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George W. (Rock) Pring

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THE NATIONAL ENVIRONMENTAL POLICY ACT:
NO LONGER A TEENAGER, BUT NOT YET GROWN-UP

Professor George W. (Rock) Pring
University of Denver College of Law

The United States' "National Environmental Policy Act" ¹- NEPA - celebrates its 20th birthday on January 1, 1990. NEPA began the outpouring of environmental quality laws that made the 1970s "the decade of the environment." ² Its birth in Congress was almost by chance. Its early years generated a flood of litigation. And its "teens" have continued its "growing pains," marking it as one of the most controversial of our environmental laws.

Yet, it remains not only the first but, in many ways, still the foremost attempt at articulating an enforceable environmental policy for the U.S. Its flaws and failures, as well as its successes, have much to teach us.

The Original Concept

In 1969, three distinct pressures prodded Congress to make this unprecedented step to protect the environment. First, a nationwide concern over "environmental disaster" was being fed by

¹ 42 U.S.C. Secs. 4321-4370a.

² COUNCIL ON ENVIRONMENTAL POLICY, ENVIRONMENTAL QUALITY-THE TENTH ANNUAL REPORT 1, 15 (1979).

numerous publications ³ and becoming a vote-getting issue. Second, Congress was becoming increasingly frustrated by the intransigence and insensitivity of many federal agencies to the environmental impacts of their programs. And third, the Democratically controlled Congress (and several powerful Presidential hopefuls) saw the environment as a major political campaign issue against then-President Nixon's Republican Executive Branch.

However, the first NEPA bills introduced were inconsistent on environmental policy, and more seriously lacked any means for enforcing environmental values or requiring the government to carry out the policy. ⁴ It was a professor of government, Dr. Lynton Caldwell, who became "the Father of the EIS," by testifying that NEPA needed some "action-forcing" measure to make it obeyed. Convinced, Congress at the last minute (and virtually without debate) inserted the "detailed statement" requirement of Section 102(2)(C) - the provision which has become the overriding aspect of NEPA.

NEPA The Law

The Act begins in Section 101 with a lengthy, poetic declaration of national environmental policy. Recognizing "the profound impact" of human population growth, urbanization,

³ See W. Andreen, In Pursuit of NEPA's Promise: The Role of Executive Oversight in the Implementation of Environmental Policy, 64 INDIANA LAW JOURNAL 205, 212-14 (1989).

⁴ Id. at 214-15.

industrialization, resource exploitation, and new technology, Congress "declares that it is the continuing policy of the Federal Government...to use all practicable means...to create and maintain conditions under which man and nature can exist in productive harmony...." ⁵

To carry out this mandate, Section 102 contains a number of "action-forcing" provisions. Chief among them is the key Section 102(2)(C), which requires all federal government agencies to prepare a "detailed statement" on all "proposals for legislation or other major Federal actions significantly affecting the quality of the human environment." ⁶ This "Environmental Impact Statement" or EIS should analyze the impacts of and alternatives to the proposed action.

The purpose of the EIS is fourfold. It is (1) to ensure that environmental consequences are considered and balanced in advance of action, (2) to aid government decisionmaking, (3) to inform other government officials and the public and allow them to comment, and (4) to prove that environmentally sensitive decisionmaking did take place. ⁷ In short, NEPA's somewhat simplistic concept is that by making agencies consider the

⁵ Section 101(a), 42 U.S.C. Sec. 4331(a).

⁶ Section 102(2)(C), 42 U.S.C. Sec. 4332(2)(C).

⁷ Calvert Cliffs' Coordinating Committee, Inc. v. U.S. Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971). Calvert Cliffs' was the first, great court interpretation of NEPA. While only an appellate court interpretation, its expansionist view of NEPA's purposes has largely been adopted by the U.S. Supreme Court.

environmental consequences of their missions, the agencies will "see the light" and alter their conduct for the better.

A second major accomplishment of NEPA was the creation of the President's Council on Environmental Quality (CEQ).⁸ Section 204(3) gives CEQ the power to "review and appraise" all programs and activities of the Federal Government to assure they conform with the Section 101 environmental policies.⁹

A third major boost to NEPA came 6-1/2 months later with the adoption of the Clean Air Act.¹⁰ Section 309 of that Act¹¹ requires the Environmental Protection Agency (EPA) to "review and comment" on the environmental impact of any major federal actions requiring an EIS. Thus, not one but two top-level agencies are empowered to "police" NEPA, in theory.

