[3125-01-M]

Title 40—Protection of Environment

CHAPTER V—COUNCIL ON ENVIRONMENTAL QUALITY

NATIONAL ENVIRONMENTAL POLICY ACT—REGULATIONS

Implementation of Procedural Provisions

AGENCY: Council on Environmental Quality, Exective Office of the President.

ACTION: Final regulations.

SUMMARY: These final regulations establish uniform procedures for implementing the procedural provisions of the National Environmental Policy Act. The regulations would accomplish three principal aims: to reduce paperwork, to reduce delays, and to produce better decisions. The regulations were issued in draft form in 43 FR 25230-25247 (June 9, 1978) for public review and comment and reflect changes made as a result of this process.

EFFECTIVE DATE: July 30, 1979. (See exceptions listed in § 1506.12.)

FOR FURTHER INFORMATION CONTACT:

Nicholas C. Yost, General Counsel, Council on Environmental Quality, Executive Office of the President, 722 Jackson Place NW., Washington, D.C. 20006 (telephone number 202-633-7032 or 202-395-5750).

SUPPLEMENTARY INFORMATION:

1. Purpose

We are publishing these final regulations to implement the procedural provisions of the National Environmental Policy Act. Their purpose is to provide all Federal agencies with efficient, uniform procedures for translating the law into practical action. We expect the new regulations to accomplish three principal aims: To reduce paperwork, to reduce delays, and at the same time to produce better decisions which further the national policy to protect and enhance the quality of the human environment.

The Council on Environmental Quality is responsbile for overseeing Federal efforts to comply with the National Environmental Policy Act ("NEPA"). In 1970, the Council issued Guidelines for the preparation of environmental impact statements (EISs) under Executive Order 11514 (1970). The 1973 revised Guidelines are now in effect. Although the Council conceived of the Guidelines as non-discretionary standards for agency decisionmaking, some agencies viewed them as advisory only. Similarly, courts differed over the weight which should be accorded the Guidelines in evaluating agency compliance with the statute.

The result has been an evolution of inconsistent agency practices and interpretations of the law. The lack of a uniform, government-wide approach to implementing NEPA has impeded Federal coordination and made it more difficult for those outside government to understand and participate in the environmental review process. It has also caused unnecessary duplication, delay and paperwork.

Moreover, by the terms of Executive Order 11514, the Guidelines were confined to Subsection (C) of Section 102(2) of NEPA—the requirement for environmental impact statements. The Guidelines did not address Section 102(2)'s other important provisions for agency planning and decisionmaking. Consequently, the environmental impact statement has tended to become an end in itself, rather than a means to making better decisions. Environmental impact statements have often failed to establish the link between what is learned through the NEPA process and how the information can contribute to decisions which further national environmental policies and goals.

To correct these problems, the President issued Executive Order 11991 on May 24, 1977 directing the Council to issue the regulations. The Executive Order was based on the President's Constitutional and statutory authority, including NEPA, the Environmental Quality Improvement Act, and Section 309 of the Clean Air Act. The President has a constitutional duty to insure that the laws are faithfully executed (U.S. Const. art. II, sec. 3), which may be delegated to appropriate officials. (Title 3 U.S.C., Sec. 301). In signing Executive Order 11991, the President delegated this authority to the agency created by NEPA, the Council on Environmental Quality.

In accordance with this directive, the Council's regulations are binding on all Federal agencies, replace some seventy different sets of agency regulations, and provide uniform standards applicable throughout the Federal government for conducting environmental reviews. The regulations also establish formal guidance from the Council on the requirements of NEPA for use by the courts in interpreting this law. The regulations address all nine subdivisions of Section 102(2) of the Act, rather than just the EIS provision covered by the Guidelines. Finally, as mandated by President Carter's Executive Order, the regulations are

> "* * * designed to make the environmental impact statement more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives."

2. Summary of Major Innovations in the Regulations

Following this mandate in developing the new regulations, we have kept in mind the threefold objective of less paperwork, less delay, and better decisions.

A. REDUCING PAPERWORK

These regulations reduce paperwork requirements on agencies of government. Neither NEPA nor these regulations impose paperwork requirements on the public.

i. *Reducing the length of environmental impact statements.* Agencies are directed to write concise EISs (§ 1502.2(c)), which normally shall be less than 150 pages, or, for proposals of unusual scope or complexity, 300 pages (§ 1502.7).

ii. *Emphasizing real alternatives.* The regulations stress that the environmental analysis is to concentrate on alternatives, which are the heart of the process (§§ 1502.14, 1502.16); to treat peripheral matters briefly (§ 1502.2(b)); and to avoid accumulating masses of background data which tend to obscure the important issues (§§ 1502.1, 1502.15).

iii. *Using an early "scoping" process to determine what the important issues are.* A new "scoping" procedure is established to assist agencies in deciding what the central issues are, how long the EIS shall be, and how the responsibility for the EIS will be allocated among the lead agency and cooperating agencies (§ 1501.7). The scoping process is to begin as early in the NEPA process as possible—in most cases, shortly after the decision to prepare an EIS—and shall be integrated with other planning.

iv. *Using plain language.* The regulations strongly advocate writing in plain language (§ 1502.8).

v. *Following a clear format.* The regulations recommend a standard format intended to eliminate repetitive discussion, stress the major conclusions, highlight the areas of controversy, and focus on the issues to be resolved (§ 1502.10).

vi. *Requiring summaries of environmental impact statements.* The regulations are intended to make the document more usable by more people (§ 1502.12). With some exceptions, a summary may be circulated in lieu of the environmental impact statement if the latter is unusually long (§ 1502.19).

vii. *Eliminating duplication.* Under the regulations Federal agencies may prepare EISs jointly with State and local units of government which have "little NEPA" requirements (§ 1506.2).

They may also adopt another Federal agency's EIS (§ 1506.3).

viii. *Consistent terminology.* The regulations provide uniform terminology for the implementation of NEPA (§ 1508.1). For instance, the CEQ term "environmental assessment" will replace the following (nonexhaustive) list of comparable existing agency procedures: "survey" (Corps of Engineers), "environmental analysis" (Forest Service), "normal or special clearance" (HUD), "environmental analysis report" (Interior), and "marginal impact statement" (HEW) (§ 1508.9).

ix. *Incorporation by reference.* Agencies are encouraged to incorporate material by reference into the environmental impact statement when the material is not of central importance and when it is readily available for public inspection (§ 1502.21).

x. *Specific comments.* The regulations require that comments on environmental impact statements be as specific as possible to facilitate a timely and informative exchange of views among the lead agency and other agencies and the public (§ 1503.3).

xi. *Simplified procedures for making minor changes in environmental impact statements.* If comments on a draft environmental impact statement require only minor changes or factual corrections, an agency may circulate the comments, responses thereto, and the changes from language in the draft statement, rather than rewriting and circulating the entire document as a final environmental impact statement (§ 1506.4).

xii. *Combining documents.* Agencies may combine environmental impact statements and other environmental documents with any other document used in agency planning and decisionmaking (§ 1506.4).

xiii. *Reducing paperwork involved in reporting requirements.* The regulations will reduce the paperwork involved in reporting requirements as summarized below. In comparing the requirements under the existing Guidelines and the new CEQ regulations, it should be kept in mind that the regulations cover Sections 102(2)(A) through (I) of NEPA, while the Guidelines cover only Section 102(2)(C) (environmental impact statements). CEQ's new regulations will also replace more than 70 different existing sets of individual agency regulations. (Under the new regulations each agency will only issue implementing procedures to explain how the regulations apply to its particular policies and programs (§ 1507.3).)

Existing requirements (Applicable guidelines sections are noted)	New requirements (Applicable regulations sections are noted)
Assessment (optional under Guidelines on a case-by-case basis; currently required, however, by most major agencies in practice or in procedures) Sec. 1500.6.	*Assessment* (limited requirement: not required where there would not be environmental effects or where an EIS will be required) Secs. 1501.3, .4.
Notice of intent to prepare impact statement Sec. 1500.6.	*Notice of intent* to prepare EIS and commence scoping process Sec. 1501.7.
Quarterly list of notices of intent Sec. 1500.6.	Requirement abolished.
Negative determination (decision not to prepare impact statement) Sec. 1500.6.	*Finding of no significant impact* Sec. 1501.4.
Quarterly list of negative determinations Sec. 1500.6.	Requirement abolished.
Draft EIS Sec. 1500.7	*Draft EIS* Sec. 1502.9.
Final EIS Sec. 1500.6, .10	*Final EIS* Sec. 1502.9.
EISs on non-agency legislative reports ("agency reports on legislation initiated elsewhere") Sec. 1500.5(a)(1).	Requirment abolished.
Agency report to CEQ on implementation experience Sec. 1500.14(b).	Requirement abolished.
Agency report to CEQ on substantive guidance Secs. 1500.6(c), 14.	Requirement abolished.
Record of decision (no Guideline provision but required by many agencies' own procedures and in a wide range of cases generally under the Administrative Procedure Act and OMB Circular A-95, Part I, Sec. 6(c) and (d), Part II, Sec. 5(b)(4)).	*Record of decision* (brief explanation of decision based in part on EIS that was prepared; no circulation requirement) Sec. 1505.2.

