

**ENVIRONMENTAL CONSIDERATIONS IN DLA ACTIONS  
IN THE UNITED STATES (RCS: DD-M(AR)1327)  
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CAAE  
DLA REGULATION  
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ENVIRONMENTAL CONSIDERATIONS IN DLA ACTIONS IN THE UNITED STATES (RCS: DD-M(AR)1327)

(Supplementation is permitted at all levels.)

**I. PURPOSE AND SCOPE.**

To establish policy, assign responsibilities, provide guidance, and establish procedures for the integration of environmental considerations into DLA planning and decisionmaking in accordance with the Council on Environmental Quality (CEQ) Regulations (40 CFR 1500-1508). The provisions of this DLAR apply to proposed plans, decisions, and actions of HQ DLA and DLA field activities which could have an impact on the human environment, and implement DoD Directive 6050.1, Environmental Effects in the United States of DoD Actions. Contractors under the administrative cognizance of the Defense Contract Administration Service (DCAS) are excluded.

**II. POLICY.**

A. It is the continuing policy of the DLA to carry out its mission in a manner consistent with the National Environmental Policy Act (NEPA) and implementing regulations. All practicable means not in conflict with statutory authority will be employed to minimize or avoid adverse environmental consequences and to attain the following objectives:

1. Provide safe, healthful, productive, and aesthetically and culturally pleasing surroundings.
2. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other unintended adverse consequences.
3. Preserve important historic, cultural, and natural resources, and maintain an environment which supports diversity and variety of individual choice, where possible.
4. Achieve a balance between resource use and development within the carrying capacity of the ecosystem involved.
5. Enhance the quality of renewable natural resources by promoting conservation and recycling of depletable resources.

B. To accomplish these objectives, DLA activities will integrate the requirements of NEPA with other planning and review procedures so that all such procedures run concurrently rather than consecutively. Planners and decisionmakers will consider environmental values and amenities concurrent with economic and technical considerations. In particular, DLA activities will:

1. Use a systematic, interdisciplinary approach in developing environmental documents and conducting environmental review processes.
2. Include environmental considerations in planning and decisionmaking to the greatest extent practicable even when specific environmental documents are not required.

3. Consider all reasonable alternative courses of action in the planning of any proposed action where there is the potential for environmental controversy over the proposed use of resources.
4. Make decisions based on an understanding of environmental consequences.
5. Encourage public involvement in actions which affect the quality of the human environment and, where appropriate, invite cooperation and assistance from Federal, state, regional, and local authorities and the public.

### **III. DEFINITIONS.**

With the exception of those listed below, the terms used in this publication are defined in enclosure 2, part 1508.

A. CEQ. Council on Environmental Quality in the Executive Office of the President.

B. CEQ Regulations. Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR 1500-1508, 29 November 1978.

C. Environmental Documents. Those documents which must be prepared at specified stages of the DLA Environmental Review Process including an Environmental Assessment, a Finding of No Significant Impact, a Record of Determination, a Notice of Intent, a Draft Environmental Impact Statement, a Final Environmental Impact Statement, and a Record of Decision.

D. Environmental Review. Those actions required by NEPA and the CEQ Regulations to evaluate the environmental consequences of a proposed action.

E. Proponent. A headquarters staff element or field activity. The former is normally the staff element charged with establishing program objectives and policies and overall management of a program. The latter is an activity responsible for the detailed planning and implementation of an action in accordance with an assigned mission.

F. United States. All states, the District of Columbia, territories and possessions of the United States, and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef. For the purpose of this regulation, United States also includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Marianas.

### **IV. BACKGROUND.**

A. NEPA establishes national policies and goals for the protection of the environment. This law contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal Agencies are required to give appropriate predecisional consideration to the environmental effects of their actions and to prepare detailed statements regarding major Federal actions significantly affecting the quality of the human environment.

B. Executive Order 11991, May 24, 1977, directed CEQ to issue regulations to supersede previous guidelines on the implementation of the procedural provisions of NEPA. Accordingly, CEQ issued final regulations (40 CFR 1500-1508), 29 Nov 78, to achieve a reduction in excessive paperwork and time delays associated with accomplishing environmental reviews and to improve decisionmaking within the Government. These regulations also direct each Federal Agency to issue implementing procedures to supplement the CEQ Regulations. DoD issued its implementing procedures in DoD Directive 6050.1.

### **V. SIGNIFICANT CHANGES.**

A. This revision provides all DLA components with new procedural requirements established by CEQ. These include the use of a scoping process to aid in identifying important environmental issues involved

in a proposed action. A list of Categorical Exclusions is provided to identify types of DLA actions which require neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS). New documents are described in enclosures 1 and 2 for the purpose of announcing and recording decisions reached in the application of the NEPA process. These include a Finding of No Significant Impact (FONSI), a Notice of Intent, a Record of Decision, and a Record of Determination.

B. The Office of Installation Services and Environmental Protection (DLA-W) will be responsible for preparing and staffing environmental documents when a Primary Staff Element (PSE) is the proponent, staffing final environmental documents prior to publication, publication of DLA Categorical Exclusions, and providing the Chairperson of the DLA Environmental Coordination Committee. Revisions also provide for DLA PSEs to appoint a representative to the DLA Environmental Coordination Committee, and to identify actions having environmental consequences to the Committee. PSEs will assist in reviewing and commenting on environmental documents covering actions within their areas of staff responsibility. Primary level field activities are encouraged to submit preliminary documentation, leading to the preparation of formal environmental documents, to the appropriate PSE for review and coordination. This revision does not increase responsibilities of DCAS for preparing environmental documents as they pertain to Defense contracts. Categorical Exclusion No. 22 covers DCAS except for decisions involving the disposal of toxic and hazardous waste. Categorical Exclusion No. 23 covers activities of contractors under DCAS administrative cognizance.

## **VI. RESPONSIBILITIES.**

### **A. HQ DLA**

1. The Staff Director, Installation Services and Environmental Protection, DLA (DLA-W) will:
  - a. Exercise primary staff responsibility for coordinating and monitoring NEPA activities within DLA.
  - b. Serve as the HQ DLA primary point of contact on matters pertaining to this DLAR.
  - c. Monitor DLA proposed decisions which have environmental implications to ensure that environmental considerations are integrated into the decisionmaking process.
  - d. Resolve issues regarding the need for formal environmental documents.
  - e. Staff, approve, and publish all changes to the DLA list of Categorical Exclusions.
  - f. Provide assistance and advice on the preparation and processing of environmental documents, and ensure that DLA documents fulfill the requirements of the CEQ Regulations.
  - g. Prepare environmental documents on actions for which HQ DLA is the proponent.
  - h. Review and provide comments on environmental documents submitted by other DoD components and other Federal Agencies on actions which could affect DLA operations.
  - i. Receive copies of FONSI, EAs, Notices of Intent, Draft and Final EISs, and Records of Decision.
  - j. Publish or file notices on the availability of DLA environmental documents.
  - k. Designate primary responsibility in preparing and processing environmental documents when more than one DLA activity is involved.
- l. Provide the Chairperson of the HQ DLA Environmental Coordination Committee.
- m. Receive copies of Records of Determination prepared by PLFA Environmental Staff Officers.

2. The Counsel, DLA (DLA-G) will provide legal advice and assistance in the interpretation of NEPA and CEQ Regulations, and participate in the preparation of environmental documents as requested.

3. The Special Assistant for Public Affairs, DLA (DLA-B) will:

- a. Make DLA EISs available to the public except for portions that are classified.
- b. Coordinate the public release of DLA EISs with the Office of the Secretary of Defense to ensure that appropriate security procedures are observed.

4. The Heads of DLA Principal Staff Elements will:

- a. Apply the policies and procedures set forth in this DLAR to programs and actions within their areas of responsibility.
- b. Determine the need for environmental documentation early in the planning of an action not covered by a Categorical Exclusion.
- c. Designate to DLA-W a single point of contact for coordinating environmental matters pertaining to this DLAR. This individual will serve as the staff representative to the HQ DLA Environmental Coordination Committee.
- d. Review and provide comments on environmental documents covering actions within their areas of functional responsibility.
- e. Coordinate with DLA-W proposed Headquarters Staff Instructions, regulations, manuals, and other policy publications that have environmental implications.

