alternatives Including the Proposed Action** (40 CFR 1502.14; 43 CFR 46.425). For externally initiated proposals, i.e., for those cases where the Department is reacting to an application or similar request, the draft and final EIS shall identify the applicant's proposed action. Proposed departures from 43 CFR 46.425(a) or this guidance must

be approved by the OEPC and the Office of the Solicitor.

1.17 **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.

1.18 **Tiering** (40 CFR 1502.20; 43 CFR 46.120, 46.140). Bureaus must maintain access to such things as: sources of similar information, examples of tiered and transferred analyses, a set of procedural steps to make the most of tiered and transferred analyses, knowledge of when to use previous material, and how to used tiered and transferred analyses without sacrificing references to original sources.

1.19 **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 (Pub. L.106-554, 114 Stat. 2763).

1.20 **Environmental Review and Consultation Requirements** (40 CFR 1502.25; 43 CFR 46.155, 46.430).

A. A list of related environmental review and consultation requirements is available from the OEPC (ESM 09-8).

B. Bureaus shall ensure that they have a process in place to make integrated analyses a standard part of their NEPA compliance efforts.

C. The comments of 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.

D. 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. Late introduction of new issues and alternatives is to be avoided and they will be considered only to the extent practicable.

E. For those EISs requiring the approval of the AS/PMB pursuant to 516 DM 3.3B, bureaus will consult with the OEPC when they propose to prepare an abbreviated final EIS [40 CFR 1503.4(c)].

1.21 **Further Guidance** (40 CFR 1506.7). The OEPC may provide further guidance concerning NEPA pursuant to its organizational responsibilities (112 DM 4) and through supplemental directives (381 DM 4.5B). Current guidance is located in the Environmental Memoranda Series periodically updated by OEPC and available on the OEPC website at: http://www.doi.gov/oepc/.

1.22 **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, unless a longer period is required by individual agency regulation or process.

B. For those ElSs requiring the approval of the AS/PMB pursuant to 516 DM 3.3B, 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.

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Replaces 5/27/04 #3611; 6/21/05 #3675; 5/27/04 #3613; and 5/27/04 #3614

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Department of the Interior
Departmental Manual

Effective Date: 9/1/09
Series: Environmental Quality Programs
Part 516: National Environmental Policy Act of 1969
Chapter 2: Relationship to Decision Making

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 Council of Environmental Quality (CEQ) Regulations and the Department's NEPA Regulations pertaining to decision making.

2.2 **Pre-Decision 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 Program Assistant Secretary, the Solicitor, and the Office of Environmental Policy and Compliance (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.

2.3 **Decision Making Procedures** (40 CFR 1505.1).

A. Procedures for decisions by the Secretary/Deputy Secretary are specified in 301 DM 1. Program 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 Responsible Official (RO) 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 RO.

F. To the extent practicable, the RO will consider other substantive and legal obligations beyond the immediate context of the proposed action.

2.4 **Record of Decision** (40 CFR 1505.2).

A. Any decision documents prepared pursuant to 301 DM 1 for proposals involving an Environmental Impact Statement (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.

2.5 **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.

2.6 **Limitations on Actions** (40 CFR 1506.1). A bureau will immediately notify its Program Assistant Secretary, the Solicitor, and the OEPC of any situations described in Section 1506.1(b).

2.7 **Timing of Actions** (40 CFR 1506.10). For those EISs requiring the approval of the AS/PMB pursuant to 516 DM 3.3, the responsible official will consult with the OEPC before making any request for reducing the time period before a decision or action.

2.8 **Emergencies** (40 CFR 1506.11). In the event of an emergency situation, a bureau will follow the requirements of 43 CFR 46.150.

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Part 516: National Environmental Policy Act of 1969
Chapter 3: Managing the NEPA Process

Originating Office: Office of Environmental Policy and Compliance

516 DM 3

3.1 **Purpose**. This chapter provides supplementary instructions for implementing those provisions of the CEQ Regulations and the Department's National Environmental Policy Act (NEPA) Regulations pertaining to procedures for implementing and managing the NEPA process.

3.2 **Organizational Responsibilities for Environmental Quality**.

A. Office of Environmental Policy and Compliance (OEPC). The Director, OEPC, 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.

3.3 **Approval of Environmental Impact Statements (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 Council of Environmental Quality (CEQ) Regulations, the Department's NEPA Regulations, and the Departmental Manual (DM).

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.

3.4 **List of Specific Compliance Responsibilities**.