Professor Lin Dao Lian, in his excellent paper at our first conference,¹² described the strong role China's National and provincial EPAs have in approving the environmental impact assessment process in the P.R.C. Despite similar authority, the U.S. watchdog agencies would fall short of that control level from the outset.

⁸ Secs. 201-09, 42 U.S.C. Secs. 4341-47.

⁹ Section 204(3), 42, U.S.C. Sec. 4344(3).

¹⁰ 42 U.S.C. Sec. 7401 et seq.

¹¹ 42 U.S.C. Sec. 7609.

¹² Lin Dao Lian, Establishment and Practice of the Chinese Environmental Impact Assessment System, in PROCEEDINGS OF THE SINO-AMERICAN CONFERENCE ON ENVIRONMENTAL LAW (BEIJING, P.R.C., AUG. 16-18, 1987) 217 (1989).

NEPA in Practice

Federal agencies did not embrace NEPA and EISs willingly at the start, to say the least. There was massive law-avoidance: agencies proceeding with major projects without preparing an EIS or preparing patently short, inadequate ones. (The author remembers fondly his first NEPA lawsuit in 1972, against a 12-page EIS for a huge U.S. Army Corps of Engineers' dam project!) Nor did CEQ or EPA jump into the breach and use their considerable powers to pressure sister agencies to comply.¹³ For the first eight years of NEPA, CEQ did not even adopt legally binding regulations, to flesh out the skeletal NEPA requirements. By default, NEPA's "enforcer" became the courts.

The courts jumped willingly into the NEPA compliance vacuum, starting with the trend-setting Calvert Cliffs' case.¹⁴ In the first 10 years of NEPA, some 1,200 lawsuits were filed against federal agencies, by environmental groups, citizen organizations, state and local government, and business

¹³ For a selection of studies on federal agency compliance with NEPA see, e.g., Bardach & Pugliaresi, The Environmental-Impact Statement vs. The Real World, 49 PUBLIC INTEREST 22 (1977); Liroff, NEPA - Where Have We Been and Where Are We Going?, 46 JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 154 (1980); S. TAYLOR, MAKING BUREAUCRACIES THINK: THE ENVIRONMENTAL IMPACT STATEMENT STRATEGY OF ADMINISTRATIVE REFORM (1984); ENVIRONMENTAL LAW INSTITUTE, NEPA IN ACTION: ENVIRONMENTAL OFFICES IN 19 FEDERAL AGENCIES (1981); U.S. COMPTROLLER GENERAL, ENVIRONMENTAL ASSESSMENT EFFORTS FOR PROPOSED PROJECTS HAVE BEEN INEFFECTIVE (1975).

¹⁴ Note 7, above.

interests.¹⁵ Court enforcement, however, was cumbersome and expensive, reached only a minority of the violations, and resulted in nonuniform rulings around the country. Also, courts early determined that their role was only to enforce "procedural" compliance ("Did the agency follow all the correct steps and analyze all the correct issues?"). They largely refused to review "substance" (Did the agency make the right decision, given the environmental impacts?). Since the adoption of the 1978 CEQ NEPA regulations,¹⁶ litigation has declined.¹⁷

EIS preparation, meanwhile, has become a major industry. In the first decade of NEPA, 90 federal agencies prepared over 12,400 EISs.¹⁸ Many were prepared for the government by the multi-billion-dollar environmental consulting business that has grown up in the private sector, subsidized by our pollution laws. A typical EIS can take 12 months (+ or - 6) to prepare and cost \$350,000 or more.¹⁹

One of the most notable NEPA developments of the 1980s has been the vastly increased use of the "Environmental Assessment"

¹⁵ COUNCIL ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL QUALITY: THE 12TH ANNUAL REPORT 260 (1981).

¹⁶ 40 C.F.R. Secs. 1500.1-1517.7 (1978).

¹⁷ Kent & Pendergrass, Has NEPA Become a Dead Issue? Preliminary Results of a Comprehensive Study of NEPA Litigation, 5 Temple Environmental Law & Technology Journal 11 (1986).

¹⁸ CEQ 11th Annual Report, note 14 above.