## B. Field Activities

1. Heads of DLA Primary Level Field Activities (PLFAs) will:

- a. Develop and implement, as necessary, internal procedures for assessing environmental consequences of continuing and proposed programs; proposed regulations, instructions, manuals and other policy publications; and proposed actions for which they are the proponent. In addition, they will prepare, coordinate, and process environmental documents required for such actions within their areas of responsibility.
- b. Ensure that adequate funds are applied to comply with the provisions of this DLAR.
- c. Designate to DLA-W an Environmental Staff Officer for coordinating and implementing environmental matters pertaining to this DLAR.

2. Commanders of DCSC, DESC, DFSC, DGSC, DPSC, DDOU, DDMT, DDTTC, and DPDS, in addition to fulfilling the responsibilities in subparagraph 1 above, will:

- a. Establish an Environmental Coordination Committee, or expand the functions of an existing committee, for the purpose of identifying issues having potential adverse environmental consequences and recommending possible courses of action.
- b. Establish a continuing program to assure that sufficient personnel are properly trained in the requirements of NEPA, the CEQ Regulations, and the provisions of this DLAR.

## VII. PROCEDURES.

DLA activities will adhere to procedures for the processing of environmental documents as set forth in

enclosures 1 and 2.

## **VIII. FORMS AND REPORTS.**

The environmental documents required by this regulation are assigned Report Control Symbol DD-M(AR)1327.

BY ORDER OF THE DIRECTOR  
R. F. McCORMACK  
Colonel, USA  
Staff Director, Administration

2 Encl

1. DLA NEPA Procedures
2. CEQ Regulations (40 CFR Parts 1500-1508)

DISTRIBUTION 2

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Encl 1  
DLA NEPA PROCEDURES

### **I. General**

#### **A. Applicability**

1. The types of actions subject to environmental review include:
  - a. Policies, regulations, and procedures (e.g. regulations, manuals, instructions, mission changes).
  - b. Management programs and operational plans (e.g., contract administration, commodity management, property disposal).
  - c. Projects (e.g. construction projects, depot modernization).
  - d. Activities (e.g. installation operations).
2. In addition to the above, an environmental review may be required for certain activities supported by DLA through:
  - a. Federal contracts and equipment loans.
  - b. Lease, permit, license or other entitlements for use of real property (e.g. grant of easement for utilities).

#### **B. Classified Actions**

1. Limited exceptions to the procedural provisions of this regulation for proposed classified actions are contained in enclosure 2, section 1507.3(c). Further, the provisions of DLAR 5400.13, Clearance of Information for Public Release, will be observed.
2. Classified information will be kept separate from unclassified matter whenever possible to enable environmental documents to be processed routinely in accordance with this regulation. Classified portions will only be provided to reviewers and decisionmakers with a need-to-know in accordance with current security regulations. Questions on the application of these provisions may be referred to DLA-W.

## **II. Environmental Review Procedures.**

### **A. General**

1. The environmental review procedures to be used within DLA are depicted in figure 1. This diagram identifies a series of sequential decisions to be made by the proponent early in the planning of an action, and the follow-on actions with the associated documentation needed to complete the environmental review process. An explanation of these decision points and the content and format of each of the action documents identified in the diagram is provided herein.

2. The initial decisions in this process are to determine what level of environmental review is required for a proposed action. As indicated by the diagram, no review is required when the proposed action is exempt by law, an emergency action, designated a Categorical Exclusion, or has been adequately evaluated in an existing EA or EIS. When the foregoing conditions do not apply, a determination as to the type of EA, program or individual, is then considered. If it is known from the outset that the proposed action being considered will have a significant impact on the human environment, a Draft EIS will be prepared directly without an EA.

### **B. Environmental Review Decisions**

#### **1. Actions Exempt by Law**

a. Certain specific actions are exempt by law from complying with NEPA requirements. An exemption based on security of classified information is discussed in paragraph I B above.

b. The applicability of a law to this type of exemption must be obtained from available counsel. Following approval, DLA Form 1664, Record of Determination Environmental Evaluation, will be completed by the responsible official for inclusion in the master activity or project file.

#### **2. Emergency Actions**

a. In an emergency, DLA may be required to take immediate action having significant environmental impact. However, these actions will be initiated only for reasons of national defense or for the protection of life or property.

b. HQ DLA (DLA-W) will promptly notify the Assistant Secretary of Defense (MRA&L) of the emergency action. ASD (MRA&L) will consult with CEQ as required in enclosure 2, section 1506.11. An emergency action will not be delayed for the purpose of complying with this DLAR or the CEQ Regulations. However, DLA activities will coordinate emergency actions having significant environmental impact with affected agencies and members of the public to the extent that time allows.

#### **3. Categorically Excluded Actions**

a. Categorical Exclusions are recurring type actions that do not individually or cumulatively have a significant impact on the environment, and do not require preparation of an EA or EIS. The types of DLA actions which normally qualify for categorical exclusion are listed in attachment 1.

b. The DLA list of Categorical Exclusions is subject to periodic review and modification. Changes may be made by HQ PSEs and DLA PLFAs by submitting their recommendations along with adequate justification to DLA-W. Field activities are prohibited from modifying the list through supplements to this regulation.

#### **4. Actions Covered by Existing EA or EIS**

a. Actions previously evaluated in an EA or EIS do not have to be reassessed for environmental consequences when the following conditions apply:

(1) A proposed action is identical to one that has been previously evaluated or so similar that the same environmental conditions apply.

(2) Only a part of a previously proposed action has been implemented, and it is determined subsequently to implement the remainder. However, conditions during the time interval must not have changed materially from those previously assessed.

b. A proposed action which is not adequately covered in an existing EA or EIS shall be given further environmental analysis. This may be accomplished by preparing a supplement to the existing EA or EIS in lieu of preparing a new and separate document.

## 5. Actions to be Covered in an Environmental Assessment

a. Program Environmental Assessment. An EA may be either a program or an individual assessment. The program assessment is prepared for broad-scope actions, such as policies, regulations or Agency-wide programs. These are actions that normally affect all or most PLFAs, and have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, or subject matter. Under these circumstances, one rather than a series of individual assessments covering a number of installations or activities would be prepared.

### b. Individual Environmental Assessments

(1) An individual EA may be prepared to cover either a site specific action or proposals or parts of broad proposals which are closely enough related to each other to be a single course of action.

(2) The following are types of DLA actions which normally require preparation of an individual EA:

(a) Construction which may significantly alter land use, or which may result in significant environmental consequences when completed and operated.

(b) Installation Pest Management Plan.

(c) Change in installation land use which may alter environmental conditions.

(d) Repair or alteration projects affecting historical or culturally significant sites, structures or areas.

(e) Actions which could affect prime and unique agricultural land, wetlands, floodplains, coastal zones, rivers in the Nationwide Inventory and similar sensitive areas.

(f) Development of installation master plans, and land and natural resources management plans.

(g) Actions involving the excessing of real property with significant environmental impact.

(h) Actions with significant local or regional impacts on energy availability.

(i) Activities that affect any species not on or proposed for the U.S. List of Endangered Species, but which is on an applicable state list of endangered, threatened, or rare species.

(j) Civilian personnel reductions involving relocation to another installation and involving 50 or more personnel or 10 percent or more of the civilian work force.

## 6. Actions to be Covered in an Environmental Impact Statement

#### a. Program EIS

(1) A program EIS is required for a proposed major action which may have a significant impact on the environment. A program EIS would be prepared for broadscope actions for the same reasons discussed previously on actions to be covered in an EA.

(2) Representative major DLA actions for which a program EIS should be considered include:

(a) Major organizational realignments during peacetime, except where the only significant impacts are socioeconomic.

(b) Development of a major program for the acquisition, storage, or disposal of large quantities of hazardous or toxic materials, fossil fuels, or natural resources.

#### b. Individual EIS

(1) The types of actions normally requiring the preparation of an individual EIS are site specific actions or broad proposals considered as a single action which may significantly degrade environmental quality or public health and safety. Statements should also be prepared when there are highly uncertain environmental effects or unknown environmental risks.

(2) DLA actions which normally require preparation of an individual EIS include:

(a) Construction or major expansion of a facility that would significantly alter land use or result in significant environmental consequences when operational.