B. REDUCING DELAY

The measures to reduce delay are listed below.

i. *Time limits on the NEPA process.* The regulations encourage lead agencies to set time limits on the NEPA process and require that time limits be set when requested by an applicant (§§ 1501.7(b)(2), 1501.8).

ii. *Integrating EIS requirements with other environmental review requirements.* Often the NEPA process and the requirements of other laws proceed separately, causing delay. The regulations provide for all agencies with jurisdiction over a proposal to cooperate so that all reviews may be conducted simultaneously (§§ 1501.7, 1502.25).

iii. *Integrating the NEPA process into early planning.* If environmental review is tacked on to the end of the planning process, then the process is prolonged, or else the EIS is written to justify a decision that has already been made and genuine consideration may not be given to environmental factors. The regulations require agencies to integrate the NEPA process with other planning at the earliest possible time (§ 1501.2).

iv. *Emphasizing interagency cooperation before the EIS is drafted.* The regulations emphasize that other agencies should begin cooperating with the lead agency before the EIS is prepared in order to encourage early resolution of differences (§ 1501.6). We hope that early cooperation among affected agencies in preparing a draft EIS will produce a better draft and will reduce delays caused by unnecessarily late criticism.

v. *Swift and fair resolution of lead agency disputes.* When agencies differ as to who shall take the lead in preparing an EIS, or when none is willing to take the lead, the regulations provide a means for prompt resolution of the dispute (§ 1501.5).

vi. *Preparing EISs on programs and not repeating the same material in project specific EISs.* Material common to many actions may be covered in a broad EIS, and then through "tiering" may be summarized and incorporated by reference rather than reiterated in each subsequent EIS (§§ 1502.4, 1502.20, 1502.21, 1508.28).

vii. *Legal delays.* The regulations provide that litigation, if any, should come at the end rather than in the middle of the process (§ 1500.3).

viii. *Accelerated procedures for legislative proposals.* The regulations provide accelerated, simplified procedures for environmental analysis of legislative proposals, to fit better with Congressional schedules (§ 1506.8).

ix. *Categorical exclusions.* Under the regulations, categories of actions which do not individually or cumulatively have a significant effect on the human environment may be excluded from environmental review requirements (§ 1508.4).

x. *Finding of no significant impact.* If an action has not been categorically excluded from environmental review under § 1508.4, but nevertheless will not significantly affect the quality of the human environment, the agency will issue a finding of no significant impact as a basis for not preparing an EIS (§ 1508.13).

C. BETTER DECISIONS

Most of the features described above will help to improve decisionmaking. This, of course, is the fundamental purpose of the NEPA process the end to which the EIS is a means. Section 101 of NEPA sets forth the substantive requirements of the Act, the policy to be implemented by the "action-forcing" procedures of Section 102. These procedures must be tied to their intended purpose, otherwise they are indeed useless paperwork and wasted time.

i. *Recording in the decision how the EIS was used.* The new regulations re-

quire agencies to produce a concise public record, indicating how the EIS was used in arriving at the decision (§ 1505.2). This record of decision must indicate which alternative (or alternatives) considered in the EIS is preferable on environmental grounds. Agencies may also discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. Agencies should identify those "essential considerations of national policy", including factors not related to environmental quality, which were balanced in making the decision.

ii. *Insure follow-up of agency decisions.* When an agency requires environmentally protective mitigation measures in its decisions, the regulations provide for means to ensure that these measures are implemented and monitored (§ 1505.3).

iii. *Securing more accurate, professional documents.* The regulations require accurate documents as the basis for sound decisions. As provided by Section 102(2)(A) of NEPA, the documents must draw upon all the appropriate disciplines from the natural and social sciences, plus the environmental design arts (§ 1502.6). The lead agency is responsible for the professional integrity of environmental documents and requirements are established to ensure this result, such as special provisions regarding the use of data provided by an applicant (§ 1506.5). A list of people who helped prepare documents, and their professional qualifications, shall be included in the EIS to encourage professional responsibility and ensure that an interdisciplinary approach was followed (§ 1502.17).

The regulations establish a streamlined process, and one which has a broader purpose than the Guidelines they replace. The Guidelines emphasized a single document, the EIS, while the regulations emphasize the entire NEPA process, from early planning through assessment and EIS preparation through decisions and provisions for follow-up. They are designed to gear means to ends—to ensure that the action-forcing procedures of Section 102(2) of NEPA are used by agencies to fulfill the requirements of the Congressionally mandated policy set out in Section 101 of the Act. Furthermore, the regulations are uniform, applying in the same way to all Federal agencies, although each agency will develop its own procedures for implementing the regulations. With these new regulations we seek to carry out as faithfully as possible the original intent of Congress in enacting NEPA.

3. Background

The Council was greatly assisted by the hundreds of people who responded to our call for suggestions on how to make the NEPA process work better. In all, the Council sought the views of almost 12,000 private organizations, individuals, State and local agencies, and Federal agencies. In public hearings which we held in June 1977, we invited testimony from a broad array of public officials, organizations, and private citizens, affirmatively involving NEPA's critics as well as its friends.

Among those represented were the U.S. Chamber of Commerce, which coordinated testimony from business; the Building and Construction Trades Department of the AFL-CIO, which did so for labor; the National Conference of State Legislatures, for State and local governments; and the Natural Resources Defense Council, for environmental groups. Scientists, scholars, and the general public were also represented.

There was broad consensus among these diverse witnesses. All, without exception, expressed the view that NEPA benefited the public. Equally widely shared was the view that the process had become needlessly cumbersome and should be streamlined. Witness after witness said that the length and detail of EISs made it difficult to distinguish the important from the trivial. The degree of unanimity about the good and bad points of the NEPA process was such that at one point an official spokesperson for the oil inductry rose to say that he adopted in its entirety the presentation of the President of the Sierra Club.

After the hearings we culled the record to organize both the problems and the solutions proposed by witnesses into a 38-page "NEPA Hearing Questionnaire." The questionnaire was sent to all witnesses, every State governor, all Federal agencies, and everyone who responded to an invitation in the Federal Register. We received more than 300 replies, from a broad cross section of groups and individuals. By the comments we received from respondents we gauged our success in faithfully presenting the results of the public hearings. One commenter, an electric utility official, said that for the first time in his life he knew the government was listening to him, because all the suggestions made at the hearing turned up in the questionnaire. We then collated all the responses for use in drafting the regulations.

We also met with every agency of the Federal government to discuss what should be in the regulations. Guided by these extensive interactions with government agencies and the public, we prepared draft regulations which were circulated for comment to all Federal agencies in December, 1977. We then studied agency comments in detail, and consulted numerous Federal officials with special experience in implementing the Act. Informal redrafts were circulated to the agencies with greatest experience in preparing environmental impact statements.

At the same time that Federal agencies were reviewing the early draft, we continued to meet with, listen to, and brief members of the public, including representatives of business, labor, State and local governments, environmental groups, and others. Their views were considered during this early stage of the rulemaking. We also considered seriously and proposed in our regulations virtually every major recommendation made by the Commission on Federal Paperwork and the General Accounting Office in their recent studies on the environmental impact statement process. The studies by these two independent bodies were among the most detailed and informed reviews of the paperwork abuses in the impact statement process. In many cases, such as streamlining intergovernmental coordination, the proposed regulations go further than their recommendations.

On June 9, 1978 the regulations were proposed in draft form (43 FR at pages 25230-25247) and the Council announced that the period for public review of and comment on the draft regulations would extend for two months until August 11, 1978. During this period, the Council received almost 500 written comments on the draft regulations, most of which contained specific and detailed suggestions for improving them. These comments were again broadly representative of the various interests which are involved in the NEPA process.

The Council carefully reevaluated the regulations in light of the comments we received. The Council's staff read and analyzed each of the comments and developed recommendations for responding to them. A clear majority of the comments were favorable and expressed strong support for the draft regulations as a major improvement over the existing Guidelines. Some comments suggested further improvements through changes in the wording of specific provisions. A smaller number expressed more general concerns about the approach and direction taken by the regulations. In continuing efforts to resolve issues raised during the review, staff members conducted numerous meetings with individuals and groups who had offered comments and with representatives of affected Federal agencies. This process continued until most concerns with the proposals were alleviated or satisfied.