¹⁹ Edelson, The Management of Oil and Gas Leasing on Federal Wilderness Lands, 10 BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW 905, 944 n. 206 (1983).

or EA, to avoid doing a full-scale EIS. Because NEPA only requires an EIS if the federal action will have a "significant" effect on the environment, an EIS is not necessary if the impacts can be classed as "not significant." In borderline cases, the CEQ regulations encourage the preparation of an EA - a much shorter, quicker, cheaper study, in theory designed only to evaluate the significance-level of impacts.²⁰ However, agencies eager to avoid EISs seem increasingly inclined to produce EAs, typically underestimating impacts (or overestimating mitigation measures). Many use the EA incorrectly as a substitute, shortcut EIS.

Criticism and Praise for NEPA

Has NEPA changed federal decisionmaking for the better? Does the EIS process work? There is profound disagreement on these questions still. However, while even NEPA's most ardent supporters would not give it a "grade A" to date, its most strident opponents - including President Reagan - have been unable to get Congress to make any serious changes in, let alone repeal, the law.

Its critics complain, with some justification, that it causes unnecessary paperwork, delays, and expense. They argue that forcing unwilling agencies to consider the environmental impacts of their missions results in no conversions, simply self-justifying, whitewash, advocacy documents. They point out that

²⁰ 40 C.F.R. Secs. 1501.3-.4, 1508.9.

the ever-present possibility of court intervention results in "encyclopedic" EISs, designed to cover every flaw an opponent might exploit rather than designed to be a true decisionmaking aid. And finally they say a system that only mandates decisional "procedures," but does not judge decisional outcomes or "substance" is a charade.

NEPA's supporters argue that it has made significant contributions to environmental decisionmaking and that the environment is better off with it than without it. They point to the progressive 1978 CEQ regulations (which have rationalized and streamlined the process and eliminated much of the problem of inconsistent court rulings) and also the supporting internal procedures now in effect in every major federal agency.²¹ NEPA's best contribution may be unintentional: the hiring of thousands of environmentally trained specialists by the agencies since 1970 and their role in reforming agency planning from within.²² And finally supporters point out that the CEQ regulations have cured the "procedure/substance" problem by the revolutionary requirement that agencies, after finishing an EIS, must prepare a "Record of Decision" defending their final decision to proceed with an action.²³

Still, both supporters and critics largely agree that NEPA will never be maximally effective as long as litigation is the

²¹ See authorities, note 12 above.

²² Liroff, note 12 above, at 156-57.

²³ 40 C.F.R. Secs. 1505.1-.3.

only external force to complement the internal reforms. The Act envisioned more, and CEQ and EPA need to supply it.

Suggested Reforms

Courts and the CEQ regulations transformed NEPA from a contentious child to a more effective adolescent. We need now to transform that uncoordinated teenager into a mature adult, if we are to maximize environmental benefits and justify NEPA's admitted costs.

One suggested reform has been to expand NEPA beyond merely federal government actions and include all actions significantly affecting the environment, including those of other government levels and the private sector. This would be too massive an undertaking for the national government to supervise. It seems better left to the individual states to adopt their own "Little NEPAs," as some 30 states including California have done.²⁴ Counties, cities, and other local levels of government can benefit by adapting the impact study as a prerequisite to zoning and building permits for new development.

But we still need to do NEPA better. CEQ and EPA need to become the "enforcers" Congress envisioned them to be in 1970, and as EPA is in the P.R.C. NEPA Section 204(3) gives CEQ and Clean Air Act Section 309 gives EPA the mandate to review and evaluate how well other agencies are complying with NEPA. From

²⁴ Pridgeon, Anderson & Delphey, State Environmental Policy Acts: A Survey of Recent Developments, 2 HARVARD ENVIRONMENTAL LAW REVIEW 419 (1978).

time to time, both agencies have used their respective powers to intervene in extreme cases (or under extreme political pressure), but they have never done so rigorously or consistently. All they need is the political will to do their duty.

In a very thoughtful recent analysis, Alabama Law School Professor William Andreen, writing in the Indiana Law Journal, has made a comprehensive case for "structural reform" of CEQ and EPA to make them (and NEPA) more effective.²⁵ Congress has provided all the power necessary and the CEQ regulations provide the tool.