(b) Major construction and operation of a facility in or near wetlands, inland waterways, floodplains, coastal zones, or within otherwise ecologically sensitive areas.

(c) Major land acquisition, outleasing, or land excessing actions that may be expected to result in a significant change in land use.

(d) Closure of a major installation, except where the only significant impacts are socioeconomic.

### C. Preparation and Processing of Environmental Documents

#### 1. General

a. Any environmental document prepared in accordance with this DLAR shall accompany the appropriate staffing document in the DLA decisionmaking process, and the alternative courses of action presented in these documents will correspond.

b. The manner in which environmental considerations are to be integrated into DLA planning and staffing of major Agency actions is contained in attachment 3 to this enclosure.

c. There is nothing in these regulations to prevent DLA from requesting a contractor to prepare an EA in report form containing relevant environmental information for possible use by DLA in preparing an EA or an EIS. However, the provisions of enclosure 2, section 1506.5, must be observed.

d. The submission of preliminary documentation, leading to the preparation of formal environmental documents, to the appropriate PSE for review and coordination is encouraged.

e. Decisions reached on the level of environmental review required for a proposed action (subparagraph B) determine the nature and scope of following actions required to complete the environmental review process. The following describes the procedures to be employed in the preparation of documents for

actions exempt from further environmental analysis and those required for the preparation and processing of an EA or EIS.

## 2. Exempt Actions

### a. General

(1) Environmental analysis is not required for actions exempt by law, declared an emergency action, or designated a Categorical Exclusion. In addition, a proposed action covered in a previously completed EA or EIS, or one essentially identical to a previous action covered in an EA or EIS which had no significant environmental impact, needs no further environmental review.

(2) When a proposed action is an unqualified Categorical Exclusion, the proponent of the proposed action may proceed with implementation. However, if the action has associated unusual circumstances, the activity Environmental Staff Officer shall be requested to make the decision as to whether further environmental review is necessary. Similarly, the Environmental Staff Officer shall be requested to determine whether a proposed action falls within the scope of an existing approved EA or EIS, and is thereby exempt from further evaluation. Such decisions shall be recorded by completing DLA Form 1664, and only when it is concluded that further environmental review is not required may the proponent proceed to accomplish the action.

b. Record of Determination. DLA Form 1664 is a written record for the file prepared by the Environmental Staff Officer indicating that no further environmental analysis is required prior to implementation of an action. It includes a brief description of the proposed action and cites projected implementation and completion dates.

## 3. Environmental Assessment

a. General. An EA is a concise public document that briefly provides sufficient evidence and analysis to identify the nature and scope of environmental impacts of a DLA action and aids in determining whether to prepare an EIS or FONSI (enclosure 2, section 1508.9). It enables DLA to comply with NEPA when no EIS is necessary and it can facilitate preparation of an EIS when one is required.

### b. Public Participation

(1) Involvement by environmental organizations and the public in the preparation of an EA is not mandatory, but is considered desirable. Some of the factors to be considered in making such a determination include:

- (a) Magnitude of the proposed action.
- (b) Extent of anticipated public interest.
- (c) Urgency of the proposal.
- (d) Extent of classified information involved.

(2) Applicants for DLA support in accomplishing those actions identified in par. 1 A 2 above may be requested to provide information for possible use in preparing an EA. The DLA proponent shall assist the applicant by outlining the types of information required. However, the DLA activity involved shall independently evaluate the information submitted and shall be responsible for its accuracy. If the activity chooses to use the information submitted by the applicant either directly or indirectly by reference in an EA, then the names of the preparers shall be included in the list of agencies and persons contacted.

(3) DLA activities shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements. Such cooperation may include

the preparation of a joint EA, holding joint public hearings, and use of the scoping process (enclosure 2, section 1501.7).

#### c. EA Format and Content

(1) Preparation of an EA generally does not require the extensive research or detailed documentation required for an EIS. However, the EA shall contain a brief discussion of the following:

- (a) Need for the proposed action.
- (b) Alternatives considered for the proposed action.
- (c) Environmental consequences of the proposed action and alternatives.
- (d) Listing of agencies and persons consulted.
- (e) Conclusion on whether to prepare an EIS or FONSI.

(2) Additional guidance on the preparation of an EA is contained in attachment 2.

(3) The portion of the EA covering the elements (a) through (c) above will not normally exceed 50 double spaced typed pages in length. All EAs over 15 pages in length shall contain a summary of up to 5 pages, a table of contents, and be bound with an appropriate cover.

(4) A supplement to an existing EA shall follow the above format. However, applicable information and analyses already provided in the EA need only be briefly summarized and appropriately referenced in the supplement rather than be fully repeated.

#### d. Finding of No Significant Impact (FONSI)

(1) The FONSI is a document which briefly presents the reasons why a proposed action will not have a significant impact on the human environment and, thus, will not require an EIS. It shall contain the EA or EA supplement, or a summary of it, and references to any related environmental documents.

(2) Each FONSI will be submitted to DLA-W for headquarters review and comment, and then made available to the potentially affected or interested public. Those covering actions of national concern will be published by DLA-W in the Federal Register. In addition, local publication of a FONSI will be made by the proponent, but not before publication in the Federal Register. In such instances, the text of both announcements must be identical. A FONSI on actions of only local or regional interest will be published by the DLA proponent after headquarters review in accordance with enclosure 2, section 1506.6 (b)(3). Copies may also be distributed to appropriate agencies, organizations, and individuals.

#### e. Distribution of EA

(1) Two copies of each approved EA will be forwarded by the proponent PLFA to DLA-W.

(2) Copies of an EA may be provided to local officials and organizations that may be affected by the proposed action. In addition, copies may be made available to the public and others outside DLA upon request at no charge.

#### 4. Environmental Impact Statement (EIS)

a. General. An EIS is a detailed written statement which fully discloses those actions or projects determined to be major Federal actions having a significant impact on the human environment. It differs from an EA in that an EIS contains more detailed analysis, requires positive public participation, and involves more formal preparation and processing as depicted in figure 1. Detailed guidance on the

preparation of an EIS is contained in enclosure 2, part 1502.

b. Lead and Cooperating Agency Responsibilities

(1) When DLA and other Federal agencies are involved in a proposed action, or for such other reasons as identified in enclosure 2, section 1501.5, DLA-W will consult with OSD or appropriate Federal agencies involved to reach an agreement on who will assume lead and cooperating agency responsibilities in the preparation of the EIS.

(2) HQ DLA or a PLFA may be designated a lead or cooperating agency. In such instances, the responsibilities set forth in enclosure 2, section 1501.6, shall be observed.

c. Public Participation

(1) Participation by the public is required in the preparation of an EIS. Public involvement will be accomplished by publishing a Notice of Intent in the Federal Register (enclosure 2, section 1508.22), through the scoping process (enclosure 2, sections 1501.7 and 1508.25), soliciting comments on the Draft EIS (enclosure 2, sections 1503 and 1506.6), and holding public hearings (encl 2, sections 1506.6(c) and (d)).

(2) Announcement of a scoping meeting shall normally be included in the Notice of Intent which will be prepared in accordance with the attached format (figure 2). The proponent will submit the Notice of Intent to DLA-W for review and publication in the Federal Register. Arrangements for distribution of a Draft EIS for comment and the scheduling of public hearings will be developed by the proponent in consultation with DLA-W and the other PSEs involved.

(3) A written record shall be prepared of scoping meetings and public hearings for use in preparing the Draft or Final EIS.

d. Preparation and Distribution of EIS

(1) A proposed Draft EIS will be prepared by the proponent PLFA and forwarded with 10 copies to DLA-W for internal HQ DLA review and comment. Staff comments will be provided to the proponent within 30 days to make revisions as necessary and produce a Draft EIS.

(2) After revision by the proponent, 25 copies of the Draft EIS will be forwarded to DLA-W for restaffing as necessary, filing with EPA, and distribution to appropriate Federal agencies and to interested national organizations for comment. The preparing activity will be notified to distribute the Draft EIS to State, regional and local agencies, and to interested members of the public.

(3) At the conclusion of the comment period, the EIS will be revised as necessary and forwarded to DLA-W for filing with EPA.

e. EIS Preparation and Processing Time Relationships. Figure 3 depicts the steps and normal time relationships involved in the preparation and processing of an EIS from the time a decision is reached on the need for a statement to the implementation of a proposed action. The indicated time intervals are approximations, except for those specified as minimum requirements. The latter conforms with the provisions set forth in enclosure 2, section 1506.10.