A. Bureaus and offices shall:

(1) Prepare NEPA handbooks providing guidance on the interpretation of NEPA, the CEQ regulations, 43 CFR Part 46, and the applicable portions of this Part in principal program areas.

(2) Prepare program regulations or directives for applicants.

(3) Propose and apply categorical exclusions (CEs).

(4) Prepare and approve Environmental Assessments (EAs).

(5) Decide whether to prepare an EIS.

(6) Prepare and publish NOIs and FONSIs.

(7) Prepare and, when assigned, approve EISs.

B. Program Assistant Secretaries shall:

(1) Approve bureau and office handbooks.

(2) Approve regulations or directives for applicants.

(3) Approve proposed categorical exclusions.

(4) Approve EISs pursuant to 516 DM 3.3.

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 3.3. (See also 43 CFR 46.150).

3.5 **Bureau Requirements**.

A. Requirements specific to bureaus appear as separate chapters beginning with chapter 8 of this Part and include the following:

(1) Identification of officials and organizational elements responsible for NEPA compliance.

(2) List of program regulations or directives which provide information to applicants.

(3) Identification of major decision points in principal programs for which an EIS is normally prepared.

(4) List of projects or groups of projects for which an EA is normally prepared.

(5) List of categorical exclusions.

B. Bureau requirements are found in the following chapters for the current bureaus:

(1) U.S. Fish and Wildlife Service (Chapter 8).

(2) U.S. Geological Survey (Chapter 9).

(3) Bureau of Indian Affairs (Chapter 10).

(4) Bureau of Land Management (Chapter 11).

(5) National Park Service (Chapter 12).

(6) Office of Surface Mining (Chapter 13).

(7) Bureau of Reclamation (Chapter 14).

(8) Minerals Management Service (Chapter 15).

C. Offices in the Office of the Secretary (O/S) must comply with the policy in this chapter and will consult with the OEPC about compliance activities.

3.6 **Information about the NEPA Process**. The OEPC will periodically publish a Departmental list of bureau contacts where information about the NEPA process and the status of EISs may be obtained. This list will be available on OEPC's website at: http://www.doi.gov/oepc/.

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Department of the Interior
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Effective Date: 9/1/09
Series: Environmental Quality Programs
Part 516: National Environmental Policy Act of 1969
Chapter 4: Review of Environmental Impact Statements and Project Proposals Prepared by Other Federal Agencies

Originating Office: Office of Environmental Policy and Compliance

516 DM 4

4.1 **Purpose**.

A. These procedures implement the policy and directives of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (NEPA); Section 2(f) of Executive Order No. 11514 (March 5, 1970); the Council of Environmental Quality (CEQ) Regulations, 40 Parts 1500- 1508; 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 Environmental Impact Statements (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 the Department's various authorities.

4.2 **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 that 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.

4.3 **Responsibilities**.

A. The Assistant Secretary - Policy, Management and Budget (AS/PMB) shall be the Department's contact point for the receipt of requests for reviews of environmental review documents prepared by or for other Federal agencies. This authority shall be carried out through the Director, Office of Environmental Policy and Compliance (OEPC).

B. The Director, Office of Environmental Policy and Compliance.

(1) Shall determine whether such review requests are to be answered by a Secretarial Officer, the Director, OEPC, or by a Regional Environmental Officer (REO), 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.

(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. Program 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 responsibility for preparing the Department’s 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 4.2 regarding competency and timeliness are carried out.

(8) Shall provide the necessary authority to those designated in 4.3E(1) above to carry out all the requirements of 516 DM 4.

4.4 **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) Environmental Assessments 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. Finding of No Significant Impact.

(1) Findings of No Significant Impact (FONSI) 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 are not normally circulated.

(2) FONSI 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. Notice of Intent and Scoping Requests.

(1) Notices of intent (NOI) and scoping requests mark the beginning of the formal review process. NOI 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 NOI 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 Environmental Protection Agency (EPA) and officially circulated to other Federal, State, and local agencies (see 40 CFR 1503.1(a), 1506.9, 1506.10) 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 4.5A(1)). They are presented to the public for review and comment as well (see 40 CFR 1503.1(a)(4); 43 CFR 46.435).

(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 (FERC).

(2) Environmental review of applications is generally handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

(3) While review of NEPA compliance documents associated with Corps of Engineers permit applications is managed in accordance with this chapter, review of Corps of Engineers permit applications is managed in accordance with 503 DM 1. Reviewers are referred to that Manual Part and to 4.5C(3) below for the processing of concurrent reviews.