When, after discussions and review the Council determined that the comments raised valid concerns, we altered the regulations accordingly. When we

decided that reasons supporting the regulations were stronger than those for challenging them, we left the regulations unchanged. Part 4 of the Preamble describes section by section the more significant comments we received, and how we responded to them.

4. COMMENTS AND THE COUNCIL'S RESPONSE

PART 1500—PURPOSE, POLICY AND MANDATE

Comments on § 1500.3: Mandate. Section 1500.3 of the draft regulations stated that it is the Council's intention that judicial review of agency compliance with the regulations not occur before an agency has filed the final environmental impact statement, causes irreparable injury, or has made a finding of no significant impact. Some comments expressed concern that court action might be commenced under this provision following a finding of no significant impact which was only tentative and did not represent a final determination that an environmental impact statement would not be prepared.

The Council made two changes in response to this concern: First, the word "final" was inserted before the phrase "finding of no significant impact." Thus, the Council eliminated the possibility of interpreting this phrase to mean a preliminary or tentative determination. Second, a clarification was added to this provision to indicate the Council's intention that judicial review would be appropriate only where the finding of no significant impact would lead to action affecting the environment.

Several comments on § 1500.3 expressed concern that agency action could be invalidated in court proceedings as the result of trivial departures from the requirements established by the Council's regulations. This is not the Council's intention. Accordingly, a sentence was added to indicate the Council's intention that a trivial departure from the regulations not give rise to an independent cause of action under law.

PART 1501—NEPA AND AGENCY PLANNING

Comments on § 1501.2: Apply NEPA early in process. Section (d)(1) of § 1501.2 stated that Federal agencies should take steps to ensure that private parties and State and local entities initiate environmental studies as soon as Federal involvement in their proposals can be foreseen. Several commenters raised questions concerning the authority of a Federal agency to require that environmental studies be initiated by private parties, for example, even before that agency had become officially involved in the review of the proposal.

The Council's intention in this provision is to ensure that environmental factors are considered at an early stage in the planning process. The Council recognizes that the authority of Federal agencies may be limited before their duty to review proposals initiated by parties outside the Federal government officially begins. Accordingly, the Council altered subsection (d)(1) of § 1501.2 to require that in such cases Federal agencies must ensure that "[p]olicies or designated staff are available to advise potential applicants of studies or other information foreseeably required by later Federal action." The purpose of the amended provision is to assure the full cooperation and support of Federal agencies for efforts by private parties and State and local entities in making an early start on studies for proposals that will eventually be reviewed by the agencies.

Comments on § 1501.3: When to prepare an environmental assessment. One commenter asked whether an environmental assessment would be required where an agency had already decided to prepare an environmental impact statement. This is not the Council's intention. To clarify this point, the Council added a sentence to this provision stating that an assessment is not necessary if the agency has decided to prepare an environmental impact statement.

Comments on § 1501.5: Lead agencies. The Council's proposal was designed to insure the swift and fair resolution of lead agency disputes. Section 1501.5 of the draft regulations established procedures for resolving disagreements among agencies over which of them must take the lead in preparing an environmental impact statement. Under subsection (d) of this section, persons and governmental entities substantially affected by the failure of Federal agencies to resolve this question may request these agencies in writing to designate a lead agency forthwith. If this request has not been met "within a reasonable period of time," subsection (e) authorizes such persons and governmental entities to petition the Council for a resolution of this issue.

Several comments objected to the phrase "within a reasonable time" because it was vague, and left it uncertain when concerned parties could file a request with the Council. The comments urged that a precise time period be fixed instead. The Council adopted this suggestion and substituted 45 days for the phrase "within a reasonable period of time." With this change, the regulations require that a lead agency be designated, if necessary by the Council, within a fixed period following a request from concerned parties that this be done.

Several commenters suggested that the Council take responsibility for designating lead agencies in every case to reduce delay. These commenters recommended that all preliminary steps be dropped in favor of immediate Council action whenever the lead agency issue arose.

The Council determined, however, that individual agencies are in the best position to decide these questions and should be given the opportunity to do so. In view of its limited resources, the Council does not have the capability to make lead agency designations for all proposals. As a result of these factors, the Council determined not to alter this provision.

Several commenters opposed the concept of joint lead agencies authorized by subsection (b) of this section, particularly where two or more of the agencies are Federal. These commenters expressed doubt that Federal agencies could cooperate in such circumstances and stated their view that the environmental review process will only work where one agency is given primary responsibility for conducting it.

In the Council's judgment, however, the designation of joint lead agencies may be the most efficient way to approach the NEPA process where more than one agency plays a significant role in reviewing proposed actions. The Council believes that Federal agencies should have the option to become joint lead agencies in such cases.

Comments on § 1501.6: Cooperating agencies. The Council developed proposals to emphasize interagency cooperation before the environmental impact statement was prepared rather than comments on a completed document. Section 1501.6 stated that agencies with jurisdiction by law over a proposal would be required to become "cooperating agencies" in the preparation of an EIS should the lead agency request that they do so. Under subsection (b) of this provision, "cooperating agencies" could be required to assume responsibility for developing information and analysis within their special competence and to make staff support available to enhance the interdisciplinary capability of the lead agency.

Several comments pointed out that principal authority for environmental matters resides in a small number of agencies in the Federal government. Concern was expressed that these few agencies could be inundated with requests for cooperation in the preparation of EISs and, if required to meet these requests in every case, drained of resources required to fulfill other statutory mandates.

The Council determined that this was a valid concern. Accordingly, it added a new subsection (c) to this sec-

tion which authorizes a cooperating agency to decline to participate or otherwise limit its involvement in the preparation of an EIS where existing program commitments preclude more extensive cooperation.

Subsection (b)(5) of this section provided that a lead agency shall finance the major activities or analyses it requests from cooperating agencies to the extent available funds permit. Several commenters expressed opposition to this provision on grounds that a lead agency should conserve its funds for the fulfillment of its own statutory mandate rather than disburse funds for analyses prepared by other agencies.

The same considerations apply, however, to cooperating agencies. All Federal agencies are subject to the mandate of the National Environmental Policy Act. This provision of the regulations allows a lead agency to facilitate compliance with this statute by funding analyses prepared by cooperating agencies "to the extent available funds permit." In the Council's view, this section will enhance the ability of a lead agency to meet all of its obligations under law.

Section 1501.7: Scoping. The new concept of "scoping" was intended by the Council and perceived by the great preponderance of the commenters as a means for early identification of what are and what are not the important issues deserving of study in the EIS. Section 1501.7 of the draft regulations established a formal mechanism for agencies, in consultation with affected parties, to identify the significant issues which must be discussed in detail in an EIS, to identify the issues that do not require detailed study, and to allocate responsibilities for preparation of the document. The section provided that a scoping meeting must be held when practicable. One purpose of scoping is to encourage affected parties to identify the crucial issues raised by a proposal before an environmental impact statement is prepared in order to reduce the possibility that matters of importance will be overlooked in the early stages of a NEPA review. Scoping is also designed to ensure that agency resources will not be spent on analysis of issues which none concerned believe are significant. Finally, since scoping requires the lead agency to allocate responsibility for preparing the EIS among affected agencies and to identify other environmental review and consultation requirements applicable to the project, it will set the stage for a more timely, coordinated, and efficient Federal review of the proposal.

The concept of scoping was one of the innovations in the proposed regulations most uniformly praised by members of the public ranging from business to environmentalists. There was considerable discussion of the details of implementing the concept. Some commenters objected to the formality of the scoping process, expressing the view that compliance with this provision in every case would be time-consuming, would lead to legal challenges by citizens and private organizations with objections to the agency's way of conducting the process, and would lead to paperwork since every issue raised during the process would have to be addressed to some extent in the environmental impact statement. These commenters stated further that Federal agencies themselves were in the best position to determine matters of scope, and that public participation in these decisions was unnecessary because any scoping errors that were made by such agencies could be commented upon when the draft EIS was issued (as was done in the past) and corrected in the final document. These commenters urged that scoping at least be more open-ended and flexible and that agencies be merely encouraged rather than required to undertake the process.

Other commenters said that the Council had not gone for enough in imposing uniform requirements. These commenters urged the Council to require that a scoping meeting be held in every case, rather than only when practicable; that a scoping document be issued which reflected the decisions reached during the process; and that formal procedures be established for the resolution of disagreements over scope that arise during the scoping process. These commenters felt that more stringent requirements were necessary to ensure that agencies did not avoid the process.

