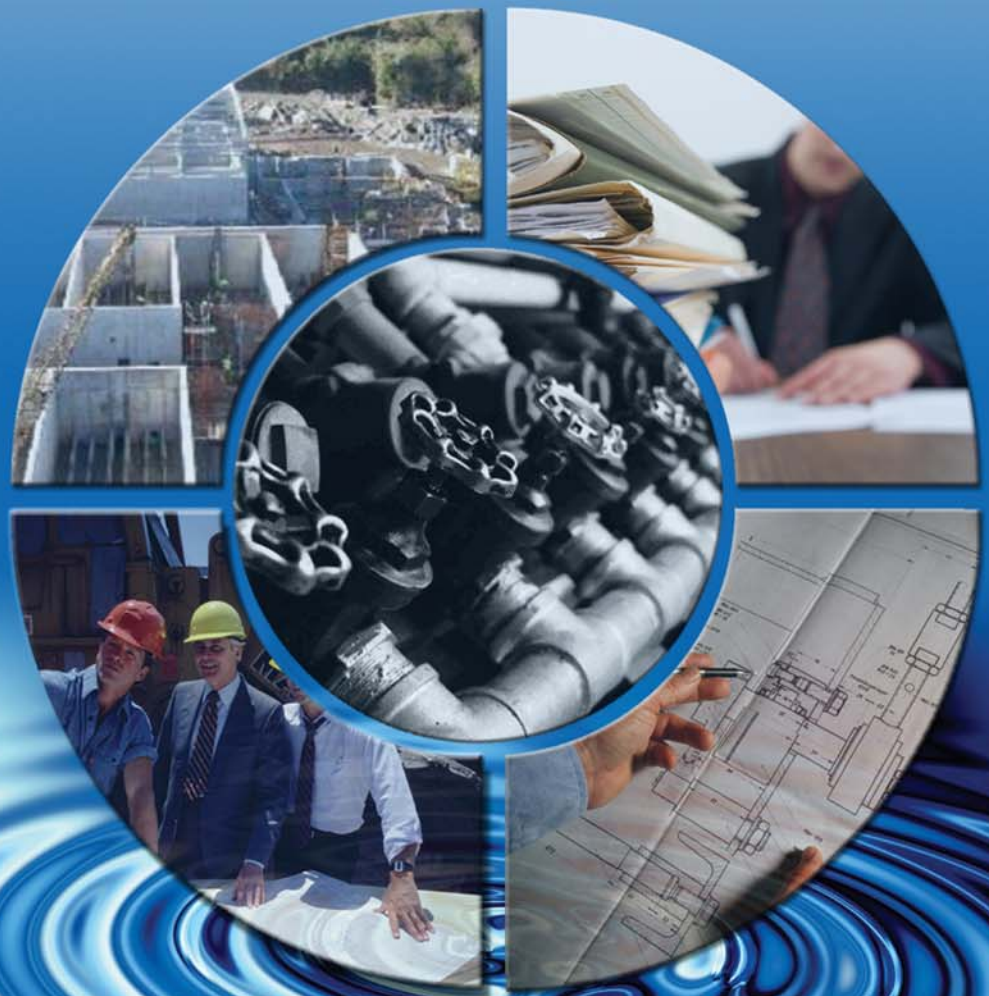




# Environmental Review Guide for Special Appropriation Grants



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# Environmental Review Guide for Special Appropriation Grants

Prepared by:

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## **Disclaimer**

The U.S. Environmental Protection Agency's (EPA's) Office of Federal Activities prepared this guidance document with the technical assistance of Booz Allen Hamilton, in partial fulfillment of EPA Contract 68-W-03-030, Task Order 007.

This guidance document is not a regulation and does not change or substitute for any legal requirements, as indicated by the use of non-mandatory language, such as may, should, and can. It provides non-binding policy and procedural guidance; therefore, it is not intended to create legal rights, impose legally binding requirements on EPA or the public when applied in particular situations, or contravene any other legal requirements that may apply to particular Agency determinations or actions. Specifically, this guidance document provides recommended procedures and approaches to assist grant applicants in preparing environmental information related to proposed construction projects that are subject to the National Environmental Policy Act (NEPA). EPA-funded construction projects subject to NEPA are generally those projects that are authorized by Congress and for which the grant authority is the Agency's annual appropriations acts; however, the procedures and approaches recommended herein may also be useful to grant applicants whose projects are funded under the authority of other EPA statutes.

## **Overview**

This guidance document, "Environmental Review Guide for Special Appropriation Grants," presents an overview to EPA's environmental review process and the levels of analysis associated with that review. This handbook and the related appendices are designed for grant applicants who are applying for project funds that were authorized by Congress and for which the grant authority is the Agency's annual appropriations acts. It contains background information, guidelines, checklists, other tools, and references that will assist grant applicants in understanding requirements under NEPA. This handbook should help applicants understand the environmental review process required under NEPA, as well as how to assist EPA during this review. It is EPA's hope that this handbook will help grant applicants and the Agency move projects through the grant and environmental review process in a timely and efficient manner.

## **Preparers and Contributors**

This document was prepared by the EPA's Office of Federal Activities with the technical assistance of Booz Allen Hamilton, in partial fulfillment of EPA Contract 68-W-03-030, Task Order 007.

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- APPENDIX B:*** Environmental Protection Agency (EPA) Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions (40 C.F.R. Part 6)
- APPENDIX C:*** Cross-Cutter Coordination and Consultation Process
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## Section 1.0 Introduction — The U.S. Environmental Protection Agency (EPA) and the Environmental Review Process

### 1.1 Who should use this Handbook?

This handbook is designed for the use of grant applicants who are applying for grants for projects that are authorized by Congress and for which the grant authority is the Agency's annual appropriations acts. Such projects are subject to the National Environmental Policy Act of 1969 (NEPA). EPA's annual appropriations acts have included funding for a number of such construction-related projects identified as line items or earmarks. Line items in the annual appropriations acts generally specify the recipient name, dollar amount, and project or type of project to be funded. Congress usually provides the line items to help fund infrastructure construction projects related to drinking water, wastewater, and storm water. EPA refers to each of these projects as a "Special Appropriations Act Project" (SAAP). For the purposes of this handbook, these grant-funded projects are referred to as "projects."

"The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals, and provides means for carrying out the policy" (40 C.F.R. §1500.1(a)).

The purpose of this handbook is to provide a tool to assist grant applicants in providing environmental information on proposed projects to EPA. EPA uses this information to fulfill its responsibilities under NEPA, the Council on Environmental Quality regulations, and EPA regulations implementing NEPA (see Appendices A and B).

When using this handbook, keep in mind that it is a tool to assist the grant applicant and does not establish EPA policy or prescribe regulatory requirements. This handbook contains background information, specific guidelines, checklists, other tools, and references. This information is intended to assist grant applicants in understanding the environmental review process for projects.

## 1.2 Does NEPA Apply to a SAAP Grant?

Grants for SAAP infrastructure construction projects are subject to NEPA. Two sets of regulations govern EPA's implementation of NEPA: (1) the Council on Environmental Quality (CEQ) regulations found at Title 40 Code of Federal Regulations Parts 1500-1508 (40 C.F.R. Parts 1500-1508) (see Appendix A), and (2) EPA's regulations implementing NEPA at 40 C.F.R. Part 6 (see Appendix B). Applicants can access the CEQ and EPA regulations on CEQ's NEPA.net at:

<http://ceq.eh.doe.gov/nepa/nepanet.htm>.

EPA's NEPA implementing regulations (40 C.F.R. Part 6) also can be accessed at:

<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>

It is important to note that the requirement for an environmental review under NEPA generally does not apply to grants solely for planning activities, such as infrastructure assessments, watershed plans, and wastewater capital improvement plans. Applicants should check with their EPA point of contact to determine if NEPA applies to a particular grant.

## 1.3 What is a NEPA environmental review?

EPA's review and assessment of environmental information relating to the project, including any applicable public review and the determination of a categorical exclusion (CATEX), or the development of an environmental assessment/finding of no significant impact (EA/FONSI), or an environmental impact statement/record of decision (EIS/ROD) is called the NEPA environmental review. If a project is not eligible for a CATEX, NEPA requires EPA to prepare either an EA or EIS on the proposed project.

Section 102(2)(C) of NEPA directs that, "to the fullest extent possible, all agencies of the Federal Government shall... include in every recommendation or report on proposals for ... major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed action,... alternatives to the proposed action,... and any irreversible and irretrievable commitments of resources which would be involved in the proposed action" (42 U.S.C. §4332(2)(C)).

CEQ regulations require agencies to develop their own NEPA procedures to make the NEPA process more useful to decision makers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives (40 C.F.R. § 1500.2(b)).

In order for EPA to prepare either an EA or EIS, it needs environmental information about the proposed project. The grant applicant provides EPA with this project information to help assess the potential environmental effects of the proposed project and alternatives to the proposed project. Typically, EPA refers to this documentation as the Environmental Information Document (EID). The EID should contain adequate information for EPA to conduct an environmental review.

"An EID means a written analysis prepared by an applicant that provides sufficient information for the Responsible Official to undertake an environmental review..." (40 C.F.R. § 6.102 (b)(4)). The EID provides basic project information, including a description of the proposed project, and evaluates the environmental impacts of and alternatives to the proposed project. The scope and level of detail for the EID should be commensurate with the magnitude and significance of the proposed project. Section 3.0 describes the EID in more detail.

NEPA and its implementing regulations provide the framework that is used to evaluate a proposed action, consider all of the reasonable alternatives and no action, and assess the potential environmental effects of the proposed action and alternatives. EPA decision makers responsible for providing SAAP grant funds use this information in making the grant decision.

NEPA also requires integrating analyses and consultations undertaken pursuant to other environmental laws and executive orders to the maximum extent possible with the NEPA environmental review process. These environmental laws and Executive Orders are commonly referred to as "cross-cutters." To comply with cross-cutting federal laws and Executive Orders, it is often necessary to provide the cross-cutter agency the opportunity to review and provide input (or concurrence) through consultation and coordination on the proposed project. Beginning this process early in the project may help avoid delays. Cross-cutters are addressed in greater detail in Appendix C. Additionally, grant applicants should be aware that other state, local, or tribal government reviews may be needed for a project under Executive Order 12372, *Intergovernmental Review of Federal Programs*. Grant applicants should seek guidance from EPA when determining all of the cross-cutters and coordination applicable to a project.

It is also important to note that the public, other interested parties, and stakeholders are given an opportunity to provide input to the decision-making process through review and comment on an EA/FONSI and EIS/ROD. The level of public input is determined by the level of environmental review conducted for a specific project. Sections 2.0 through 5.0 address the public involvement process in more detail.

#### 1.4 What level of review is needed for a SAAP?

Every proposed project seeking SAAP grant funding is evaluated for its potential environmental impacts. In recognizing that there are varying degrees of environmental impacts, from minor to significant and beneficial to adverse, the

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NEPA regulations provide for varying levels of environmental review depending on the potential significance of predicted environmental impacts.

There are three basic levels of environmental analysis:

**Categorical Exclusion.** A CATEX is a category of actions that do not individually or cumulatively have a significant effect on the human environment and are identified in the EPA NEPA implementing regulations. These actions do not require an EID, EA, or EIS. Most water or wastewater infrastructure projects that qualify for a CATEX are rehabilitative activities or activities adjacent to or occurring at existing facilities. Section 2.0 describes the CATEX process in greater detail.

"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 and for which, therefore, neither an environmental assessment or an environmental impact statement is required" (40 C.F.R. § 1508.4).

**Environmental Assessment.** An EA is an analysis prepared by EPA or the grant applicant to determine if the proposed action will have significant impacts. An EA may result in a FONSI or a need to prepare an EIS. The EID prepared by the grant applicant forms the basis for the EA. Section 4.0 describes the EA process in greater detail.

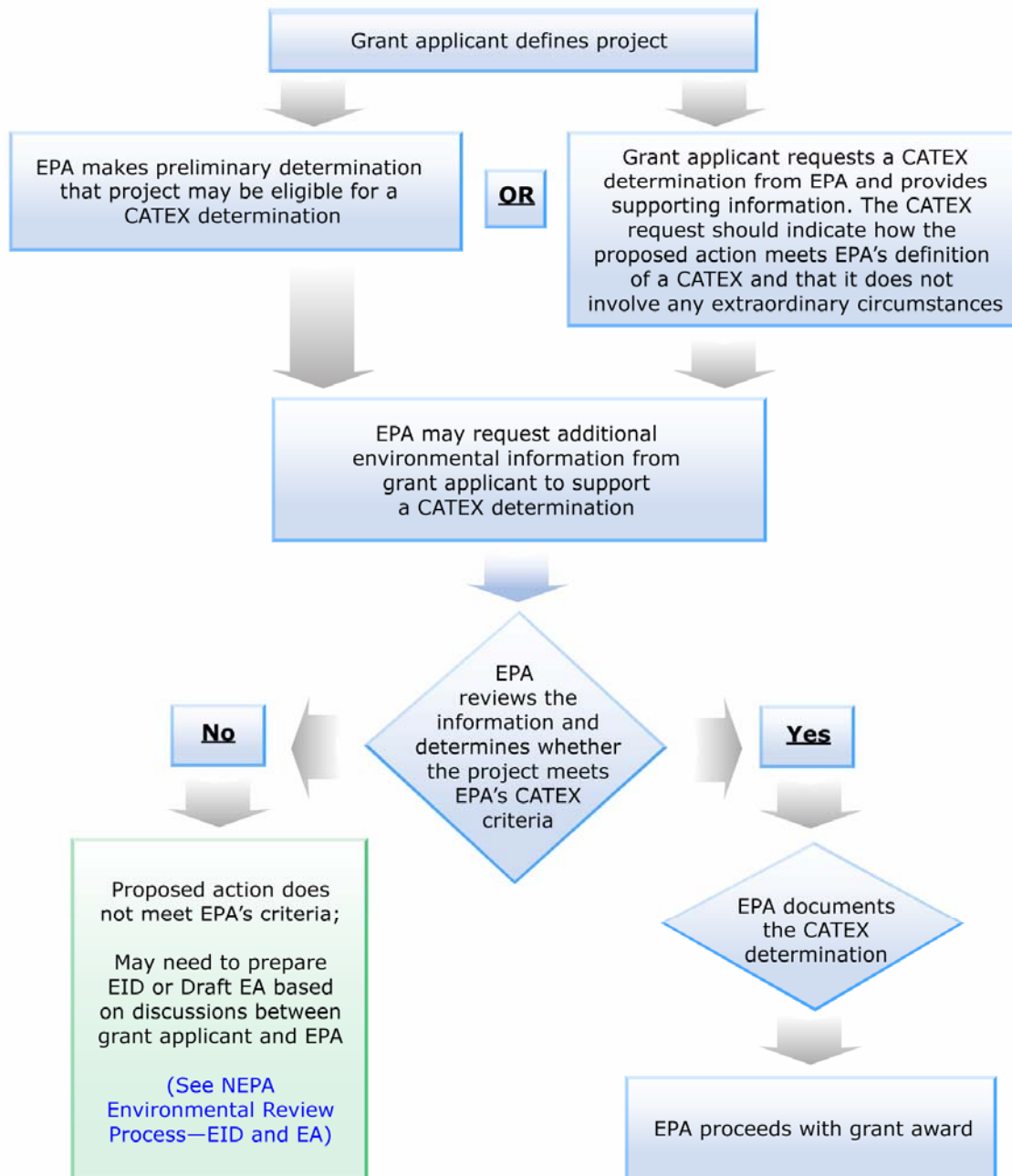
"An environmental assessment is a concise public document for which a federal agency is responsible and serves to briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact" (40 C.F.R. § 1508.9).

**Environmental Impact Statement.** An EIS is prepared when EPA determines that the proposed project has the potential to have significant environmental impacts on the quality of the human environment. Scoping is the process whereby the agency determines the range of issues to be analyzed in detail in an EIS. The EIS provides a detailed analysis of the potential environmental impacts of the proposed action and its alternatives and evaluates mitigation measures to avoid adverse impacts. The EIS process is discussed in greater detail in Section 5.0.

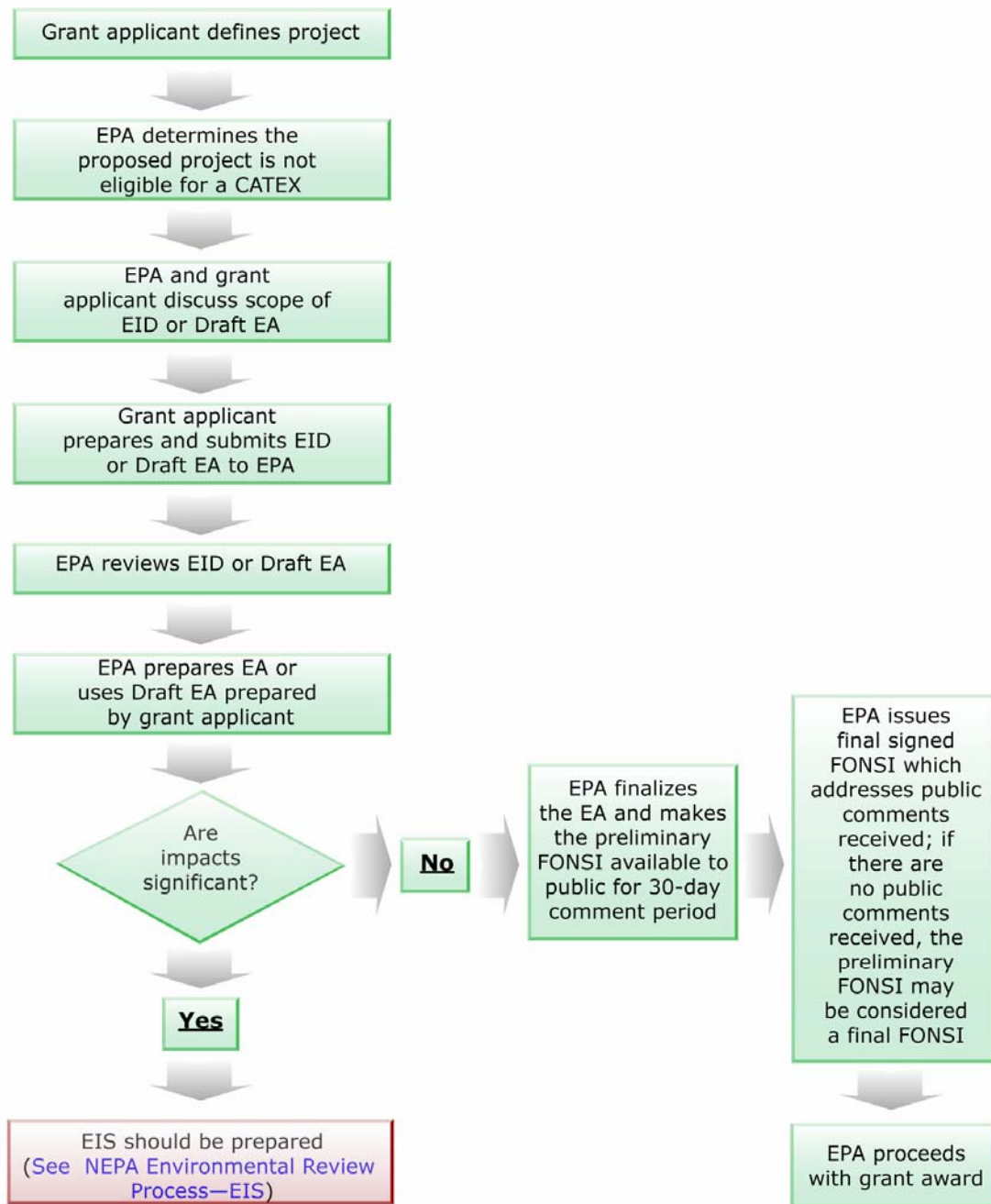
An Environmental Impact Statement "means a detailed written statement as required by section 102(2)(C) of [NEPA]" (40 C.F.R. § 1508.11).

The NEPA environmental review process for all levels of environmental review is depicted in Figures 1-1a through 1-1c. More details on the review processes and related documents are provided in Sections 2.0 through 5.0 of the handbook.

**Figure 1-1a. NEPA Environmental Review Process—CATEX**

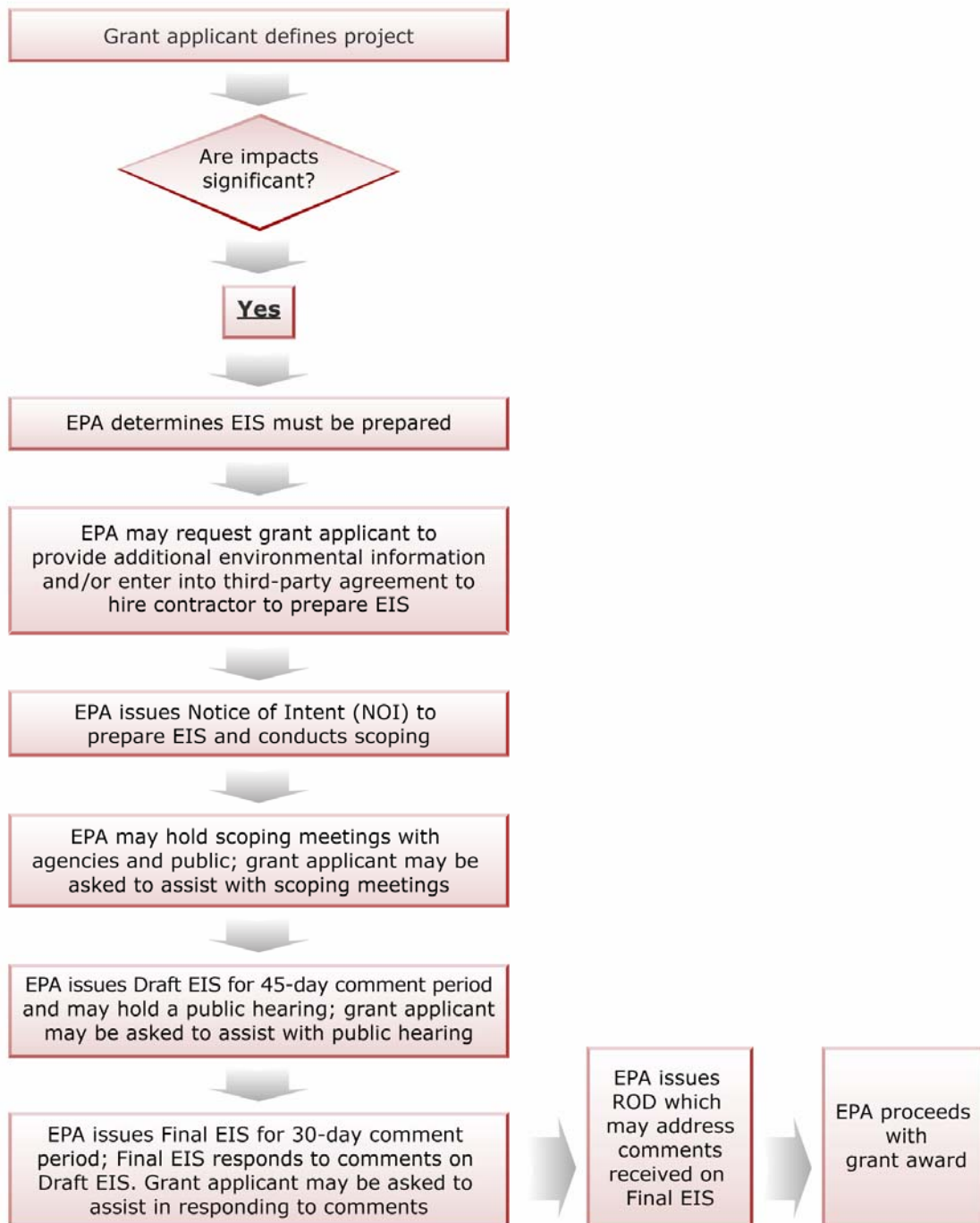


**Figure 1-1b. NEPA Environmental Review Process—EID and EA**





**Figure 1-1c. NEPA Environmental Review Process—EIS**



## 1.5 What is the grant applicant's role in the NEPA environmental review process?

The role of the grant applicant in the NEPA environmental review process is to provide information to EPA about the project and its potential environmental effects. As a first step, EPA and the grant applicant should discuss the scope of information to be provided to EPA. This information may include:

- Defining the project description and potential environmental impacts of the proposed project
- Describing the project purpose and need (such as addressing water quality and quantity problems, public health concerns, inadequate systems, more stringent effluent limits)
- Describing the project details (such as planning area description; planning period; description of construction phases; owner and operator of the facilities; location of facilities, including a map)
- Describing design parameters (for example, major unit processes, flow diagrams, pipe lengths, sizes and locations, design criteria)
- Describing project costs, including funding from EPA and all other sources.