I. Project Plans and Reports without Associated Environmental Review Documents.

(1) The Department receives draft and final project plans and reports under various authorities which do not have environmental review documents circulated with them. This may be because NEPA compliance has been completed, will be completed on a slightly different schedule, NEPA does not apply, or other reasons.

(2) Environmental review of these documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

J. Federal Regulations.

(1) The Department circulates and controls the review of advance notices of proposed rulemaking, proposed rulemaking, and final rulemaking which are environmental in nature, may impact the quality of the human environment, and may impact the Department's natural resources and programs.

(2) Environmental review of these documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

K. Documents Prepared Pursuant to Other Environmental Statutes.

(1) The Department receives draft and final project plans prepared pursuant to other environmental statutes [e.g., National Historic Preservation Act (NHPA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Resource Conservation and Recovery Act (RCRA), and the Oil Pollution Act (OPA)], which may not have environmental review documents circulated with them.

(2) Environmental review of these documents is handled consistently with the policies and provisions of this part, and in accordance with further guidance from the Director, OEPC. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

L. Section 4(f) Documents.

(1) Under Section 4(f) of the Department of Transportation Act, the Secretary of Transportation may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if there is no prudent and feasible alternative to using that land and the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

(2) Environmental review of Section 4(f) documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website and consult with the OEPC for the most current review guidance.

4.5 **Content of Comments on Environmental Review Documents**.

A. Departmental Comments.

(1) Departmental comments on environmental review documents prepared by other Federal agencies shall be based upon the Department's jurisdiction by law or special expertise with respect to the agency mission, related program experience, or environmental impact of the proposed action or alternatives to the action. The adequacy of the document in regard to applicable statutes is the responsibility of the agency that prepared the document and any comments on its adequacy shall be limited to the Department's jurisdiction or environmental expertise.

(2) Reviews shall be conducted in sufficient detail to ensure that both potentially beneficial and adverse environmental effects of the proposed action and alternatives, including cumulative and secondary effects, are adequately identified. Wherever possible, and within the Department's competence and resources, other agencies will be advised on ways to avoid or minimize adverse impacts of the proposed action and alternatives, and on alternatives to the proposed action that may have been overlooked or inadequately treated.

(3) Review comments should not capsulate or restate the environmental review document , but should provide clear, concise, substantive, fully justified, and complete comments on the stated or unstated environmental

impacts of the proposed action and, if appropriate, on alternatives to the action. Comments, either positive or negative, shall be objective and constructive.

(4) Departmental review comments shall be organized as follows:

(a) Control Number. The Departmental review control number shall be typed in the upper left hand corner below the Departmental seal on the letterhead page of the comments.

(b) Introduction. The introductory paragraph shall reference the other Federal agency's review request, including the date, the type of review requested, the subject of the review; and, where appropriate, the geographic location of the subject and the other agency's control number.

(c) General Comments, if any. This section will include those comments of a general nature and those which occur throughout the review which ought to be consolidated in order to avoid needless repetition.

(d) Detailed Comments. The format of this section shall follow the organization of the other agency's environmental review document. These comments shall not comment on the proposed actions of other Federal agencies, but shall constructively and objectively comment on the statement’s adequacy in describing the environmental impacts of the action, the alternatives, and the impacts of the alternatives. Comments shall specify any corrections, additions, or other changes required to make the statement adequate.

(e) Summary Comments, if any. In general, the Department will not take a position on the proposed action of another Federal agency, but will limit its comments to those above. However, in those cases where the Department has jurisdiction by statute, Executive Order, memorandum of agreement, or other authority, the Department may comment on the proposed action. These comments shall be provided in this section and may take the form of support for, concurrence with, concern over, or objection to the proposed action and/or the alternatives.

B. Bureau and Office Comments. Bureau and office reviews of EISs prepared by other Federal agencies are considered informal inputs to the Department's comments and their content will generally conform to paragraph 4.5A 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 FERC. In these cases, it is recommended that bureaus consult frequently with the appropriate attorney of record in the Office of the Solicitor.

4.6 **Availability of Review Comments**.

A. Prior to the public availability of another Federal agency's final EIS, the Department shall not independently release to the public its comments on that agency's draft EIS. In accordance with Section 1506.6(f) of the CEQ Regulations, the agency that prepared the statement is responsible for making the comments available to the public, and requests for copies of the Department's comments shall be referred to that agency. Exceptions to this procedure shall be made by the OEPC and the Office of the Solicitor.