In developing § 1501.7, the Council sought to ensure that the benefits of scoping would be widely realized in Federal decisionmaking, but without significant disruptions for existing procedures. The Council made the process itself mandatory to guarantee that early cooperation among affected parties would be initiated in every case. However, § 1501.7 left important elements of scoping to agency discretion. After reviewing the recommendations for more flexibility on the one hand, and more formality on the other, and while making several specific changes in response to specific comments, the Council determined that the proper balance had been struck in Section 1501.7 and did not change the basic outline of this provision. The Council did accept amendments to make clear that scoping meetings were permissive and that an agency might make provision for combining its scoping process with its environmental assessment process.

Comments on § 1501.8: Time limits. Reducing delay and uncertainty by the use of time limits is one of the Council's principal changes. Section 1501.8 of the draft regulations established criteria for setting time limits for completion of the entire NEPA process or any part of the process. These criteria include the size of the proposal and its potential for environmental harm, the state of the art, the number of agencies involved, the availability of relevant information and the time required to obtain it. Under this section, if a private applicant requests a lead agency to set time limits for an EIS review, the agency must do so provided that the time limits are consistent with the purposes of NEPA and other essential considerations of national policy. If a Federal agency is the sponsor of a proposal for major action, the lead agency is encouraged to set a timetable for the EIS review.

Several commenters objected to the concept of time limits for the NEPA process. In their opinion, the uncertainties involved in an EIS review and competing demands for limited Federal resources could make it difficult for agencies to predict how much time will be required to complete environmental impact statements on major proposals. These commenters were concerned that time limits could prompt agencies to forego necessary analysis in order to meet deadlines. In their view, the concept of time limits should be dropped from the regulations in favor of more flexible "targets" or "goals" which would be set only after consultation with all concerned parties.

On the other side of the question, the Council received several comments that the provision for time limits was not strict enough. These comments expressed concern that the criteria contained in the draft regulations were vague and would not serve effectively to encourage tight timetables for rapid completion of environmental reviews. The Council was urged to strengthen this section by including definite time limits for the completion of the EIS process in every case or by providing that CEQ itself set such limits for every environmental review, and by setting time limits for the establishment of time limits.

A primary goal of the Council's regulations is to reduce delays in the EIS process. The Council recognizes the difficulties of evaluating in advance the time required to complete environmental reviews. Nevertheless, the Council believes that a provision for time limits is necessary to concentrate agencies' attention on the timely completion of environmental impact statements and to provide private applicants with reasonable certainty as to how long the NEPA process will take. Section 1501.7(c) of the regulations

allows revision of time limits if significant new circumstances (including information) arise which bear on the proposal or its impacts.

At the same time, the Council believes that precise time limits to apply uniformly across government would be unrealistic. The factors which determine the time needed to complete an environmental review are various, including the state of the art, the size and complexity of the proposal, the number of Federal agencies involved, and the presence of sensitive ecological conditions. These factors may differ significantly from one proposal to the next. The same law that applies to a Trans-Alaska pipeline may also apply to a modest federally funded building in a historic district. In the Council's judgment, individual agencies are in the best position to perform this function. The Council does not have the resources to weigh these factors for each proposal. Accordingly, the Council determined not to change these provisions of § 1501.8 of the regulations.

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Comments on Section 1502.5: Timing. Several commenters noted that it has become common practice in informal rulemaking for Federal agencies to issue required draft environmental impact statements at the same time that rules are issued in proposed form. These commenters expressed the view that this procedure was convenient, time-saving and consistent with NEPA, and urged that the regulations provide for it. The Council added a new subsection (d) to § 1502.5 on informal rulemaking stating that this procedure shall normally be followed.

Comments on section 1502.7: Page limits. A principal purpose of these regulations is to turn bulky, often unused EISs into short, usable documents which are in fact used. Section 1502.7 of the draft regulations provided that final environmental impact statements shall normally be less than 150 pages long and, for proposals of unusual scope or complexity, shall normally be less than 300 pages. Numerous commenters expressed strong support for the Council's decision to establish page limits for environmental impact statements.

Several commenters objected to the concept of page limits for environmental impact statements on grounds that it could constrain the thoroughness of environmental reviews. Some said that the limits were too short and would preclude essential analysis; others contended that they were too long and would encourage the inclusion of unnecessary detail. One commenter proposed a "sliding scale" for page limits; another suggested that a limitation on the number of words would be more effective than a limitation on the number of pages. A number of commenters urged that page limits be simply recommended rather than established as standards that should normally be met.

The usefulness of the NEPA process to decisionmakers and the public has been jeopardized in recent years by the length and complexity of environmental impact statements. In accordance with the President's directive, a primary objective of the regulations is to insure that these documents are clear, concise, and to the point. Numerous provisions in the regulations underscore the importance of focusing on the major issues and real choices facing federal decisionmakers and excluding less important matters from detailed study. Other sections in the regulations provide that certain technical and background materials developed during the environmental review process may be appended but need not be presented in the body of an EIS.

The Council recognizes the tension between the requirement of a thorough review of environmental issues and a limitation on the number of pages that may be devoted to the analysis. The Council believes that the limits set in the regulations are realistic and will help to achieve the goal of more succinct and useful environmental documents. The Council also determined that a limitation on the number of words in an EIS was not required for accomplishing the objective of this provision. The inclusion of the term "normally" in this provision accords Federal agencies latitude if abnormal circumstances exist.

Others suggested that page limits might result in conflict with judicial precedents on adequacy of EISs, that the proverbial kitchen sink may have to be included to insure an adequate document, whatever the length. The Council trusts and intends that this not be the case. Based on its day-to-day experience in overseeing the administration of NEPA throughout the Federal government, the Council is acutely aware that in many cases bulky EISs are not read and are not used by decisionmakers. An unread and unused document quite simply cannot achieve the purpose Congress set for it. The only way to give greater assurance that EISs will be used is to make them usable and that means making them shorter. By way of analogy, judicial opinions are themselves often models of compact treatment of complex subjects. Departmental option documents often provide brief coverage of complicated decisions. Without sacrifice of analytical rigor, we see no reason why the material to be covered in an EIS cannot normally be covered in 150 pages (or 300 pages in extraordinary circumstances).

Comments on § 1502.10: Recommended format. Section 1502.10 stated that agencies shall normally use a standard format for environmental impact statements. This provision received broad support from those commenting on the draft regulations.

As part of the recommended format, environmental impact statements would be required to describe the environmental consequences of a proposed action before they described the environment that would be affected. Many commenters felt that these elements of the EIS should be reversed so that a description of the environmental consequences of a proposal would follow rather than precede a description of the affected environment. The commenters stated their view that it would be easier for the reader to appreciate the nature and significance of environmental consequences if a description of the affected environment was presented first. The Council concurs in this view and adopted the suggested change.

Comments on § 1502.13: Purpose and need. This section of the draft regulations provided that agencies shall briefly specify—normally in one page or less—the underlying purpose and need to which the agency is responding in proposing alternatives for action. Many commenters stated that in some cases this analysis would require more than one page. The Council responded to these comments by deleting the one page limitation.

Comments on § 1502.14: Alternatives including the proposed action. Subsection (a) of this section of the draft regulations provided, among other things, that agencies shall rigorously explore and objectively evaluate all reasonable alternatives. This provision was strongly supported by a majority of those who commented on the provision.

A number of commenters objected to the phrase "all reasonable alternatives" on the grounds that it was unduly broad. The commenters suggested a variety of ways to narrow this requirement and to place limits on the range and type of alternatives that would have to be considered in an EIS.

The phrase "all reasonable alternatives" is firmly established in the case law interpreting NEPA. The phrase has not been interpreted to require that an infinite or unreasonable number of alternatives be analyzed. Accordingly, the Council determined not to alter this subsection of the regulations.

Subsection (c) requires Federal agencies to consider reasonable alternatives not within the jurisdiction of the lead agency. Subsection (d) requires consideration of the no action alternative. A

few commenters inquired into the basis for these provisions. Subsections (c) and (d) are declaratory of existing law.

Subsection (e) of this section required Federal agencies to designate the "environmentally preferable alternative (or alternatives, if two or more are equally preferable)" and the reasons for identifying it. While the purpose of NEPA is better environmental decisionmaking, the process itself has not always successfully focused attention on this central goal. The objective of this requirement is to ensure that Federal agencies consider which course of action available to them will most effectively promote national environmental policies and goals. This provision was strongly supported in many comments on the regulations.

Some commenters noted that a wide variety of decisionmaking procedures are employed by agencies which are subject to NEPA and recommended flexibility to accommodate these diverse agency practices. In particular, the commenters recommended that agencies be given latitude to determine at what stage in the NEPA process—from the draft EIS to the record of decision—the environmentally preferable alternative would be designated.