ENVIRONMENTAL REVIEW PROCESS FIGURE 1

TIME RELATIONSHIPS PREPARATION & PROCESSING AN EIS FIG 3

f. Implementation of Proposed Action. After a decision is made, the proponent shall prepare a Record of Decision in accordance with enclosure 2, section 1505.2. If required, a monitoring and enforcement

program will be developed in accordance with enclosure 2, section 1505.3. DLA-W will be kept advised of the results of monitoring.

### III. REVIEW OF EXTERNAL EIS

A. General. Review and comment by DLA PLFAs on an EIS prepared by other Federal agencies affecting DLA activities is permitted. Prior to submission of comments objecting to a proposed action, the PLFA shall consult with DLA-W.

B. References. Guidance pertaining to the review of external EISs is contained in enclosure 2, sections 1503.2 and 1503.3.

#### FORMAT

##### NOTICE OF INTENT

AGENCY: \_\_\_\_\_ (Name of proponent activity)

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (EIS)

PURPOSE: To fulfill the requirements of Section 102(2)(C) of the National Environmental Policy Act, the proponent has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40CFR1501.7.

FOR FURTHER INFORMATION CONTACT: \_\_\_\_\_ (Name, organization, mailing address, and telephone number of the point of contact).

#### **SUMMARY:**

1. Description of the Proposed Action: (Briefly describe proposed action)
2. Proposed Alternatives: (Briefly describe alternatives to be considered)
3. Public and Private Participation in the EIS Process: (Invite full participation by interested Federal, State and local agencies as well as other interested private organizations and parties. Indicate that the public will be involved to the maximum extent possible and is encouraged to participate in the planning process).
4. Scoping: (Announce when and where public scoping meetings will be held. If public meetings are not planned, indicate what other scoping process is proposed.)
5. Timing: (Estimate when the Draft EIS will be available for public review and comment.)
6. Requests for Copies of Draft EIS: (Indicate that interested parties may submit their name and address to the point of contact for inclusion on the distribution list for the draft EIS and related public notices.)

ATT 1

Encl 1

#### CATEGORICAL EXCLUSIONS

##### **I. Criteria and Revision Procedures**

A. Criteria. The types of DLA actions which normally qualify for categorical exclusion are those which have:

1. Minimal or no significant effect on environmental quality.
2. No significant change to existing environmental conditions.
3. No significant cumulative environmental impact.

4. Social and economic effects only.
5. Similarity to actions previously examined and found to meet the above criteria.

B. Revision Procedures. The DLA list of Categorical Exclusions is subject to periodic review and may be modified only by DLA-W. Requests for modification may be submitted, along with appropriate justification, by Heads of DLA PSEs and PLFAs to DLA-W for review and staffing. Field activities are not authorized to modify the list of Categorical Exclusions through supplements to this regulation.

## **II. DLA Categorical Exclusions**

1. Normal personnel, fiscal, and administrative activities (recruiting, processing, pay, and recordkeeping).
2. Protection activities performed by security police.
3. Recreation and welfare activities other than fish and wildlife management operations.
4. Commissary, Post Exchange, and Officer and NCO Club operations.
5. Routine repair and maintenance of buildings, roads, grounds, administrative vehicles, and operating and materials handling equipment.
6. Local procurement of goods and services, including routine utility services, when goods and services do not involve hazardous and toxic materials.
7. Construction, performed in accordance with an approved installation master plan, that does not significantly alter land use, and when the of the completed project would not have significant environmental consequences.
8. On-the-job training activities.
9. Studies that involve no commitment of resources other than manpower and funding.
10. Routine civilian personnel reductions, increases or relocations involving less than 50 personnel and less than 10 percent of the work force.
11. Regulations, staff instructions, and manuals covering categorically excluded activities.
12. Installation and operation of communications, data processing, and similar electronic equipment, including their transmission systems which use existing rights of way, easements, and distribution systems.
13. Inspections, surveys, and investigations.
14. Preparation of regulations, procedures, manuals, and other guidance documents that implement without substantial change the regulations, procedures, manuals, and other guidance documents issued by higher headquarters or another Federal agency.
15. Grants of easements for the use of existing rights-of-way for roads; electrical power, telephone, and other transmission and communication lines; water, sewage, stormwater, and irrigation pipelines, pumping stations, and related facilities; and for other similar, public utility, and transportation uses.
16. Grant of leases, licenses, interservice support agreements, and permits to utilize DLA-managed real property (e.g., classroom, office, warehouse, or administrative space).
17. Reporting the availability of excess real property to the General Services Administration and the owning Military Service.

18. Actions to suspend or debar contractors or individuals from doing business with DoD and to determine what actions should be taken with respect to such contractors and individuals.
19. Actions to negotiate the acquisition of rights, inventions, patents, and copyrights. Actions to negotiate licenses and other documents granting rights in inventions, patents, and copyrights owned and controlled by the Government.
20. Determinations on mistakes in bid and requests for extraordinary contractual relief.
21. Financial management activities, including budgeting, finance and accounting, development of performance standards and manpower requirements, operation of Management Information System, and evaluation of performance.
22. Contract administration services, including preaward surveys, production surveillance, quality assurance, and other activities related to the administration of defense contracts, except for decisions involving the disposal of toxic and hazardous waste.
23. Activities of contractors under the administrative cognizance of the Defense Contract Administration Service.
24. Management of assigned items, including procurement and related engineering support, storage, distribution, when such commodities do not involve significant quantities of toxic and hazardous chemicals, pesticides, radioactive items, fossil fuels, or animal products made from endangered species.
25. Technical and logistic services, including development and maintenance of the Federal cataloging program, the Scientific and Technical Information Program, the Information and Analysis Program, and the Hazardous Material Information System, Standardization Program, and related activities.
26. Application of pesticides in accordance with the Installation Pest Management Plan.
27. Reutilization, transfer, donation or sale of DoD excess or surplus personal property.
28. Abandonment or destruction of surplus DoD personal property which is not hazardous or toxic.
29. Disposal of hazardous waste, in compliance with regulations established under the Resource Conservation and Recovery Act, when substances and quantities involved do not have a significant impact on the environment, and excluding acute hazardous wastes listed in EPA Regulation, Identification and Listing of Hazardous Waste (40 CFR 261) section 261.33(e).

ATT 2  
Encl 1

## ENVIRONMENTAL ASSESSMENT FORMAT& CONTENT

### **I. Format**

A. An environmental assessment shall contain the following sections:

1. Summary (EA exceeding 15 pages).
2. Table of Contents (EA exceeding 15 pages).
3. Need For the Proposed Action.
4. Alternatives Considered.

5. Environmental Consequences.
6. Conclusions.
7. List of Agencies and Persons Contacted.
8. Appendices (if required).

B. The text of an EA (sections 3 through 6 above) shall not exceed 50 pages. Documents exceeding 15 pages should be bound and provided with a suitable cover. Information on the content of each of the above sections is provided below.

## **II. Content**

A. Summary. Each EA exceeding 15 pages in length shall contain an adequate summary of the assessment. This summary will normally not exceed 3 pages.

B. Table of Contents. The table of contents will also contain a list of figures and tables and shall normally be provided for EAs exceeding 15 pages in length.

C. Need for the Proposed Action. This section should clearly explain the nature of the problem and discuss how the proposed action or the range of alternatives would solve that problem. The primary objective in this section is to call attention to the benefits of the proposed action. When the projected benefits are primarily economic and based on a cost-benefit analysis, these findings should be either summarized or referenced, with a copy attached as an appendix.

### **D. Alternatives Considered**

1. All reasonable alternatives (courses of action relevant to a proposed action) are discussed in this section. Among those considered will be the "no action" or "status quo" alternative. In addition, the rationale for dismissing possible alternatives from detailed examination will be discussed. A preferred alternative, where it is known, should be identified in an EA along with the reasons for its selection.

2. A simple title, letter, or number identification shall be used for each of the alternatives discussed and reference to this designation shall be maintained throughout the document.