The tool is the "Record of Decision" or ROD. Each agency should be required to send not only its EISs and EAs but also its RODs to CEQ and EPA. Then the two agencies can evaluate both the extent to which the agency action has been adequately analyzed environmentally (EIS/EA) and whether the agency has made a decision that carries out NEPA's true goal: protection of the environment (ROD).

The change for CEQ and EPA to more proactive "policemen" will not be easy or without political fallout. But it is a job they have been cautiously avoiding for 20 years, and no one ever said becoming a grown-up was easy.

²⁵ Note 3 above.

NATIONAL ENVIRONMENTAL POLICY

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 [NEPA § _____]

(42 U.S.C.A. §§ 4321 to 4370a)

CHAPTER 55—NATIONAL ENVIRONMENTAL POLICY

- Sec.**
4321. Congressional declaration of purpose.
- SUBCHAPTER I—POLICIES AND GOALS**
4331. Congressional declaration of national environmental policy.
- (a) Creation and maintenance of conditions under which man and nature can exist in productive harmony.
- (b) Continuing responsibility of Federal Government to use all practicable means to improve and coordinate Federal plans, functions, programs, and resources.
- (c) Responsibility of each person to contribute to preservation and enhancement of environment.
4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts.
4333. Conformity of administrative procedures to national environmental policy.
4334. Other statutory obligations of agencies.
4335. Efforts supplemental to existing authorizations.

SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY

4341. Reports to Congress; recommendations for legislation.
4342. Establishment; membership; Chairman; appointments.
4343. Employment of personnel, experts and consultants.
4344. Duties and functions.
4345. Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives.
4346. Tenure and compensation of members.
- 4346a. Travel reimbursement by private organizations and Federal, State, and local governments.
- 4346b. Expenditures in support of international activities.
4347. Authorization of appropriations.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

4361. Plan for research, development and demonstration.

- Sec.**
4361a. Budget projections in annual revisions of plan for research, development, and demonstration.
- 4361b. Implementation by Administrator of Environmental Protection Agency of recommendations of "CHESS" Investigative Report; waiver; inclusion of status of implementation requirements in annual revisions of plan for research, development, and demonstration.
- 4361c. Staff management.
- (a) Appointments for educational programs.
- (b) Post-doctoral research fellows.
- (c) Non-government research associates.
- (d) Women and minority groups.
4362. Interagency cooperation on prevention of environmental cancer and heart and lung disease.
- 4362a. Task Force on Environmental Cancer and Heart and Lung Disease; membership of Director of National Center for Health Statistics and of head of Center for Disease Control.
4363. Continuing and long-term environmental research and development.
- 4363a. Pollution control technologies demonstrations.
4364. Expenditure of funds for research and development related to regulatory program activities.
- (a) Coordination, etc., with research needs and priorities of program offices and Environmental Protection Agency.
- (b) Program offices subject to coverage.
- (c) Report to Congress; contents.
4365. Science Advisory Board.
- (a) Establishment; requests for advice by administrator of Environmental Protection Agency and Congressional committees.
- (b) Membership; Chairman; meetings; qualifications of members.
- (c) Review and comment on plan for research, development, and demonstration and annual revisions; transmission to Congress.
- (d) Review and Report to Administrator, President, and Congress concerning authorized health effects research, etc.
- (e) Proposed environmental criteria document, standard, limitation, or regulation; functions respecting in conjunction with Administrator.
- (f) Utilization of technical and scientific capabilities of Federal agencies and national environmental laboratories for determining adequacy of scientific and technical basis of proposed criteria document, etc.
- (g) Member committees and investigative panels; establishment; chairmanship.