The Council adopted this recommendation and deleted this requirement from the EIS portion of the regulations (§ 1502.14), while leaving it in § 1505.2 regarding the record of decision. Nothing in these regulations would preclude Federal agencies from choosing to identify the environmentally preferable alternative or alternatives in the environmental impact statement.

Comments on § 1502.15: Environmental consequences. Subsection (e) of this section requires an environmental impact statement to discuss energy requirements and conservation potential of various alternatives and mitigation measures. One commenter asked whether the subsection would require agencies to analyze total energy costs, including possible hidden or indirect costs, and total energy benefits of proposed actions. The Council intends that the subsection be interpreted in this way.

Several commenters suggested that the regulations expressly mention the quality of the urban environment as an environmental consequence to be discussed in an environmental impact statement. The Council responded by adding a new subsection (g) to this section requiring that EISs include a discussion of 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. Section 1502.15 has been renumbered as § 1502.16.

Comments on § 1502.17: List of preparers. Section 1502.17 provided that environmental impact statements shall identify and describe the qualifications and professional disciplines of those persons who were primarily involved in preparing the document and background analyses. This section has three principal purposes: First, Section 102(2)(A) of NEPA requires Federal agencies 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 decisionmaking which may have an impact on man's environment." The list of preparers will provide a basis for evaluating whether such a "systematic interdisciplinary approach" was used in preparing the EIS. Second, publication of a list of preparers increases accountability for the analyses appearing in the EIS and thus tends to encourage professional competence among those preparing them. Finally, publication of the list will enhance the professional standing of the preparers by giving proper attribution to their contributions, and making them a recognized part of the literature of their disciplines. This provision received broad support from those commenting on the regulations.

Some commenters felt that a list of preparers would be used as a list of witnesses by those challenging the adequacy of an EIS in court proceedings. However, this information would ordinarily be available anyway through normal discovery proceedings.

Section 1502.17 was also criticized for failing expressly to mention expertise and experience as "qualifications" for preparing environmental impact statements. The Council added these two terms to this section to insure that the term "qualifications" would be interpreted in this way.

Some commenters suggested that the list of preparers should also specify the amount of time that was spent on the EIS by each person identified. These commenters felt that such information was required as a basis for accurately evaluating whether an interdisciplinary approach had been employed. While the Council felt there was much to be said for this suggestion, it determined that the incremental benefits gained from this information did not justify the additional agency efforts that would be required to provide it.

Comments on § 1502.19: Circulation of the environmental impact statement. If an EIS is unusually long, Section 1502.19 provided, with certain exceptions, that a summary can be circulated in lieu of the entire document. Several commenters suggested that private applicants sponsoring a proposal should receive the entire environmental impact statement in every case in view of their interest and probable involvement in the NEPA process. The Council concurs and altered this provision accordingly.

Comments on § 1502.20: Tiering. Section 1502.20 encouraged agencies to tier their environmental impact statements to eliminate repetitive discussions and to focus on the actual issues ripe for decision at each level of environmental review. Some commenters objected to tiering on grounds that it was not required by NEPA and would add an additional unauthorized layer to the environmental review process.

Section 1502.20 authorizes tiering of EISs; it does not require that it be done. In addition, the purpose of tiering is to simplify the EIS process by providing that environmental analysis completed at a broad program level not be duplicated for site-specific project reviews. Many agencies have already used tiering successfully in their decisionmaking. In view of these and other considerations, the Council determined not to alter this provision.

Comments on § 1502.22: Incomplete or unavailable information. Section 1502.22 provided, among other things, that agencies prepare a worst case analysis of the risk and severity of possible adverse environmental impacts when it proceeds with a proposal in the face of uncertainty. This provision received strong support from many commenters.

Several commenters expressed concern that this requirement would place undue emphasis on the possible occurence of adverse environmental consequences regardless of how remote the possiblity might be. In response, the Council added a phrase designed to ensure that the improbability as well as the probability of adverse environmental consequences would be discussed in worst case analyses prepared under this section.

Section 1502.22 stated that if information is essential to a reasoned choice among alternatives and is not known and the costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement. Some commenters inquired into the meaning of the term "costs." The Council intends for this word to be interpreted as including financial and other costs and adopted the phrase "overall costs" to convey this meaning.

PART 1503—COMMENTING

Comments on § 1503.1: Inviting comments. Section 1503.1 set forth the responsibility of Federal agencies to solicit comments on environmental impact statements. Several commenters observed that may Federal

agencies solicit comments from State and local environmental agencies through procedures established by Office of Management and Budget Circular A-95 and suggested that the Council confirm this approach in the regulations. The Council adopted this suggestion by adding an appropriate paragraph to the section.

Comments on § 1503.2: Duty to comment. Section 1503.2 set forth the responsibilities of Federal agencies to comment on environmental impact statements. Several commenters suggested reinforcing the requirement that Federal agencies are subject to the same time limits as those outside the Federal government in order to avoid delays. The Council concurred in this suggestion and amended the provision accordingly. The Council was constrained from further changes by the requirement of Section 102(2)(C) of NEPA that agencies "consult with and obtain" the comments of specified other agencies.

Comments on § 1503.3: Specificity of comments. Section 1503.3 of the draft regulations elaborated upon the responsibilities of Federal agencies to comment specifically upon draft environmental impact statements prepared by other agencies. Several commenters suggested that cooperating agencies should assume a particular obligation in this regard. They noted that cooperating agencies which are themselves required independently to evaluate and/or approve the proposal at some later stage in the Federal review process are uniquely qualified to advise the lead agency of what additional steps may be required to facilitate these actions. In the opinion of these commenters, cooperating agencies should be required to provide this information to lead agencies when they comment on draft EISs so that the final EIS can be prepared with further Federal involvement in mind.

The Council adopted this suggestion and amended § 1503.3 through the addition of new subsections (c) and (d). The new subsections require cooperating agencies, in their comments on draft EISs, to specify what additional information, if any, is required for them to fulfill other applicable environmental review and consultation requirements, and to comment adequately on the site-specific effects to be expected from issuance of subsequent Federal approvals for the proposal. In addition, if a cooperating agency criticizes the proposed action, this section now requires that it specify the mitigation measures which would be necessary in order for it to approve the proposal under its independent statutory authority.

Comments on § 1504.3: Procedure for referrals and response. Several commenters noted that § 1504.3 did not establish a role for members of the public or applicants in the referral process. The Council determined that such persons and organizations were entitled to a role and that their views would be helpful in reaching a proper decision on the referral. Accordingly, the Council added subsection (e) to this section, authorizing interested persons including the applicant to submit their views on the referral, and any response to the referral, in writing to the Council.

Subsection (d) of this section provided that the Council may take one of several actions within 25 days after the referral and agency responses to the referral, if any, are received. Several commenters observed, however, that this subsection did not establish a deadline for final action by the Council in cases where additional discussions, public meetings, or negotiations were deemed appropriate. These commenters expressed concern that the absence of a deadline could lead to delays in concluding the referral process. The Council concurred. Accordingly, the Council added subsection (g) to this section which requires that specified actions be completed within 60 days.

Several commenters noted that the procedures established by Section 1504.3 may be inappropriate for referrals which involve agency determinations required by statute to be made on the record after opportunity for public hearing. The Council agrees. The Council added subsection (h) to this section requiring referrals in such cases to be conducted in a manner consistent with 5 U.S.C. 557(d). Thus, communications to agency officials who made the decision which is the subject of the referral must be made on the public record and after notice to all parties to the referral proceeding. In other words, ex parte contacts with agency decisionmakers in such cases are prohibited.

PART 1505—NEPA AND AGENCY DECISIONMAKING

Comments on Section 1501.1: Agency decisionmaking procedures. Some commenters asked whether this or other sections of the regulations would allow Federal agencies to place responsibility for compliance with NEPA in the hands of those with decisionmaking authority at the field level. Nothing in the regulations would prevent this arrangement. By delegating authority in this way, agencies can avoid multiple approvals of environmental documents and enhance the role of those most directly involved in their preparation and use. For policy oversight and quality control, an environmental quality review office at the national level can, among other things, establish general procedures and guidance for NEPA compliance, monitor agency performance through periodic review of selected environmental documents, and facilitate coordination among agency subunits involved in the NEPA process.

Comments on § 1505.2: Record of decision in those cases requiring environmental impact statements. Section 1505.2 provided that in cases where an environmental statement was prepared, the agency shall prepare a concise public record stating what its final decision was. If an environmentally preferable alternative was not selected, § 1505.2 required the record of decision to state why other specific considerations of national policy overrode those alternatives.

This requirement was the single provision most strongly supported by individuals and organizations commenting on the regulations. These commenters stated, among things, that the requirement for a record of decision would be the most significant improvement over the existing process, would procedurally link NEPA's documentation to NEPA's policy, would relate the EIS process to agency decisionmaking, would ensure that EISs are actually considered by Federal decisionmakers, and was required as sound administrative practice.