3. This section may also present in comparative form a summary of the environmental consequences of all alternatives examined to sharply define the issues and provide a clear basis for choice for the decisionmaker. The information to be included is derived from data presented in the environmental consequences section. The use of tabular or matrix formats to present the comparison of environmental effects is preferred because it provides a brief summary for the reviewer of the document.

### **E. Environmental Consequences**

1. This section is primarily an analysis of the potential effects of implementing the various alternatives. This requires a brief description of the affected environment to serve as a base from which to estimate the magnitude of impacts. The important information to be made available to the reviewer is the identification and significance of both direct and indirect effects, and any environmental effects that cannot be avoided. In addition, it is essential to explain those measures, if any, that can and will be employed to mitigate adverse environmental effects, and opportunities that can be taken to enhance environmental quality.

2. The environmental factors listed below are among those that should be examined in an EA. Only those relevant to a proposed action need to be covered. Ecology Terrestrial (including endangered species)

Aquatic (including endangered species)  
Environmental Quality

Water Pollution  
Air Pollution  
Noise Pollution  
Land Pollution (solid and hazardous waste disposal)  
Aesthetics Sociological Conditions Population (composition and growth)  
Public Schools  
Housing Availability Public Transportation Historical, Archeological, and Cultural Amenities  
Community Services (police and fire protection)  
Anticipated Public and Official Attitudes Toward the Proposal  
Economic Conditions  
Work force and Unemployment Profile  
EEO Considerations  
Economic Impact Projections  
Economic Growth Potential

F. Conclusions. Conclude that there would be no significant environmental impacts and an EIS is not required, or that there would be significant environmental impacts and EIS is required. When mitigating measures are required to support the view that there would be no significant environmental impacts, it is appropriate to summarize these measures in this section.

G. List of Agencies and Persons Contacted. In addition to the listing, identify the type of information obtained from these sources if not readily apparent from the files of individuals and agencies.

H. Appendix. Information attached as appendices will normally consist of material which substantiates any analysis fundamental to the assessment.

ATT 3  
Encl 1

#### APPLICATION OF NEPA PROCESS TO MAJOR DLA ACTIONS

GENERAL. The basic DLA procedures contained in enclosure 1 are applied to DLA actions. The following table identifies four major categories of actions which can have environmental implications. It also indicates those primary organizational elements responsible for integrating environmental considerations into the planning and development of an action, and when environmental documents are to be made available during the internal staffing and decisionmaking process.

Specific points-of-contact for information pertaining to environmental documents on particular types of DLA actions are listed in the table. Requests for information on the broader aspects of the DLA environmental program and on the implementation of the CEQ Regulations, in particular, should be directed to:

Defense Logistics Agency  
Staff Director, Installation Services and Environmental Protection (DLA-W)  
Cameron Station  
Alexandria, Virginia 22314

#### TABLE OF ENVIRONMENTAL REVIEW DECISION POINTS FOR MAJOR DLA ACTIONS

Encl 2

Council on Environmental Quality  
Executive Office of the President

#### REGULATIONS

For Implementing The Procedural Provisions Of The NATIONAL ENVIRONMENTAL POLICY ACT

Reprint

43 FR 55978-56007

November 29, 1978

40 CFR Parts 1500-1508

<b>CONTENTS</b>	Page
Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act	1
The National Environmental Policy Act of 1969, as Amended	34
The Environmental Quality Improvement Act of 1970	39
The Clean Air Act 309	41
Executive Order 11514, as Amended by Executive Order 11991	42

#### **TABLE OF CONTENTS**

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

1500.1 Purpose.

1500.2 Policy.

1500.3 Mandate.

1500.4 Reducing paperwork.

1500.5 Reducing delay.

1500.6 Agency authority.

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

1501.1 Purpose.

1501.2 Apply NEPA early in the process.

1501.3 When to prepare an environmental assessment.

1501.4 Whether to prepare an environmental impact statement.

1501.5 Lead agencies.

1501.6 Cooperating agencies.

1501.7 Scoping.

1501.8 Time limits.

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

1502.1 Purpose.

1502.2 Implementation.

1502.3 Statutory requirements for statements.

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

- 1502.5 Timing.
- 1502.6 Interdisciplinary preparation.
- 1502.7 Page limits.
- 1502.8 Writing.
- 1502.9 Draft, final, and supplemental statements.
- 1502.10 Recommended format.
- 1502.11 Cover sheet.
- 1502.12 Summary.
- 1502.13 Purpose and need.
- 1502.14 Alternatives including the proposed action.
- 1502.15 Affected environment.
- 1502.16 Environmental consequences.
- 1502.17 List of preparers.
- 1502.18 Appendix.
- 1502.19 Circulation of the environmental impact statement.
- 1502.20 Tiering.
- 1502.21 Incorporation by reference.
- 1502.22 Incomplete or unavailable information.
- 1502.23 Cost-benefit analysis.
- 1502.24 Methodology and scientific accuracy.
- 1502.25 Environmental review and consultation requirements.

**PART 1503-COMMENTING**

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

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

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

**PART 1505-NEPA AND AGENCY DECISIONMAKING**

- 1505.1 Agency decisionmaking procedures.
- 1505.2 Record of decision in cases requiring environmental impact

statements.

1505.3 Implementing the decision.

**PART 1506-OTHER REQUIREMENTS OF NEPA**

1506.1 Limitations on actions during NEPA process.

1506.2 Elimination of duplication with State and local procedures.

1506.3 Adoption.

1506.4 Combining documents.

1506.5 Agency responsibility.

1506.6 Public involvement.

1506.7 Further guidance.

1506.8 Proposals for legislation.

1506.9 Filing requirements.

1506.10 Timing of agency action.

1506.11 Emergencies.

1506.12 Effective date.

**PART 1507-AGENCY COMPLIANCE**

1507.1 Compliance.

1507.2 Agency capability to comply.

1507.3 Agency procedures.

**PART 1508-TERMINOLOGY AND INDEX**

1508.1 Terminology.

1508.2 Act.

1508.3 Affecting.

1508.4 Categorical exclusion.

1508.5 Cooperating agency.

1508.6 Council.

1508.7 Cumulative impact.

1508.8 Effects.

1508.9 Environmental assessment.

1508.10 Environmental document.

1508.11 Environmental impact statement.

1508.12 Federal agency.

1508.13 Finding of no significant impact.

1508.14 Human environment.

1508.15 Jurisdiction by law.

- 1508.16 Lead agency.
- 1508.17 Legislation.
- 1508.18 Major Federal action.
- 1508.19 Matter.
- 1508.20 Mitigation.
- 1508.21 NEPA process.
- 1508.22 Notice of intent.
- 1508.23 Proposal.
- 1508.24 Referring agency.
- 1508.25 Scope.
- 1508.26 Special expertise.
- 1508.27 Significantly.
- 1508.28 Tiering.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970 as amended by Executive Order 11991, May 24, 1977).

#### **1500.1 Purpose.**

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

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

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

#### **1500.2 Policy.**

Federal agencies shall to the fullest extent possible:

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

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses. (c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

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

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

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

### **1500.3 Mandate.**

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

### **1500.4 Reducing paperwork.**

Agencies shall reduce excessive paperwork by:

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

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

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

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

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

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public ( 1502.14 and 1502.15) and reducing emphasis on background material ( 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 ( 1501.7).

(h) Summarizing the environmental impact statement ( 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long ( 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 ( 1502.4 and 1502.20).

(j) Incorporating by reference ( 1502.21).

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

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

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

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

(o) Combining environmental documents with other documents ( 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 ( 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 ( 1508.13).

#### **1500.5 Reducing delay.**

Agencies shall reduce delay by:

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

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

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

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

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

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

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

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

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

(j) Using accelerated procedures for proposals for legislation ( 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 ( 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 ( 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

### **1500.6 Agency authority.**

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

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

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

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24 1977).

### **1501.1 Purpose.**

The purposes of this part include:

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

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

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

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

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

### **1501.2 Apply NEPA early in the process.**

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that

planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

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

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

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

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

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

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

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

### **1501.3 When to prepare an environmental assessment.**

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

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

### **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 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 ( 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by 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 ( 1501.7), if the agency will prepare an environmental impact

statement.