- Sec.
4365. Science Advisory Board.
- (h) Appointment and compensation of secretary and other personnel; compensation of members.
 - (i) Consultation and coordination with Scientific Advisory Panel.
4366. Identification and coordination of research, development, and demonstration activities.
- (a) Consultation and cooperation of Administrator of Environmental Protection Agency with heads of Federal agencies; inclusion of activities in annual revisions of plan for research, etc.
 - (b) Coordination of programs by Administrator.
 - (c) Joint study by Council on Environmental Quality in consultation with Office of Science and Technology Policy for coordination of activities; report to President and Congress; report by President to Congress on implementation of joint study and report.
4367. Reporting requirements of financial interests of officers and employees of Environmental Protection Agency.
- (a) Covered officers and employees.
 - (b) Implementation of requirements by Administrator.
 - (c) Exemption of positions by Administrator.
 - (d) Violations; penalties.
4368. Grants to qualified citizens groups.
- 4368a. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control.
- (a) Technical assistance to environmental agencies.
 - (b) Pre-award certifications.
 - (c) Prior appropriations Acts.
4369. Miscellaneous reports.
- (a) Availability to Congressional committees.
 - (b) Transmittal of jurisdictional information.
 - (c) Comment by Government agencies and the public.
 - (d) Transmittal of research information to the Department of Energy.
- 4369a. Reports on environmental research and development activities of the Agency.
- (a) Reports to keep Congressional committees fully and currently informed.
 - (b) Annual reports relating requested funds to activities to be carried out with those funds.
4370. Reimbursement for use of facilities.
- (a) Authority to allow outside groups or individuals to use research and test facilities; reimbursement.
 - (b) Rules and regulations.
 - (c) Waiver of reimbursement by Administrator.
- 4370a. Assistant Administrators of Environmental Protection Agency; appointment; duties.

WESTLAW Electronic Research

See WESTLAW guide following the Explanation pages of this pamphlet.

§ 4321. Congressional declaration of purpose [NEPA § 2]

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality. (Jan. 1, 1970, Pub.L. 91-190, § 2, 83 Stat. 852.)

Short Title

Section 1 of Pub.L. 91-190 Jan. 1, 1970, 83 Stat. 852, provided: "That this Act [enacting this chapter] may be cited as the 'National Environmental Policy Act of 1969'."

Cross References

Pacific Salmon Fishing, regulations of Secretary of Commerce under treaty not subject to this chapter, see section 3636 of Title 16, Conservation.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil § 1782.

West's Federal Practice Manual

Federal environmental law, see § 4381 et seq.

Library References

Health and Environment ⇨25.5.
C.J.S. Health and Environment § 61 et seq.

Law Review Commentaries

Regulation of bature pollution and ecology. Stan Millan, 33 Loyola (La.) L.Rev. 921 (1988).

United States Supreme Court

Other statutes, not repealed by implication by this chapter, Aberdeen & Rockfish R. Co. v. Students Challenging Regulatory Agency Procedures, 1975, 95 S.Ct. 2386, 422 U.S. 289, 45 L.Ed.2d 191.

SUBCHAPTER I—POLICIES AND GOALS

§ 4331. Congressional declaration of national environmental policy [NEPA § 101]

- (a) Creation and maintenance of conditions under which man and nature can exist in productive harmony

The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental

quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) Continuing responsibility of Federal Government to use all practicable means to improve and coordinate Federal plans, functions, programs, and resources

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

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
 - (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
 - (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;
 - (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
 - (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
- (c) Responsibility of each person to contribute to preservation and enhancement of environment

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

(Jan. 1, 1970, Pub. L. 91-190, Title I, § 101, 83 Stat. 852.)

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

Library References

Health and Environment @-25.5.
C.J.S. Health and Environment § 61 et seq.

United States Supreme Court

Environmental effect and environmental impact, terms defined, Metropolitan Edison Co. v. People Against Nuclear Energy, 1988, 108 S.Ct. 1556, 460 U.S. 766, 76 L.Ed.2d 534.

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts [NEPA § 102]

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

- (A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;
- (B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;
- (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—
 - (i) the environmental impact of the proposed action,
 - (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
 - (iii) alternatives to the proposed action,
 - (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
 - (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

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

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

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

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

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

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

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than state-wide jurisdiction.¹

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

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

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

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

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

(Jan. 1, 1970, Pub.L. 91-190, Title I, § 102, 83 Stat. 853; Aug. 9, 1975, Pub.L. 94-83, 89 Stat. 424.)

¹ So in original. The period probably should be a semicolon.

Cross References

National marine sanctuaries, procedures for designation, preparation of draft environmental impact statement by Secretary of Commerce, see section 1434 of Title 16, Conservation.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

West's Federal Practice Manual

Environmentally concerned departments and agencies, see § 4821.10 et seq.
Mineral leases, see § 5301 et seq.
Relation to energy policy, see § 4342.5.
Relation to government contracts, see § 1530.