As noted above, the Council decided that agencies shall identify the environmentally preferable alternative and the reasons for identifying it in the record of decision. *See* Comments on § 1502.14. The Council's decision does not involve the preparation of additional analysis in the EIS process; it simply affects where the analysis will be presented.

Some commenters objected to the concept of a public record of decision on actions subject to NEPA review. In the Council's opinion, however, a public record of decision is essential for the effective implementation of NEPA. As previously noted, environmental impact statement preparation has too often become an end in itself with no necessary role in agency decisionmaking. One serious problem with the administration of NEPA has been the separation between an agency's NEPA process and its decisionmaking process. In too many cases bulky EISs have been prepared and transmitted but not used by the decisionmaker. The primary purpose of requiring that a decisionmaker concisely record his or her decision in those cases where an EIS has been prepared is to tie means to ends, to see that the decisionmaker considers and pays attention to what the NEPA process has shown to be an environmentally sensitive way of doing things. Other factors may, on balance, lead the decisionmaker to decide that other policies outweigh the environmental ones, but at least

the record of decision will have achieved the original Congressional purpose of ensuring that environmental factors are integrated into the agency's decisionmaking.

Some commenters expressed the opinion that it could be difficult for Federal agencies to identify the environmentally preferable alternative or alternatives because of the multitude of factors that would have to be weighed in any such determination and the subjective nature of the balancing process. By way of illustration, commenters asked: Is clean water preferable to clean air, or the preservation of prime farmland in one region preferable to the preservation of wildlife habitat in another?

In response, the Council has amended the regulations to permit agencies to identify more than one environmentally preferable alternative, regardless of whether they are "equally" preferable, as originally proposed. Moreover, the "environmentally preferable alternative" will be that alternative which best promotes the national environmental policy as expressed in Section 101 of NEPA and most specifically in Section 101(b). Section 101(a) stresses that the policy is concerned with man and nature, to see that they exist in productive harmony and that the social, economic, and other requirements of present and future generations of Americans are fulfilled. Section 101(c) recognizes the need for a healthy environment and each person's responsibility to contribute to it. Section 101(b) contemplates Federal actions which will enable the Nation to fulfill the responsibilities of each generation as trustee for the environment for succeeding generations; to attain the widest range of beneficial uses of the environment; to preserve important historic, cultural and natural aspects of our national heritage; and to accomplish other important goals. The Council recognizes that the identification of the environmentally preferable alternative or alternatives may involve difficult assessments in some cases. The Council determined that the benefits of ensuring that decisionmakers consider and take account of environmental factors outweigh these difficulties. To assist agencies in developing and determining environmentally preferable alternatives, commenters on impact statements may choose to provide agencies with their views on this matter.

Several commenters expressed concern that the regulations did not authorize Federal agencies to express preferences based on factors other than environmental quality. In the opinion of these commenters, this emphasis on environmental considerations was misplaced and not consistent with the factors that agencies are expected to consider in decisionmaking.

The Council responded to these comments by reference to the statute, recognizing that Title II of NEPA and especially Section 101 clearly contemplate balancing of essential considerations of national policy. We provided that agencies may discuss preferences they have among alternatives based on relevant factors, including economic and technical considerations and agency statutory mission. Agencies should identify those considerations, including factors not related to environmental quality, which were balanced in making the decision. Nothing in the final regulations precludes Federal agencies from choosing to discuss these preferences and identifying these factors in the environmental impact statement.

Some commenters objected to the word "overrode" in this provision. The language of the Act and its legislative history make clear that Federal agencies must act in an environnmentally responsible fashion and not merely consider environmental factors. NEPA requires that each Federal agency use "all practicable means and measures" to protect and improve the environment "consistent with other essential considerations of national policy." Section 101(b). The Council determined to tie this provision of the regulations to NEPA's statutory provision in place of the "overrode" language.

Several commenters expressed concern that the phrase "national policy" would not allow agencies to refer to state and local policies in the record of decision. "National policy" is the phrase used by Congress in NEPA. However, in many cases specific statutory provisions require that Federal agencies adhere to or pay heed to State and local policies.

Finally, some commenters expressed concern that the requirement for a concise record of decision would involve additional agency efforts. The intention is not to require new efforts, but to see that environmental considerations are built into existing processes. Preparing such decision records is recognized as good administrative practice and the benefits of this requirement outweigh the difficulties of building environmental considerations into the decisionmaking process.

Subsection (c) of § 1505.2 states that for any mitigation adopted a monitoring and enforcement program where applicable shall be adopted and summarized in the record of decision. One commenter asked what the term "summarized" was intended to mean in this context. The Council intends this word to be interpreted as requiring a brief and concise statement describing the monitoring and enforcement program which has been adopted.

Comments on § 1505.3: Implementing the decision. Section 1505.3 provides for mitigation of adverse environmental effects. Several commenters expressed concern that this provision would grant broad authority to the lead agency for mandating that other agencies undertake and monitor mitigation measures without their consent. This is not the Council's intention and the language of the provision does not support this interpretation.

PART 1506—OTHER REQUIREMENTS OF NEPA

Comments on §1506.1: Limitations on actions during NEPA process. Section 1506.1 placed limitations on actions which can be taken before completion of the environmental review process because of the possibility of prejudicing or foreclosing important choices. Some commenters expressed concern that these limitations would impair the ability of those outside the Federal government to develop proposals for agency review and approval. Accordingly, the Council added a new paragraph (d) to this section which authorizes certain limited activities before completion of the environmental review process.

Comments on § 1506.2: Elimination of duplication with State and local procedures. This section received strong support from many commenters. Several commenters sought clarification of the procedures established by this section. It provides for coordination among Federal, State and local agencies in several distinct situations. First, subsection (a) of this section simply confirms that Federal agencies funding State programs have been authorized by Section 102(2)(D) of NEPA to cooperate with certain State agencies with statewide jurisdiction in conducting environmental reviews. Second, subsection (b) provides generally for Federal cooperation with all States in environmental reviews such as joint planning processes, joint research, joint public hearings, and joint environmental assessments. Third, subsection (c) specifically provides for Federal cooperation with those States and localities which administer "little NEPA's." The Federal agencies are directed to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements. Approximately half the states now have some sort of environmental impact statement requirement either legislatively adopted or administratively promulgated. In these circumstances, Federal agencies are required to cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws. Finally, subsection (d) provides that Federal agencies generally shall in en-

vironmental impact statements discuss any inconsistency between a proposed action and any approved State or local plan or laws, regardless of whether the latter are Federally sanctioned.

Comments on § 1506.3: Adoption. Section 1506.3 authorized one Federal agency to adopt an environmental impact statement prepared by another in prescribed circumstances, provided that the statement is circulated for public comment in the same fashion as a draft EIS. Several commenters stated their view that recirculation was unnecessary if the actions contemplated by both agencies were substantially the same. The Council concurs and added a new paragraph (b) which provides that recirculation is not required in these circumstances.

Comments on § 1506.4: Combining documents. Section 1506.4 provided for the combination of environmental documents with other agency documents. Some commenters expressed the view that this section should enumerate the types of agency documents which could be combined under this provision. The Council concluded that such a list was not necessary and that such matters were better left to agency discretion. Thus, agencies may choose to combine a regulatory analysis review document, an urban impact analysis, and final decision or option documents with environmental impact statements.

Comments on § 1506.5: Agency responsibility. NEPA is a law which imposes obligations on Federal agencies. This provision is designed to insure that those agencies meet those obligations and to minimize the conflict of interest inherent in the situation of those outside the government coming to the government for money, leases or permits while attempting impartially to analyze the environmental consequences of their getting it. § 1506.5 set forth the responsibility of Federal agencies for preparing environmental documents, and addressed the role of those outside the Federal government. As proposed, subsection (b) of this section provided that environmental impact statements shall be prepared either by Federal agencies or by parties under contract to and chosen solely by Federal agencies. The purpose of this provision is to ensure the objectivity of the environmental review process.

Some commenters expressed the view that requiring Federal agencies to be a formal party to every contract for the preparation of an environmental impact statement was not necessary to ensure objectivity so long as the contractor was chosen solely by Federal agencies. These commenters contended that a requirement for formal Federal involvement in all such contracts could cause delay. The Council concurs and deleted the phrase "under contract" from this provision.

Several commenters noted that the existing procedures for a few Federal programs are not consistent with § 1506.5. The Council recognizes that this provision will in a few cases require additional agency efforts where, for example, agencies have relied on applicants for the preparation of environmental impact statements. The Council determined that such efforts were justified by the goal of this provision.