(e) Prepare a finding of no significant impact ( 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 1506.6. (2) In certain limited circumstances which the agency may cover in its procedures under 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

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

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

### **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 ( 1506.2).

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

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

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

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

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

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

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

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

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

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

#### **1501.6 Cooperating agencies.**

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

(a) The lead agency shall:

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

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

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

(b) Each cooperating agency shall:

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

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

#### **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 ( 1508.22) in the FEDERAL REGISTER except as provided in 1507.3(e).

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

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

(2) Determine the scope ( 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 ( 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 1502.25.

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

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

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

(2) Set time limits ( 1501.8).

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

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

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

#### **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 1505.10). When multiple agencies are involved the reference to agency below means lead agency.

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

(b) The agency may:

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

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

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

(v) Number of persons and agencies affected.

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

(vii) Degree to which the action is controversial.

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

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

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

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

(iii) Preparation of the draft environmental impact statement.

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

(v) Preparation of the final environmental impact statement.

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

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

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

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

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

Sec. 1502.1 Purpose. 1502.2 Implementation. 1502.3 Statutory Requirements for Statements. 1502.4 Major Federal Actions Requiring the Preparation of Environmental Impact Statements. 1502.5 Timing. 1502.6 Interdisciplinary Preparation. 1502.7 Page Limits. 1502.8 Writing. 1502.9 Draft, Final, and Supplemental Statements. 1502.10 Recommended Format. 1502.11 Cover Sheet. 1502.12 Summary. 1502.13 Purpose and Need. 1502.14 Alternatives Including the Proposed Action. 1502.15 Affected Environment. 1502.16 Environmental Consequences. 1502.17 List of Preparers. 1502.18 Appendix. 1502.19 Circulation of the Environmental Impact Statement. 1502.20 Tiering. 1502.21 Incorporation by Reference. 1502.22 Incomplete or Unavailable Information. 1502.23 Cost-Benefit Analysis. 1502.24 Methodology and Scientific Accuracy. 1502.25 Environmental Review and Consultation Requirements.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

### **1502.1 Purpose.**

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

### **1502.2 Implementation.**

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

- (a) Environmental impact statements shall be analytic rather than encyclopedic.
- (b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.
- (c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.
- (d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.
- (e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.
- (f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision ( 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.

### **1502.3 Statutory requirements for statements.**

As required by sec. 102(2)(C) of NEPA environmental impact statements( 1508.11) are to be included in every recommendation or report On proposals ( 1508.23) For legislation and ( 1508.17) Other major Federal actions ( 1508.18) Significantly ( 1508.27) Affecting ( 1508.3, 1508.8) The quality of the human environment ( 1508.14).

### **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 ( 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 ( 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

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

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

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

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

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

#### **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 ( 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made ( 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.

#### **1502.6 Interdisciplinary preparation.**

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

#### **1502.7 Page limits.**

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

#### **1502.8 Writing.**

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

#### **1502.9 Draft, final, and supplemental statements.**

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

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

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

(c) Agencies:

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

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

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

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

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

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

### **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 (secs. 102(2)(C)(iii) and 102(2)(E) of the Act).
- (f) Affected Environment.
- (g) Environmental Consequences (especially sections 102(2)(C) (i), (ii), (iv), and (v) of the Act).
- (h) List of Preparers.
- (i) List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent.
- (j) Index.
- (k) Appendices (if any).

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

### **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 Form 424 (in items 4, 6, 7, 10, and 18).

### **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.

#### **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.

#### **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 ( 1502.15) and the Environmental Consequences ( 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

- (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
- (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
- (c) Include reasonable alternatives not within the jurisdiction of the lead agency.
- (d) Include the alternative of no action.
- (e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
- (f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

#### **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.

#### **1502.16 Environmental consequences.**

This section forms the scientific and analytic basis for the comparisons under 1502.14. It shall consolidate the discussions of those elements required by secs. 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of sec. 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 1502.14. It shall include discussions of:

- (a) Direct effects and their significance ( 1508.8)

(b) Indirect effects and their significance ( 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 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under 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 1502.14(f)).

#### **1502.17 List of preparers.**

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement ( 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.

#### **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 ( 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.

#### **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 1502.18(d) and unchanged statements as provided in 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

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

(b) The applicant, if any.

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

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft. If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

#### **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 ( 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. (Sec. 1508.28).

#### **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.

#### **1502.22 Incomplete or unavailable information.**

When an agency is evaluating significant adverse effects on the human environment in an environmental impact statement and there are gaps in relevant information or scientific uncertainty, the agency shall always make clear that such information is lacking or that uncertainty exists.

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

(b) If (1) the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are exorbitant or (2) the information relevant to adverse impacts is important to the decision and the means to obtain it are not known (e.g., the means for obtaining it are beyond the state of the art) the agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the agency proceeds, it shall include a worst case analysis and an indication of the probability or improbability of its occurrence.

#### **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 sec. 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.

#### **1502.24 Methodology and scientific accuracy.**

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

#### **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. Sec. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), and other environmental review laws and executive orders.

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

### **PART 1503-COMMENTING**

Sec. 1503.1 Inviting Comments. 1503.2 Duty to Comment. 1503.3 Specificity of Comments. 1503.4 Response to Comments.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). 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) Appropriated State and local agencies which are authorized to develop and enforce environmental standards;

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

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

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

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

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

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

### **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 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.

### **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.

### **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 responses in the final statement. Possible

(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 ( 1502.19). The entire document with a new cover sheet shall be filed as the final statement ( 1506.9).

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

Sec. 1504.1 Purpose. 1504.2 Criteria for Referral. 1504.3 Procedure for Referrals and Response.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

### **1504.1 Purpose.**

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

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

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

### **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.

### **1504.3 Procedure for referrals and response.**

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

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

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

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

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

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

(c) The referral shall consist of:

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

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

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

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

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

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

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

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

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

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

(2) Be supported by evidence.

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

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

shall be delivered not later than the response.

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

- (1) Conclude that the process of referral and response has successfully resolved the problem.
- (2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.
- (3) Hold public meetings or hearings to obtain additional views and information.
- (4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.
- (5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.
- (6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).
- (7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.
- (g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f) (2), (3), or (5) of this section.
- (h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

## **PART 1505--NEPA AND AGENCY DECISIONMAKING**

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

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

### **1505.1 Agency decisionmaking procedures.**

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

- (a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).
- (b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.
- (c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.
- (d) Requiring that relevant environmental documents, comments, and responses accompany the proposal

through existing agency review processes so that agency officials use the statement in making decisions.

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

### **1505.2 Record of decision in cases requiring environmental impact statements.**

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

(a) State what the decision was.

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

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

### **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 ( 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

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

(b) Condition funding of actions on mitigation.

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

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

## **PART 1506-OTHER REQUIREMENTS OF NEPA**

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

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

### **1506.1 Limitations on actions during NEPA process.**

(a) Until an agency issues a record of decision as provided in 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.

### **1506.2 Elimination of duplication with State and local procedures.**

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

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

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

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement

requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

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

### **1506.3 Adoption**

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

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

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

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

### **1506.4 Combining documents.**

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

### **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 ( 1502.17). It is the intent of this subparagraph 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 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 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate that they have no financial 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.

#### **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 rule-making may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.
  - (3) In the case of an action with effects primarily of local concern the notice may include:
    - (i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).
    - (ii) Notice to Indian tribes when effects may occur on reservations.
    - (iii) Following the affected State's public notice procedures for comparable actions.
    - (iv) Publication in local newspapers (in papers of general circulation rather than legal papers).
    - (v) Notice through other local media.
    - (vi) Notice to potentially interested community organizations including small business associations.
    - (vii) Publication in newsletters that may be expected to reach potentially interested persons.
    - (viii) Direct mailing to owners and occupants of nearby or affected property.
    - (ix) Posting of notice on and off site in the area where the action is to be located.
  - (c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:
    - (1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.
    - (2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).
  - (d) Solicit appropriate information from the public.
  - (e) Explain in its procedures where interested persons can get information or status reports on

environmental impact statements and other elements of the NEPA process.

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

#### **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.

#### **1506.8 Proposals for legislation.**

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

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

(1) There need not be a scoping process.

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

#### **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, D.C. 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 below.

#### **1506.10 Timing of agency action.**

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

(b) No decision on the proposed action shall be made or recorded under 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 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.