Code of Federal Regulations

Requirements, standards, etc.,
Agency for International Development, see 22 CFR 216.1 et seq.
Agricultural Stabilization and Conservation Service, see 7 CFR 799.1 et seq.
Bureau of Land Management, see 43 CFR 3040 et seq., 6290.0-2 et seq.
Civil Aeronautics Board, see 14 CFR 201.1 et seq., 261.1 et seq., 312.1 et seq., 899.1 et seq.
Coast Guard, see 46 CFR 12.01 et seq., 71.01-1 et seq., 91.01-1 et seq., 105.01-1 et seq., 176.01-1 et seq., 189.01-1 et seq.
Committee for Purchase from the Blind and Other Severely Handicapped, see 41 CFR 51-6.1 et seq.
Consumer Products Safety Commission, review, see 16 CFR 1021.1 et seq.
Council on Environmental Quality, see 40 CFR 1500.1 et seq., 1510.1 et seq.
Defense Department, see 32 CFR 214.1 et seq.
Energy Research and Development Administration, see 10 CFR 711.1 et seq.
Environmental Protection Agency, see 40 CFR Ch. 1.
Federal Aviation Administration, see 14 CFR 21.1 et seq., 36.1 et seq., 91.1 et seq.

Requirements, standards, etc.—Cont'd

Federal Highway Administration, see 23 CFR 420.101 et seq., 712.101 et seq., 761.1 et seq., 770.200 et seq., 771.1 et seq., 772.1 et seq.

Federal Maritime Commission, see 46 CFR 547.1 et seq.

Federal Trade Commission, see 16 CFR 1.1 et seq.

Food and Drug Administration, see 21 CFR 25.1 et seq.

Housing and Urban Development, see 24 CFR 58.1 et seq.

Interstate Commerce Commission, see 49 CFR 1108.1 et seq.

Law Enforcement Assistance Administration, see 28 CFR 19.1 et seq.

National Aeronautics and Space Administration, see 14 CFR 1204.200 et seq.

National Highway Traffic Safety Administration, see 49 CFR 520.1 et seq.

National Marine Fisheries Service, see 50 CFR 251.1 et seq.

Navy Department, see 32 CFR 775.1 et seq.

Nuclear Regulatory Commission, see 10 CFR 2.1 et seq., 51.1 et seq.

Occupational Safety and Health Administration, see 29 CFR 1999.1 et seq.

Office of Education, see 45 CFR 100a.185, 100b.185.

Soil Conservation Service, see 7 CFR 650.1 et seq.

Tennessee Valley Authority, see 18 CFR 305.1 et seq.

Urban Mass Transportation Administration, see 49 CFR 613.100 et seq.

Law Review Commentaries

Comment, on shore oil and gas leasing on public lands: At what point does NEPA require the preparation of an environmental impact statement? 25 San Diego L.Rev. 161 (1988).

Environmental review of recombinant DNA experiments under NEPA: *Foundation on Economic Trends v. Heckler*. Note, 21 U.S.F.L.Rev. 501 (1987).

RCRA immunity from NEPA: The EPA has exceeded the scope of its authority. Comment, 24 San Diego L.Rev. 1249 (1987).

United States Supreme Court

Agency decisions, review, see *Strycker's Bay Neighborhood Council, Inc. v. Karlen*, N.Y., 1980, 100 S.Ct. 497, 444 U.S. 223, 62 L.Ed.2d 483.

Construction with other laws, see *Weinberger v. Catholic Action of Hawaii/Peace Ed. Project*, 1981, 102 S.Ct. 197, 454 U.S. 139, 70 L.Ed.2d 298.

Judicial review of agency actions, duties and functions of court, see *Aberdeen & Rockfish Ry. Co. v. Students Challenging Regulatory Agency Procedures*, 1972, 93 S.Ct. 1, 409 U.S. 1207, 34 L.Ed.2d 21.

§ 4333. Conformity of administrative procedures to national environmental policy [NEPA § 103]

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

(Jan. 1, 1970, Pub.L. 91-190, Title I, § 103, 83 Stat. 854.)

See Env. Law Stats. 89-90 Ed.—12

Federal Practice and Procedure

Environmental class actions, see *Wright, Miller & Kane: Civil 2d* § 1782.

§ 4334. Other statutory obligations of agencies [NEPA § 104]

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

(Jan. 1, 1970, Pub.L. 91-190, Title I, § 104, 83 Stat. 854.)