Several commenters expressed concern that environmental information provided by private applicants would not be adequately evaluated by Federal agencies before it was used in environmental documents. Other commenters wanted to insure that applicants were free to submit information to the agencies. Accordingly, the Council amended subsection (a) to allow receipt of such information while requiring Federal agencies to independently evaluate the information submitted and to be responsible for its accuracy. In cases where the information is used in an environmental impact statement, the persons responsible for that evaluation must be identified in the list of preparers required by § 1502.17.

Several commenters expressed the view that applicants should be allowed to prepare environmental assessments. These commenters noted that the number of assessments prepared each year is far greater than the number of environmental impact statements; that such authority was necessary to ensure environmental sensitivity was built into actions, which while ultimately Federal were planned outside the Federal government; that assessments are much shorter and less complex than EISs; and that it would be considerably less difficult for Federal agencies independently to evaluate the information submitted for an environmental assessment than for an environmental impact statement.

The Council concurs and has added a new subsection (b) to this section which authorizes the preparation of environmental assessments by applicants. The Council intends that this provision enable private and State and local applicants to build the environment into their own planning processes, while the Federal agency retains the obligation for the ultimate EIS. The Council emphasizes, however, that Federal agencies must independently evaluate the information submitted for environmental assessments and assume responsibility for its accuracy; make their own evaluation of environmental issues; and take responsibility for the scope and content of environmental assessments.

Comments on § 1506.6: Public involvement. Subsection (b)(3) of this section listed several means by which Federal agencies might provide notice of actions which have effects primarily of local concern. Several commenters urged that such notices be made mandatory, rather than permissive; other commenters felt these methods of public notice should not be listed at all. Some commenters suggested that additional methods be included in this subsection; others urged that one or more methods be deleted.

Subsection (b) of this section required agencies to provide public notice by means calculated to inform those persons and agencies who may be interested or affected. Paragraph 3 of the subsection merely identified alternative techniques that might be used for this purpose at the local level. Paragraph 3 is not intended to provide an exhaustive list of the means of providing adequate public notice. Nor are the measures it lists mandatory in nature. On the basis of these considerations, the Council determined not to alter this provision.

As proposed, subsection (f) of this section required Federal agencies to make comments on environmental impact statements available to the public. This subsection repeated the existing language on the subject that has been in the Guidelines since 1973 (40 CFR 1500.11(d)) relative to the public availability of comments. On the basis of comments received, the Council altered this provision to state that intra-agency documents need not be made available when the Freedom of Information Act allows them to be withheld.

Several commenters observed that subsection (f) did not establish limitations on charges for environmental impact statements as the Council's Guidelines had. Accordingly, the Council incorporated the standard of the Guidelines into this subsection. The standard provides that such documents shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs incurred.

Comments on § 1506.8: Proposals for legislation. Section 1506.8 established modified procedures for the preparation of environmental impact statements on legislative proposals. Except in prescribed circumstances, this section provided for the transmittal of a single legislative EIS to the Congress and to Federal, State and local agencies and the public for review and comment. No revised EIS is required in such cases.

A few commenters objected to these procedures and urged that draft and final environmental impact statements be required for all legislative proposals. These commenters said that the

conventional final environmental impact statement, including an agency's response to comments, was no less important in this context than in a purely administrative setting.

However, the Council views legislative proposals as different from proposed actions to be undertaken by agencies, in several important respects. Unlike administrative proposals, the timing of critical steps (hearings, votes) is not under the control of the administrative agency. Congress will hold its hearings or take its votes when it chooses, and if an EIS is to influence those actions, it must be there in time. Congress may request Federal agencies to provide any additional environmental information it needs following receipt of a legislative EIS. Administration proposals are considered alongside other proposals introduced by members of Congress and the final product, if any, may be substantially different from the proposal transmitted by the Federal agency. Congress may hold hearings on legislative proposals and invite testimony on all aspects of proposed legislation including its environmental impacts. On the basis of these considerations, the Council determined that it would be overly burdensome and unproductive to require draft and final legislative environmental impact statements for all legislation, wherever it originates.

Several commenters also expressed concern about the requirement that the legislative environmental impact statement actually accompany legislative proposals when they are transmitted to Congress. These commenters noted that such proposals are often transmitted on an urgent basis without advance warning. Accordingly, the Council amended this section to provide for a period of thirty days for transmittal of legislative environmental impact statements, except that agencies must always transmit such EISs before the Congress begins formal deliberations on the proposal.

Comments on § 1506.10: Timing of agency action. Subsection (c) of this section provided that agencies shall allow not less than 45 days for comments on draft environmental impact statements. Several commenters felt that this period was too long; others thought it too short.

The Council recognizes that a balance must be struck between an adequate period for public comment on draft EIS's and timely completion of the environmental review process. In the Council's judgment, 45 days has proven to be the proper balance. This period for public comment was established by the Guidelines in 1973, and the Council determined not to alter it. Subsection (e) of this section authorizes the Environmental Protection Agency to reduce time periods for agency action for compelling reasons of national policy.

Comments on § 1506.11: Emergencies. Section 1506.11 provided for agency action in emergency circumstances without observing the requirements of the regulations. The section required the Federal agency "proposing to take the action" to consult with the Council about alternative arrangements.

Several commenters expressed concern that use of the phrase "proposing to take the action" would be interpreted to mean that agencies consult with the Council before emergency action was taken. In the view of these commenters, such a requirement might be impractical in emergency circumstances and could defeat the purpose of the section. The Council concurs and substituted the phrase "taking the action" for "proposing to take the action." Similarly, the Council amended the section to provide for consultation "as soon as feasible" and not necessarily before emergency action.

PART 1507—AGENCY COMPLIANCE

Comments on § 1507.2: Agency capability to comply. Section 1507.2 provided, among other things, that a Federal agency shall itself have "sufficient capability" to evaluate any analysis prepared for it by others. Several commenters expressed concern that this could be interpreted to mean that each agency must employ the full range of professionals including geologists, biologists, chemists, botanists and others to gain sufficient capability for evaluating work prepared by others. This is not the Council's intention. Agency staffing requirements will vary with the agency's mission and needs including the number of EIS's for which they are responsible.

Comments on § 1507.3: Agency procedures. Subsection (a) of § 1507.3 provided that agencies shall adopt procedures for implementation of the regulations within eight months after the regulations are published in the FEDERAL REGISTER. Several commenters noted that State and local agencies participating in the NEPA process under certain statutory highway and community development programs would also require implementing procedures but could not finally begin to develop them until the relevant Federal agencies had completed this task. Accordingly, the Council amended this provision to allow such state and local agencies an additional four months for the adoption of implementing procedures.

Several commenters suggested that agencies with similar programs should establish similar procedures, especially for the submission of information by applicants. The Council concurs and added a new sentence to subsection (a) stating that agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants.

Several commenters suggested that a committee be established to review agency compliance with these regulations. Under subsection (a), the Council will review agency implementing procedures for conformity with the Act and the regulations. Moreover, the Council regularly consults with Federal agencies regarding their implementation of NEPA and conducts periodic reviews on how the process is working. On the basis of these considerations, the Council determined that a committee for the review of agency compliance with NEPA should not be established.

PART 1508—TERMINOLOGY AND INDEX

Comments on § 1508.8: Effects. Several commenters urged that the term "effects" expressly include aesthetic, historic and cultural impacts. The Council adopted this suggestion and altered this provision accordingly.

Comments on § 1508.12: Federal agency. Several commenters urged that States and units of general local government assuming NEPA responsibilities under Section 104(h) of the Housing and Community Development Act of 1974 be expressly recognized as Federal agencies for purposes of these regulations. The Council adopted this suggestion and amended this provision accordingly.

Comments on § 1508.14: Human environment. In its proposed form, § 1508.14 stated that the term "human environment" shall be interpreted comprehensively to include the natural and physical environment and the interaction of people with that environment. A few commenters expressed concern that this definition could be interpreted as being limited to the natural and physical aspects of the environment. This is not the Council's intention. *See* § 1508.8 (relating to effects) and our discussion of the environment in the portion of this Preamble relating to § 1505.2. The full scope of the environment is set out in Section 101 of NEPA. Human beings are central to that concept. In § 1508.14 the Council replaced the work "interaction" with the work "relationship" to ensure that the definition is interpreted as being inclusive of the human environment.

The only line we draw is one drawn by the cases. Section 1508.14 stated that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. A few commenters sought further explanation of this provision. This provision reflects the

Council's determination, which accords with the case law, that NEPA was not intended to require an environmental impact statement where the closing of a military base, for example, only affects such things as the composition of the population or the level of personal income in a region.