#### **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.

#### **1506.12 Effective date.**

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under sec. 102(2)(D) of the Act or under sec. 104(h) of the Housing and Community Development Act of 1974 and 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 reason of these regulations. Until these regulations are applicable, the Council's guidelines published in the FEDERAL REGISTER of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

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

### **PART 1507-AGENCY COMPLIANCE**

Sec. 1507.1 Compliance. 1507.2 Agency Capability to Comply. 1507.3 Agency Procedures.

AUTHORITY NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 76(9)), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

#### **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 1507.3 to the requirements of other applicable laws.

#### **1507.2 Agency capability to comply.**

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

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

(b) Identify methods and procedures required by Sec. 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 Sec. 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 Sec. 102(2)(E) extends to all such proposals, not just the more limited scope of Sec. 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

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

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

### **1507.3 Agency procedures.**

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

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

(1) Those procedures required by 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 ( 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 1506.10 when necessary to comply with other specific statutory requirements. (e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by 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. 1508.2 Act. 1508.3 Affecting. 1508.4 Categorical Exclusion. 1508.5 Cooperating Agency. 1508.6 Council. 1508.7 Cumulative Impact. 1508.8 Effects. 1508.9 Environmental Assessment. 1508.10 Environmental Document. 1508.11 Environmental Impact Statement. 1508.12 Federal Agency. 1508.13 Finding of No Significant Impact. 1508.14 Human Environment. 1508.15 Jurisdiction By Law. 1508.16 Lead Agency. 1508.17 Legislation. 1508.18 Major Federal Action. 1508.19 Matter. 1508.20 Mitigation. 1508.21 NEPA Process. 1508.22 Notice of Intent. 1508.23 Proposal. 1508.24 Referring Agency. 1508.25 Scope. 1508.26 Special Expertise. 1508.27 Significantly. 1508.28 Tiering.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

### **1508.1 Terminology.**

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

### **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."

### **1508.3 Affecting.**

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

### **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 ( 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 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.

### **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 1501.6. A State

or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

#### **1508.6 Council.**

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

#### **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.

#### **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.

#### **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 sec. 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

#### **1508.10 Environmental document.**

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

#### **1508.11 Environmental impact statement.**

"Environmental Impact Statement" means a detailed written statement as required by Sec. 102(2)(C) of the Act.

**1508.12 Federal agency.**

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

**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( 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 ( 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.

**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" ( 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.

**1508.15 Jurisdiction By Law.**

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

**1508.16 Lead agency.**

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

**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.

**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 ( 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 ( 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.

#### **1508.19 Matter.**

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in Section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

#### **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.

#### **1508.21 NEPA process.**

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

### **1508.22 Notice of intent.**

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

- (a) Describe the proposed action and possible alternatives.
- (b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.
- (c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

### **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 ( 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.

### **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.

### **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 ( 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

- (a) Actions (other than unconnected single actions) which may be:
  - (1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:
    - (i) Automatically trigger other actions which may require environmental impact statements.
    - (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
    - (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.
  - (2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.
  - (3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include: (1) No action alternative. (2) Other reasonable courses of actions. (3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be:

(1) Direct.

(2) Indirect.

(3) Cumulative.

#### **1508.26 Special expertise.**

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

#### **1508.27 Significantly.**

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

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

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

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

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

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

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

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

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

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

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

(9) The degree to which the action may adversely affect an endangered or threatened species or its

habitat that has been determined to be critical under the Endangered Species Act of 1973.

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

### **1508.28 Tiering.**

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

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

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

## **Index**

Act	1508.2
Action	1508.18, 1508.25
Action-forcing	1500.1, 1502.1
Adoption	1500.4(n), 1500.5(h), 1506.3
Affected Environment	1502.10(f), 1502.15
Affecting	1502.3, 1508.3
Agency Authority	1500.6
Agency Capability	1501.2(a), 1507.2
Agency Compliance	1507.1
Agency Procedures	1505.1, 1507.3
Agency Responsibility	1506.5
Alternatives	1501.2(c), 1502.2, 1502.10(e), 1502.14, 1505.1(e), 1505.2, 1507.2(d), 1508.25(b)
Appendices	1502.10(k), 1502.18, 1502.24
Applicant	1501.2(d)(1), 1501.4(b), 1501.8(a), 1502.19(b), 1503.1(a)(3), 1504.3(e), 1506.1(d), 1506.5(a), 1506.5(b)
Apply NEPA Early in the Process.	1501.2
Categorical Exclusion	1500.4(p), 1500.5(k), 1501.4(a), 1507.3(b), 1508.4

Circulating of Environmental Impact Statement	1502.19, 1506.3
Classified Information	1507.3(c)
Clean Air Act	1504.1, 1508.19(a)
Combining Documents	1500.4(o), 1500.5(1), 1506.4
Commenting	1502.19, 1503.1, 1503.2, 1503.3, 1503.4, 1506.6(f)
Consultation Requirement	1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25
Context	1508.27(a)
Cooperating Agency	1500.5(b), 1501.1(b), 1501.5(c), 1501.5(f), 1501.6, 1503.1(a)(1), 1503.2, 1503.3, 1506.3(c), 1506.5(a), 1506.5
Cost-Benefit	1502.23
Council on Environmental Quality	1500.3, 1501.5(e), 1501.5(f), 1501.6(c), 1502.9(c)(4), 1504.1, 1504.2, 1504.3, 1506.6(f), 1506.9, 1506.10(e), 1506.11, 1507.3, 1508.6, 1508.24
Cover Sheet	1502.10(a), 1502.11
Cumulative Impact	1508.7, 1508.25(a), 1508.25(c)
Decisionmaking	1505.1, 1506.1
Decision points	1505.1(b)
Dependent	1508.25(a)
Draft Environmental Impact Statement	1502.9(a)
Early Application of NEPA	1501.2
Economic Effects	1508.8
Effective Date	1506.12
Effects	1502.16, 1508.8
Emergencies	1506.11
Endangered Species Act	1502.25, 1508.27(b)(9)
Energy	1502.16(e)
Environmental Assessment	1501.3, 1501.4(b), 1501.4(c), 1501.7(b)(3), 1506.2(b)(4), 1506.5(b), 1508.4, 1508.9, 1508.10, 1508.13

Environmental Consequences	1502.10(g), 1502.16
Environmental Consultation Requirements	1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25, 1503.3(c)
Environmental Documents	1508.10
Environmental Impact Statement	1500.4, 1501.4(c), 1501.7, 1501.3, 1502.1, 1502.2, 1502.3, 1502.4, 1502.5, 1502.6, 1502.7, 1502.8, 1502.9, 1502.10, 1502.11, 1502.12, 1502.13, 1502.14, 1502.15, 1502.16, 1502.17, 1502.18, 1502.19, 1502.20, 1502.21, 1502.22, 1502.23, 1502.24, 1502.25, 1506.2(b)(4), 1506.3, 1506.8, 1508.11
Environmental Protection Agency	1502.11(f), 1504.1, 1504.3, 1506.7(c), 1506.9, 1506.10, 1508.19(a)
Environmental Review Requirements	1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25, 1503.3(c)
Expediter	1501.8(b)(2)
Federal Agency	1508.12
Filing	1506.9
Final Environmental Impact Statement	1502.9(b), 1503.1, 1503.4(b)
Finding of No Significant Impact	1500.3, 1500.4(q), 1500.5(1), 1501.4(e), 1508.13
Fish and Wildlife Coordination Act	1502.25
Format for Environmental Impact Statement.	1502.10
Freedom of Information Act	1506.6(f)
Further Guidance	1506.7
Generic	1502.4(c)(2)
General Services Administration	1506.8(b)(5)
Geographic	1502.4(c)(1)
Graphics	1502.8
Handbook	1506.7(a)
Housing and Community Development Act.	1506.12, 1508.12
	1502.3, 1502.22, 1508.14