***Categorical Exclusion.*** The grant applicant should review EPA's list of actions that may be categorically excluded at 40 C.F.R. § 6.204 to determine if the project might fit within an established CATEX. A grant applicant who concludes that the project may qualify for a CATEX may request a CATEX determination from EPA; or EPA may determine that a proposed project may be eligible for a CATEX during initial discussions with the grant applicant about the proposed project. If EPA determines the project does not qualify for a CATEX, the applicant should provide EPA with more detailed information on the proposed project in the form of an EID. In addition, cross-cutter agency review documentation (details in Appendix C) may need to be provided for CATEX determinations.

***Environmental Information Document.*** If EPA determines that the project does not qualify for a CATEX, EPA will likely ask the grant applicant to submit an EID to EPA to provide information about the project and its potential environmental effects. The EID provides basic project information including a detailed description of the proposed project and evaluates the environmental impacts and alternatives to the proposed project. The scope and level of detail of the EID should be commensurate with the magnitude and significance of the proposed project. Section 3.0 provides details about the purpose, content, and other pertinent information related to the EID.

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It is recommended that the grant applicant consult the EPA point of contact to obtain information on the processes to follow when preparing an EID and the information that should be included. If the grant applicant holds one or more public meetings as part of preparing the EID, a description of the process and any additional documentation should be included in the EID. Please be aware that EPA may request additional information from the grant applicant if insufficient information has been provided for EPA to conduct the NEPA review. This lack of information may result in process delays.

***Environmental Assessment.*** If EPA is preparing the EA, the grant applicant's role in the EA process is to provide sufficient information in the EID submitted to EPA. In some cases, the grant applicant may submit a draft EA and supporting documents in lieu of an EID. EPA may contact the grant applicant during the EA preparation process to request additional information on the project or its potential impacts. If the EA results in a FONSI, the grant applicant may also be asked to assist EPA in conducting any public review process. The grant applicant should consult with the EPA point of contact for the exact processes to follow. More details about the EA process are provided in Section 4.0.

***Environmental Impact Statement.*** If the grant applicant's proposed project requires an EIS, EPA has the primary responsibility for preparing the document. EPA may enter into a third-party agreement with the applicant to hire a consulting firm to prepare the EIS. As the project's proponent, the grant applicant may be asked to assist EPA by providing project information, assisting with public meetings or hearings, helping to respond to comments that require project changes, or in other ways. After the EIS is complete, EPA will make a decision on the action it will take and formalize it in a ROD. For more information about the EIS/ROD process, see Section 5.0.

## **1.6 What is EPA's role in the NEPA environmental review process?**

EPA is responsible for the NEPA review. In carrying out its responsibilities, EPA does the following:

- Reviews the information submitted by the grant applicant
  - Determines the adequacy of the information submitted for making a decision on the appropriate level of environmental review under NEPA
  - Prepares the appropriate environmental review document (CATEX determination, EA, or EIS) or reviews and adopts environmental review documents (Draft EA) prepared by the grantee or a third-party contractor and ensures its accuracy
  - Issues a preliminary FONSI or draft/final EIS and takes public comment on the preliminary FONSI or draft/final EIS
  - Completes the NEPA process through preparation of the appropriate decision-making document (discussed below).
-

EPA may prepare the following NEPA decision documents:

- CATEX Documentation
- FONSI for an EA,
- ROD for an EIS.

### **1.7 How does the NEPA environmental review process fit into the grant process?**

Federal funding of the design and construction of a project funded in whole or in part under an EPA appropriations act is subject to NEPA. Under NEPA, EPA must evaluate the environmental impacts of its action and all reasonable alternatives (including the no-action alternative), before taking the action (grant award). EPA may award a grant for planning and preliminary design and later amend it to include final design and construction once the NEPA environmental review process has been completed.

Although the purpose of this handbook is to explain the NEPA process as it relates to SAAP grant applicants, it may be helpful to understand how the NEPA environmental review relates to the grant award process. The SAAP grant award process for design and construction varies slightly among EPA regional offices, but generally consists of the following:

**EPA's Appropriations Act and Special Appropriations Grant Guidelines.** Once the EPA appropriations bill is signed into law, the Office of Water in EPA Headquarters in Washington, D.C. begins developing national guidelines for administering the SAAP grants. Upon completion, the guidelines are forwarded to the EPA regional and other headquarters offices. The guidelines assist the regional and headquarters offices in administering the grants for that fiscal year.

**Pre-Application Planning.** During this phase, EPA and the grant recipient may discuss submission of the grant application and the scope of the environmental review information needed. These discussions may also include the project scope, environmental review, environmental benefits and results, grant workplan, cost eligibility of project components, engineering data, and other items of importance for submitting a grant application.

**Environmental Review.** During the environmental review, the applicant provides information to EPA to support a request for a CATEX determination, submits an EID or Draft EA to EPA, or provides information for preparation of an EIS. EPA reviews the CATEX request, the EID, Draft EA, or EIS and prepares or finalizes the appropriate NEPA document.

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**Grant Application Process.** Discussions between the EPA point of contact and the potential grantee continue throughout the application process. The grant applicant prepares the application and submits it to EPA. EPA reviews the application for completeness, undertakes the appropriate NEPA review, and awards the grant, if appropriate. Once the grantee fulfills the conditions of the grant, it is closed out.

### **1.8 Who should be contacted for questions about a SAAP?**

The grant applicant should initially contact the EPA point of contact in the area where the SAAP is located. A list of initial contacts for each Region and a map of the Regions are included in the "Toolbox" at the end of this section.

### **1.9 How does the grant applicant coordinate a project with other state, regional, local, and tribal governments?**

As part of the environmental review process, grant applicants may also need to coordinate with other agencies and governments for issues that apply to their project. The following subsections provide examples of the type of information applicants may need to gather from outside agencies to provide EPA adequate information to support the environmental review process.

#### **1.9.1 Coordination with a State, County, City, or Other Local Community**

Grant applicants may need to contact the relevant state, county, city, or community office for information on population size of the project area. The project area is often deemed to be the "planning area." Depending on project size, the planning area may include the entire community (local town, city, or county) that will be affected by the proposed project, or it may include only the neighborhood in which the project is to be located. Applicants should document the information they gather, including who was contacted, when the contact was made, and what information was provided. A simple way to document this effort is to provide EPA with a copy of the initial information request submitted to the office along with the response that was received. A summary of the correspondence may also be used.

#### **1.9.2 Coordination with Alaska Native and Native American Tribal Governments**

Tribal governments, including Alaskan Native villages, are unique entities requiring specific coordination independent of other agency coordination. EPA maintains a list of tribal governments specific to the project area. If there is a need to consult with tribal governments, EPA will coordinate meetings between the necessary parties to discuss the proposed project.

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## 1.10 How to get started

The grant applicant's first step should be to clearly define the scope of the project. This will include such details as the project needs, project components (piping, pump stations, wells, water towers, and treatment plant components), size and length of components, location of all project components, project costs, source of funds, and so forth. Section 1.5 provides a list of minimum information that should be included.

The grant applicant's next step is to contact EPA with the project description and to discuss any applicable intergovernmental review process. The applicant will also want to discuss their role in the cross-cutter review process. Although the cross-cutter review process is the responsibility of EPA, the grant applicant may choose to initiate the cross-cutter review to expedite the environmental review process. A cross-cutter review is a requirement for every project, including those that qualify for a CATEX. Appendix C provides details on the cross-cutter coordination and consultation process.

Open lines of communication between grant applicants and EPA are beneficial for maintaining the project schedule and environmental review timeline. Furthermore, early planning and open lines of communication should produce a more efficient planning process and result in better decisions for the project.

## 1.11 Toolbox for Section 1

This handbook provides helpful tools to identify and prepare the appropriate level of environmental review for a project. A toolbox, provided at the end of each section, includes a list of helpful references, checklists, and other items discussed in the section.

### **Tools for Section 1**

#### **Web sites referenced:**

- Code of Federal Regulations,  
<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>

#### **Appendices referenced:**

- CEQ Regulations for Implementing NEPA—Appendix A
- EPA's NEPA Implementing Regulations—Appendix B

#### **Other tools referenced:**

- EPA Regional Contact List (follows)-Table 1-1
- EPA Regional Map (follows)-Figure 1-2

Figure 1-2. EPA REGIONAL MAP

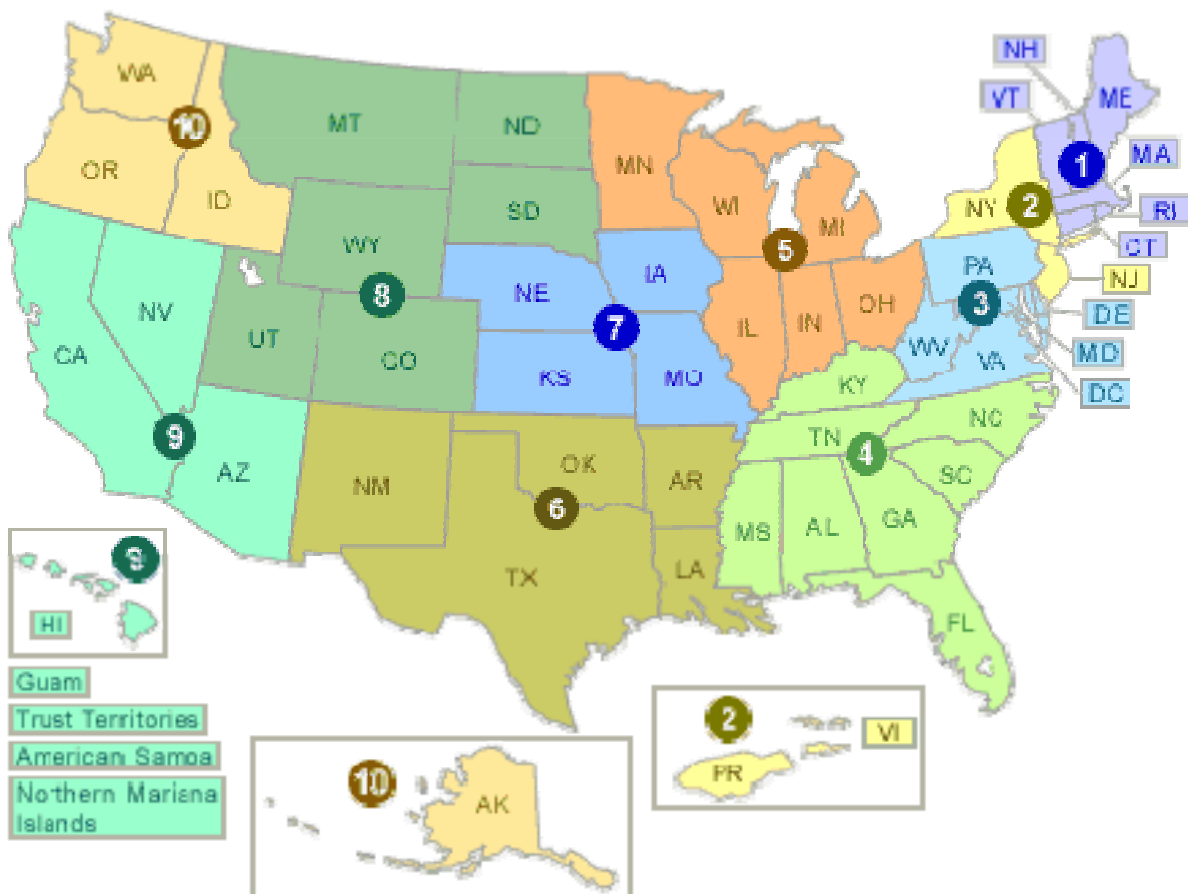


Table 1-1. EPA REGIONAL CONTACTS

**Region 1 (CT, MA, ME, NH, RI, VT)**

Environmental Protection Agency  
1 Congress St. Suite 1100  
Boston, MA 02114-2023  
<http://www.epa.gov/region01/>  
Phone: (617) 918-1111  
Fax: (617) 918-1809  
Toll free within Region 1: (888) 372-7341

**Region 2 (NJ, NY, PR, VI)**

Environmental Protection Agency  
Environmental Review Section  
290 Broadway – 25<sup>th</sup> floor  
New York, NY 10007-1866  
<http://www.epa.gov/region02/spmm/r2NEPA.htm>  
Phone: (212) 637-3504  
Fax: (212) 637-3771

**Region 3 (DC, DE, MD, PA, VA, WV)**

Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029  
<http://www.epa.gov/region03/>  
Phone: (215) 814-5000  
Fax: (215) 814-5103  
Toll free: (800) 438-2474  
E-mail: [r3public@epa.gov](mailto:r3public@epa.gov)

**Region 4 (AL, FL, GA, KY, MS, NC, SC, TN)**

Environmental Protection Agency  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960  
<http://www.epa.gov/region4/>  
Phone: (404) 562-9345 Water Division  
Fax: (404) 562-9318 Water Division  
Toll free: (800) 241-1754 Customer Service

**Region 5 (IL, IN, MI, MN, OH, WI)**

Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, IL 60604-3507  
<http://www.epa.gov/region5/>  
Phone: (312) 353-2000  
Fax: (312) 353-4135  
Toll free within Region 5: (800) 621-8431

**Region 6 (AR, LA, NM, OK, TX)**

Environmental Protection Agency  
Fountain Place 12th Floor, Suite 1200  
1445 Ross Avenue  
Dallas, TX 75202-2733  
<http://www.epa.gov/region06/>  
Phone: (214) 665-2200  
Fax: (214) 665-7113  
Toll free within Region 6: (800) 887-6063

**Region 7 (IA, KS, MO, NE)**

Environmental Protection Agency  
901 North 5th Street  
Kansas City, KS 66101  
<http://www.epa.gov/region07/>  
Phone: (913) 551-7003  
Toll free: (800) 223-0425

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## Section 2.0 Categorical Exclusions and Extraordinary Circumstances

### 2.1 What is a categorical exclusion?

Categorical exclusions (CATEXs) are categories of actions that do not individually or cumulatively have a significant effect on the quality of the human environment and that have been found to have no such effect. CATEXs applicable to EPA actions are listed at 40 C.F.R. § 6.204(a). Sections 2.5 and 2.6 discuss the process for preparing the information to be provided to EPA in support of a request for a CATEX.

### 2.2 Is the project eligible for a CATEX?

Determining a project's eligibility for a CATEX is the first step in the environmental review process. As part of the CATEX determination, EPA determines whether there are any extraordinary circumstances that would prevent the project from being eligible for a CATEX. If the proposed project is eligible for a CATEX and no extraordinary circumstances are involved, no further NEPA review is required. EPA has published the full set of actions eligible for a CATEX determination in 40 C.F.R. § 6.204. Based on § 6.204 (a)(1) (ii)(iii), and (v), the following types of actions related to infrastructure projects are eligible for exclusion:

EPA determines whether a proposed project is eligible for a categorical exclusion.

- ▶ Actions relating to existing sewer systems, drinking water supply systems, and storm water systems that involve:
  - minor upgrading, or minor expansion of system capacity or rehabilitation (including functional replacement) of the existing system and system components, or
  - construction of new minor ancillary facilities adjacent to or on the same property as existing facilities.

System components include:

- the sewer collection network and treatment system;
- the system to collect, treat, store, and distribute drinking water; and
- storm water systems, including combined sewer overflow systems.

This category does not include actions that:

- involve new or relocated discharges to surface or ground water;
  - will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water;
  - will provide capacity to serve a population 30% greater than the existing population;
  - are not supported by the state, or other regional growth plan or strategy;
- or

- directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.
- ▶ Actions in unsewered communities involving the replacement of existing onsite systems, providing the new onsite systems do not result in:
  - substantial increases in the volume of discharge,
  - the loadings of pollutants from existing sources, or
  - relocation of existing discharge.
- ▶ Actions for award of grants authorized by Congress under EPA's annual appropriations acts that are solely for reimbursement of the costs of a project that was completed prior to the date the appropriation was enacted.

It is important for grant applicants to consult EPA early in the design stage to determine whether their projects may be eligible for a CATEX. A project cannot be eligible for a CATEX unless it fits within a category of actions identified as eligible in § 6.204(a). Further, projects are not eligible for a CATEX if one of the extraordinary circumstances listed in § 6.204 paragraphs (b)(1) through (b)(10) are involved (see Section 2.3 for further details).

### 2.3 When would a project not qualify for a CATEX and what are extraordinary circumstances?

A proposed action is not eligible for a CATEX if any extraordinary circumstances are involved. An action that may be eligible for a CATEX is subject to sufficient environmental review to determine whether any extraordinary circumstances are involved. Information and documentation, including information and documentation on cross-cutters, may be needed to verify that a proposed project does not involve any extraordinary circumstances and is, therefore, eligible for a CATEX.

Extraordinary circumstances are "those circumstances listed in § 6.204 that may cause a significant environmental effect, such that a proposed action that otherwise meets the requirements of a categorical exclusion may not be categorically excluded" (40 C.F.R. § 6.102 (b)(6)).

Extraordinary circumstances are identified as those circumstances listed in 40 C.F.R. §6.204 that may cause a significant environmental effect. EPA has identified the extraordinary circumstances that would make a proposed action ineligible for a CATEX as follows (§ 6.204 (b)(1) through (10)):

- (1) The proposed action is known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time.
- (2) The proposed action is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.

- (3) The proposed action is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat.
- (4) The proposed action is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the National Register of Historic Places.
- (5) The proposed action is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.
- (6) The proposed action is known or expected to cause significant adverse air quality effects.
- (7) The proposed action is known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans.
- (8) The proposed action is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.
- (9) The proposed action is known or expected to be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts.
- (10) The proposed action is known or expected to conflict with federal, state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.

#### **2.4 Can EPA use a CATEX that another federal agency has provided for the same project?**

Each federal agency has its own regulations pertaining to the NEPA environmental review process, including its own list of categorical exclusions. Actions that may be categorically excluded by one federal agency's regulations may not be eligible for a CATEX under the regulations of another. It is, therefore, important for grant applicants to consult with EPA early in the process to determine whether their actions may be eligible for a CATEX under EPA's regulations implementing NEPA.

Although EPA makes CATEX determinations based on its own regulations, it can use information collected as part of another agency's NEPA process. Grant applicants having a CATEX determination resulting from another agency's NEPA

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review of their project should provide that information to EPA as part of any request for a CATEX.

## **2.5 What is the grant applicant's role in preparing a CATEX?**

Grant applicants may initiate a request for a CATEX determination if their project fits within a category of actions eligible for a CATEX in EPA's regulations at 40 C.F.R. § 6.204 and does not involve any extraordinary circumstances (See Sections 2.2 and 2.3). If the applicant does not initiate the request for a CATEX, EPA may do so. The grant applicant should write a letter that provides the following information when requesting a CATEX determination:

- Description of the proposed action
- Statement that identifies the category of actions eligible for a CATEX that the action fits within, explains how the action fits within that category, and explains why the action does not involve any extraordinary circumstances
- Project map(s)
- Cross-cutter coordination and consultation information, if applicable (See Appendix C).

The grant applicant should draft the project description with sufficient detail to clearly explain the scope of the proposed project. For example, where applicable, the project description should include a description of the existing equipment and structures involved in the project, as well as any replacement or ancillary equipment and structures. Additional information that the applicant believes EPA may need for evaluation purposes, such as a list of the location, size, and linear feet of all pipe being rehabilitated or replaced, as well as the size and linear feet of the new pipe being installed, should be included as an attachment.<sup>1</sup>

### **2.5.1 What is included in cross-cutter coordination and consultation?**

As stated above, a proposed project is not eligible for a CATEX if an extraordinary circumstance is involved with the proposed project. As noted in Section 2.3, some of the extraordinary circumstances are concerned with the potential impacts to certain environmental resources. Accordingly, information obtained from cross-cutter agencies can provide information on those environmental resources and whether an extraordinary circumstance may be involved with a project. Thus, responses obtained through cross-cutter coordination and consultation can assist and support the justification that a particular extraordinary circumstance is not involved with a proposed project.

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<sup>1</sup> Note, the EPA grant regulations at 40 C.F.R. § 31.3 define equipment as "tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit."

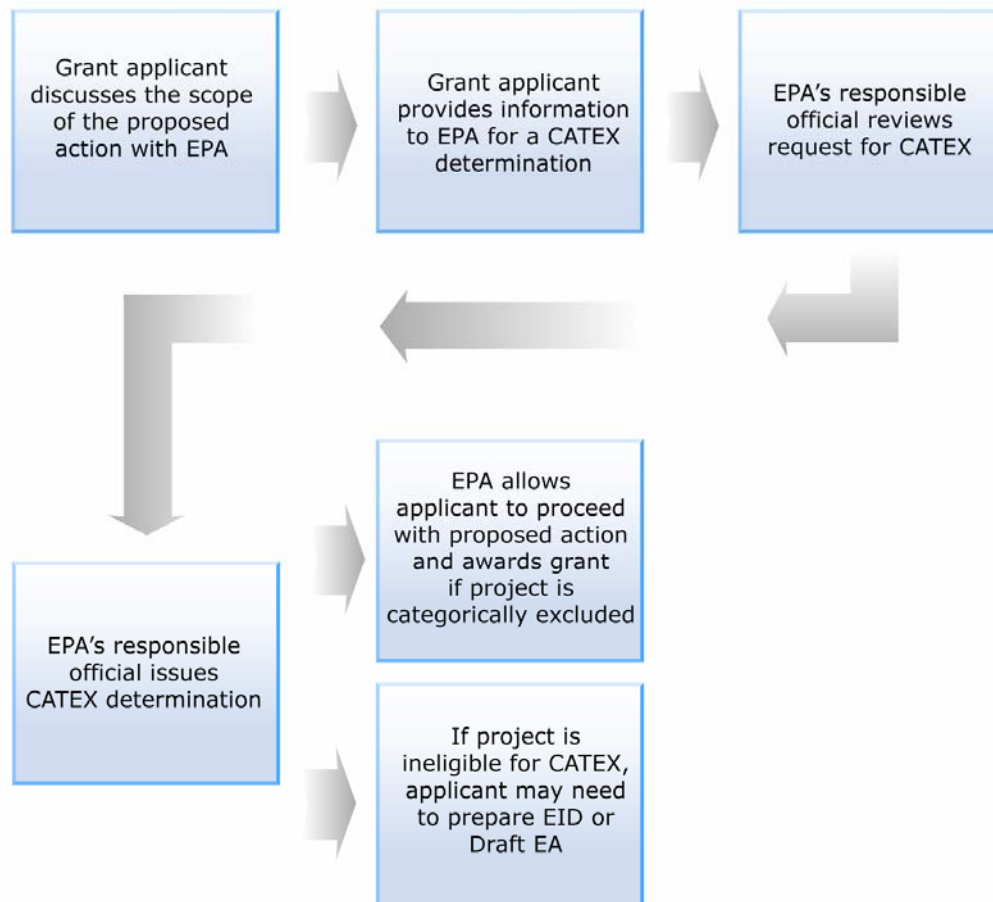
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Please refer to Appendix C for information concerning what is included in the cross-cutter coordination and consultation.

In some cases, a project eligible for a CATEX may not require any coordination with the cross-cutter agencies. For example, if a pump or other piece of equipment in an existing building is being replaced or an existing pipe is being slip-lined, the project may not impact any environmental resources and as a result would not need cross-cutter coordination and consultation. Grant applicants should coordinate with EPA if it appears their project does not need cross-cutter concurrence.

## **2.6 What is EPA's role in the CATEX process?**

EPA is responsible for reviewing information provided by grant applicants requesting a CATEX determination and determining whether the project may be categorically excluded. If the proposed project is eligible for a CATEX, EPA may prepare a CATEX determination memo. Figure 2-1 shows the categorical exclusion process.

**Figure 2-1. NEPA Review Process for Categorical Exclusions**

After a project has been determined as eligible for a CATEX, EPA may revoke the CATEX determination and require a complete environmental review if EPA determines that any of the following circumstances apply to a project:

- The project no longer meets the requirements for a CATEX as a result of changes in the project.
- The project involves extraordinary circumstances as determined from new evidence.
- The project may violate or has violated federal, state, local, or tribal laws.