Comments on § 1508.16: Legislation. Section 1508.16 defined legislation to exclude requests for appropriations. Some commenters felt that this exclusion was inappropriate. Others noted that environmental reviews for requests for appropriations had not been conducted in the eight years since NEPA was enacted. On the basis of traditional concepts relating to appropriations and the budget cycle, considerations of timing and confidentiality, and other factors, the Council decided not to alter the scope of this provision. The Council is aware that this is the one instance in the regulations where we assert a position opposed to that in the predecessor Guidelines. Quite simply, the Council in its experience found that preparation of EISs is ill-suited to the budget preparation process. Nothing in the Council's determination, however, relieves agencies of responsibility to prepare statements when otherwise required on the underlying program or other actions. (We note that a petition for certiorari on this issue is now pending before the Supreme Court.) This section was renumbered as § 1508.17.

Comments on § 1508.17: Major Federal action. Section 1508.17 of the draft regulations addressed the issue of NEPA's application to Federal programs which are delegated or otherwise transferred to State and local government. Some commenters said that the application of NEPA in such circumstances is a highly complicated issue; that its proper resolution depends on a variety of factors that may differ significantly from one program to the next and should be weighed on a case-by-case basis; and that agencies themselves should be accorded latitude in resolving this issue, subject to judicial review. The Council concurs and determined not to address this issue in this context at the present time. This determination should not be interpreted as a decision one way or the other on the merits of the issue.

Section 1508.17 also stated that the term "major" reinforces but does not have a meaning independent of the term "significantly" in NEPA's phrase "major Federal action significantly affecting the quality of the human environment." A few commenters noted that courts have differed over whether these terms should have independent meaning under NEPA. The Council determined that any Federal action which significantly affects the quality of the human environment is "major" for purposes of NEPA. The Council's view is in accord with *Minnesota PIRG v. Butz*, 498 F. 2d 1314 (8th Cir., 1974).

Section 1508.17 was renumbered as § 1508.18.

Comments on § 1508.22: Proposal. Section 1508.22 stated that a proposal exists when an agency is "actively considering" alternatives and certain other factors are present. Several commenters expressed the view that this phrase could be interpreted to mean that a proposal exists too early in planning and decisionmaking, before there is any likelihood that the agency will be making a decision on the matter. In response to this concern, and to emphasize the link between EISs and actual agency decisions, the Council deleted the phrase "actively considering" and replaced it with the phrase "actively preparing to make a decision on" alternatives. The Council does not intend the change to detract from the importance of integrating NEPA with agency planning as provided in § 1501.2 of the regulations.

This section was renumbered as § 1508.23.

OTHER COMMENTS

Comments on the application of NEPA abroad. Several commenters urged that the question of whether NEPA applies abroad be resolved by these regulations. However, the President has publicly announced his intention to address this issue in an Executive Order. The Executive Order, when issued, will represent the position of the Administration on that issue.

Comments on the role of Indian tribes in the NEPA process. Several commenters stated that the regulations should clarify the role of Indian Tribes in the NEPA process. Accordingly, the Council expressly identified Indian Tribes as participants in the NEPA process in §§ 1501.2(d)(2), 1501.7(a)(1), 1502.15(c) and 1503.1(a)(2)(ii).

Comments on the Council's special environmental assessment for the NEPA regulations. The Council prepared a special environmental assessment for these regulations and announced in the preamble to the draft regulations that the document was available to the public upon request. Some commenters expressed the view that it did not contain an adequate evaluation of the effects of the regulations. For the reasons set out in the assessment, and the preamble to the proposed regulations, the Council confirmed its earlier determination that the special environmental assessment did provide an adequate evaluation for these procedural regulations.

Comments on the President's authority to issue Executive Order 11991 and the Council's authority to issue regulations. A few commenters questioned the authority of the President to issue Executive Order 11991, and the authority of the Council to issue the regulations. The President is empowered to issue regulations implementing the procedural provisions of NEPA by virtue of the authority vested in him as President of the United States under Article II, Section 3 of the Constitution and other provisions of the Constitution and laws of the United States. The President is empowered to delegate responsibility for performing this function to the Council on Environmental Quality under Section 301 of Title 3 of the United States Code and other laws of the United States.

Comments on the responsibilities of Federal agencies in the NEPA process. Agency responsibilities under the regulations often depend upon whether they have "jurisdiction by law" or "special expertise" with respect to a particular proposal. Several commenters noted that these terms were not defined in the regulations and could be subject to varying interpretations. Accordingly, the Council added definitions for these terms in §§ 1508.15 and 1508.26.

Comments on the role of State and areawide clearinghouses. At the request of several States, the Council recognized the role of state and areawide clearinghouses in distributing Federal documents to appropriate recipients. *See* e.g. §§ 1501.4(e)(2), 1503.1(2)(iii), and 1506.6(b)(3)(i).

Comments on the concept of a national data bank. When the Council issued the proposed regulations, it invited comment on the concept of a national data bank. The purpose of a data bank would be to provide for the storage and recall of information developed in one EIS for use in subsequent EISs. Most commenters expressed reservations about the idea on grounds of cost and practicality. The Council, while still intrigued by the concept did not change its initial conclusion that the financial and other resources that would be required are beyond the benefits that might be achieved.

Comments on Federal funding of public comments on EISs. The Council also invited comment on a proposal for encouraging Federal agencies to fund public comments on EISs when an important viewpoint would otherwise not be presented. Several commenters supported this proposal on grounds that it would broaden the range and improve the quality of public comments on EISs. Others doubted that the expenditure of Federal funds for this purpose would be worthwhile. Some felt that Congress should decide the question. The Council determined not to address the issue of Federal funding for public comments on EISs in the regu-

lations, but to leave the matter to individual agencies' discretion.

5. REGULATORY ANALYSES

The final regulations implement the policy and other requirements of Executive Order 12044 to the fullest extent possible. We intend agencies in implementing these regulations to minimize burdens on the public. The determinations required by Section 2(d) of the Order have been made by the Council and are available on request.

It is our intention that a Regulatory Analysis required by Section 3 of the Order be undertaken concurrently with and, where appropriate, integrated with an environmental impact statement required by NEPA and these regulations.

6. CONCLUSION

We could not, of course, adopt every suggestion that was made on the regulations. We have tried to respond to the major concerns that were expressed. In the process, we have changed 74 of the 92 sections, making a total of 340 amendments to the regulations. We are confident that any issues which arise in the future can be resolved through a variety of mechanisms that exists for improving the NEPA process.

We appreciate the efforts of the many people who participated in developing the regulations and look forward to their cooperation as the regulations are implemented by individual agencies.

CHARLES WARREN,
Chairman.

TABLE OF CONTENTS

PART 1500—PURPOSE, POLICY, AND MANDATE

Sec.
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.
Index.

PART 1500—PURPOSE, POLICY, AND MANDATE

Sec.
1500.1 Purpose.
1500.2 Policy.
1500.3 Mandate.
1500.4 Reducing paperwork.
1500.5 Reducing delay.
1500.6 Agency authority.

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 con-

centrate 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 programs, 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 ap-

propriate 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.
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 of 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 above 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 § 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

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

(b) The agency may:

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

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

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

(v) Number of persons and agencies affected.

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

(vii) Degree to which the action is controversial.

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

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

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

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

(iii) Preparation of the draft environmental impact statement.

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

(v) Preparation of the final environmental impact statement.

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

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

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

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

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 Methodolgy 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 or 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 of 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 must be received (computed in cooperation with EPA under § 1506.10).

The information required by this section may be entered on Standard 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 (§ 1508.18).

(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(c).)

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

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

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

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

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

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

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under § 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 response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

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

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

(4) Make factual corrections.

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

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

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§ 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 Procedures 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 nongovernmental 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 the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

§ 1506.6 Public involvement.

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

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

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the FEDERAL REGISTER and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the *102 Monitor*. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

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

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

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

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

(v) Notice through other local media.

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

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

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

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

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

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

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

(d) Solicit appropriate information from the public.

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

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

§ 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 esq.) 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 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 Procedures 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 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

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

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

PART 1507—AGENCY COMPLIANCE

Sec.
1507.1 Compliance.
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. 7609), 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 proce-

dures 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 tht 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 consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

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

(c) Impacts, which may be: (1) Direct. (2) Indirect. (3) Cumulative.

§ 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. Significant 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(i), 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), 1508.5
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), 1506.5(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
Human Environment	1502.3, 1502.22, 1508.14
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
Index	1502.10(j)
Indian Tribes	1501.2(d)(2), 1501.7(a)(1), 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), 1508.10(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

INDEX—Continued

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(e), 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(e), 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(d), 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(1), 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

[FR Doc. 78-33362 Filed 11-27-78; 8:45 am]