B. The availability of various internal Departmental memoranda, such as the review comments of bureaus, offices, task forces, and individuals, which are used as inputs to the Department's review comments is governed by the Freedom of Information Act (5 U.S.C. Section 552) and the Departmental procedures established by 43 CFR 2. Upon receipt of such requests and in addition to following the procedures above in 4.6A, the responsible bureau or office shall notify and consult their bureau Freedom of Information Act Officer and the OEPC to coordinate any responses.

4.7 **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 4.7B(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 or office and shall provide the date that the review will be delivered. The lead bureau or office shall inform the OEPC in cases of headquarters-level response, or the REO in cases of field-level response, if it cannot meet the schedule, why it cannot, and when it will. The OEPC or the REO 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 or office, 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 or office. Review comments shall also be sent to the lead bureau or office 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 REO 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 REO 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 REO 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 REO determines that the review involves policy matters of Secretarial significance, they shall not sign and transmit the comments as provided in subparagraph (b) above, but shall forward the review to the OEPC in headquarters for final disposition.

C. Referrals of Environmentally Unsatisfactory Proposals to the Council on Environmental Quality.

(1) Referral to CEQ is a formal process provided for in the CEQ Regulations (40 CFR 1504). It is used sparingly and only when all other administrative processes have been exhausted in attempting to resolve issues between the project proponent and one or more other Federal agencies. These issues must meet certain criteria (40

CFR 1504.2), and practice has shown that these issues generally involve resource concerns of national importance to the Department.

(2) A bureau or office intending to recommend referral of a proposal to CEQ must, at the earliest possible time, advise the proponent Federal agency that it considers the proposal to be a possible candidate for referral. If not expressed at an earlier time, this advice must be outlined in the Department's comments on the draft EIS.

(3) CEQ referral is a high level activity that must be conducted in an extremely short time frame. A referring bureau or office has 25 days after EPA has published a notice of availability of the final EIS in the Federal Register in which to file the referral unless an extension is granted per 40 CFR 1504.3(b). The referral documents must be signed by the Secretary of the Interior.

(4) Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC website at: http://www.doi.gov/oepc/, and consult with the OEPC for the most current review guidance.

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Replaces 5/27/04 #3617

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Department of the Interior
Departmental Manual

Effective Date: 5/27/04
Series: Environmental Quality Programs
Part 516: National Environmental Policy Act of 1969
Chapter 14: Managing the NEPA Process--Bureau of Reclamation

Originating Office: Bureau of Reclamation

516 DM 14

14.1 **Purpose**. This Chapter provides supplementary requirements for implementing provisions of 516 DM 1 through 6 within the Department's Bureau of Reclamation. This Chapter is referenced in 516 DM 6.5.

14.2 **NEPA Responsibility**.

A. Commissioner. Is responsible for NEPA compliance for Bureau of Reclamation (BuRec) activities.

B. Assistant Commissioners.

(1) Are responsible to the Commissioner for supervising and coordinating NEPA activities in their assigned areas of responsibility.

(2) Are responsible, in assigned areas of responsibility, for the Washington level review of EISs prepared in the regions or E&R Center for compliance with program area policy guidance.

(3) Provide supervision and coordination in assigned areas of responsibility to insure that environmental concerns are identified in the planning stages and to see that Regional Directors follow through with environmental commitments during the construction and operation and maintenance stages.

(4) May designate a staff position to be responsible for NEPA oversight and coordination in their assigned areas of responsibility.

C. Regional Directors.

(1) Are fully responsible to the Commissioner for integrating the NEPA compliance activities in their regional area.

(2) Will designate a staff position with the full responsibility to the Regional Director for providing direction of the NEPA process including information, guidance, training, advice, consistency, quality, adequacy, oversight, and coordination on NEPA documents or matters.

D. Division and Office Chiefs in E&R Center.

(1) Are responsible for integrating the NEPA process into their activities.

(2) Will designate a staff position to be responsible to the division or office chief for providing guidance, advice, consistency, quality, adequacy, oversight, and coordination on NEPA documents for matters originating in the E&R Center.

(3) Will provide a technical review within their area of expertise of environmental documents directed to their office for review and comment.

E. Director, Office of Environmental Affairs (Washington). Is the position designated by the Commissioner to be responsible for overall policy review of BuRec NEPA compliance. Information about BuRec NEPA documents of the NEPA process can be obtained by contacting this office.