## 2.7 Toolbox for Section 2

### Tools for Section 2

#### **Appendices referenced:**

- Appendix B—40 C.F.R. Part 6 (see listing of Categorical Exclusions and Extraordinary Circumstances, § 6.204)

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## **Section 3.0 Environmental Information Document**

### **3.1 What is an Environmental Information Document?**

An environmental information document (EID) describes in detail factors relating to the project, including a description of the proposed project, project need, existing environment, and, as applicable, any existing drinking water and wastewater systems affected by the grant project. The EID also includes an analysis of the environmental impacts of the proposed project and its reasonable alternatives, including the “no action” alternative. EPA’s regulations implementing NEPA require grant applicants to submit an EID for their project unless EPA has determined that the project either is eligible for a CATEX or will require an EIS.<sup>2</sup> Grant applicants should consult with their EPA point of contact on the scope of the EID they need to prepare. Generally, the scope of the EID is commensurate to the size and magnitude of the proposed project.

### **3.2 What should an EID contain?**

To produce a sufficient EID, it is important to first understand what type of information EPA needs to conduct its NEPA review. There are generally nine components of an environmental review, and the EID should address each component. The contents of an EID are described in the subsections that follow. Grant applicants should consult their EPA point of contact for further guidance on the scope of their EID (See Table 1-1).

#### **3.2.1 Purpose and Need for the Project**

This section of the EID provides a description of the purpose of the project and why it is needed. The purpose of the project includes the goals and objectives of the proposed project. For example, the purpose of the project may be to improve water quality to meet established EPA and state standards. The need for the project can be stated as a solution to a problem. For example, the project need may be to: solve a particular water quality or water quantity problem; solve a specified public health concern; correct inadequate systems or system components; or increase treatment due to more stringent effluent limits. If needed, the grant applicant should contact EPA for guidance on how to best describe the purpose and need for a project in the EID.

#### **3.2.2 Proposed Project and Funding Status**

This section of the EID provides a description of the project including its cost. Providing a good project description is one of the most important steps in preparing the EID because much of the information in the EID is based on the proposed project. The project description includes a project summary, the

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<sup>2</sup> 40 C.F.R. § 6.300 (c)(1)

planning period, the name of the owner and operator of the facilities, location of the facilities, and the planning area description. Applicants should also explain how they expect their project to address the need stated in the Purpose and Need Section of the document (see Section 3.2.1 above).

The EID should describe the project for which EPA is providing funding. The EID also should describe any aspects of the project that have the potential to cause cumulative impacts. All phases of the project should be described if it is to be completed in phases. The EID should describe the relevant design parameters, including a description of major unit processes; flow diagrams; sewer and water pipe lengths, sizes, and locations; and, basic design criteria.

Applicants should include with the EID an 8.5 by 11 inch project map suitable for black and white photocopying. For linear projects, applicants may need to use more than one map to show the project at a legible scale. In addition to other figures and maps needed to adequately describe the project, applicants should include a copy of a United States Geological Survey (USGS) 7.5-minute topographic map showing the existing and proposed facilities associated with the project and the overall project planning area. Clearly identify the location of major project components on the maps, such as treatment works, sewers, water lines, pump stations, storage facilities, and so forth.

The description of project costs should include the proposed total project costs; project costs for the portion of the project to be funded by EPA; and all other funding sources for the entire project, broken down by source, amount, and status of funds.

### **3.2.3 Existing Environment**

This section of the EID describes the current environmental and cultural resources in the planning area that may be affected by the project as well as areas that may be affected by proposed alternatives. As a general rule, avoid lengthy descriptions by providing succinct descriptions that are focused and written in language that is easy to understand. The extent of data and the analysis that are included should correspond to the significance of the impact with less significant material summarized, consolidated, or simply referenced. The baseline information should be discussed in proportion to the potential for impact to an environmental resource. For example, if soils are minimally impacted then the baseline information for soils does not need to be described in great detail. In the case of surface water discharges, for example, it may not be necessary to describe soil conditions in detail; however, any selected alternative using soil for treatment (septic tanks, spray irrigation, overland flow), should include a thorough description of soil conditions.

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The EID describes any special or sensitive environmental areas such as wetlands; air quality non-attainment areas; endangered or threatened species; prime or unique agricultural lands; areas of recognized scenic, recreational, archeological, or historic value; valuable floral or faunal communities; wild or scenic rivers; drinking water (surface or ground water) sources; floodplains; recreational or commercial uses of potential receiving streams; land uses; transportation; geology and soils; and, parklands or other public lands. A cross-cutter coordination and consultation review may have revealed that some of these special environmental resources do not exist in the project area or will not be impacted by the proposed project. For those special or sensitive environmental resources not found in the planning area, make a statement such as "No wetlands, wildlife preserves, prime agricultural lands, or other environments of special interest are located where they could be impacted by implementation of the project," and include documentation for such conclusions, such as letters from administering cross-cutter agencies. Drinking water and wastewater treatment plants located in air quality non-attainment areas may also require coordination or consultation with the state agency responsible for implementing Clean Air Act programs.

In preparing the EID, it is important to identify any community, including minority and low-income communities, that exists within the overall planning area or may otherwise be impacted by the project (for example, downstream or downwind communities). An EPA Web site with an Environmental Justice Geographic Assessment Tool is available to assist in identifying such communities and environmental justice information at <http://www.epa.gov/enviro/ej/>. Applicants may consult EPA on the best way to identify Environmental Justice (EJ) and Native American community information for inclusion in the EID.

### **3.2.4 Alternatives Analysis**

All reasonable alternatives and "no-action" are described, analyzed, and presented in a comparative form in this section. These alternatives may be ones that the applicant considered during project planning. For example, alternatives may relate to upgrading an existing facility, building a new facility, regionalization, the location of the project, the process, specific technologies, the means for handling materials, and so forth. EPA's regulations implementing NEPA require evaluation of no-action, which provides the baseline for comparison of the action alternatives.

The EID may identify the grant applicant's preferred alternative and should state the reasons why this alternative is the preferred alternative. An explanation should be provided for why each of the other alternatives, including the no-action, was not proposed. The explanation may include information such as present worth or equivalent annual cost comparisons, reliability of the

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alternatives, complexity of the alternatives, significant environmental effects, and legal or institutional constraints.

### 3.2.5 Environmental Impacts and Mitigation

In this section, the EID assesses, describes, and documents all environmental impacts of each of the reasonable alternatives on each of the different environmental and cultural resources discussed in the Existing Environment section of the EID (see Section 3.2.3). This section also describes any potential impacts, both beneficial and adverse. The EID should briefly note which environmental resources are not located in the project area and therefore would not be potentially impacted by the proposed action. The EID should also describe the predicted impacts of the proposed project(s) on any special environmental resources cited in the Existing Environment section.

In discussing environmental impacts, applicants should address the direct, indirect, and cumulative impacts of the proposed action and alternatives. For example, one indirect impact of a project could be new development and growth that would be encouraged or enabled by the construction of the project. In the EID, the applicant would address the impact of that growth, including potable water demands, wastewater produced, land use changes, community service needs, impact on natural areas or wildlife, and other such concerns.

Direct effects “are caused by the action and occur at the same time and place” (40 C.F.R. § 1508.8) and are directly related to the project activity. Indirect impacts are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable” (40 C.F.R. § 1508.8).

A cumulative impact is “the impact on the environment [that] 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” (40 C.F.R. § 1508.7). Thus, cumulative impacts may result from repeated actions or from the interaction of multiple actions on a given environmental resource.

This section of the EID includes an evaluation of the potential for cumulative impacts that may occur as a result of the applicant’s proposed project when combined with other actions. The applicant should pay particular attention to land use changes and air and water quality impacts and attach, in an appendix, any available documentation of the analysis.

Where there are multiple projects, cumulative impacts are possible and can occur. Geographical boundaries may limit the extent of cumulative impacts. For example, water resource impacts usually occur within a particular watershed

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or aquifer. Therefore, in conducting the cumulative impact analysis, it is important to define the temporal and spatial boundaries of any resource that may potentially be cumulatively impacted by the proposed action or alternatives. Although mitigation measures are not required for cumulative effects, mitigation measures should be discussed and analyzed as part of the cumulative effects analysis.

More information on cumulative impacts is available in CEQ's handbook, [\*Considering Cumulative Effects Under the National Environmental Policy Act\*](#), which is available on CEQ's website at <http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm>.

Grant applicants should also address mitigation measures designed to reduce or eliminate adverse environmental impacts. The EID should describe all mitigation measures that would reduce or lessen the potential for environmental impacts.

### **3.2.6 Interagency Coordination and Consultation Activities**

Applicants should document any coordination or consultation process in this section of the EID. Federal law and executive orders require that agencies other than EPA review certain environmental impacts of projects. If the applicant chooses to undertake the cross-cutter coordination and consultation process, then the responses obtained should be documented and included in an appendix to the EID. The information gathered as part of the cross-cutter review often is used to determine whether there are significant environmental impacts and whether mitigation is necessary to protect environmental resources.

When conducting interagency coordination, the applicant should consider whether:

- All pertinent stakeholders have been identified, including state, local, federal, and tribal agencies that need to be involved in the project.
- All required cross-cutter environmental reviews needed for the project have been identified and the respective agencies contacted for required

Mitigation includes: avoiding the impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating the impact over time by preservation and maintenance of operations during the life of the action; compensating for the impact by replacing or providing substitute resources or environments (40 C.F.R. § 1508.20).

The EID should contain a clear explanation of the consultation process; compliance with requirements; and for some resources, the written documentation from the agencies consulted.

consultation or discussion of environmental information needs.

- The intergovernmental review process has been considered per Executive Order 12372 (See the intergovernmental review information at <http://www.whitehouse.gov/omb/grants/spoc.html> ).

If a grant applicant undertakes the coordination and consultation process for cross-cutters, EPA suggests that the grant applicant complete to the extent possible all necessary coordination with federal/state/local agencies. Where applicable, EPA may send a non-federal representative designation letter to the appropriate agency or authority [e.g., U.S. Fish and Wildlife Service (USFWS), the U.S. National Marine Fisheries Service (NMFS), State Historic Preservation Office (SHPO)] designating the grant applicant as EPA's non-federal representative to initiate informal consultation under the Endangered Species Act of 1973 (ESA) or Section 106 of the National Historic Preservation Act (NHPA).

If there is a potential for one or more resource impacts to occur, notify EPA early in the process so that it can be involved in the coordination and consultation. It may also be necessary to coordinate with non-federal—in addition to federal—agencies that may have authority over and an interest in the proposed project or area. These agencies could include state wildlife agencies, local governments, councils of government, water districts, river authorities, and others.

In this section of the EID, list all sources consulted for information and/or concurrence.

### **3.2.7 Public Participation**

Public participation may also be included in the project planning process. The EID should include a summary and documentation of any public involvement process, including the public meeting date, public meeting summary or transcripts, and evidence of publication of the meeting notice in the local newspaper.

If there are comments opposing any aspect of the project, the applicant should explain the response to or resolution of the issue raised by the comments. If there is significant public objection based on an environmental concern, EPA may need to prepare an EIS.

### **3.2.8 List of Preparers**

In this section, list the names and qualifications (expertise, experience, professional disciplines) of the people who were primarily responsible for

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preparing the EID and the section(s) they prepared. The list should also include their address, phone number, and agency or firm affiliation.

### **3.2.9 List of References**

This section should list the references that were used in preparing the EID. References include, but are not limited to, source documents, studies, scientific literature, and other planning documents used to provide information and support analyses contained in the EID.

### **3.3 How are other state and federal agency reviews used?**

The grant applicant is encouraged to incorporate and summarize other state and federal agency environmental reviews into the EID to reduce the length of the EID. However, it is important that summarized information does not impede the review of the EID.

Material based on proprietary data that is not available for public review and comment should be marked Confidential Business Information if submitted with an EID.

### **3.4 What are some helpful hints for efficient EID preparation?**

In preparing the EID, grant applicants should avoid statements that are ambiguous, inconsistent, unsubstantiated, redundant, or biased. The text should be easy to understand and organized logically.

The EID should be as brief as practical and the information presented should be current and well referenced. If data gaps exist, clearly identify them. Use maps, figures, and tables when possible. The use of such materials is an effective way to convey large amounts of information without extensive text. These materials can include regional, vicinity, and project maps; exhibits such as graphics, diagrams, and graphs; and data, figure, and narrative tables.

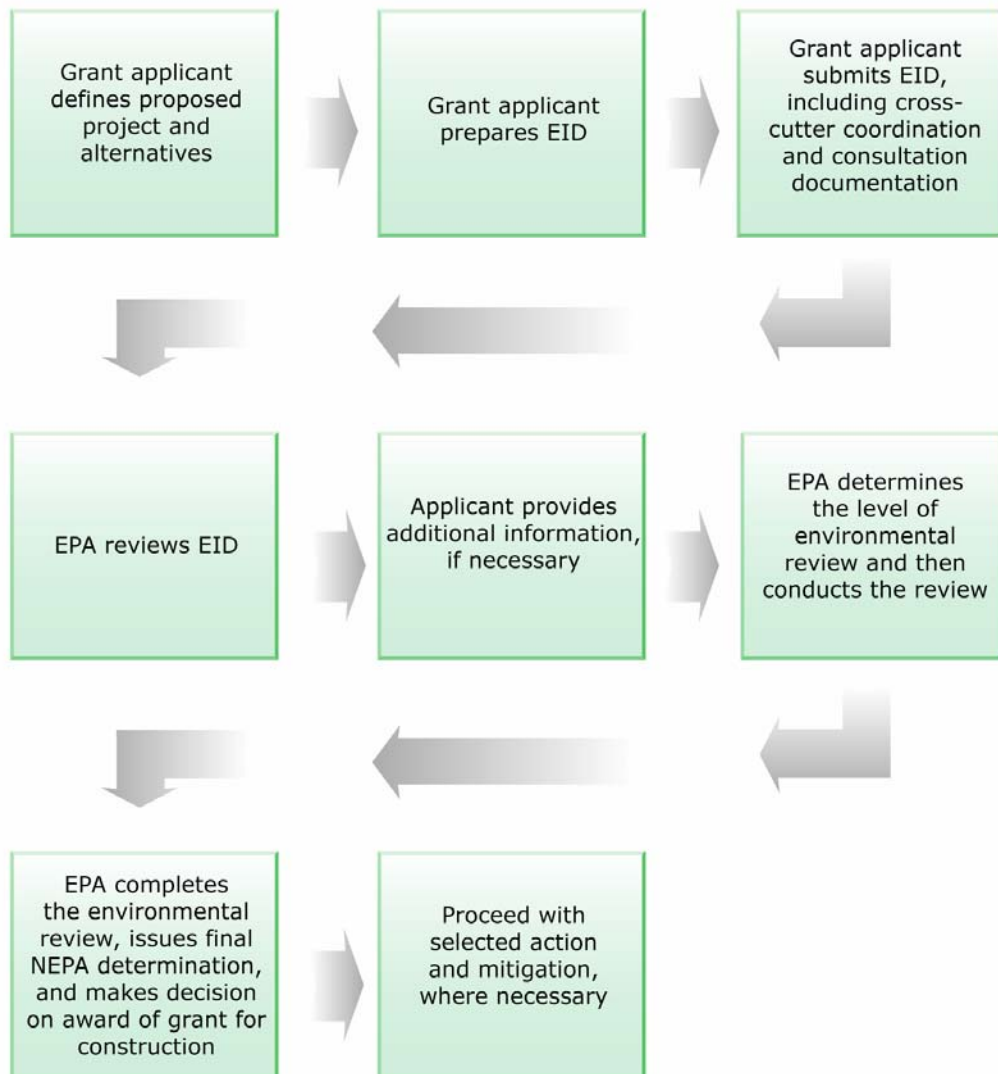
EPA has identified several common shortcomings in the preparation of EIDs:

- The project need is not well documented.
  - The project description lacks specific detail.
  - Project map(s) are not suitable for public distribution.
  - The project costs do not match the grant application.
  - Cross-cutter agencies documentation is not included with the EID.
  - The description of the project sent to the cross-cutter agencies does not match the EID description.
-

- Issues raised by a cross-cutter agency or authority are not addressed.
- Reasonable alternatives are not proposed or evaluated.
- EIDs prepared for another agency are submitted without revisions to meet EPA's needs.

Figure 3-1 identifies the primary points of grant project integration between EID preparation and NEPA review.

**Figure 3-1. Integration of EID Preparation and NEPA Review with Grant Project Planning**





### 3.5 What is EPA's role in the preparation of the EID?

After the grant applicant submits the EID, EPA reviews it for completeness and accuracy. EPA may ask the applicant to revise or supplement the EID if EPA determines more information is needed. The grant applicant should consult with the EPA point of contact to determine the appropriate electronic format for submitting an EID. This allows EPA to review the document electronically and to use a document reader.

Based on the information in the EID, EPA may prepare an EA. If the project is found to have no significant effect, then EPA documents the findings with the preparation of a FONSI, which is made available to the public for a 30-day comment period. At the end of the 30-day comment period, EPA fully considers comments submitted on the EA/FONSI before taking any action. If EPA determines that the project may have potentially significant environmental impacts, EPA prepares an EIS.

Once EPA has completed the NEPA environmental review process, EPA determines whether to award the construction grant. If EPA determines that it will award the grant, it may award a construction grant or, where applicable, amend the existing planning grant to include the construction phase. At that time, the grant applicant also will be given permission to proceed with the project.

### 3.6 Toolbox for Section 3

To understand how reviewers evaluate the EID, a sample checklist used by EPA is provided. This EID checklist is provided for information only. It is a broad-based checklist for all infrastructure projects. It is recommended that this checklist be used as a tool when preparing the EID; completing the EID checklist is *not* a requirement. It is also important to note that not all of the items listed on the checklist may need to be addressed in the EID. Only those items pertaining to the project should be addressed in the EID. Thus, EPA encourages the grant applicant to discuss the scope of any EID with the EPA contact for the project.

#### **Tools for Section 3**

##### **Web sites referenced:**

- EPA Environmental Justice Geographic Assessment Tool, <http://www.epa.gov/enviro/ej/>
- Considering Cumulative Effects Under the National Environmental Policy Act, <http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm>

##### **Other tools referenced:**

- EID checklist (follows)

<b><i>Environmental Information Document</i></b> <b><i>Project Name:</i></b>	<b><i>Page</i></b>	<b><i>Adequate</i></b>	<b><i>Inadequate</i></b>	<b><i>Not Applicable</i></b>
<b>A. Proposed Project and Funding Status</b>				
1. Project Purpose and Need (select at least one)				
a. Water Quality/Water Quantity Problems				
b. Public Health Concerns				
c. Inadequate System or System Components				
d. More Stringent Effluent Limits <b>(wastewater only)</b>				
(1) Existing Effluent Limitations				
(2) Proposed Effluent Limitations				
e. Other (specify: )				
2. Project Description				
a. Project Summary				
b. Planning Area Description (including a map with facilities)				
c. Planning Period (time period)				
d. Description of Project Construction Phases				
e. Owner and Operator of the Facilities				
f. Location of the Facilities				
g. 8.5 X 11 inch, Black and White Project Map Suitable for Distribution				
3. Relevant Design Parameters				
a. Description of Major Unit Processes				
b. Flow Diagram				
c. Sewer/Water Pipe Lengths, Sizes, and Locations				
d. Basic Design Criteria				
e. Design Storm(s)				
f. Description of Major Storm Water Components (Structural and Non-Structural)				
g. Estimated Pollutant Removal Capability (i.e., performance criteria of structural components)				
h. Other				

<b>Environmental Information Document</b> <i>Project Name:</i>	<i>Page</i>	<i>Adequate</i>	<i>Inadequate</i>	<i>Not Applicable</i>
4. Project Cost				
a. Proposed Total Project Cost				
b. Portion of Total Project Cost Funded by EPA				
c. List of Amount, Sources, and Status of All Funding Sources				
<b>B. Existing Environment As Pertains to Project</b>				
1. Public Health Problems Due to Water Quality				
2. Water Quality Problems, Fish Kills, etc.				
3. Surface & Ground water Hydrology				
4. Drinking Water Sources and Supply				
5. Physiography, Topography, Geology & Soils				
6. Federally Endangered & Threatened Species				
7. Air Quality (non-attainment area needs state sign-off)				
8. Environmental Justice Information				
a. Conditions, Minority & Low Income Areas (include median family income)				
b. Census Maps				
9. Land Use & Development, Percent Impervious Cover, Pollutant Sources				
10. Identification of Floodplains and Wetlands				
<b>C. Existing Wastewater/Drinking Water/Storm Water System</b>				
1. General Description of Wastewater Collection & Treatment and Storm Water System & Map				
2. Existing Wastewater System ( <b>wastewater only</b> )				
a. Wastewater Flows: Average, Peak, Wet Weather				
b. Influent Characteristics				
c. Major Industrial Users				
d. Residuals (sludge) Disposal				
e. Service Area				
f. Infiltration and Inflow				
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## Section 4.0 Environmental Assessment

### 4.1 What is an environmental assessment?

An environmental assessment (EA) is a concise public document that provides sufficient evidence and analysis for EPA to determine whether to issue either a finding of no significant impact (FONSI) or a notice of intent (NOI) to prepare an EIS. EPA's decision to finalize and issue the EA and FONSI or to move forward with the EIS process is based on whether or not the project will have significant impacts.

### 4.2 Who is responsible for preparing an EA?

Issuing an EA is the regulatory responsibility of EPA. The grant applicant's role in the development of an EA is generally limited to preparing the EID; information gathered and compiled in the EID is used to prepare the EA.

As an alternative pursuant to 40 CFR § 6.303, the grant applicant in consultation with EPA may prepare a Draft EA instead of an EID via a third-party agreement or with the grant applicant's resources. It is important to note that grant funds may not be used to prepare a federal agency document, such as a Draft EA, but may be used to prepare an EID. If the applicant chooses to prepare a Draft EA, the applicant would need to pay for a Draft EA with its own resources. Where the grant applicant prepares the Draft EA, EPA is responsible for the content and accuracy of the Draft EA and finalizing the EA process.

EPA has the legal obligation to issue the NEPA document, to approve NEPA determinations, and to fulfill other cross-cutter federal requirements before approving or funding for design or construction.

### 4.3 Overview of an EA

Preparing an EA is not necessary for cases in which EPA has already determined that an EIS will be prepared. The framework of an EA is based on site-specific proposed actions, such as size, scope, and level of detail for each effect. The EA is tailored to the project's environmental resources, such as presence of or potential for endangered species, essential fish habitat, wild and scenic rivers, coastal zones, seismic areas, floodplains, prime farmland, and others. Resource areas that are excluded from further study are identified in the beginning sections of the EA. Figure 4-1 presents the basic overview of an EA.

The basic components of an EA include a brief discussion of the purpose and need for the project, alternatives, environmental impacts of the proposed action, and a listing of agencies and persons consulted.

**Figure 4-1. EA Overview**

<b>Purpose</b>	<ul style="list-style-type: none"> <li>Briefly provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact (40 C.F.R. § 1508.9)</li> </ul>
<b>Scope</b>	<ul style="list-style-type: none"> <li>Reviews all environmental impacts (natural and human) and identifies alternatives considered</li> </ul>
<b>Content</b>	<ul style="list-style-type: none"> <li>Describes and identifies:                             <ul style="list-style-type: none"> <li>Purpose and need for the proposed action</li> <li>Proposed action</li> <li>Alternatives considered (including the no-action alternative)</li> <li>Affected environment (including baseline conditions)</li> <li>Environmental consequences of the proposed action and alternatives</li> <li>Agencies and persons consulted</li> <li>Any mechanism (e.g., special grant conditions) needed to ensure that mitigation is carried out</li> <li>Note: The EA is provided for review upon request or as an attachment to the FONSI.</li> </ul> </li> </ul>

**4.4 What is the framework for a FONSI?**

A FONSI is a federal agency document that briefly presents the reasons why an action, not otherwise excluded (§ 1508.4) from NEPA review, will not have a significant effect on the human environment and for which an EIS will not be prepared (40 C.F.R. § 1508.13). Figure 4-2 presents an overview of a FONSI.