Human Environment	
Impacts	1508.8, 1508.25(c)
Implementing the Decision	1505.3
Incomplete or Unavailable Information	1502.22
Incorporation by Reference	1500.4(j), 1502.21
Indian Tribes	1501.2(d)(2), 1501.7(a)(1), 1502.10(j), 1502.15(c), 1503.1(a)(2)(ii), 1506.6(b)(3)(ii), 1508.5, 1508.12
Intensity	1508.27(b)
Interdisciplinary Preparation	1502.6, 1502.17
Interim Actions	1506.1
Joint Lead Agency	1501.5(b), 1506.2
Judicial Review	1500.3
Jurisdiction by Law	1508.15
Lead Agency	1500.5(c), 1501.1(c), 1501.5, 1501.6, 1501.7, 1501.8, 1504.3, 1506.2(b)(4), 1506.8(a), 1506.10(e), 1508.16
Legislation	1500.5(j), 1502.3, 1506.8, 1508.17, 1508.18(a)
Limitation on Action During NEPA Process	1506.1
List of Preparers	1502.10(h), 1502.17
Local or State	1500.4(n), 1500.5(h), 1501.2(d)(2), 1501.5(b), 1501.5(d), 1501.7(a)(1), 1501.8(c), 1502.16(c), 1503.1(a)(2), 1506.2(b), 1506.6(b)(3), 1508.5, 1508.12, 1508.18
Major Federal Action	1502.3, 1508.18
Mandate	1500.3
Matter	1504.1, 1504.2, 1504.3, 1508.19
Methodology	1502.24
Mitigation	1502.14(h), 1502.16(h), 1503.3(d), 1505.2(c), 1505.3, 1508.20
Monitoring	1505.2(c), 1505.3
National Historic Preservation Act	1502.25
National Register of Historical Places	1508.27(b)(8)

Natural or Depletable Resource Requirements	1502.16(f)
Need for Action	1502.10(d), 1502.13
NEPA Process	1508.21
Non-Federal Sponsor	1501.2(d)
Notice of Intent	1501.7, 1507.3(c), 1508.22
OMB Circular A-95	1503.1(a)(2)(iii), 1505.2, 1506.6(b)(3)(i)
102 Monitor	1506.6(b)(2), 1506.7(c)
Ongoing Activities	1506.12
Page Limits	1500.4(a), 1501.7(b), 1502.7
Planning	1500.5(a), 1501.2(b), 1502.4(a), 1508.18
Policy	1500.2, 1502.4(b), 1508.18(a)
Program Environmental Impact Statement	1500.4(i), 1502.4, 1502.20, 1508.18
Programs	1502.4, 1508.18(b)
Projects	1508.18
Proposal	1502.4, 1502.5, 1506.8, 1508.23
Proposed Action	1502.10(e), 1502.14, 1506.2(c)
Public Health and Welfare	1504.1
Public Involvement	1501.4(c), 1503.1(a)(3), 1506.6
Purpose	1500.1, 1501.1, 1502.1, 1504.1
Purpose of Action	1502.10(d), 1502.13
Record of Decision	1505.2, 1506.1
Referrals	1504.1, 1504.2, 1504.3, 1506.3(d)
Referring Agency	1504.1, 1504.2, 1504.3
Response to Comments	1503.4
Rural Electrification Administration	1506.1(d)
Scientific Accuracy	1502.24
Scope	1502.4(a), 1502.9(a) 1508.25
Scoping	1500.4(b), 1501.1(a), 1501.4(d), 1501.7, 1502.9(a), 1506.8(a)
Significantly	1502.3, 1508.27
Similar	1508.25

Small Business Associations	1506.6(b)(3)(vi)
Social Effects	1508.8
Special Expertise	1508.26
Specificity of Comments	1500.4(l), 1503.3
State and Areawide Clearinghouses	1501.4(e)(2), 1503.1(a)(2)(iii), 1506.6(b)(3)(i)
State and Local	1500.4(n), 1500.5(h), 1501.2(d)(2), 1501.5(b), 1501.5(d), 1501.7(a)(1), 1501.8(c), 1502.16(c), 1503.1(a)(2), 1506.2(b), 1506.6(b)(3), 1508.5, 1508.12, 1508.18
State and Local Fiscal Assistance Act	1508.18(a)
Summary	1500.4(h), 1502.10(b), 1502.12
Supplements to Environmental Impact Statements	1502.9(c)
Table of Contents	1502.10(c)
Technological Development	1502.4(c)(3)
Terminology	1508.1
Tiering	1500.4(i), 1502.4(d), 1502.20, 1508.28
Time Limits	1500.5(e), 1501.1(e), 1501.7(b)(2), 1501.8
Timing	1502.4, 1502.5, 1506.10
Treaties	1508.17
When to Prepare an Environmental Impact Statement	1501.3
Wild and Scenic Rivers Act	1506.8(b)(ii)
Wilderness Act	1506.8(b)(ii)
Writing	1502.8

## **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, and Pub. L. 94-83, August 9, 1975.

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. 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**

### **DECLARATION OF NATIONAL ENVIRONMENTAL POLICY**

SEC. 101. (a) The Congress recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, 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 esthetically 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. The Congress authorizes and directs that, to the fullest extent possible:

(1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and

(2) all agencies of the Federal Government shall-

(A) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an

impact on man's environment;

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

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

(i) The environmental impact of the proposed action,

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

(iii) Alternatives to the proposed action,

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

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

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

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

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

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

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

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

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

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

(f) Recognize the worldwide and long-range character of environmental problems and, where consistent

with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

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

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

(i) Assist the Council on Environmental Quality established by title II of this Act.

SEC. 103. 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. Nothing in section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency. SEC. 105. 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. 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 environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation. SEC. 202. 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, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment. SEC. 203. The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

SEC. 204. It shall be the duty and function of the Council

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 of this title;

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

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

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

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

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

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

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request. SEC. 205. 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. 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. The Council may accept reimbursements from any private non-profit 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. 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. There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

## **THE ENVIRONMENTAL QUALITY IMPROVEMENT ACT OF 1970**

\*\*Pub. L. 91- 224, 42 U.S.C. 4371-4374, April 3, 1970

TITLE II--ENVIRONMENTAL QUALITY (OF THE WATER QUALITY IMPROVEMENT ACT OF 1974)

**SHORT TITLE**

SEC. 201. This title may be cited as the "Environmental Quality Improvement Act of 1970."

**FINDINGS, DECLARATIONS, AND PURPOSES**

SEC. 202.

(a) The Congress finds

(1) That man has caused changes in the environment;

(2) That many of these changes may affect the relationship between man and his environment; and

(3) That population increases and urban concentration contribute directly to pollution and the degradation of our environment.

(b)

(1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. This policy is evidenced by statutes heretofore enacted relating to the prevention, abatement, and control of environmental pollution, water and land resources, transportation, and economic and regional development.

(2) The primary responsibility for implementing this policy rests with State and local governments.

(3) The Federal Government encourages and supports implementation of this policy through appropriate regional organizations established under existing law.

(c) The purposes of this title are--

(1) To assure that each Federal department and agency conducting or supporting public works activities which affect the environment shall implement the policies established under existing law; and

(2) To authorize an Office of Environmental Quality, which, notwithstanding any other provision of law, shall provide the professional and administrative staff for the Council on Environmental Quality established by Public Law 91-190.

**OFFICE OF ENVIRONMENTAL QUALITY**

SEC. 203.

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

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

(c) The Director is authorized to employ such officers and employees (including experts and consultants)

as may be necessary to enable the Office to carry out its functions under this title and Public Law 91-190, except that he may employ no more than 10 specialists and other experts without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter 111 of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5330 of title 5.

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

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

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

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

(4) Promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encourage the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

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

(6) Assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established through the Federal Government;

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

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to sections 3618 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5) in carrying out his functions.

## **REPORT**

SEC. 204. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

## **AUTHORIZATION**

SEC. 205. There are hereby authorized to be appropriated not to exceed \$500,000 for the fiscal year ending June 30, 1970, not to exceed \$750,000 for the fiscal year ending June 30, 1971, not to exceed \$1,250,000 for the fiscal year ending June 30, 1972, and not to exceed \$1,500,000 for the fiscal year ending June 30, 1973. These authorizations are in addition to those contained in Public Law 91-190. Approved April 3, 1970. THE CLEAN AIR ACT 309\*\* July 14, 1955, c. 360, 309, as added Dec. 31, 1970, Pub. L. 91-604 12(a), 42 U.S.C. 7609 (1970).

7609. Policy review

(a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 4332(2)(C) of this title applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

Executive Order 11514. March 5, 1970

## **PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY**

As amended by Executive Order 11991. (Secs. 2(g) and (3(h)). May 24, 1977\*\*