14.3 **Guidance to Applicants**.

A. Types of Applicants.

(1) Actions that are initiated by private or non-Federal entities through applications include the following: Repayment contracts, water service contracts, Small Reclamation Projects Act Loans, Emergency Loans, Rehabilitation and Betterment Loans, Distribution System Loans, land use permits, licenses, easements, crossing agreements, permits for removal of sand and gravel, renewal of grazing, recreation management, or cabin site leases.

(2) Applicants will be provided information by the regional office on what environmental reports, analysis, or information are needed when they initiate their application. The environmental information requested may, of necessity, be related to impacts on private lands or other lands not under the jurisdiction of the Bureau to allow the BuRec to meet its environmental responsibilities.

B. Prepared Program Guidance for Applicants.

(1) Loans under the Small Reclamation Projects Act of 1958, U.S. Department of the Interior, Bureau of Reclamation, March 1976 (35 pages).

(2) Guidelines for Preparing Applications for Loans and Grants under the Small Reclamation Projects Act, Public Law 84-984, U.S. Department of the Interior, Bureau of Reclamation, December 1973 (121 pages).

(3) The Rehabilitation and Betterment Program, U.S. Department of the Interior, Bureau of Reclamation, September 1978 (14 pages).

(4) Guidelines for Preparation of Reports to Support Proposed Rehabilitation and Betterment Programs, U.S. Department of the Interior, Bureau of Reclamation, September 1978 (8 pages).

14.4 **Major Actions Normally Requiring an EIS**.

A. The following types of BuRec proposals will normally require the preparation of an EIS:

(1) Proposed Feasibility Reports on water resources projects.

(2) Proposed Definite Plan Reports (DPR) on water resources projects if not covered by an EIS at the feasibility report stage or if there have been major changes in the project plan which may cause significantly different or additional new impacts.

(3) Proposed repayment contracts and water service contracts or amendments thereof or supplements thereto, for irrigation, municipal, domestic, or industrial water where NEPA compliance has not already been accomplished.

(4) Proposed modifications to existing projects or proposed changes in the programmed operation of an existing project that may cause a significant new impact.

(5) Proposed initiation of construction of a project or major unit thereof, if not already covered by an

EIS, or if significant new impacts are anticipated.

(6) Proposed major research projects where there may be significant impacts resulting from experimentation or other such research activities.

B. If, for any of these proposals it is initially decided not to prepare an EIS, an EA will be prepared and handled in accordance with Section 1501.4(e)(2).

14.5 **Categorical Exclusions**. In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the Bureau also performs, the following Bureau actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2.3A(3):

A. General Activities.

(1) Changes in regulations or policy directives and legislative proposals where the impacts are limited to economic and/or social effects.

(2) Training activities of enrollees assigned to the various youth programs. Such training may include minor construction activities for other entities.

(3) Research activities, such as nondestructive data collection and analysis, monitoring, modeling, laboratory testing, calibration, and testing of instruments or procedures and nonmanipulative field studies.

B. Planning Activities.

(1) Routine planning investigation activities where the impacts are expected to be localized, such as land classification surveys, topographic surveys, archeological surveys, wildlife studies, economic studies, social studies, and other study activity during any planning, preconstruction, construction, or operation and maintenance phases.

(2) Special, status, concluding, or other planning reports that do not contain recommendations for action, but may or may not recommend further study.

(3) Data collection studies that involve test excavations for cultural resources investigations or test pitting, drilling, or seismic investigations for geologic exploration purposes where the impacts will be localized.

C. Project Implementation Activities.

(1) Classification and certification of irrigable lands.

(2) Minor acquisition of land and rights-of-way or easements.

(3) Minor construction activities associated with authorized projects which correct unsatisfactory environmental conditions or which merely augment or supplement, or are enclosed within existing facilities.

(4) Approval of land management plans where implementation will only result in minor construction activities and resultant increased operation and maintenance activities.

D. Operation and Maintenance Activities.

(1) Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation.

(2) Transfer of the operation and maintenance of Federal facilities to water districts, recreation agencies, fish and wildlife agencies, or other entities where the anticipated operation and maintenance activities are agreed to in

a contract or a memorandum of agreement, follow approved Reclamation policy, and no major change in operation and maintenance is anticipated.

(3) Administration and implementation of project repayment and water service contracts, including approval of organizational or other administrative changes in contracting entities brought about by inclusion or exclusion of lands in these contracts.