**Figure 4-2. FONSI Overview**

<b>Purpose</b>	<ul style="list-style-type: none"> <li>Notifies the public of EA results and any mitigation plans</li> </ul>
<b>Scope</b>	<ul style="list-style-type: none"> <li>Explains why an action will not have significant effect on the natural or human environment</li> </ul>
<b>Content</b>	<ul style="list-style-type: none"> <li>Includes a summary of the EA or the complete EA as an attachment</li> <li>Explains why an action will not have a significant effect on the environment</li> <li>Describes, if necessary, mitigation measures required to ensure that the anticipated environmental impacts will not be significant; a mitigation plan may also be described to ensure that mitigation is implemented</li> <li>Describes changes that have been made in the proposed action to eliminate or reduce environmental impacts</li> <li>Any mechanism (e.g., special grant conditions) needed to ensure that mitigation is carried out</li> </ul>
<b>Public Participation</b>	<ul style="list-style-type: none"> <li>Provides a 30-day public comment period before proceeding with action</li> </ul>

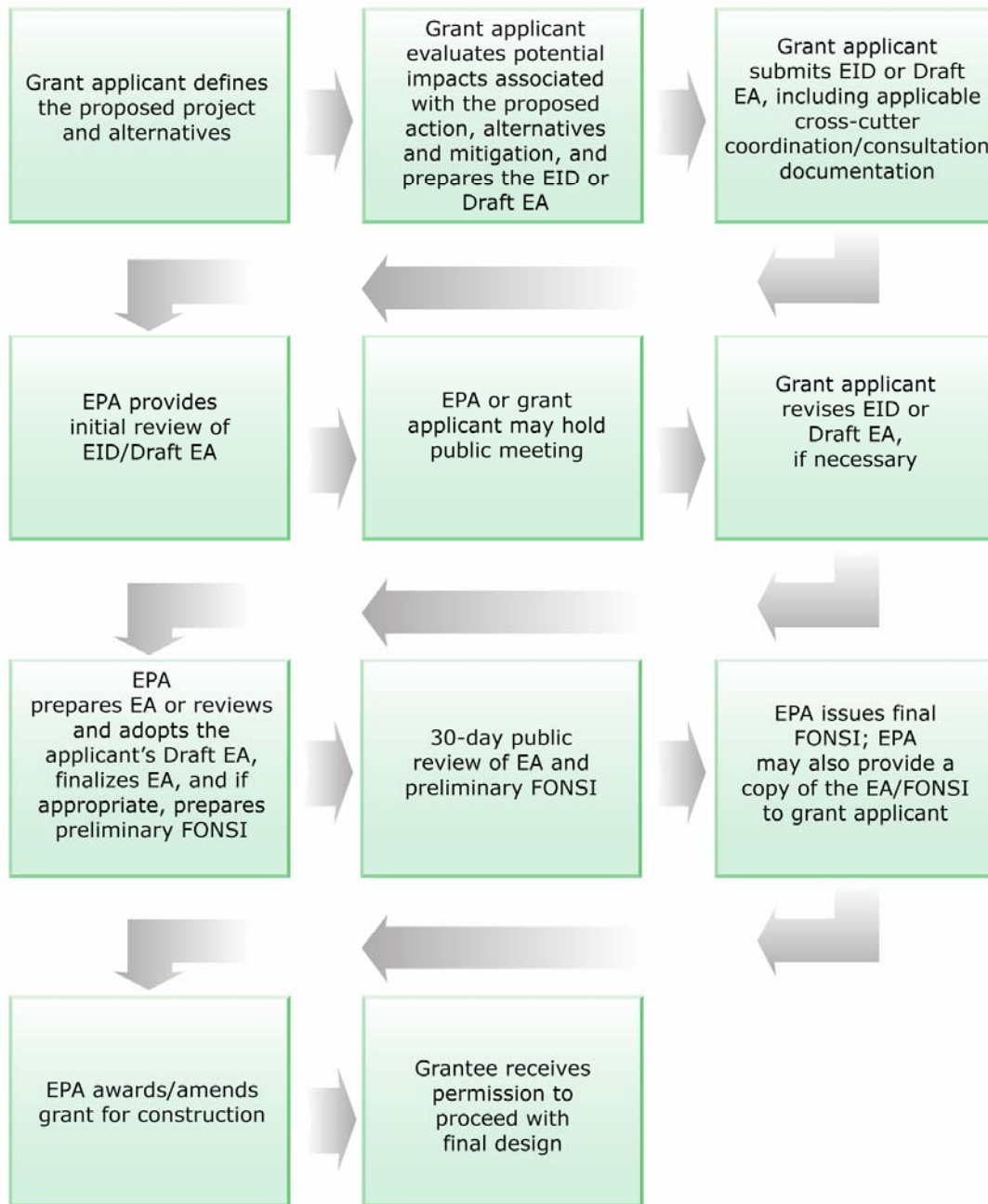


#### **4.5 How does the public participate in the EA process?**

EPA issues a preliminary FONSI if it determines, based on the information in the EA, that the proposed action will not have a significant effect on the environment. The purpose of the FONSI is to explain why a proposed action will not have a significant impact on the environment. The FONSI also states any mitigation measures that will be implemented. The public is given 30 calendar days to review and comment on the preliminary FONSI and the supporting analysis documented in the EA. No administrative action is taken on a project until the required 30-day comment period is completed and any substantive comments received are considered. If no substantive comments are received, EPA finalizes the EA and FONSI. When substantive comments are received, EPA determines how best to address the comments.

Figure 4-3 shows the integration of the EID preparation and NEPA review as it relates to the grant project process.

**Figure 4-3. EID Preparation NEPA Review/Grant Project Planning Integration (Environmental Assessments)**



## Section 5.0 Environmental Impact Statement

### 5.1 What is the definition of an Environmental Impact Statement (EIS)?

An environmental impact statement (EIS) is a detailed document that is required if federal actions are likely to have significant impacts on the environment. Because the potential for significant impacts exists, an EIS presents an evaluation of a proposed action and reasonable alternatives in greater detail than an EA. The EIS also discusses reasonable mitigation measures that are necessary to reduce or eliminate adverse environmental impacts or possibly enhance the quality of the human environment.

An Environmental Impact Statement "means a detailed written statement as required by section 102(2)(C) of [NEPA]" (40 C.F.R. § 1508.11).

### 5.2 Who is responsible for preparing an EIS?

EPA prepares an EIS when it is determined that there are likely to be significant impacts from a proposed project. EPA initiates the process, conducts the scoping effort, prepares an EIS document, coordinates the cross-cutter and public review process, and finalizes the document with a Record of Decision (ROD). The grant applicant's role in this process typically involves providing EPA clarification of baseline information, assisting EPA with public meetings or hearings during the EIS process, and/or assisting EPA if the project changes or if mitigation is recommended during the review process. As an alternative pursuant to 40 CFR § 6.303, EPA may enter into third-party agreement with the grant applicant to hire a contractor to prepare the EIS. It is important to note that grant funds may not be used to prepare a federal agency document, such as an EIS. Thus, the applicant would pay for the third-party consultant with EPA providing technical direction on the preparation of the EIS. In this circumstance, EPA retains ultimate responsibility for finalizing and issuing the EIS, and preparing the ROD using the EIS inputs from the third-party consultant.

### 5.3 When is an EIS prepared?

An EIS is prepared when:

- An EA has been initiated or completed, and the findings demonstrate that significant environmental impacts may occur from the proposed action.
  - EPA determines that a proposed project may have a potentially significant impact on the human environment and that mitigation of the impacts may not be possible. In this case, preparation of an EA is not necessary.
-

For SAAP grants related to construction, an EIS may be prepared for the following types of actions:

- New regional wastewater treatment facilities or water supply systems for a community with a population greater than 100,000 (40 C.F.R. § 6.207(a)(1)(i)).
- Expansion of existing wastewater treatment facilities that will increase the existing discharge to an impaired water by greater than 10 million gallons per day (mgd) (40 C.F.R. § 6.207(a)(1)(ii)).

In addition, EPA may decide to prepare an EIS when it is determined that any of the following conditions exist (40 C.F.R. § 6.207(a)(3)(i) through (xi)):

- (i) The proposed action would result in a discharge of treated effluent from a new or modified existing facility into a body of water and the discharge is likely to have a significant effect on the quality of the receiving waters.
  - (ii) The proposed action is likely to directly, or through induced development, have significant adverse effect upon local ambient air quality or local ambient noise levels.
  - (iii) The proposed action is likely to have significant adverse effects on surface water reservoirs or navigation projects.
  - (iv) The proposed action would be inconsistent with state or local government, or federally-recognized Indian tribe approved land use plans or regulations, or federal land management plans.
  - (v) The proposed action would be inconsistent with state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws and regulations for protection of the environment.
  - (vi) The proposed action is likely to significantly affect the environment through the release of radioactive, hazardous or toxic substances, or biota.
  - (vii) The proposed action involves uncertain environmental effects or highly unique environmental risks that are likely to be significant.
-

- (viii) The proposed action is likely to significantly affect national natural landmarks or any property on or eligible for the National Register of Historic Places.
- (ix) The proposed action is likely to significantly affect environmentally important natural resources such as wetlands, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.
- (x) The proposed action in conjunction with related federal, state or local government, or federally-recognized Indian tribe projects is likely to produce significant cumulative impacts.
- (xi) The proposed action is likely to significantly affect the pattern and type of land use (industrial, commercial, recreational, residential) or growth and distribution of population including altering the character of existing residential areas.

The complete set of detailed EPA criteria for which proposed actions normally require an EIS is found in 40 C.F.R. § 6.207 (See Appendix B).

#### **5.4 Overview of an EIS**

An EIS evaluates the potential for significant impacts from the proposed action and alternatives. An EIS can include in-depth scientific analyses, additional agency consultation information and coordination, and additional supporting studies. The EIS is developed using the general content outlined in Figure 5-1.

**Figure 5-1. Overview of an EIS**

<b>Purpose</b>	<ul style="list-style-type: none"> <li>• Provides detailed environmental information to decision makers about the proposed project/action</li> <li>• Examines alternatives and potential for mitigating impacts</li> </ul>
<b>Scope</b>	<ul style="list-style-type: none"> <li>• Provides a comprehensive review of all impacts of the proposed action and alternatives</li> </ul>
<b>Content</b>	<ul style="list-style-type: none"> <li>• Includes the following:             <ul style="list-style-type: none"> <li>• Cover sheet</li> <li>• Executive summary</li> <li>• Table of Contents</li> <li>• Purpose and need for the proposed action</li> <li>• Proposed action</li> <li>• Alternatives considered (including the no action alternative)</li> <li>• Affected environment (including baseline conditions)</li> <li>• Environmental consequences of the proposed action and alternatives</li> <li>• Coordination – includes a distribution list of agencies, organizations, and interested parties, including the public</li> <li>• List of preparers</li> <li>• Index</li> <li>• Appendices</li> </ul> </li> </ul>
<b>Public Participation</b>	<ul style="list-style-type: none"> <li>• Provides a Notice of Intent (NOI) published by EPA</li> <li>• Provides for a 45-day public comment period on the Draft EIS (DEIS)</li> <li>• Publishes a Notice of Availability (NOA) for DEIS, Final EIS (FEIS), and Record of Decision (ROD)</li> <li>• If a public meeting or hearing is held, it should not be held earlier than 30 days after issuance of the DEIS</li> <li>• Provides for a 30-day wait period on the FEIS prior to EPA’s decision, which is documented in the ROD</li> </ul>

**5.4.1 What is a Record of Decision (ROD)?**

A ROD is a concise public document required under 40 C.F.R. § 1505.2 that states the final decision on an action for which a Final EIS has been prepared. The ROD is documented and made available following the 30-day wait period after the completion of the FEIS. It provides EPA’s official decision on the action, describes the alternatives that were considered and identifies any applicable mitigation and/or monitoring that may be required. Figure 5-2 presents the general content and outline of a ROD. EPA may publish a Notice of Availability (NOA) for the ROD in the same manner as for the announcement of the DEIS and FEIS releases.

**Figure 5-2. ROD Overview**

<b>Purpose</b>	<ul style="list-style-type: none"> <li>Records EPA’s decision regarding the proposed major EPA action*</li> </ul>
<b>Scope</b>	<ul style="list-style-type: none"> <li>States EPA’s decision and the basis for the decision</li> <li>Summarizes the EIS analyses and any commitments to mitigation</li> </ul>
<b>Content</b>	<ul style="list-style-type: none"> <li>Includes the following:                             <ul style="list-style-type: none"> <li>Brief description of the proposed action and alternatives considered in the EIS, environmental factors considered, and project impacts</li> <li>Any commitments to mitigation and states whether all practicable mitigation measures were adopted</li> <li>Identification of EPA’s preferred alternative, and an explanation if the environmentally preferred alternative was not selected</li> <li>Responds to any substantive comments on the Final EIS</li> <li>Provides the date of issuance</li> <li>Signature of the Responsible Official</li> </ul> </li> </ul>
<b>Public Participation</b>	<ul style="list-style-type: none"> <li>Provides a notice to announce the decision to the public</li> <li>ROD is made available to all persons responding to the DEIS or FEIS and to those requesting it.</li> </ul>

\* Note: The Responsible Official may not make any decisions on the action until the time periods in 40 C.F.R. § 1506.10 have been met.

### 5.5 How does the public participate in the EIS Process?

EISs have the greatest extent of public participation in the NEPA environmental review process. Because the need for an EIS indicates that significant impacts are predicted, public participation procedures ensure that the goals of the NEPA process are achieved.

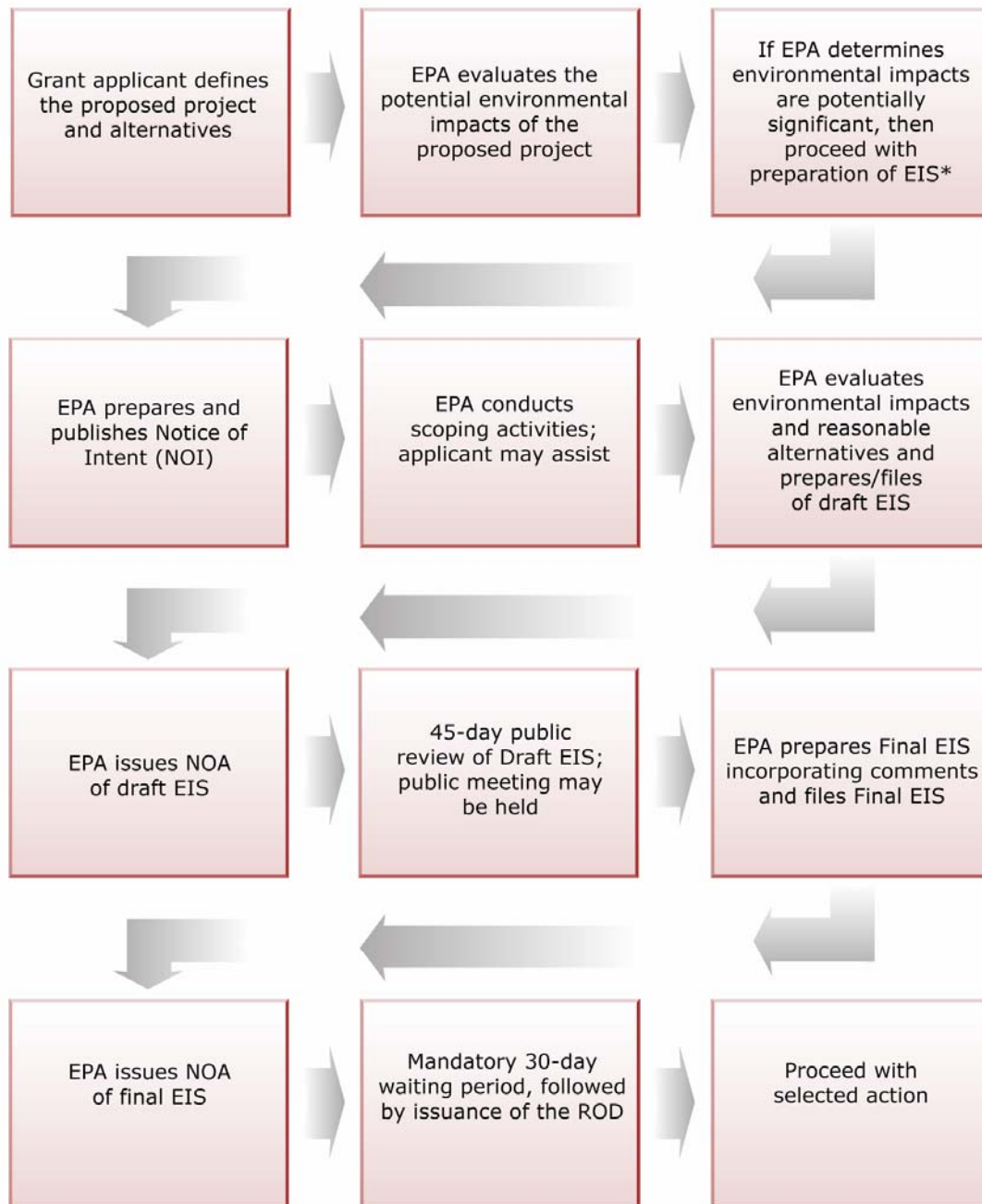
Public participation in the EIS process begins when EPA publishes a NOI to prepare an EIS in the Federal Register. Following issuance of the NOI, the public will have the opportunity to provide input on the scope of the EIS. This could include participating in scoping meetings if they are held. The DEIS and FEIS are distributed to the public and other interested parties for review. A NOA is published in the Federal Register by EPA announcing the release of the DEIS for a 45-day review period with any associated public hearing. A NOA is also published in the Federal Register by EPA for the release of the FEIS for a 30-day review period. A NOA may be published announcing the release of the ROD.

There are several public participation milestones for the EIS process, including:

- participation in scoping meeting, if one is held,
- 45-day public comment period for the draft EIS,
- participation in meeting or hearing on Draft EIS, if one is held,
- 30-day review period on the final EIS prior to the EPA’s decision, which is documented in the ROD.

Figure 5-3 presents the basic steps of the EIS process and highlights the timing and duration of public participation activities.

**Figure 5-3. EIS Preparation NEPA Review/Grant Project Planning Integration (Environmental Impact Statement)**



\* Note: The grant applicant can use a third party to prepare EIS.



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## **Acronyms and Abbreviations**

Corps	U.S. Army Corps of Engineers
CATEX	Categorical Exclusion
CEQ	Council on Environmental Quality
DEIS	Draft Environmental Impact Statement
EA	Environmental Assessment
EID	Environmental Information Document
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FONSI	Finding of No Significant Impact
USFWS	U.S. Fish and Wildlife Service
FY	Fiscal Year
NEPA	National Environmental Policy Act
NMFS	U.S. National Marine Fisheries Service
NOA	Notice of Availability
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resource Conservation Service
NRHP	National Register of Historic Places
PO	Project Officer
ROD	Record of Decision
SHPO	State Historic Preservation Office
SAAP	Special Appropriations Act Project
STAG	State and Tribal Assistance Grants
USGS	U.S. Geological Survey

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## Glossary of Terms

**Administrative Action:** A signed decision by a responsible official resulting in an award, approval, notification, cancellation, termination of use, or commitment of federal funds or property.

**Categorical Exclusion (CATEX):** Categories of actions that do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect. See 40 C.F.R. § 1508.4.

**Council on Environmental Quality (CEQ):** Created under the National Environmental Policy Act of 1969 (NEPA), CEQ oversees the administration of NEPA government-wide, is responsible for issuing regulations that implement the procedural provisions of NEPA, and advises the President on environmental matters.

**Cross-Cutter:** Laws or regulations for protecting and conserving special environmental resources with which compliance is required by all federal programs.

**Cumulative Impact:** The impact on the environment that 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 actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over time. See 40 C.F.R. § 1508.7.

**Environmental Assessment (EA):** A concise public document prepared to provide sufficient data and analysis to determine whether to prepare an environmental impact statement (EIS) or finding of no significant impact (FONSI). See 40 C.F.R. § 1508.9.

**Environmental Information Document (EID):** A written analysis prepared by the applicant that provides sufficient information for the Responsible Official to undertake an environmental review and prepare either an EA and FONSI or an EIS and record of decision (ROD) for the proposed action. An EID includes basic project information, including a description of the proposed project, and evaluates the environmental impacts of the project and alternatives to the proposed project. See 40 C.F.R. § 6.102(b)(4).

**Environmental Impact Statement (EIS):** A detailed document prepared to analyze federal actions that are likely to have a significant impact on the environment. An EIS provides the public and decision makers with detailed

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information and analyses of the environmental impacts of the proposed project. See 40 C.F.R. § 1502.1.

***Extraordinary Circumstances:*** Those circumstances that may cause a significant environmental effect such that a proposed action that otherwise meets the requirements of a categorical exclusion may not be categorically excluded. See 40 C.F.R. § 6.204.

***Finding of No Significant Impact (FONSI):*** A document briefly providing the reasons why a proposed action will not have a significant impact on the environment and for which an EIS will not be prepared.

***Major Federal Action:*** An action by a federal agency that potentially has a significant impact or an action by a non-federal entity that potentially has a significant impact and potentially is subject to federal control and responsibility. The term "major" reinforces but does not have a meaning independent of "significantly." See 40 C.F.R. §§ 1508.18 and 1508.27.

***Mitigation Measures:*** Measures designed to minimize the impacts of an action on the environment. Mitigation may include:

- Avoiding the impact altogether by not taking a certain action or parts of an action
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action
- Compensating for the impact by replacing or providing substitute resources or environments.

See 40 C.F.R. § 1508.20.

***National Environmental Policy Act (NEPA):*** NEPA establishes a national policy for protection of the environment that encourages productive and enjoyable harmony between man and his environment. NEPA also promotes efforts to prevent or eliminate damage to the environment and to enrich the understanding of the ecological systems and natural resources important to the Nation. In addition, NEPA establishes the Council on Environmental Quality. See 42 U.S.C. § 4321.

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**Notice of Availability (NOA):** A notice placed in the newspaper, Federal Register, or other appropriate communication channel that announces the availability of a Draft EIS, Final EIS, or ROD for public review.

**Notice of Intent (NOI):** A notice placed in the Federal Register, notifying the public that a federal agency is considering taking a major federal action that may have a significant impact on the environment and for which an EIS will be prepared. The NOI describes the proposed action and possible alternatives and the proposed scoping process (including whether, when, and where scoping meetings will be held) and provides contact information. See 40 C.F.R. § 1508.22.

**Record of Decision (ROD):** A public document stating the final decision on a proposed action for which a final EIS has been prepared. The ROD includes a brief description of the proposed action and alternatives considered in the EIS, environmental factors considered, and project impacts; any commitments to mitigation; an explanation if an environmental preferred alternative was not selected; and responses to any substantive comments on the final EIS.

**Special Appropriations Act Projects (SAAPs):** EPA grant projects identified and funded through EPA's annual appropriations acts. Sometimes these projects are also referred to as STAG projects because they are contained in the State and Tribal Assistance Grants section.

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## **Reference Materials**

"Categorical Exclusion Handbook: A Source Book on Preparing Categorical Exclusion Application Materials for EPA Special Appropriation Act Grant Projects," United States Environmental Protection Agency, Office of Water, Region 10, February 2001.

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"Modernizing NEPA Implementation," Report to the Council on Environmental Quality, NEPA Task Force, September 2003.

"National Environmental Policy Act Review Procedures For EPA Facilities," United States Environmental Protection Agency, Office of Administration and Resources Management, May 1998.

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"Public Participation in Programs Under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act," Code of Federal Regulations, Part 25.

"Special Appropriations Projects Procedures" Workbook, United States Environmental Protection Agency, Office of Water, Region 4, March 17, 2005.

"The National Environmental Policy Act," 42 United States Code 4321; Amended by Public Law 94-52, July 3, 1975; Public Law 94-83, August 9, 1975; and Public Law 97-258, § 4(b), September 13, 1982.

"Understanding the National Environmental Policy Act: A Self-Study Training Booklet," United States Environmental Protection Agency, Office of Administration, Facilities and Management and Services Division, June 1996.



## **List of Appendices**

**APPENDIX A:** The National Environmental Policy Act (NEPA); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 C.F.R. Parts 1500-1508); and the Council on Environmental Quality Questions and Answers on the NEPA regulations

**APPENDIX B:** Environmental Protection Agency (EPA) Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions (40 C.F.R. Part 6)

**APPENDIX C:** Cross-Cutter Coordination and Consultation Process

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## **Appendix A**

The National Environmental Policy Act (NEPA); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 C.F.R. Parts 1500-1508); and the Council on Environmental Quality Questions and Answers on the National Environmental Policy Act Regulations

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## The National Environmental Policy Act of 1969 (NEPA)

**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 U.S.C. § 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 U.S.C. § 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.

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(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, consistent 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 U.S.C. § 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 decision-making 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

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insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making 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 § 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

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(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 U.S.C. § 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 U.S.C. § 4334].** Nothing in § 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or

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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 U.S.C. § 433].** 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 U.S.C. § 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, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environment 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 U.S.C. § 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.

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**Sec. 203 [42 U.S.C. § 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 § 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding § 3679(b) of the Revised Statutes (31 U.S.C. § 665(b)), the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

**Sec. 204 [42 U.S.C. § 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 § 201;

(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

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(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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 5313). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. § 5315).

**Sec. 207 [42 U.S.C. § 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 U.S.C. § 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 U.S.C. § 4347].** There are authorized to be appropriated to carry out the provisions of this Act not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

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**Council on Environmental Quality Regulations for Implementing the  
Procedural Provisions of the National Environmental Policy Act  
(40 C.F.R. Parts 1500-1508)**

**PART 1500--PURPOSE, POLICY, AND MANDATE**

**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 (§ 101), and provides means (§ 102) for carrying out the policy. Sec. 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 § 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 § 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 decision makers and the public; to reduce paperwork and the accumulation of

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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.) § 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 § 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.

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**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 decision makers 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).
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(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).

#### **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).

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(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 § 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

### **PART 1501--NEPA AND AGENCY PLANNING**

#### **Sec. 1501.1 Purpose.**

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.

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- (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 § 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 decision-making 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 § 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.
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(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 decision-making.

**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.

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

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

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

**Sec. 1501.5 Lead agencies.**

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

(1) Proposes or is involved in the same action; or

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

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

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

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

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

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

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(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.

#### **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.

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(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:

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(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 decision-making 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

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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.

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

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

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

(iii) Preparation of the draft environmental impact statement.

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

(v) Preparation of the final environmental impact statement.

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

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

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

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

## **PART 1502--ENVIRONMENTAL IMPACT STATEMENT**

### **Sec. 1502.1 Purpose.**

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 decision makers 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.

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### **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 decision maker.
- (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).

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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 decision-making.

(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.

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**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 decision-making 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 (§ 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.

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**Sec. 1502.8 Writing.**

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decision makers 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.

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(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 (§§ 102(2)(C)(iii) and 102(2)(E) of the Act).
- (f) Affected environment.
- (g) Environmental consequences (especially §§ 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),

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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.

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**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 decision maker 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.

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**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 §§ 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of § 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)).

**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

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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.
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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. (§ 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.

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(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 C.F.R. 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.

#### **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 § 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

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scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

**Sec. 1502.25 Environmental review and consultation requirements.**

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

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

**PART 1503--COMMENTING**

**Sec. 1503.1 Inviting comments.**

(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.

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(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.

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### **Sec. 1503.4 Response to comments.**

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

(1) Modify alternatives including the proposed action.

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

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

(4) Make factual corrections.

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

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

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

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

### **Sec. 1504.1 Purpose.**

(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.

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(b) Under § 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," § 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under § 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.
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(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.

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(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).
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(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).

## **PART 1505--NEPA AND AGENCY DECISION-MAKING**

### **Sec. 1505.1 Agency decision-making 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 § 102(2) to achieve the requirements of §§ 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 decision maker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decision maker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decision maker, 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.

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**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, §§ 6(c) and (d), and Part II, § 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. 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.

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**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 § 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.

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(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

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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.

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(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

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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.

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

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

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

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

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

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

#### **Sec. 1506.9 Filing requirements.**

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and § 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.

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(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.

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**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 § 102(2)(D) of the Act or under § 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the Federal Register of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

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

**PART 1507--AGENCY COMPLIANCE**

**Sec. 1507.1 Compliance.**

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

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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 § 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 decision-making 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 § 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 § 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 § 102(2)(E) extends to all such proposals, not just the more limited scope of § 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of § 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 §§ 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.

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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.

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

## **PART 1508--TERMINOLOGY AND INDEX**

### **Sec. 1508.1 Terminology.**

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,

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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.

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**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 § 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 § 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 § 104(h) of the Housing and Community Development Act of 1974.

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**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.

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**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.

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**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 § 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 § 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 § 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.

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(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.

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

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

(b) Alternatives, which include:

(1) No action alternative.

(2) Other reasonable courses of actions.

(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:

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- (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.

**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)

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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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## Council on Environmental Quality Questions and Answers on the National Environmental Policy Act

<http://www.nepa.gov/nepa/regs/40/40p3.htm>

### NEPA's Forty Most Asked Questions

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1. [Range of Alternatives.](#)
  2. [Alternatives Outside the Capability of Applicant or Jurisdiction of Agency.](#)
  3. [No-Action Alternative.](#)
  4. [Agency's Preferred Alternative.](#)
  5. [Proposed Action v. Preferred Alternative.](#)
  6. [Environmentally Preferable Alternative.](#)
  7. [Difference Between Sections of EIS on Alternatives and Environmental Consequences.](#)
  8. [Early Application of NEPA.](#)
  9. [Applicant Who Needs Other Permits.](#)
  10. [Limitations on Action During 30-Day Review Period for Final EIS.](#)
  11. [Limitations on Actions by an Applicant During EIS Process.](#)
  12. [Effective Date and Enforceability of the Regulations.](#)
  13. [Use of Scoping Before Notice of Intent to Prepare EIS.](#)
  14. [Rights and Responsibilities of Lead and Cooperating Agencies.](#)
  15. [Commenting Responsibilities of EPA.](#)
  16. [Third Party Contracts.](#)
  17. [Disclosure Statement to Avoid Conflict of Interest.](#)
  18. [Uncertainties About Indirect Effects of A Proposal.](#)
  19. [Mitigation Measures.](#)
  20. [Worst Case Analysis. \[Withdrawn.\]](#)
  21. [Combining Environmental and Planning Documents.](#)
  22. [State and Federal Agencies as Joint Lead Agencies.](#)
  23. [Conflicts of Federal Proposal With Land Use Plans, Policies or Controls.](#)
  24. [Environmental Impact Statements on Policies, Plans or Programs.](#)
  25. [Appendices and Incorporation by Reference.](#)
  26. [Index and Keyword Index in EISs.](#)
  27. [List of Preparers.](#)
  28. [Advance or Xerox Copies of EIS.](#)
  29. [Responses to Comments.](#)
  30. [Adoption of EISs.](#)
  31. [Application of Regulations to Independent Regulatory Agencies.](#)
  32. [Supplements to Old EISs.](#)
  33. [Referrals.](#)
  34. [Records of Decision.](#)
  35. [Time Required for the NEPA Process.](#)
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36. [Environmental Assessments \(EA\).](#)
37. [Findings of No Significant Impact \(FONSI\).](#)
38. [Public Availability of EAs v. FONSI.](#)
39. [Mitigation Measures Imposed in EAs and FONSI.](#)
40. [Propriety of Issuing EA When Mitigation Reduces Impacts.](#)

[END NOTES](#)

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## **Appendix B**

Environmental Protection Agency (EPA) Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions (40 C.F.R. Part 6)

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# Federal Register

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Wednesday,  
September 19, 2007

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## Part III

### Environmental Protection Agency

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40 CFR Part 6

Procedures for Implementing the National  
Environmental Policy Act and Assessing  
the Environmental Effects Abroad of EPA  
Actions; Final Rule

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engage in outreach designed to reach those in "potentially affected communities where the proposed action is known or expected to have environmental impacts including minority communities, low-income communities, or federally-recognized Indian tribal communities." EPA provides guidance to Responsible Officials and EPA staff on incorporating environmental justice concerns into the NEPA analysis. See "Final Guidance For Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses," April 1998.

#### K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A Major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective October 19, 2007.

#### List of Subjects in 40 CFR Part 6

Environmental protection, Environmental assessments, Environmental impact statements, Environmental protection reporting, Foreign relations, Grant programs—environmental protection, Reporting and recordkeeping requirements.

Dated: September 7, 2007.

Stephen L. Johnson,  
Administrator.

■ Therefore, for the reasons set forth in the preamble, EPA hereby amends title 40, chapter I of the Code of Federal Regulations by revising part 6 to read as follows:

#### PART 6—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT AND ASSESSING THE ENVIRONMENTAL EFFECTS ABROAD OF EPA ACTIONS

##### Subpart A—General Provisions for EPA Actions Subject to NEPA

Sec.

- 6.100 Policy and Purpose.
- 6.101 Applicability.
- 6.102 Definitions.

- 6.103 Responsibilities of the NEPA and Responsible Officials.

##### Subpart B—EPA's NEPA Environmental Review Procedures

- 6.200 General requirements.
- 6.201 Coordination with other environmental review requirements.
- 6.202 Interagency cooperation.
- 6.203 Public participation.
- 6.204 Categorical exclusions and extraordinary circumstances.
- 6.205 Environmental assessments.
- 6.206 Findings of no significant impact.
- 6.207 Environmental impact statements.
- 6.208 Records of decision.
- 6.209 Filing requirements for EPA EISs.
- 6.210 Emergency circumstances.

##### Subpart C—Requirements for Environmental Information Documents and Third-Party Agreements for EPA Actions Subject to NEPA

- 6.300 Applicability.
- 6.301 Applicant requirements.
- 6.302 Responsible Official requirements.
- 6.303 Third-party agreements.

##### Subpart D—Assessing the Environmental Effects Abroad of EPA Actions

- 6.400 Purpose and policy.
- 6.401 Applicability.
- 6.402 Definitions.
- 6.403 Environmental review and assessment requirements.
- 6.404 Lead or cooperating agency.
- 6.405 Exemptions and considerations.
- 6.406 Implementation.

Authority: 42 U.S.C. 4321 *et seq.*, 7401–7671q, unless otherwise noted.

##### Subpart A—General Provisions for EPA Actions Subject to NEPA

###### § 6.100 Policy and purpose.

(a) The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, as implemented by the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500 through 1508), requires that Federal agencies include in their decision-making processes appropriate and careful consideration of all environmental effects of proposed actions, analyze potential environmental effects of proposed actions and their alternatives for public understanding and scrutiny, avoid or minimize adverse effects of proposed actions, and restore and enhance environmental quality to the extent practicable. The U.S. Environmental Protection Agency (EPA) shall integrate these NEPA requirements as early in the Agency planning processes as possible. The environmental review process shall be the focal point to ensure NEPA considerations are taken into account.

(b) Through this part, EPA adopts the CEQ Regulations (40 CFR Parts 1500 through 1508) implementing NEPA; subparts A through C of this part

supplement those regulations, for actions proposed by EPA that are subject to NEPA requirements. Subparts A through C supplement, and are to be used in conjunction with, the CEQ Regulations.

###### § 6.101 Applicability.

(a) Subparts A through C of this part apply to the proposed actions of EPA that are subject to NEPA. EPA actions subject to NEPA include the award of wastewater treatment construction grants under Title II of the Clean Water Act, EPA's issuance of new source National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the Clean Water Act, certain research and development projects, development and issuance of regulations, EPA actions involving renovations or new construction of facilities, and certain grants awarded for projects authorized by Congress through the Agency's annual Appropriations Act.

(b) Subparts A through C of this part do not apply to EPA actions for which NEPA review is not required. EPA actions under the Clean Water Act, except those identified in § 6.101(a), and EPA actions under the Clean Air Act are statutorily exempt from NEPA. Additionally, the courts have determined that certain EPA actions for which analyses that have been conducted under another statute are functionally equivalent with NEPA.

(c) The appropriate Responsible Official will undertake certain EPA actions required by the provisions of subparts A through C of this part.

(d) Certain procedures in subparts A through C of this part apply to the responsibilities of the NEPA Official.

(e) Certain procedures in subparts A through C of this part apply to applicants who are required to provide environmental information to EPA.

(f) When the Responsible Official decides to perform an environmental review under the *Policy for EPA's Voluntary Preparation of National Environmental Policy Act (NEPA) Documents*, the Responsible Official generally will follow the procedures set out in subparts A through C of this part.

###### § 6.102 Definitions.

(a) Subparts A through C of this part use the definitions found at 40 CFR part 1508. Additional definitions are listed in this subpart.

(b) Definitions.

(1) *Administrator* means the Administrator of the United States Environmental Protection Agency.

(2) *Applicant* means any individual, agency, or other entity that has:



(i) Filed an application for federal assistance; or

(ii) Applied to EPA for a permit.

(3) *Assistance agreement* means an award of federal assistance in the form of money or property in lieu of money from EPA to an eligible applicant including grants or cooperative agreements.

(4) *Environmental information document (EID)* means a written analysis prepared by an applicant that provides sufficient information for the Responsible Official to undertake an environmental review and prepare either an EA and FONSI or an EIS and record of decision (ROD) for the proposed action.

(5) *Environmental review or NEPA review* means the process used to comply with section 102(2) of NEPA or the CEQ Regulations including development, supplementation, adoption, and revision of NEPA documents.

(6) *Extraordinary circumstances* means those circumstances listed in section 6.204 of this part that may cause a significant environmental effect such that a proposed action that otherwise meets the requirements of a categorical exclusion may not be categorically excluded.

(7) *NEPA document* is a document prepared pursuant to NEPA.

(8) *NEPA Official* is the Assistant Administrator for Enforcement and Compliance Assurance, who is responsible for EPA's NEPA compliance.

(9) *Responsible Official* means the EPA official responsible for compliance with NEPA for individual proposed actions.

#### **§ 6.103 Responsibilities of the NEPA and Responsible Officials.**

(a) The NEPA Official will:

(1) Ensure EPA's compliance with NEPA pursuant to 40 CFR 1507.2(a) and the regulations in subparts A through C of this part.

(2) Act as EPA's liaison with the CEQ and other federal agencies, state and local governments, and federally-recognized Indian tribes on matters of policy and administrative procedures regarding compliance with NEPA.

(3) Approve procedural deviations from subparts A through C of this part.

(4) Monitor the overall timeliness and quality of EPA's compliance with subparts A through C of this part.

(5) Advise the Administrator on NEPA-related actions that involve more than one EPA office, are highly controversial, are nationally significant, or establish new EPA NEPA-related policy.

(6) Support the Administrator by providing policy guidance on NEPA-related issues.

(7) Assist EPA's Responsible Officials with establishing and maintaining adequate administrative procedures to comply with subparts A through C of this part, performing their NEPA duties, and training personnel and applicants involved in the environmental review process.

(8) Consult with Responsible Officials and CEQ regarding proposed changes to subpart A through C of this part, including:

(i) The addition, amendment, or deletion of a categorical exclusion, or

(ii) Changes to the listings of types of actions that normally require the preparation of an EA or EIS.

(9) Determine whether proposed changes are appropriate, and if so, coordinate with CEQ, pursuant to 40 CFR 1507.3, and initiate a process to amend this part.

(b) The Responsible Official will:

(1) Ensure EPA's compliance with the CEQ regulations and subparts A through C of this part for proposed actions.

(2) Ensure that environmental reviews are conducted on proposed actions at the earliest practicable point in EPA's decision-making process and in accordance with the provisions of subparts A through C of this part.

(3) Ensure, to the extent practicable, early and continued involvement of interested federal agencies, state and local governments, federally-recognized Indian tribes, and affected applicants in the environmental review process.

(4) Coordinate with the NEPA Official and other Responsible Officials, as appropriate, on resolving issues involving EPA-wide NEPA policy and procedures (including the addition, amendment, or deletion of a categorical exclusion and changes to the listings of the types of actions that normally require the preparation of an EA or EIS) and/or unresolved conflicts with other federal agencies, state and local governments, and federally-recognized Indian tribes, and/or advising the Administrator when necessary.

(5) Coordinate with other Responsible Officials, as appropriate, on NEPA-related actions involving their specific interests.

(6) Consistent with national NEPA guidance, provide specific policy guidance, as appropriate, and ensure that the Responsible Official's office establishes and maintains adequate administrative procedures to comply with subparts A through C of this part.

(7) Upon request of an applicant and consistent with 40 CFR 1501.8, set time

limits on the NEPA review appropriate to individual proposed actions.

(8) Make decisions relating to the preparation of the appropriate NEPA documents, including preparing an EA or EIS, and signing the decision document.

(9) Monitor the overall timeliness and quality of the Responsible Official's respective office's efforts to comply with subparts A through C of this part.

(c) The NEPA Official and the Responsible Officials may delegate NEPA-related responsibilities to a level no lower than the Branch Chief or equivalent organizational level.

#### **Subpart B—EPA's NEPA Environmental Review Procedures**

##### **§ 6.200 General requirements.**

(a) The Responsible Official must determine whether the proposed action meets the criteria for categorical exclusion or whether it requires preparation of an EA or an EIS to identify and evaluate its environmental impacts. The Responsible Official may decide to prepare an EIS without first undertaking an EA.

(b) The Responsible Official must determine the scope of the environmental review by considering the type of proposed action, the reasonable alternatives, and the type of environmental impacts. The scope of an EIS will be determined as provided in 40 CFR 1508.25.

(c) During the environmental review process, the Responsible Official must:

(1) Integrate the NEPA process and the procedures of subparts A through C of this part into early planning to ensure appropriate consideration of NEPA's policies and to minimize or eliminate delay;

(2) Emphasize cooperative consultation among federal agencies, state and local governments, and federally-recognized Indian tribes before an EA or EIS is prepared to help ensure compliance with the procedural provisions of subparts A through C of this part and with other environmental review requirements, to address the need for interagency cooperation, to identify the requirements for other agencies' reviews, and to ensure appropriate public participation.

(3) Identify at an early stage any potentially significant environmental issues to be evaluated in detail and insignificant issues to be de-emphasized, focusing the scope of the environmental review accordingly;

(4) Involve other agencies and the public, as appropriate, in the environmental review process for

proposed actions that are not categorically excluded to:

(i) Identify the federal, state, local, and federally-recognized Indian tribal entities and the members of the public that may have an interest in the action;

(ii) Request that appropriate federal, state, and local agencies and federally-recognized Indian tribes serve as cooperating agencies consistent with 40 CFR 1501.6 and 1508.5; and

(iii) Integrate, where possible, review of applicable federal laws and executive orders into the environmental review process in conjunction with the development of NEPA documents.

(d) When preparing NEPA documents, the Responsible Official must:

(1) Utilize a systematic, interdisciplinary approach to integrate the natural and social sciences with the environmental design arts in planning and making decisions on proposed actions subject to environmental review under subparts A through C of this part (see 40 CFR 1501.2(a) and 1507.2);

(2) Plan adequate time and funding for the NEPA review and preparation of the NEPA documents. Planning includes consideration of whether an applicant will be required to prepare an EID for the proposed action.

(3) Review relevant planning or decision-making documents, whether prepared by EPA or another federal agency, to determine if the proposed action or any of its alternatives have been considered in a prior federal NEPA document. EPA may adopt the existing document, or will incorporate by reference any pertinent part of it, consistent with 40 CFR 1506.3 and 1502.21.

(4) Review relevant environmental review documents prepared by a state or local government or a federally-recognized Indian tribe to determine if the proposed action or any of its alternatives have been considered in such a document. EPA will incorporate by reference any pertinent part of that document consistent with 40 CFR 1502.21.

(e) During the decision-making process for the proposed action, the Responsible Official must:

(1) Incorporate the NEPA review in decision-making on the action. Processing and review of an applicant's application must proceed concurrently with the NEPA review procedures set out in subparts A through C of this part. EPA must complete its NEPA review before making a decision on the action.

(2) Consider the relevant NEPA documents, public and other agency comments (if any) on those documents, and EPA responses to those comments,

as part of consideration of the action (see 40 CFR 1505.1(d)).

(3) Consider the alternatives analyzed in an EA or EIS before rendering a decision on the action; and

(4) Ensure that the decision on the action is to implement an alternative analyzed or is within the range of alternatives analyzed in the EA or EIS (see 40 CFR 1505.1(e)).

(f) To eliminate duplication and to foster efficiency, the Responsible Official should use tiering (see 40 CFR 1502.20 and 1508.28) and incorporate material by reference (see 40 CFR 1502.21) as appropriate.

(g) For applicant-related proposed actions:

(1) The Responsible Official may request that the applicant submit information to support the application of a categorical exclusion to the applicant's pending action.

(2) The Responsible Official may gather the information and prepare the NEPA document without assistance from the applicant, or, pursuant to Subpart C of this part, have the applicant prepare an EID or a draft EA and supporting documents, or enter into a third-party agreement with the applicant.

(3) During the environmental review process, applicants may continue to compile additional information needed for the environmental review and/or information necessary to support an application for a permit or assistance agreement from EPA.

(h) For all NEPA determinations (CEs, EA/FONISIs, or EIS/RODs) that are five years old or older, and for which the subject action has not yet been implemented, the Responsible Official must re-evaluate the proposed action, environmental conditions, and public views to determine whether to conduct a supplemental environmental review of the action and complete an appropriate NEPA document or reaffirm EPA's original NEPA determination. If there has been substantial change in the proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, the Responsible Official must conduct a supplemental environmental review of the action and complete an appropriate NEPA document.

#### § 6.201 Coordination with other environmental review requirements.

Consistent with 40 CFR 1500.5(g) and 1502.25, the Responsible Official must determine the applicability of other environmental laws and executive

orders, to the fullest extent possible. The Responsible Official should incorporate applicable requirements as early in the NEPA review process as possible.

#### § 6.202 Interagency cooperation.

(a) Consistent with 40 CFR 1501.5, 1501.6, and 1508.5, the Responsible Official will request other appropriate federal and non-federal agencies to be joint lead or cooperating agencies as a means of encouraging early coordination and cooperation with federal agencies, state and local governments, and federally-recognized Indian tribes with jurisdiction by law or special expertise.

(b) For an EPA action related to an action of any other federal agency, the Responsible Official must comply with the requirements of 40 CFR 1501.5 and 1501.6 relating to lead agencies and cooperating agencies, respectively. The Responsible Official will work with the other involved agencies to facilitate coordination and to reduce delay and duplication.

(c) To prepare a single document to fulfill both NEPA and state or local government, or federally-recognized Indian tribe requirements, consistent with 40 CFR 1506.2, the Responsible Official should enter into a written agreement with the involved state or local government, or federally-recognized Indian tribe that sets out the intentions of the parties, including the responsibilities each party intends to assume and procedures the parties intend to follow.

#### § 6.203 Public participation.

(a) *General requirements.* (1) The procedures in this section apply to EPA's environmental review processes, including development, supplementation, adoption, and revision of NEPA documents.

(2) The Responsible Official will make diligent efforts to involve the public, including applicants, in the preparation of EAs or EISs consistent with 40 CFR 1501.4 and 1506.6 and applicable EPA public participation regulations (e.g., 40 CFR Part 25).

(3) EPA NEPA documents will use plain language to the extent possible.

(4) The Responsible Official will, to the greatest extent possible, give notice to any state or local government, or federally-recognized Indian tribe that, in the Official's judgment, may be affected by an action for which EPA plans to prepare an EA or an EIS.

(5) The Responsible Official must use appropriate communication procedures to ensure meaningful public participation throughout the NEPA

process. The Responsible Official must make reasonable efforts to involve the potentially affected communities where the proposed action is expected to have environmental impacts or where the proposed action may have human health or environmental effects in any communities, including minority communities, low-income communities, or federally-recognized Indian tribal communities.

(b) *EA and FONSI requirements.* (1) At least thirty (30) calendar days before making the decision on whether, and if so how, to proceed with a proposed action, the Responsible Official must make the EA and preliminary FONSI available for review and comment to the interested federal agencies, state and local governments, federally-recognized Indian tribes and the affected public. The Responsible Official must respond to any substantive comments received and finalize the EA and FONSI before making a decision on the proposed action.

(2) Where circumstances make it necessary to take the action without observing the 30 calendar day comment period, the Responsible Official must notify the NEPA Official before taking such action. If the NEPA Official determines that a reduced comment period would be in the best interest of the Government, the NEPA Official will inform the Responsible Official, as soon as possible, of this approval. The Responsible Official will make the EA and preliminary FONSI available for review and comment for the reduced comment period.

(c) *EIS and ROD requirements.* (1) As soon as practicable after the decision to prepare an EIS and before beginning the scoping process, the Responsible Official must ensure that a notice of intent (NOI) (see 40 CFR 1508.22) is published in the *Federal Register*. The NOI must briefly describe the proposed action; a preliminary list of environmental issues to be analyzed, and possible alternatives; EPA's proposed scoping process including, if available, whether, when, and where any scoping meeting will be held; and the name and contact information for the person designated by EPA to answer questions about the proposed action and the EIS. The NOI must invite comments and suggestions on the scope of the EIS.

(2) The Responsible Official must disseminate the NOI consistent with 40 CFR 1506.6.

(3) The Responsible Official must conduct the scoping process consistent with 40 CFR 1501.7 and any applicable EPA public participation regulations (e.g., 40 CFR Part 25).

(i) Publication of the NOI in the *Federal Register* begins the scoping process.

(ii) The Responsible Official must ensure that the scoping process for an EIS allows a minimum of thirty (30) days for the receipt of public comments.

(iii) The Responsible Official may hold one or more public meetings as part of the scoping process for an EPA EIS. The Responsible Official must announce the location, date, and time of public scoping meetings in the NOI or by other appropriate means, such as additional notices in the *Federal Register*, news releases to the local media, or letters to affected parties. Public scoping meetings should be held at least fifteen (15) days after public notification.