(4) Approval, execution, and implementation of water service contracts for minor amounts of long-term water use or temporary or interim water use where the action does not lead to long-term changes and where the impacts are expected to be localized.

(5) Approval of changes in pumping power and water rates charged contractors by the Bureau for project water service or power.

(6) Execution and administration of recordable contracts for disposal of excess lands.

(7) Withdrawal, termination, modification, or revocation where the land would be opened to discretionary land laws and where such future discretionary actions would be subject to the NEPA process, and disposal and sale of acquired lands where no major change in usage is anticipated.

(8) Renewal of existing grazing, recreation management, or cabin site leases which do not increase the level of use or continue unsatisfactory environmental conditions.

(9) Issuance of permits for removal of gravel or sand by an established process from existing quarries.

(10) Issuance of permits, licenses, easements, and crossing agreements which provide right-of-way over Bureau lands where the action does not allow for or lead to a major public or private action.

(11) Implementation of improved appearance and soil and moisture conservation programs where the impacts are localized.

(12) Conduct of programs of demonstration, educational, and technical assistance to water user organizations for improvement of project and on-farm irrigation water use and management.

(13) Follow-on actions such as access agreements, contractual arrangements, and operational procedures for hydropower facilities which are on or appurtenant to Bureau facilities or lands which are permitted or licensed by the Federal Energy Regulatory Commission (FERC), when FERC has accomplished compliance with NEPA (including actions to be taken by the Bureau) and when the Bureau's environmental concerns have been accommodated in accordance with the Bureau/FERC Memorandum of Understanding of June 22, 1981.

(14) Approval, renewal, transfer, and execution of an original, amendatory, or supplemental water service or repayment contract where the only result will be to implement an administrative or financial practice or change.

(15) Approval of second party water sales agreements for small amounts of water (usually less than 10 acre-feet) where the Bureau has an existing water sales contract in effect.

(16) Approval and execution of contracts requiring the repayment of funds furnished or expended on behalf of an entity pursuant to the Emergency Fund Act of June 26, 1948 (43 U.S.C. 502), where the action taken is limited to the original location of the damaged facility.

(17) Minor safety of dams construction activities where the work is confined to the dam, abutment areas, or appurtenant features, and where no major change in reservoir or downstream operation is anticipated as a result of the construction activities.

E. Grant and Loan Activities.

(1) Rehabilitation and Betterment Act loans and contracts which involve repair, replacement, or modification of equipment in existing structures or minor repairs to existing dams, canals, laterals, drains, pipelines, and similar facilities.

(2) Small Reclamation Projects Act grants and loans where the work to be done is confined to areas already impacted by farming or development activities, work is considered minor, and where the impacts are expected to be localized.

(3) Distribution System Loans Act loans where the work to be done is confined to areas already impacted by farming or developing activities, work is considered minor, and where the impacts are expected to be localized.

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Replaces 3/18/80 #3511
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Reclamation Manual

Policy

Subject: National Environmental Policy Act

Purpose: Establish policy for implementation of the National Environmental Policy Act.

Authority: National Environmental Policy Act (NEPA); Executive Order (E.O.) 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 11991, Protection and Enhancement of Environmental Quality; E.O. 12898, Environmental Justice; and E.O. 12114, International Environmental Effects.

Contact: Environmental and Planning Coordination Office, D-5100

1. **National Environmental Policy.**

   A. **Objective.** Reclamation will use all practicable means and measures to create and maintain water development and management conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations.

   B. **Policy.** Reclamation will integrate environmental considerations into all decisionmaking that potentially affects the environment.

      (1) Reclamation will provide all reasonable opportunity for input and involvement from the public and other Federal, State, Tribal, and local agencies on environmental issues.

      (2) Decisionmaking will integrate, as practicable, all applicable environmental laws and Executive Orders, Secretarial Orders, etc., including but not limited to NEPA, the Endangered Species Act, the Clean Water Act, the National Historic Preservation Act, the Fish and Wildlife Coordination Act, E.O. 11990, E.O. 11988, E.O. 12898, and E.O. 12114.

      (3) Appropriate and reasonable alternatives will be developed and assessed for actions that may significantly affect the environment.

      (4) Reclamation will use the best available environmental data, and acquire additional data as appropriate and reasonable, to support decisionmaking.

      (5) Reclamation's NEPA Handbook provides policy directives and guidance on the use and applicability of NEPA to Reclamation activities.