(iv) The Responsible Official must use appropriate means to publicize the availability of draft and final EISs and the time and place for public meetings or hearings on draft EISs. The methods chosen for public participation must focus on reaching persons who may be interested in the proposed action. Such persons include those in potentially affected communities where the proposed action is known or expected to have environmental impacts including minority communities, low-income communities, or federally-recognized Indian tribal communities.

(v) The Responsible Official must circulate the draft and final EISs consistent with 40 CFR 1502.19 and any applicable EPA public participation regulations and in accordance with the 45-day public review period for draft EISs and the 30-day public review period for final EISs (see § 6.209 of this part). Consistent with section 6.209(b) of this part, the Responsible Official may establish a longer public comment period for a draft or final EIS.

(vi) After preparing a draft EIS and before preparing a final EIS, the Responsible Official must solicit the comments of appropriate federal agencies, state and/or local governments, and/or federally-recognized Indian tribes, and the public (see 40 CFR 1503.1). The Responsible Official must respond in the final EIS to substantive comments received (see 40 CFR 1503.4).

(vii) The Responsible Official may conduct one or more public meetings or hearings on the draft EIS as part of the public involvement process. If meetings or hearings are held, the Responsible Official must make the draft EIS available to the public at least thirty (30) days in advance of any meeting or hearing.

(4) The Responsible Official must make the ROD available to the public upon request.

#### § 6.204 **Categorical exclusions and extraordinary circumstances.**

(a) A proposed action may be categorically excluded if the action fits within a category of action that is eligible for exclusion and the proposed action does not involve any extraordinary circumstances.

(1) Certain actions eligible for categorical exclusion require the Responsible Official to document a determination that a categorical exclusion applies. The documentation must include: A brief description of the proposed action; a statement identifying the categorical exclusion that applies to the action; and a statement explaining why no extraordinary circumstances apply to the proposed action. The Responsible Official must make a copy of the determination document available to the public upon request. The categorical exclusions requiring this documentation are listed in paragraphs (a)(1)(i) through (a)(1)(v) of this section.

(i) Actions at EPA owned or operated facilities involving routine facility maintenance, repair, and grounds-keeping; minor rehabilitation, restoration, renovation, or revitalization of existing facilities; functional replacement of equipment; acquisition and installation of equipment; or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities.

(ii) Actions relating to existing infrastructure systems (such as sewer systems; drinking water supply systems; and stormwater systems, including combined sewer overflow systems) that involve minor upgrading, or minor expansion of system capacity or rehabilitation (including functional replacement) of the existing system and system components (such as the sewer collection network and treatment system; the system to collect, treat, store and distribute drinking water; and stormwater systems, including combined sewer overflow systems) or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities. This category does not include actions that: involve new or relocated discharges to surface or ground water; will likely result in the substantial increase in the volume or the loading of pollutant in the receiving water; will provide capacity to serve a population 30% greater than the existing population; are not supported by the state, or other regional growth plan or strategy; or directly or indirectly involve or relate to upgrading or

extending infrastructure systems primarily for the purposes of future development.

(iii) Actions in unsewered communities involving the replacement of existing onsite systems, providing the new onsite systems do not result in substantial increases in the volume of discharge or the loadings of pollutants from existing sources, or relocate existing discharge.

(iv) Actions involving re-issuance of a NPDES permit for a new source providing the conclusions of the original NEPA document are still valid (including the appropriate mitigation), there will be no degradation of the receiving waters, and the permit conditions do not change or are more environmentally protective.

(v) Actions for award of grants authorized by Congress under EPA's annual Appropriations Act that are solely for reimbursement of the costs of a project that was completed prior to the date the appropriation was enacted.

(2) Certain actions eligible for categorical exclusion do not require the Responsible Official to document a determination that a categorical exclusion applies. These categorical exclusions are listed in paragraphs (a)(2)(i) through (a)(2)(x) of this section.

(i) Procedural, ministerial, administrative, financial, personnel, and management actions necessary to support the normal conduct of EPA business.

(ii) Acquisition actions (compliant with applicable procedures for sustainable or "green" procurement) and contracting actions necessary to support the normal conduct of EPA business.

(iii) Actions involving information collection, dissemination, or exchange; planning; monitoring and sample collection wherein no significant alteration of existing ambient conditions occurs; educational and training programs; literature searches and studies; computer studies and activities; research and analytical activities; development of compliance assistance tools; and architectural and engineering studies. These actions include those conducted directly by EPA and EPA actions relating to contracts or assistance agreements involving such actions.

(iv) Actions relating to or conducted completely within a permanent, existing contained facility, such as a laboratory, or other enclosed building, provided that reliable and scientifically-sound methods are used to appropriately dispose of wastes and safeguards exist to prevent hazardous, toxic, and radioactive materials in excess of

allowable limits from entering the environment. Where such activities are conducted at laboratories, the Lab Director or other appropriate official must certify in writing that the laboratory follows good laboratory practices and adheres to all applicable federal, state, local, and federally-recognized Indian tribal laws and regulations. This category does not include activities related to construction and/or demolition within the facility (see paragraph (a)(1)(i) of this section).

(v) Actions involving emergency preparedness planning and training activities.

(vi) Actions involving the acquisition, transfer, lease, disposition, or closure of existing permanent structures, land, equipment, materials, or personal property provided that the property: has been used solely for office functions; has never been used for laboratory purposes by any party; does not require site remediation; and will be used in essentially the same manner such that the type and magnitude of the impacts will not change substantially. This category does not include activities related to construction and/or demolition of structures on the property (see paragraph (a)(1)(i) of this section).

(vii) Actions involving providing technical advice to federal agencies, state or local governments, federally-recognized Indian tribes, foreign governments, or public or private entities.

(viii) Actions involving approval of EPA participation in international "umbrella" agreements for cooperation in environmental-related activities that would not commit the United States to any specific projects or actions.

(ix) Actions involving containment or removal and disposal of asbestos-containing material or lead-based paint from EPA owned or operated facilities when undertaken in accordance with applicable regulations.

(x) Actions involving new source NPDES permit modifications that make only technical corrections to the NPDES permit (such as correcting typographical errors) that do not result in a change in environmental impacts or conditions.

(b) The Responsible Official must review actions eligible for categorical exclusion to determine whether any extraordinary circumstances are involved. Extraordinary circumstances are listed in paragraphs (b)(1) through (b)(10) of this section. (See 40 CFR 1508.4.)

(1) The proposed action is known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time.

(2) The proposed action is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.

(3) The proposed action is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat.

(4) The proposed action is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the National Register of Historic Places.

(5) The proposed action is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.

(6) The proposed action is known or expected to cause significant adverse air quality effects.

(7) The proposed action is known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans.

(8) The proposed action is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.

(9) The proposed action is known or expected to be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts.

(10) The proposed action is known or expected to conflict with federal, state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.

(c) The Responsible Official may request that an applicant submit sufficient information to enable the Responsible Official to determine whether a categorical exclusion applies to the applicant's proposed action or

whether an exceptional circumstance applies. Pursuant to Subpart C of this part, applicants are not required to prepare EIDs for actions that are being considered for categorical exclusion.

(d) The Responsible Official must prepare an EA or EIS when a proposed action involves extraordinary circumstances.

(e) After a determination has been made that a categorical exclusion applies to an action, if new information or changes in the proposed action involve or relate to at least one of the extraordinary circumstances or otherwise indicate that the action may not meet the criteria for categorical exclusion and the Responsible Official determines that an action no longer qualifies for a categorical exclusion, the Responsible Official will prepare an EA or EIS.

(f) The Responsible Official, or other interested parties, may request the addition, amendment, or deletion of a categorical exclusion.

(1) Such requests must be made in writing, be directed to the NEPA Official, and contain adequate information to support and justify the request.

(2) Proposed new categories of actions for exclusion must meet these criteria:

(i) Actions covered by the proposed categorical exclusion generally do not individually or cumulatively have a significant effect on the human environment and have been found by EPA to have no such effect.

(ii) Actions covered by the proposed categorical exclusion generally do not involve extraordinary circumstances as set out in paragraphs (b)(1) through (b)(14) of this section and generally do not require preparation of an EIS; and

(iii) Information adequate to determine that a proposed action is properly covered by the proposed category will generally be available.

(3) The NEPA Official must determine that the addition, amendment, or deletion of a categorical exclusion is appropriate.

(g) Any addition, amendment, or deletion of a categorical exclusion will be done by rule-making and in coordination with CEQ pursuant to 40 CFR 1507.3 to amend paragraph (a)(1) or paragraph (a)(2) of this section.

#### § 6.205 Environmental assessments.

(a) The Responsible Official must prepare an environmental assessment (EA) (see 40 CFR 1508.9) for a proposed action that is expected to result in environmental impacts and the significance of the impacts is not known. An EA is not required if the proposed action is categorically

excluded, or if the Responsible Official has decided to prepare an EIS. (See 40 CFR 1501.3.)

(b) Types of actions that normally require the preparation of an EA include:

(1) The award of wastewater treatment construction grants under Title II of the Clean Water Act;

(2) EPA's issuance of new source NPDES permits under section 402 of the Clean Water Act;

(3) EPA actions involving renovations or new construction of facilities;

(4) Certain grants awarded for special projects authorized by Congress through the Agency's annual Appropriations Act; and

(5) Research and development projects, such as initial field demonstration of a new technology, field trials of a new product or new uses of an existing technology, alteration of a local habitat by physical or chemical means, or actions that may result in the release of radioactive, hazardous, or toxic substances, or biota.

(c) The Responsible Official, or other interested parties, may request changes to the list of actions that normally require the preparation of an EA (i.e., the addition, amendment, or deletion of a type of action).

(d) Consistent with 40 CFR 1508.9, an EA must provide sufficient information and analysis for determining whether to prepare an EIS or to issue a FONSI (see 40 CFR 1508.9(a)), and may include analyses needed for other environmental determinations. The EA must focus on resources that might be impacted and any environmental issues that are of public concern.

(e) An EA must include:

(1) A brief discussion of:

(i) The need for the proposed action;

(ii) The alternatives, including the no action alternative (which must be assessed even when the proposed action is specifically required by legislation or a court order);

(iii) The affected environment, including baseline conditions that may be impacted by the proposed action and alternatives;

(iv) The environmental impacts of the proposed action and alternatives, including any unresolved conflicts concerning alternative uses of available resources; and

(v) Other applicable environmental laws and executive orders.

(2) A listing or summary of any coordination or consultation undertaken with any federal agency, state or local government, or federally-recognized Indian tribe regarding compliance with applicable laws and executive orders;

(3) Identification and description of any mitigation measures considered,

including any mitigation measures that must be adopted to ensure the action will not have significant impacts; and

(4) Incorporation of documents by reference, if appropriate, including, when available, the EID for the action.

#### § 6.206 Findings of no significant impact.

(a) The Responsible Official may issue a finding of no significant impact (FONSI) (see 40 CFR 1508.13) only if the EA supports the finding that the proposed action will not have a significant effect on the human environment. If the EA does not support a FONSI, the Responsible Official must prepare an EIS and issue a ROD before taking action on the proposed action.

(b) Consistent with 40 CFR 1508.13, a FONSI must include:

(1) The EA, or in lieu of the EA, a summary of the supporting EA that includes a brief description of the proposed action and alternatives considered in the EA, environmental factors considered, and project impacts; and

(2) A brief description of the reasons why there are no significant impacts.

(c) In addition, the FONSI must include:

(1) Any commitments to mitigation that are essential to render the impacts of the proposed action not significant;

(2) The date of issuance; and

(3) The signature of the Responsible Official.

(d) The Responsible Official must ensure that an applicant that has committed to mitigation possesses the authority and ability to fulfill the commitments.

(e) The Responsible Official must make a preliminary FONSI available to the public in accordance with section 6.203(b) of this part before taking action.

(f) The Responsible Official may proceed with the action subject to any mitigation measures described in the FONSI after responding to any substantive comments received on the preliminary FONSI during the 30-day comment period, or 30 days after issuance of the FONSI if no substantive comments are received.

(g) The Responsible Official must ensure that the mitigation measures necessary to the FONSI determination, at a minimum, are enforceable, and conduct appropriate monitoring of the mitigation measures.

(h) The Responsible Official may revise a FONSI at any time provided the revision is supported by an EA. A revised FONSI is subject to all provisions of paragraph (d) of this section.

**§ 6.207 Environmental impact statements.**

(a) The Responsible Official will prepare an environmental impact statement (EIS) (see 40 CFR 1508.11) for major federal actions significantly affecting the quality of the human environment, including actions for which the EA analysis demonstrates that significant impacts will occur that will not be reduced or eliminated by changes to or mitigation of the proposed action.

(1) EISs are normally prepared for the following actions:

(i) New regional wastewater treatment facilities or water supply systems for a community with a population greater than 100,000.

(ii) Expansions of existing wastewater treatment facilities that will increase existing discharge to an impaired water by greater than 10 million gallons per day (mgd).

(iii) Issuance of new source NPDES permit for a new major industrial discharge.

(iv) Issuance of a new source NPDES permit for a new oil/gas development and production operation on the outer continental shelf.

(v) Issuance of a new source NPDES permit for a deepwater port with a projected discharge in excess of 10 mgd.

(2) The Responsible Official, or other interested party, may request changes to the list of actions that normally require the preparation of an EIS (i.e., the addition, amendment, or deletion of a type of action).

(3) A proposed action normally requires an EIS if it meets any of the following criteria. (See 40 CFR 1507.3(b)(2)).

(i) The proposed action would result in a discharge of treated effluent from a new or modified existing facility into a body of water and the discharge is likely to have a significant effect on the quality of the receiving waters.

(ii) The proposed action is likely to directly, or through induced development, have significant adverse effect upon local ambient air quality or local ambient noise levels.

(iii) The proposed action is likely to have significant adverse effects on surface water reservoirs or navigation projects.

(iv) The proposed action would be inconsistent with state or local government, or federally-recognized Indian tribe approved land use plans or regulations, or federal land management plans.

(v) The proposed action would be inconsistent with state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws and

regulations for protection of the environment.

(vi) The proposed action is likely to significantly affect the environment through the release of radioactive, hazardous or toxic substances, or biota.

(vii) The proposed action involves uncertain environmental effects or highly unique environmental risks that are likely to be significant.

(viii) The proposed action is likely to significantly affect national natural landmarks or any property on or eligible for the National Register of Historic Places.

(ix) The proposed action is likely to significantly affect environmentally important natural resources such as wetlands, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.

(x) The proposed action in conjunction with related federal, state or local government, or federally-recognized Indian tribe projects is likely to produce significant cumulative impacts.

(xi) The proposed action is likely to significantly affect the pattern and type of land use (industrial, commercial, recreational, residential) or growth and distribution of population including altering the character of existing residential areas.

(4) An EIS must be prepared consistent with 40 CFR Part 1502.

(b) When appropriate, the Responsible Official will prepare a legislative EIS consistent with 40 CFR 1506.8.

(c) In preparing an EIS, the Responsible Official must determine if an applicant, other federal agencies or state or local governments, or federally-recognized Indian tribes are involved with the project and apply the applicable provisions of § 6.202 and Subpart C of this part.

(d) An EIS must:

(1) Comply with all requirements at 40 CFR parts 1500 through 1508.

(2) Analyze all reasonable alternatives and the no action alternative (which may be the same as denying the action). Assess the no action alternative even when the proposed action is specifically required by legislation or a court order.

(3) Describe the potentially affected environment including, as appropriate, the size and location of new and existing facilities, land requirements, operation and maintenance requirements, auxiliary structures such as pipelines or transmission lines, and construction schedules.

(4) Summarize any coordination or consultation undertaken with any federal agency, state and/or local government, and/or federally-

recognized Indian tribe, including copies or summaries of relevant correspondence.

(5) Summarize any public meetings held during the scoping process including the date, time, place, and purpose of the meetings. The final EIS must summarize the public participation process including the date, time, place, and purpose of meetings or hearings held after publication of the draft EIS.

(6) Consider substantive comments received during the public participation process. The draft EIS must consider the substantive comments received during the scoping process. The final EIS must include or summarize all substantive comments received on the draft EIS, respond to any substantive comments on the draft EIS, and explain any changes to the draft EIS and the reason for the changes.

(7) Include the names and qualifications of the persons primarily responsible for preparing the EIS including an EIS prepared under a third-party contract (if applicable), significant background papers, and the EID (if applicable).

(e) The Responsible Official must prepare a supplemental EIS when appropriate, consistent with 40 CFR 1502.9.

**§ 6.208 Records of decision.**

(a) The Responsible Official may not make any decisions on the action until the time periods in 40 CFR 1506.10 have been met.

(b) A record of decision (ROD) records EPA's decision on the action. Consistent with 40 CFR 1505.2, a ROD must include:

(1) A brief description of the proposed action and alternatives considered in the EIS, environmental factors considered, and project impacts;

(2) Any commitments to mitigation; and

(3) An explanation if the environmentally preferred alternative was not selected.

(c) In addition, the ROD must include:

(1) Responses to any substantive comments on the final EIS;

(2) The date of issuance; and

(3) The signature of the Responsible Official.

(d) The Responsible Official must ensure that an applicant that has committed to mitigation possesses the authority and ability to fulfill the commitment.

(e) The Responsible Official must make a ROD available to the public.

(f) Upon issuance of the ROD, the Responsible Official may proceed with the action subject to any mitigation

measures described in the ROD. The Responsible Official must ensure adequate monitoring of mitigation measures identified in the ROD.

(g) If the mitigation identified in the ROD will be included as a condition in the permit or grant, the Responsible Official must ensure that EPA has the authority to impose the conditions. The Responsible Official should ensure that compliance with assistance agreement or permit conditions will be monitored and enforced under EPA's assistance agreement and permit authorities.

(h) The Responsible Official may revise a ROD at any time provided the revision is supported by an EIS. A revised ROD is subject to all provisions of paragraph (d) of this section.

#### **§ 6.209 Filing requirements for EPA EISs.**

(a) The Responsible Official must file an EIS with the NEPA Official no earlier than the date the document is transmitted to commenting agencies and made available to the public. The Responsible Official must comply with any guidelines established by the NEPA Official for the filing system process and comply with 40 CFR 1506.9 and 1506.10. The review periods are computed through the filing system process and published in the **Federal Register** in the Notice of Availability.

(b) The Responsible Official may request that the NEPA Official extend the review periods for an EIS. The NEPA Official will publish notice of an extension of the review period in the **Federal Register** and notify the CEQ.

#### **§ 6.210 Emergency circumstances.**

If emergency circumstances make it necessary to take an action that has a significant environmental impact without observing the provisions of subparts A through C of this part that are required by the CEQ Regulations, the Responsible Official must consult with the NEPA Official at the earliest possible time. Consistent with 40 CFR 1506.11, the Responsible Official and the NEPA Official should consult with CEQ about alternative arrangements at the earliest opportunity. Actions taken without observing the provisions of subparts A through C of this part will be limited to actions necessary to control the immediate impacts of the emergency; other actions remain subject to the environmental review process.

### **Subpart C—Requirements for Environmental Information Documents and Third-Party Agreements for EPA Actions Subject to NEPA**

#### **§ 6.300 Applicability.**

(a) This section applies to actions that involve applications to EPA for permits or assistance agreements.

(b) The Responsible Official is responsible for the environmental review process on EPA's action (that is, issuing the permit or awarding the assistance agreement) with the applicant contributing through submission of an EID or a draft EA and supporting documents.

(c) An applicant is not required to prepare an EID when:

(1) The action has been categorically excluded or requires the preparation of an EIS; or

(2) The applicant will prepare and submit a draft EA and supporting documents.

(d) The Responsible Official must notify the applicant if EPA will not require submission of an EID.

#### **§ 6.301 Applicant requirements.**

(a) The applicant must prepare an EID in consultation with the Responsible Official, unless the Responsible Official has notified the applicant that an EID is not required. The EID must be of sufficient scope and content to enable the Responsible Official to prepare an EA and FONSI or, if necessary, an EIS and ROD. The applicant must submit the EID to the Responsible Official.

(b) The applicant must consult with the Responsible Official as early as possible in the planning process to obtain guidance with respect to the appropriate level and scope of environmental information required for the EID.

(c) As part of the EID process, the applicant may consult with appropriate federal agencies, state and local governments, federally-recognized Indian tribes, and other potentially affected parties to identify their interests in the project and the environmental issues associated with the project.

(d) The applicant must notify the Responsible Official as early as possible of other federal agency, state or local government, or federally-recognized Indian tribe requirements related to the project. The applicant also must notify the Responsible Official of any private entities and organizations affected by the proposed project. (See 40 CFR 1501.2(d)(2).)

(e) The applicant must notify the Responsible Official if, during EPA's environmental review process, the applicant:

(1) Changes its plans for the project as originally submitted to EPA; and/or

(2) Changes its schedule for the project from that originally submitted to EPA.

(f) In accordance with § 6.204, where appropriate, the applicant may request a categorical exclusion determination by the Responsible Official. If requested by the Responsible Official, the applicant must submit information to the Responsible Official regarding the application of a categorical exclusion to EPA's pending action and the applicant's project.

#### **§ 6.302 Responsible Official requirements.**

(a) Consistent with 40 CFR 1501.2(d), the Responsible Official must ensure early involvement of applicants in the environmental review process to identify environmental effects, avoid delays, and resolve conflicts.

(b) The Responsible Official must notify the applicant if a determination has been made that the action has been categorically excluded, or if EPA needs additional information to support the application of a categorical exclusion or if the submitted information does not support the application of a categorical exclusion and that an EA, or an EIS, will be required.

(c) When an EID is required for a project, the Responsible Official must consult with the applicant and provide the applicant with guidance describing the scope and level of environmental information required.

(1) The Responsible Official must provide guidance on a project-by-project basis to any applicant seeking such assistance. For major categories of actions involving a large number of applicants, the Responsible Official may prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide.

(2) The Responsible Official must consider the extent to which the applicant is capable of providing the required information. The Responsible Official may not require the applicant to gather data or perform analyses that unnecessarily duplicate either existing data or the results of existing analyses available to EPA. The Responsible Official must limit the request for environmental information to that necessary for the environmental review.

(d) If, prior to completion of the environmental review for a project, the Responsible Official receives notification, that the applicant is proposing to or taking an action that would result in significant impacts or would limit alternatives, the

Responsible Official must notify the applicant promptly that EPA will take appropriate action to ensure that the objectives and procedures of NEPA are achieved (see 40 CFR 1506.1(b)). Such actions may include withholding grant funds or denial of permits.

(e) The Responsible Official must begin the NEPA review as soon as possible after receiving the applicant's EID or draft EA. The Responsible Official must independently evaluate the information submitted and be responsible for its accuracy (see 40 CFR 1506.5).

(f) At the request of an applicant and at the discretion of the Responsible Official, an applicant may prepare an EA or EIS and supporting documents or enter into a third-party contract pursuant to § 6.303.

(g) The Responsible Official must review, and take responsibility for the completed NEPA documents, before rendering a final decision on the proposed action.

#### § 6.303 Third-party agreements.

(a) If an EA or EIS is to be prepared for an action subject to subparts A through C of this part, the Responsible Official and the applicant may enter into an agreement whereby the applicant engages and pays for the services of a third-party contractor to prepare an EA or EIS and any associated documents for consideration by EPA. In such cases, the Responsible Official must approve the qualifications of the third-party contractor. The third-party contractor must be selected on the basis of ability and absence of any conflict of interest. Consistent with 40 CFR 1506.5(c), in consultation with the applicant, the Responsible Official shall select the contractor. The Responsible Official must provide guidance to the applicant and contractor regarding the information to be developed, including the project's scope, and guide and participate in the collection, analysis, and presentation of the information. The Responsible Official has sole authority for final approval of and EA or EIS.

(1) The applicant must engage and pay for the services of a contractor to prepare the EA or EIS and any associated documents without using EPA financial assistance (including required match).

(2) The Responsible Official, in consultation with the applicant, must ensure that the contractor is qualified to prepare an EA or EIS, and that the substantive terms of the contract specify the information to be developed, and the procedures for gathering, analyzing and presenting the information.

(3) The Responsible Official must prepare a disclosure statement for the applicant to include in the contract specifying that the contractor has no financial or other interest in the outcome of the project (see 40 CFR 1506.5(c)).

(4) The Responsible Official will ensure that the EA or EIS and any associated documents contain analyses and conclusions that adequately assess the relevant environmental issues.

(b) In order to make a decision on the action, the Responsible Official must independently evaluate the information submitted in the EA or EIS and any associated documents, and issue an EA or draft and final EIS. After review of, and appropriate changes to, the EA or EIS submitted by the applicant, the Responsible Official may accept it as EPA's document. The Responsible Official is responsible for the scope, accuracy, and contents of the EA or EIS and any associated documents (see 40 CFR 1506.5).

(c) A third-party agreement may not be initiated unless both the applicant and the Responsible Official agree to its creation and terms.

(d) The terms of the contract between the applicant and the third-party contractor must ensure that the contractor does not have recourse to EPA for financial or other claims arising under the contract, and that the Responsible Official, or other EPA designee, may give technical advice to the contractor.

#### Subpart D—Assessing the Environmental Effects Abroad of EPA Actions

Authority: 42 U.S.C. 4321, note, E.O. 12114, 44 FR 1979, 3 CFR, 1979 Comp., p. 356.

#### § 6.400 Purpose and policy.

(a) *Purpose.* On January 4, 1979, the President signed Executive Order 12114 entitled "Environmental Effects Abroad of Major Federal Actions." The purpose of this Executive Order is to enable responsible Federal officials in carrying out or approving major Federal actions which affect foreign nations or the global commons to be informed of pertinent environmental considerations and to consider fully the environmental impacts of the actions undertaken. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and the Marine Protection, Research, and Sanctuaries Act (MPRSA) (33 U.S.C. 1401 *et seq.*). It should be noted, however, that in fulfilling its

responsibilities under Executive Order 12114, EPA shall be guided by CEQ regulations only to the extent that they are made expressly applicable by this subpart. The procedures set forth below reflect EPA's duties and responsibilities as required under the Executive Order and satisfy the requirement for issuance of procedures under section 2-1 of the Executive Order.

(b) *Policy.* It shall be the policy of this Agency to carry out the purpose and requirements of the Executive Order to the fullest extent possible. EPA, within the realm of its expertise, shall work with the Department of State and the Council on Environmental Quality to provide information to other Federal agencies and foreign nations to heighten awareness of and interest in the environment. EPA shall further cooperate to the extent possible with Federal agencies to lend special expertise and assistance in the preparation of required environmental documents under the Executive Order. EPA shall perform environmental reviews of activities significantly affecting the global commons and foreign nations as required under Executive Order 12114 and as set forth under these procedures.

#### § 6.401 Applicability.

(a) Administrative actions requiring environmental review. The environmental review requirements apply to the activities of EPA as follows:

(1) Major research or demonstration projects which affect the global commons or a foreign nation.

(2) Ocean dumping activities carried out under section 102 of the MPRSA which affect the related environment.

(3) Major permitting or licensing by EPA of facilities which affect the global commons or the environment of a foreign nation. This may include such actions as the issuance by EPA of hazardous waste treatment, storage, or disposal facility permits pursuant to section 3005 of the Resource Conservation and Recovery Act (42 U.S.C. 6925), NPDES permits pursuant to section 402 of the Clean Water Act (33 U.S.C. 1342), and prevention of significant deterioration approvals pursuant to Part C of the Clean Air Act (42 U.S.C. 7470 *et seq.*)

(4) Wastewater Treatment Construction Grants Program under section 201 of the Clean Water Act when activities addressed in the facility plan would have environmental effects abroad.

(5) Other EPA activities as determined by OFA and OIA (see § 6.406(c)).

(b) [Reserved].



**§ 6.402 Definitions.**

As used in this subpart, *environment* means the natural and physical environment and excludes social, economic and other environments; *global commons* is that area (land, air, water) outside the jurisdiction of any nation; and *responsible official* is either the EPA Assistant Administrator or Regional Administrator as appropriate for the particular EPA program. Also, an action *significantly* affects the environment if it does *significant* harm to the environment even though on balance the action may be beneficial to the environment. To the extent applicable, the responsible official shall address the considerations set forth in the CEQ regulations under 40 CFR 1508.27 in determining significant effect.

**§ 6.403 Environmental review and assessment requirements.**

(a) *Research and demonstration projects.* The appropriate Assistant Administrator is responsible for performing the necessary degree of environmental review on research and demonstration projects undertaken by EPA. If the research or demonstration project affects the environment of the global commons, the applicant shall prepare an environmental analysis. This will assist the responsible official in determining whether an EIS is necessary. If it is determined that the action significantly affects the environment of the global commons, then an EIS shall be prepared. If the undertaking significantly affects a foreign nation EPA shall prepare a unilateral, bilateral or multilateral environmental study. EPA shall afford the affected foreign nation or international body or organization an opportunity to participate in this study. This environmental study shall discuss the need for the action, analyze the environmental impact of the various alternatives considered and list the agencies and other parties consulted.

(b) *Ocean dumping activities.* (1) The Assistant Administrator for Water shall ensure the preparation of appropriate environmental documents relating to ocean dumping activities in the global commons under section 102 of the MPRSA. For ocean dumping site designations prescribed pursuant to section 102(c) of the MPRSA and 40 CFR part 228, and for the establishment or revision of criteria under section 102(a) of the MPRSA, EPA shall prepare appropriate environmental documents consistent with EPA's Notice of Policy and Procedures for Voluntary Preparation of National Environmental

Policy Act (NEPA) Documents dated October 29, 1998.

(2) For individual permits issued by EPA under section 102(b) an environmental assessment shall be made by EPA. Pursuant to 40 CFR part 221, the permit applicant shall submit with the application an environmental analysis which includes a discussion of the need for the action, an outline of alternatives, and an analysis of the environmental impact of the proposed action and alternatives consistent with the EPA criteria established under section 102(a) of MPRSA. The information submitted under 40 CFR part 221 shall be sufficient to satisfy the environmental assessment requirement.

(c) *EPA permitting and licensing activities.* The appropriate Regional Administrator is responsible for conducting concise environmental reviews with regard to permits issued under section 3005 of the Resource Conservation and Recovery Act (RCRA permits), section 402 of the Clean Water Act (NPDES permits), and section 165 of the Clean Air Act (PSD permits), for such actions undertaken by EPA which affect the global commons or foreign nations. The information submitted by applicants for such permits or approvals under the applicable consolidated permit regulations (40 CFR parts 122 and 124) and Prevention of Significant Deterioration (PSD) regulations (40 CFR part 52) shall satisfy the environmental document requirement under Section 2-4(b) of Executive Order 12114. Compliance with applicable requirements in part 124 of the consolidated permit regulations (40 CFR part 124) shall be sufficient to satisfy the requirements to conduct a concise environmental review for permits subject to this paragraph.

(d) *Wastewater treatment facility planning.* 40 CFR part 6, subparts A through C, detail the environmental review process for the facilities planning process under the wastewater treatment works construction grants program. For the purpose of these regulations, the facility plan shall also include a concise environmental review of those activities that would have environmental effects abroad. This shall apply only to the Step 1 grants awarded after January 14, 1981, but on or before December 29, 1981, and facilities plans developed after December 29, 1981. Where water quality impacts identified in a facility plan are the subject of water quality agreements with Canada or Mexico, nothing in these regulations shall impose on the facility planning process coordination and consultation requirements in addition to those required by such agreements.

(e) *Review by other Federal agencies and other appropriate officials.* The responsible officials shall consult with other Federal agencies with relevant expertise during the preparation of the environmental document. As soon as feasible after preparation of the environmental document, the responsible official shall make the document available to the Council on Environmental Quality, Department of State, and other appropriate officials. The responsible official with assistance from OIA shall work with the Department of State to establish procedures for communicating with and making documents available to foreign nations and international organizations.

**§ 6.404 Lead or cooperating agency.**

(a) *Lead Agency.* Section 3-3 of Executive Order 12114 requires the creation of a lead agency whenever an action involves more than one Federal agency. In implementing section 3-3, EPA shall, to the fullest extent possible, follow the guidance for the selection of a lead agency contained in 40 CFR 1501.5 of the CEQ regulations.

(b) *Cooperating Agency.* Under Section 2-4(d) of the Executive Order, Federal agencies with special expertise are encouraged to provide appropriate resources to the agency preparing environmental documents in order to avoid duplication of resources. In working with a lead agency, EPA shall to the fullest extent possible serve as a cooperating agency in accordance with 40 CFR 1501.6. When other program commitments preclude the degree of involvement requested by the lead agency, the responsible EPA official shall so inform the lead agency in writing.

**§ 6.405 Exemptions and considerations.**

Under section 2-5 (b) and (c) of the Executive Order, Federal agencies may provide for modifications in the contents, timing and availability of documents or exemptions from certain requirements for the environmental review and assessment. The responsible official, in consultation with the Director, Office of Federal Activities (OFA), and the Assistant Administrator, Office of International Affairs (OIA), may approve modifications for situations described in section 2-5(b). The responsible official, in consultation with the Director, OFA and Assistant Administrator, OIA, shall obtain exemptions from the Administrator for situations described in section 2-5(c). The Department of State and the Council on Environmental Quality shall be consulted as soon as possible on the utilization of such exemptions.

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**§ 6.406 Implementation.**

(a) *Oversight.* OFA is responsible for overseeing the implementation of these procedures and shall consult with OIA wherever appropriate. OIA shall be utilized for making formal contacts with the Department of State. OFA shall assist the responsible officials in carrying out their responsibilities under these procedures.

(b) *Information exchange.* OFA with the aid of OIA, shall assist the Department of State and the Council on Environmental Quality in developing the informational exchange on environmental review activities with foreign nations.

(c) *Unidentified activities.* The responsible official shall consult with OFA and OIA to establish the type of

environmental review or document appropriate for any new EPA activities or requirements imposed upon EPA by statute, international agreement or other agreements.

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## **Appendix C**

### **Cross-Cutter Coordination and Consultation Process**

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## Cross-Cutter Coordination and Consultation Process

### C.1 What are Environmentally Related Cross-Cutters?

Environmentally related cross-cutters are federal statutes, executive orders, or implementing regulations that address the federal responsibility for protecting and conserving specific environmental resources. Typically, cross-cutters apply to all federal activities, including the award of grand funds. In order to comply with cross-cutters, it is often necessary to provide the administering agency (agencies responsible for administering the cross-cutter authority) the opportunity to review and provide input (or concurrence) through consultation and/or coordination on the proposed project.

Cross-cutters require federal agencies to consider the impact of their programs; individual actions may have impacts on particular resources and such considerations should be documented as part of the agency's decision-making process. Federal actions that could have an effect on a particular resource include agency activities that could physically disrupt the environment, such as the issuance of grants and permits for construction projects that could have an impact on the specific resources in question. In addition, grant applicants should be aware that other state, local, or tribal government reviews may be needed for a project under Executive Order 12372, *Intergovernmental Review of Federal Programs*. Grant applicants should seek guidance from EPA when determining all of the reviews applicable to a project.

Although EPA complies<sup>3</sup> with the cross-cutters before taking action on a project (i.e., awarding the grant), the grant applicant may assist EPA in carrying out these responsibilities. For example, the grant applicant may begin the coordination and consultation processes. In doing so, the applicant may be able to get any coordination and consultation requirements of cross-cutters underway earlier in the environmental review process. Section C.4 provides a summary of the major federal cross-cutters (statute, executive order, etc.) that may be applicable to SAAP grant actions.

### C.2 What is Involved in a Cross-Cutter Review?

Consultation/coordination with administering agencies for cross-cutter compliance usually begins early in the planning stages of a program or project. This avoids delays that might be incurred from having to address a cross-cutter later on in the environmental review process when it may be more difficult and time consuming for an agency to make necessary changes to the proposed action. The evaluation that is conducted under cross-cutters is usually integrated

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<sup>3</sup> Compliance includes committing to a process to be followed during the project design of water and wastewater infrastructure projects that will result in compliance.

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into other statutory reviews, such as the environmental review process under NEPA. Thus, the information obtained through the cross-cutter coordination and consultation process may be used in the development of environmental documentation required under NEPA (e.g., CATEX request, EID, Draft EA, or Draft EIS). Ultimately, this helps to reduce paperwork and the potential for delays.

Generally, the cross-cutter review process involves coordinating with the administering agencies. In some cases, the administering agency has delegated certain review functions to other agencies. The grant applicant should discuss with EPA the appropriate approach to coordinating or consulting with administering agencies. For example, under relevant implementing regulations, the Advisory Council on Historic Preservation authorizes the State Historic or Tribal Preservation Office for administering portions of the National Historic Preservation Act (NHPA). The Cross-Cutter summaries in Section C.4 and associated Additional References Toolboxes indicate which agency is the initial contact in the cross-cutter review.

Once it has been determined which cross-cutter authorities apply to the proposed project, the grant applicant may request coordination/consultation and/or concurrence from the administering agencies and respond to any substantive comments from those agencies concerning the potential impacts of the proposed project. The grant applicant should discuss with EPA and get authorization for undertaking any coordination and consultation for cross-cutters.<sup>4</sup> Under the National Historic Preservation Act and Endangered Species Act, EPA can designate the grant applicant to undertake consultation under these Acts. By undertaking the coordination/consultation process for cross-cutter authorities to assist EPA, the applicant can reduce the amount of time EPA needs to process the grant application. If the grant applicant cannot, or chooses not to, undertake the coordination/consultation process for cross-cutter authorities, EPA is required to do the consultation/coordination as part of the grant process.

To determine which cross-cutter authorities apply to SAAP grant action projects, the first step is to meet with the EPA point of contact. In preparation for the meeting, the grant applicant should carefully review the cross-cutter authorities to determine which authorities may not apply (see Section C.4 for a summary of key cross-cutter statutes, regulations, and Executive Orders). Based on the description and intent, the grant applicant should be able to eliminate some of the cross-cutters simply due to geographic location. For example, projects in Tennessee are not subject to the Coastal Zone Management Act or the Coastal Barriers Resources Act. For some cross-cutters, such as The Wild and Scenic Rivers and The Wilderness Act, a simple database check will ensure that a protected resource is not located near the proposed project. In such cases, contacting the administering agency may not be necessary. However, the process used to

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<sup>4</sup> EPA may need to obtain approval for a grant applicant to undertake coordination and consultation for a particular cross-cutter from the respective administering agency.

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determine that a resource is not in the project area and/or will not be affected by the SAAP grant action should be documented in any environmental information provided to EPA. The most common cross-cutters that apply to SAAP grant actions include the Endangered Species Act, the National Historic Preservation Act, and the Executive Order for Wetlands Protection.

Once the grant applicant has determined which cross-cutters may apply to their project, the applicant contacts the administering agencies. The grant applicant should discuss with EPA the specific method to use in contacting the administering agencies. The Additional References Tool Box associated with each cross-cutter discussed in Section C.4 of this document contains the web addresses for the major agency contacts.

Typically, a letter or a fax is sent to the administering agency to initiate coordination and consultation. The grant applicant should discuss with EPA the exact method to be used in contacting the applicable cross-cutter agencies. This ensures the proposed method meets EPA's documentation needs and relevant requirements of the cross-cutter at issue.

When the grant applicant contacts the administering agencies, they should ask if that agency would prefer to coordinate with EPA directly or with the grant applicant. It is important to indicate to the cross-cutter agencies that an application has been submitted for grant funding from EPA, in whole or in part, for the proposed SAAP project. When communicating with the administering agencies, the grant applicant should provide those agencies with detailed information on the project location, project boundaries, and the areas of potential ground disturbance. Include a clear description of the project and its components (i.e., pipelines, pump stations, etc.) along with maps showing the project component locations. Reference, as appropriate, any biological or cultural resources that have been determined to be or are potentially present in the area based on existing information. Also, include, as appropriate, any biological or cultural resource surveys or assessments that may have been performed for the project area.

It is important to document all responses and consultation results in any environmental documentation provided to EPA (e.g., CATEX request, EID, Draft EA, or Draft EIS). It should not be assumed that no response after a certain amount of time means the cross-cutter agency has concurred or has no comment.<sup>5</sup> If there is difficulty in completing any coordination or consultation with any administering agency, the grant applicant should contact the appropriate EPA point of contact for assistance.

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<sup>5</sup> Under NHPA regulations, (36 C.F.R. § 800.3(c)(4)), however, failure of the SHPO/THPO to respond to certain determinations within 30 days allows the federal agency to proceed to the next step in the review process.

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Sometimes the administering agency will respond that additional information is needed about the project or resources under the administering agency's jurisdiction. Additional information may consist of requests to conduct cultural or biological resources surveys or assessments. Sometimes the administering agency simply needs more details on the proposed project such as timing and duration of the project. Occasionally, the administering agency will request changes to the proposed project to avoid or minimize impacts on the protected resource. In other instances, mitigation measures may be requested. To the greatest extent possible, the grant applicant should respond to these requests for additional information. The grant applicant should contact EPA if there are any questions on how to address comments received from administering agencies.

Once responses have been received from all of the administering agencies, the grant applicant should compile all of the coordination and consultation documentation. The grant applicant may submit this information to EPA as part of their request for a CATEX determination (see Section 2.0), or as an appendix to the EID, Draft EA, or Draft EIS (see Sections 3.0 to 5.0). The coordination and consultation review documentation should contain:

- Copies of the documentation sent to the cross-cutter agencies,
- The agencies' responses, including any requests for additional information, mitigation, and project modifications,
- Any responses provided to the cross-cutter agencies, and
- Any applicable concurrence letter from the cross-cutter agency.

If some of the concurrence or completed coordination or consultation letters received were part of any State or Intergovernmental Clearinghouse review process, include those letters that were sent requesting a review and the attachments that show the project was reviewed.

### **C.3 What if the SAAP grant project changes after the coordination and consultation process has been initiated or completed?**

If there are any project changes that might affect any concurrence or completed coordination/consultation received from administering cross-cutter agencies, the grant applicant may need to undertake additional coordination or consultation with a cross-cutter agency. Project changes that are likely to need additional coordination include, but are not limited to:

- Adding sewer or water lines that were previously not included in the original project plans,
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- Adding or moving structures so they are being placed on previously undisturbed land,
- Any change in the location of a water intake or wastewater discharge point,
- Significant changes in capacity,
- Placing structures above ground that may obstruct viewing vistas, or
- Changing work so that it will occur in wetlands or floodplains.

The grant applicant should contact EPA staff if the project changes after completion of coordination/consultation with administering cross-cutter agencies.

#### **C.4 What Specific Reviews are Performed as Part of the Cross-Cutter Process?**

The following subsections provide general information on the regulatory framework for each cross-cutter. It should be noted that this information is not a replication of the law, but is a summary. For all cross-cutter coordination and consultation, the grant applicant should seek guidance from the EPA point of contact on the specific processes to be undertaken. Another useful source of information on cross-cutters is currently being developed by CEQ, the guidance will be focused on integrating other environmental reviews and analyses (i.e., cross cutters) with the NEPA process.

##### **C.4.1 Environmental Justice**

Executive Order No.12898, signed February 11, 1994, directs each federal agency to "make achieving environmental justice part of its mission." Each agency is required to identify and address any "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." EPA has defined environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." Thus, environmental justice means that "no group of people, including a racial, ethnic, or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from . . . the execution of federal, state, local, and tribal programs and policies." (<http://www.epa.gov/compliance/environmentaljustice/>). One vehicle for EPA to address environmental justice concerns is the NEPA analysis. As a matter of policy, EPA has integrated environmental justice concepts into NEPA analyses through guidelines outlining the steps that should be taken to ensure environmental justice concerns have been addressed during the NEPA process. Identifying potential adverse effects on minority and low-income populations, as well as encouraging early public participation and the development of alternative or mitigating options is emphasized.

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### Additional References

#### Implementing Regulations/Executive Orders:

- Executive Order 12898, Federal Actions to Address Environmental Justice (EJ) in Minority Populations and Low-Income Populations.

#### Supplemental Guidance and Resources:

- EPA Environmental Justice Website, <http://www.epa.gov/ebtpages/envienvIRONMENTALJUSTICE.html>
- Environmental Justice: Guidance under the National Environmental Policy Act, Council of Environmental Quality, December 1997.
- Final guidance for Incorporating EJ concerns in EPA's NEPA Compliance Analysis, EPA, April 1988.
- Environmental Justice Demographics Tool (Region 2) <http://www.epa.gov/ipbpages/archive/v7/372.htm>
- Environmental Justice Geographic Assessment Tool, <http://www.epa.gov/enviro/ej/> (Note: this tool assists in assessing the potential EJ effects of a proposed project in particular geographic regions).

## C.4.2 Historic Resources

### National Historic Preservation Act 16 U.S.C. §§470 – 470x-6

The National Historic Preservation Act (NHPA) embodies a long-standing national policy to preserve historic sites, buildings, structures, districts and objects of national, state, tribal, local, and regional significance and, among other things, to protect such historic properties from adverse impacts caused by activities undertaken or funded by federal agencies. NHPA expanded the scope of the 1935 Historic Sites Act (Pub. L. No. 74-292) by establishing the National Register of Historic Places, a listing of historical and cultural resources maintained by the U.S. Department of the Interior (DOI).

The fundamental responsibilities of federal agencies are expressed in Section 106 of the Act, which reads:

The head of any Federal agency having direct or indirect jurisdiction over a proposed or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under title II of this Act (16 U.S.C. §§ 470i et. seq.) a reasonable opportunity to comment with regard to such undertaking (16 U.S.C. § 470(f)).<sup>6</sup>

The NHPA is administered by the DOI and the Advisory Council on Historic Preservation (the Council). The Council implements Section 106 of the NHPA and has promulgated regulations for consultation regarding how to determine the effects of federal agency undertakings on historic properties (36 C.F.R. Part 800). Although under certain circumstances the Council may become directly involved in such consultations, the procedures generally call for consultation between the federal agency and relevant state or tribal historic preservation officers (SHPOs and THPOs) and other interested parties, including applicants for federal assistance (who may be authorized to initiate consultation with the SHPO/THPO and others – 36 C.F.R. § 800.2(c)(4)). The consultation process generally involves a series of determinations regarding the area of potential effect of the undertaking, whether there are historic properties (defined as any prehistoric or historic district,

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<sup>6</sup> Under relevant Section 106 implementing regulations, undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including: those carried out by or on behalf of the agency; those carried out with federal financial assistance; and those requiring a federal permit, license, or approval (36 C.F.R. § 800.16(y)).

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site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places – 36 C.F.R. § 800.16(l)) within such area, and, if so, whether such properties may be affected and how to address any adverse effects.

### Additional References

#### Implementing Regulations/Executive Orders:

- Protection of Historic Properties (36 C.F.R. Part 800).

#### Supplemental Guidance and Resources:

- Advisory Council on Historic Preservation website, <http://www.achp.gov>
- General information and National Historic Sites Listings, <http://www.nps.gov/history/nr/listing.htm>
- State Historic Preservation Office Contacts, <http://www.ncshpo.org/stateinfolist/>

### Archeological and Historic Preservation Act 16 U.S.C. §469a-1

The intent of the Archeological and Historic Preservation Act (AHPA) is to limit the loss of important historical data that would result from federal, or federally authorized, construction activities. Unlike Section 106 of the NHPA, which principally addresses adverse effects to historic properties identified within a project area prior to project initiation, the requirements of the AHPA are typically invoked when historic properties are discovered after the project has begun and potential adverse effects may occur. (The NHPA regulations do have a provision that addresses late discoveries of historic properties (36 C.F.R. § 800.13)).

The AHPA requires federal agencies to identify relics, specimens, and other forms of scientific, prehistorical, historical, or archeological data that may be lost during the construction of federally sponsored projects. If such items are discovered, the DOI must be notified and may undertake recovery, protection, or preservation of the data or recommend measures to mitigate potential losses. The Department's standards and guidelines (48 FR 44716 (Sept. 9, 1983)) detail accepted archeological preservation activities and methods. This publication is the standard for all data recovery activities undertaken for discovery situations under the AHPA, or for avoiding or mitigating adverse impacts on known or discovered historic properties under the NHPA.

16 U.S.C. § 469a-1 reads in part:

(a) Notification and request for preservation of data

Whenever any Federal agency finds, or is notified, in writing, by an appropriate historical or archeological authority, that its activities in connection with any federal construction project or federally licensed project, activity or program, may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary [of the Interior], in writing, and shall provide the Secretary with appropriate information concerning the project, program, or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data . . . . "

### Additional References

**Implementing Regulations/Executive Orders:**

- Protection of Historic Properties (36 C.F.R. Part 800).

**Supplemental Guidance and Resources:**

- Department of Interior Archeological and Historic Preservation Standards and Guidelines (48 FR 44716 (September 9, 1983)). See [www.nps.gov](http://www.nps.gov) for relevant updates.
- Advisory Council on Historic Preservation website, <http://www.achp.gov>
- General information and National Historic Sites Listings, <http://www.nps.gov/history/nr/listing.htm>
- State Historic Preservation Office Contacts, <http://www.ncshpo.org/stateinfolist/>

### C.4.3 Environmentally Sensitive Lands

#### Wetlands

**Executive Order No. 11990 (1977), as amended by Executive Order No. 12608 (1997)**

National wetlands policy applicable to many activities of federal agencies is set forth in Executive Order No. 11990, which was issued by President Carter in 1977 and which President Clinton amended 20 years later by Executive Order No. 12608. The Executive Order broadly directs all agencies of the federal government to carefully consider the effects of their actions on wetlands. Section 2(a) of the order states that:

. . . each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

The Executive Order also directs Agencies to provide public notice of any plans or proposals for new construction in wetlands.

### **Clean Water Act – Section 404**

Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and mining projects.

The basic premise of the program is that no discharge of dredged or fill material may be permitted if: (1) a practicable alternative exists that is less damaging to the aquatic environment or (2) the nation's waters would be significantly degraded. In other words, when you apply for a permit, you must show that you have, to the extent practicable:

- taken steps to avoid wetland impacts;
- minimized potential impacts on wetlands; and
- provided compensation for any remaining unavoidable impacts.

Proposed activities are regulated through a permit review process. An *individual permit* is required for potentially significant impacts. Individual permits are reviewed by the U.S. Army Corps of Engineers, which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA Section 404(b)(1) Guidelines. However, for most discharges that will have only minimal adverse effects, a *general permit* may be suitable.

General permits are issued on a nationwide, regional, or State basis for particular categories of activities. The general permit process eliminates individual review and allows certain activities to proceed with little or no delay, provided that the general or specific conditions for the general permit are met. For example, minor road activities, utility line backfill, and bedding are activities that can be

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considered for a general permit. States also have a role in Section 404 decisions, through State program general permits, water quality certification, or program assumption.

Coordination with the appropriate District Office of the U.S. Army Corps of Engineers is recommended in order to determine whether the permitting requirements of Section 404 of the Clean Water Act are applicable to the proposed project.

### Additional References

#### Implementing Regulations/Executive Orders:

- Executive Order 11990 (as amended by Executive Order 12608), Protection of Wetlands.

#### Supplemental Guidance and Resources:

- EPA's Statement on Procedures on Floodplain Management and Wetlands Protection to implement Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). <http://www.epa.gov/compliance/resources/policies/nepa/floodplain-management-wetlands-statement-pg.pdf>
- EPA Wetlands Program, <http://www.epa.gov/owow/wetlands>.
- U.S. Army Corps of Engineers <http://www.usace.army.mil/cw/cecwo/reg/>
- Department of the Interior Fish and Wildlife Service National Wetlands Inventory Maps, <http://www.fws.gov/nwi/faqs.htm>.

### Flood Plain Management

#### Executive Order No. 11988 (1977), as amended by Executive Order No. 12148 (1979)

Executive Order No. 11988 directs all agencies undertaking, financing, or assisting proposed activities to determine whether they will occur in or affect a floodplain and to consider alternatives to avoid adverse effects or incompatible development in the floodplain. Locations of floodplains can be determined by examining maps available from the U.S. Department of Housing and Urban Development, Federal Emergency Management Agency (FEMA), the U.S. Department of Agriculture, and state water resource planning agencies. Agencies may take an action in a floodplain if it is the only practicable alternative consistent with the law and with the Executive Order.

If construction or improvements will be undertaken or supported in a floodplain because no practicable alternative locations are available, and the agency has otherwise complied with the Executive Order, the agency is directed to design or modify the action to minimize the potential harm to or within the floodplain. Such measures may include flood proofing the facility to be constructed, elevating structures above base flood levels, or providing compensatory flood storage. In addition, the agency is to provide an opportunity for early public review of each plan or proposal for action taking place within a floodplain.

To determine whether the project will be located in or is likely to affect a floodplain, the applicant should obtain the maps from the Federal Insurance Administration of the Federal Emergency Management Agency that identify and delineate floodplains in the project area. Boundaries and elevations of the 100- and 500-year floodplains are identified in the Flood Insurance Rate Maps. For areas that are predominantly state- or federally-owned, consult the controlling federal or state agency for information. Applicants may obtain additional information for identifying and delineating floodplains from the following:

- U.S. Army Corps of Engineers,
- Natural Resource Conservation Service,
- State environmental departments, or
- Local municipalities.

If there is no practicable alternative to locating the project in a floodplain, mitigation measures should be incorporated into the project to minimize or avoid adverse effects to the floodplain. Mitigation measures can include restoration and preservation of the natural and beneficial values of the floodplain. As mentioned in the previous subsection on wetlands, a floodplain assessment can be combined with a wetlands assessment for the same action.

If applicable, the EID, which includes information on mitigation and design measures, should include a preliminary finding regarding compliance with EO 11988. Notice of this finding should be given to the Federal Emergency Management Agency, which may provide recommendations for improving mitigation measures or further modification of the project's design to enhance flood protection.

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### Additional References

**Implementing Regulations/Executive Orders:**

- Executive Order 11988 (as amended by Executive Order 12148), Floodplains Management.
- FEMA Floodplain regulations, 44 C.F.R. Part 9

**Supplemental Guidance and Resources:**

- EPA Statement of Procedures on Floodplain Management and Wetlands Protections,  
<http://www.epa.gov/Compliance/resources/policies/nepa/floodplain-management-wetlands-statement-pg.pdf>
- Water Resources Council's Flood Plain Management Guidelines issued to assist other federal agencies in developing their regulations and procedures to comply with Executive Order No. 11988. (43 FR 6030 (1978)): The Guidelines include an eight-step decision-making process.
- "Further Advice on Executive Order 11988 Flood Plain Management," issued by FEMA and the Interagency Task Force on Flood Plain Management, in 1987.
- FEMA Floodplain Map Service Center,  
<http://www.fema.gov/business/nfip/mscjumpptpage.shtm>

### Farmland Protection Policy Act 7 U.S.C. §§4201 - 4209

In the 1970s, federal assistance for large-scale construction projects became pervasive and concerns developed in several agencies that many projects were being undertaken without due regard to their effect on the productive capacity of the nation's agricultural lands. These concerns gave rise to a series of policy statements, issued by the U.S. Department of Agriculture, the Council on Environmental Quality and EPA (EPA Policy to Protect Environmentally Significant Agricultural Lands, signed by the Administrator on September 8, 1978), instructing federal program managers to more carefully consider the effect of a project on agricultural land and to take alternative or mitigating measures, when appropriate, to ensure that valuable farmland is preserved.

This policy direction culminated in 1981 with the passage of the Farmland Protection Policy Act, which was included in the 1981 Farm Bill (Agriculture and Food Act of 1981, 7 U.S.C. § 4201 et. seq.). In the Act, Congress directed federal agencies to use criteria developed by the Department of Agriculture to identify the potential adverse effects of federal programs on farmland and its conversion to nonagricultural uses, to mitigate these effects, and to ensure that programs are carried out in a manner that is compatible with the farmland preservation policies of state and local governments, and private organizations.

7 U.S.C. § 4202(b) requires all federal agencies to use criteria under the Act to:

. . . identify and take into account the adverse effects of federal programs on the preservation of farmland; consider alternative actions, as appropriate, that could lessen such adverse effects; and assure that such federal programs, to the extent practicable, are compatible with state, unit of local government, and private programs and policies to protect farmland.

#### Additional References

##### Implementing Regulations/Executive Orders:

- 7 C.F.R. Part 658: Department of Agriculture criteria for identifying and taking into account the adverse effects of federal programs on the preservation of farmlands.

##### Supplemental Guidance and Resources:

- *EPA Policy to Protect Environmentally Significant Agricultural Lands*, September 8, 1978.
- General information, contacts, and AD-1006 form, National Resources Conservation Service, <http://www.nrcs.usda.gov/programs/fppa>

#### C.4.4 Coastal Area Protection

##### Coastal Zone Management Act 16 U.S.C. §§ 1451 - 1466

In 1972, Congress amended the Marine Resources and Engineering Development Act to establish a national policy for the protection, beneficial use, and effective management and development of the nation's coastal zones.<sup>7</sup> The Act is also applicable to the coasts of the Great Lakes. The Coastal Zone Management Act (Pub. L. No. 101-508, 104 Stat. 1388-300 (1990)),

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<sup>7</sup> *The coastal zone encompasses coastal waters including the lands therein and thereunder and the adjacent shore lands and the waters therein and thereunder. The coastal zone includes islands, intertidal areas, salt marshes, wetlands and beaches. The zone extends inland from the shorelines only to the extent necessary to control the shore lands. See 16 U.S.C. § 1453(1).*

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authorizes the Secretary of Commerce to approve state management plans designed to preserve, protect, develop, and where possible, restore or enhance the Nation's coastal zone, as well as to provide financial assistance to states with approved management programs. The Act also calls on all federal agencies to ensure that their activities in or that may affect coastal zones are consistent with the enforceable policies of state coastal zone management plans that have been approved by the Department of Commerce.

16 U.S.C. §1456(c)(1)(A) states:

Each federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent, to the maximum extent practicable, with the enforceable policies of approved state management programs.

If EPA's proposed action is in or may affect a coastal zone for which there is an approved management plan, EPA must develop a consistency determination in accordance with the National Oceanic and Atmospheric Administration's regulations titled Federal Consistency With Approved Coastal Zone Management Programs in 15 C.F.R. Part 930. The consistency determination is a certification of the EPA action's consistency, to the maximum extent practicable, with the enforceable policies of the approved state coastal zone management plan. If the relevant state agency objects to EPA's consistency determination regarding the proposed action, EPA may not approve or fund this action unless EPA concludes either that consistency with the enforceable policies of the approved program is prohibited by law or that the action is fully consistent with the enforceable policies of the approved program, even though the state objects. In either case, EPA must notify the state in writing. 15 C.F.R. § 930.43

### Additional References

#### Implementing Regulations/Executive Orders:

- Consistency for Federal Assistance to State and Locals with Approved Coastal Zone Management Programs (15 C.F.R. Part 930, Subpart F).
- Coastal Zone Management Program Regulations (15 C.F.R. Part 923).

#### Supplemental Guidance and Resources:

- State Coast Zone Management locator, <http://www.coastalmanagement.noaa.gov/mystate/welcome.html>

## Coastal Barriers Resources Act 16 U.S.C. §§3501 - 3510

In 1982, Congress enacted legislation intended to discourage development in the Coastal Barrier Resources System,<sup>8</sup> a collection of undeveloped and ecologically sensitive barrier formations along the Atlantic and Gulf Coasts of the United States, and the shore areas of the Great Lakes. The Coastal Barrier Resources Act restricts federal financial expenditures and assistance for any purpose within the Coastal Barriers Resources System and the adjacent wetlands, marshes, estuaries, inlets, and near-shore waters. 16 U.S.C. § 3504(a) reads in part:

### Limitations on Federal Expenditures Affecting the System

(a) . . . no new expenditures or new financial assistance may be made available under authority of any federal law for any purpose within the [Coastal Barrier Resources System], including, but not limited to—

- (1) the construction or purchase of any structure, appurtenance, facility, or related infrastructure . . . .

16 U.S.C. § 3505 provides a number of exceptions to this limitation on federal funding, including exceptions for facilities necessary to explore and extract energy resources and for "the maintenance, replacement, reconstruction, or repair, but not the expansion of, publicly-owned or operated . . . structures or facilities that are essential links in a larger network or system." (16 U.S.C. § 3505(a)(3)).

### Additional References

#### Implementing Regulations/Executive Orders:

- None.

#### Supplemental Guidance and Resources:

- DOI, U.S. Fish and Wildlife Service, Coastal Barrier Act Advisory Guidelines (48 FR 45664 (1983)).
- General information and contacts, [http://www.fws.gov/habitatconservation/coastal\\_barrier.htm](http://www.fws.gov/habitatconservation/coastal_barrier.htm)

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<sup>8</sup> The Coastal Barrier Resources System is established at 16 U.S.C. § 3503. The areas in the system are depicted on maps on file with the Secretary of DOI titled, "Coastal Barrier Resources System."

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## C.4.5 Wild and Scenic Rivers

### Wild and Scenic Rivers Act 16 U.S.C. §§1271 - 1287

Congress passed the Wild and Scenic Rivers Act to preserve the special scenic, cultural, historic, recreational, geologic, and fish and wildlife values of the nation's free flowing rivers and related adjacent land. The Act established the national Wild and Scenic River System, which includes rivers designated by Act of Congress and rivers that the Secretary of the DOI approves for addition to the list upon the petition of state governors. The Wild and Scenic Rivers Act establishes requirements for proposed projects that may affect the river, river segments, or the adjacent land.

The Wild and Scenic Rivers Act prohibits federal assistance for water resource projects<sup>9</sup> that would have direct and adverse effects on, invade, or unreasonably diminish, the special values of a designated wild and scenic river. This restraint is contained in 16 U.S.C. §1278(a), which reads in part:

. . . no department or agency of the United States shall assist by loan, grant, or otherwise in the construction of any water resource project that would have a direct and adverse effect on the values for which such river was established.

### Additional References

#### Implementing Regulations/Executive Orders:

- Wild and Scenic Rivers, Water Resources Projects (36 C.F.R. Part 297, Subpart A).

#### Supplemental Guidance and Resources:

- Joint DOI National Park Service and Department of Agriculture (DOA) Forest Service Final Revised Guidelines for Eligibility Classification and Management of River Areas (47 FR 39457 (1982)).
- Designated Rivers information, <http://www.nps.gov/rivers/>

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<sup>9</sup> "Water resource projects" are defined in the Services' regulations to include "construction of developments which would affect the free-flowing characteristics of a designated or proposed Wild and Scenic River or Study River." "Construction" is defined as any action carried out with federal assistance affecting the free-flowing characteristics or the scenic or natural values of a Wild and Scenic River or a Study River." (36 C.F.R. § 297.3).

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### C.4.6 Endangered Species

#### **Endangered Species Act 16 U.S.C. §§1531 - 1599**

Congress passed the Endangered Species Act (ESA) in response to the risks posed to plants, fish, and wildlife by development and economic growth. The DOI's U.S. Fish and Wildlife Service and the Department of Commerce's National Marine Fisheries Service (NMFS) prepare and maintain a list of endangered and threatened species. The Act requires all federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed endangered or threatened species, or destroy or adversely modify the designated critical habitat on which they depend. The Act also prohibits federal agencies and all other "persons" from "taking," that is, harming (including, in some cases, habitat modification), harassing, or killing individuals of listed endangered, and most threatened, animal species, without prior authorization for incidental taking from the applicable Service.

Actions that may affect listed species or their critical habitat must be reviewed through a consultation process between the federal agency and either the U.S. Fish and Wildlife Service, which is responsible for terrestrial, freshwater species, and certain marine mammals (e.g., manatees) or the NMFS, which is responsible for most marine species. Federal agencies also must "confer" with the Service(s) if their actions are likely to jeopardize the continued existence of species proposed for listing or result in the destruction or adverse modification of habitat proposed for designation as critical. The consultation and conference requirements are established by Section 7 of the Act, which reads in part:

(a) Federal Agency Actions and Consultations.

\* \* \* \* \*

(2) Each federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical....

\* \* \* \* \*

(4) Each federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed . . . or result in the destruction or adverse modification of critical habitat proposed to be designated for such species.

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## 16 U.S.C. §§ 1536(a)(2) and (4)

Finally, the prohibition against “taking” (e.g., harming, harassing, or killing) individuals of listed animal species is established under Section 9 of the ESA. Detailed regulations governing consultation, conferences, and take issues associated with agency actions are set forth at 50 C.F.R. Part 402. These regulations allow for federal agencies to fulfill certain ESA duties through designated non-federal representatives (50 C.F.R. § 402.08).

**Additional References****Implementing Regulations/Executive Orders:**

- DOI and Department of Commerce Procedures for Implementing Section 7 of the Endangered Species Act (50 C.F.R. Part 402).
- U.S. Fish and Wildlife Lists of Endangered or Threatened Species (50 C.F.R. §17.11 and §17.12).
- U.S. Fish and Wildlife Critical Habitats (50 C.F.R. §17.95, §17.96 and Part 226).
- NMFS’s List of Endangered or Threatened Marine Species (50 C.F.R. § 222.23(a) and § 227.4).

**Supplemental Guidance and Resources:**

- Final Endangered Species Act Consultation Handbook for Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act, U.S. Fish & Wildlife Service and NMFS (March 1998), found at <http://www.fws.gov/endangered/consultations/s7hndbk/s7hndbk.htm>
- General Information on Federally designated endangered and threatened species, <http://www.fws.gov/endangered/wildlife.html>
- Endangered and Threatened Species Lists by State, [http://ecos.fws.gov/tess\\_public/StateListing.do?state=all](http://ecos.fws.gov/tess_public/StateListing.do?state=all)

**C.4.7 Essential Fish Habitat****Essential Fish Habitat Consultation Process under the  
Magnuson-Stevens Fishery Conservation and Management Act****16 U.S.C. §§1801 - 1891**

The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended, was designed to manage and conserve national fishery resources. Eight Regional Fishery Management Councils (RFMC) were established to maintain the fisheries in their geographic region through Fishery Management Plans (FMPs). The National Oceanic and Atmospheric Administration (NOAA), through the NMFS, evaluates FMPs and issues necessary regulations.

In 1996, reflecting Congressional concern with marine habitat loss, the MSA was amended. The Sustainable Fisheries Act of 1996 added new requirements for the identification and protection of Essential Fish Habitat (EFH)<sup>10</sup> for species included in the fishery management unit. Each RFMC was required to designate EFH in its region, as well as identify adverse effects on EFH. Federal agencies are required to consult with the NMFS regarding "any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this chapter." (16 U.S.C. § 1855(b)(2))

The NMFS issued final EFH regulations in 2002 for coordination and consultation with federal and state agencies concerning actions that may adversely affect EFH. (50 C.F.R. § 600.905 et. seq.) Actions completed prior to an EFH designation will not require a consultation; however, renewals, reviews or substantial revisions will require a consultation if the renewal, review or revision may adversely affect EFH. Importantly, "EFH consultation is required for any federal funding of actions that may adversely affect EFH." (50 C.F.R. § 600.920(a)(1)).

### Additional References

#### Implementing Regulations/Executive Orders:

- Final regulations for coordination and consultation with federal and state agencies concerning actions that may adversely affect EFH (50 C.F.R. § 600.905 et. seq).
- Regulations for the sole source aquifer program (40 C.F.R. Part 149).

#### Supplemental Guidance and Resources:

- Federal agency consultation with the Secretary. Includes details on the requirements of EFH Assessments (50 C.F.R. § 600.920). "EFH Assessment Template issued by Habitat Conservation Division, NMFS, June 14, 2001, available at <http://www.nwr.noaa.gov/Salmon-Habitat/Salmon-EFH/upload/EFH-assess.pdf>
- "Essential Fish Habitat Consultation Guidance" issued by Office of Habitat Conservation, NMFS, available at <http://www.nmfs.noaa.gov/habitat/efh/Consultation/TOC.html>
- "Guidance for Integrating Magnuson-Stevens Fishery Conservation and Management Act EFH Consultations with Endangered Species Act Section 7 Consultations" issued by NMFS, January 2001, available at <http://www.nmfs.noaa.gov/habitat/habitatprotection/pdf/efh/guidance1.pdf>
- "National Finding for use of Endangered Species Act Section 7 Consultation Process to Complete Essential Fish Habitat Consultations" issued by NMFS, February 28, 2001, available at <http://www.nmfs.noaa.gov/habitat/habitatprotection/pdf/efh/EFH%20Consultation%20Guidance%20v1-1.pdf>

<sup>10</sup> EFH is defined as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." (16 U.S.C. 1802(10)). The NMFS has further interpreted this statutory definition at 50 C.F.R. § 600.10.



## **C.4.8 Clean Air Act**

### **Clean Air Act Conformity 42 U.S.C. §7506(c)**

Because of the nature and scope of the problem to be remedied, the Clean Air Act (CAA) imposes responsibilities for its implementation on all levels of government. Among other things, the Act directs EPA to set national ambient air quality standards (NAAQS), which are airborne pollutant levels that are sufficient to protect the public health and welfare. Each state must develop a state implementation plan (SIP), describing how it will attain, maintain and enforce the air quality standards. Developing the SIP, and implementing its provisions for controlling direct and indirect emissions, is done in consultation with state air agencies and other government organizations.

Section 176(c) of the Act prohibits any federal activity within a NAAQS non-attainment or maintenance area that fails to conform to an applicable SIP. This broad provision reads in part:

(c) Activities not conforming to approved or promulgated plans

(1) No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to a [State Implementation Plan].

42 U.S.C. § 7506(c)

Thus, Section 176(c) requires federal agencies to ensure that emissions from their actions (including actions supported, funded, or permitted by the federal government) will conform to the purposes of a SIP or not otherwise interfere with a state's ability to attain and maintain the NAAQS. EPA has promulgated rules (40 C.F.R. Part 93) that explain the specific ways in which federal agencies must carry out their obligations under the Act's conformity provisions. The application of the rules are dictated by the type of action taken and are divided into general conformity and transportation conformity.

**General Conformity:** For any federal action in a NAAQS nonattainment or maintenance area that is not covered by the provisions of section 176(c) that apply to highway and mass transit funding and approvals (i.e., for any federal action not covered by transportation conformity), federal agencies must determine if a general conformity determination is required for that action. Unless the federal action is specifically included in the list of exempt activities contained in the general conformity rule, a general conformity determination is

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required for each pollutant (or its specific precursors) where the total of direct and indirect emissions in a nonattainment or maintenance area would equal or exceed specified thresholds, or where the total emissions are deemed to be regionally significant. If a conformity determination is required, the general conformity rule provides a number of ways in which federal agencies can demonstrate conformity: the emissions are already accounted for in the SIP; the state can commit to add the activity's emissions to the SIP; the impacts of activity emissions can be modeled to demonstrate project emissions will not interfere with the SIP; or the agency can show that emissions offsets (equivalent in time, location, and quantity to the project emissions) have been secured.

**Transportation Conformity:** The transportation conformity provisions apply to federally funded or approved transportation plans, programs, and projects. Transportation plans and programs are developed for a metropolitan planning area, pursuant to 23 C.F.R. Part 450. Transportation projects include any highway or transit project which receives federal funding or approval. (Accordingly, transportation conformity provisions do not apply to SAAP projects). EPA's regulations implementing the transportation conformity requirement require determination that transportation plans, programs, and projects (with the exception of certain exempt projects specified in the regulations) in nonattainment and maintenance areas for ozone, carbon monoxide, nitrogen dioxide, and particulate matter conform to the area's SIP. Specifically, the conformity regulations ensure that these transportation activities do not produce new air quality standard violations, worsen existing violations, or delay timely attainment of air quality standards.

### Additional References

#### **Implementing Regulations/Executive Orders:**

- Requirements for the Preparation, Adoption, and Submittal of Implementation Plans (40 C.F.R. Part 51)
- Determining Conformity of Federal Actions to State or Federal Implementation Plans (40 C.F.R. Part 93).

#### **Supplemental Guidance and Resources:**

- General Conformity Guidance: Question and Answers (July 13, 1994 and October 19, 1994) found at <http://www.epa.gov/ttn/oarpg/genconformity.html>.

## C.4.9 Safe Drinking Water

### Safe Drinking Water Act

#### 42 U.S.C. §§300f – 300j-26

In 1974, Congress passed the first comprehensive Safe Drinking Water Act (SDWA). The Act required water supply systems in the United States to meet certain minimum national standards to protect the public health. Under the Act, EPA is required to set standards for the wide range of contaminants that can be present in drinking water supplies. EPA's drinking water regulations are codified at 40 C.F.R. Parts 141-143. The SDWA was significantly amended in 1976, 1986, and 1996.

In the 1974 Act, Congress emphasized preventing contamination of aquifers that are the sole source of drinking water for a community. Specifically, under section 1424(e) of the Act, if the EPA Administrator determines that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. To protect sole source aquifers<sup>11</sup> from contamination, section 1424(e) provides that after the publication of any such notice,

. . . no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator [of EPA] determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

#### Additional References

##### Implementing Regulations/Executive Orders:

- National Primary and Secondary Drinking Water Standards (40 C.F.R. Parts 141-143).
- Regulations for the sole source aquifer program (40 C.F.R. Part 149).

##### Supplemental Guidance and Resources:

- Safe Drinking Water Information,  
<http://www.epa.gov/safewater/sdwa/index.html>

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<sup>11</sup> EPA has currently designated 73 Sole Source Aquifers (SSAs) in the United States. For a map of SSAs in your EPA Region, see <http://cfpub.epa.gov/safewater/sourcewater/sourcewater.cfm?action=SSA>.

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