Federal Practice and Procedure

Environmental class actions, see *Wright, Miller & Kane: Civil 2d* § 1782.

West's Federal Practice Manual

Quotas for minority businesses, see § 16555.

Code of Federal Regulations

Department of Defense, environmental effects, see 32 CFR 214.1 et seq.

§ 4335. Efforts supplemental to existing authorizations [NEPA § 105]

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

(Jan. 1, 1970, Pub.L. 91-190, Title I, § 105, 83 Stat. 854.)

Federal Practice and Procedure

Environmental class actions, see *Wright, Miller & Kane: Civil 2d* § 1782.

SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY**§ 4341. Reports to Congress; recommendations for legislation [NEPA § 201]**

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the

social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation. (Jan. 1, 1970, Pub.L. 91-190, Title II, § 201, 83 Stat. 854.)

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

Library References

Health and Environment ¶1, 25.5.
C.J.S. Health and Environment §§ 4 et seq., 61 et seq.

§ 4342. Establishment; membership; Chairman; appointments [NEPA § 202]

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment. (Jan. 1, 1970, Pub.L. 91-190, Title II, § 202, 83 Stat. 854.)

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

West's Federal Practice Manual

Council on Environmental Quality, see § 4382.5.

§ 4343. Employment of personnel, experts and consultants [NEPA § 203]

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

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

(Jan. 1, 1970, Pub.L. 91-190, Title II, § 203, 83 Stat. 855; July 3, 1975, Pub.L. 94-52, § 2, 89 Stat. 258; as amended Sept. 13, 1982, Pub.L. 97-258, § 4(b), 96 Stat. 1067.)

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

§ 4344. Duties and functions [NEPA § 204]

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 4341 of this title;

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

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

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

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

quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) Continuing responsibility of Federal Government to use all practicable means to improve and coordinate Federal plans, functions, programs, and resources

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

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

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

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

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

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

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

(c) Responsibility of each person to contribute to preservation and enhancement of environment

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

(Jan. 1, 1970, Pub. L. 91-190, Title I, § 101, 83 Stat. 852.)

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

Library References

Health and Environment @-25.5.
C.J.S. Health and Environment § 61 et seq.

United States Supreme Court

Environmental effect and environmental impact, terms defined, Metropolitan Edison Co. v. People Against Nuclear Energy, 1988, 108 S.Ct. 1556, 460 U.S. 766, 76 L.Ed.2d 584.

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts [NEPA § 102]

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

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

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

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

(i) the environmental impact of the proposed action,

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

(iii) alternatives to the proposed action,

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

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

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

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

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

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

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

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

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.¹

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

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

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

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

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

(Jan. 1, 1970, Pub.L. 91-190, Title I, § 102, 83 Stat. 853; Aug. 9, 1976, Pub.L. 94-83, 89 Stat. 424.)

¹So in original. The period probably should be a semicolon.

Cross References

National marine sanctuaries, procedures for designation, preparation of draft environmental impact statement by Secretary of Commerce, see section 1434 of Title 16, Conservation.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

West's Federal Practice Manual

Environmentally concerned departments and agencies, see § 4381.10 et seq.
Mineral leases, see § 5301 et seq.
Relation to energy policy, see § 4342.5.
Relation to government contracts, see § 1530.

Code of Federal Regulations

Requirements, standards, etc.,
Agency for International Development, see 22 CFR 216.1 et seq.
Agricultural Stabilization and Conservation Service, see 7 CFR 799.1 et seq.
Bureau of Land Management, see 43 CFR 3040 et seq., 6250.0-2 et seq.
Civil Aeronautics Board, see 14 CFR 201.1 et seq., 261.1 et seq., 312.1 et seq., 399.1 et seq.
Coast Guard, see 46 CFR 12.01 et seq., 71.01-1 et seq., 91.01-1 et seq., 105.01-1 et seq., 176.01-1 et seq., 189.01-1 et seq.
Committee for Purchase from the Blind and Other Severely Handicapped, see 41 CFR 51-6.1 et seq.
Consumer Products Safety Commission, review, see 16 CFR 1021.1 et seq.
Council on Environmental Quality, see 40 CFR 1500.1 et seq., 1510.1 et seq.
Defense Department, see 32 CFR 214.1 et seq.
Energy Research and Development Administration, see 10 CFR 711.1 et seq.
Environmental Protection Agency, see 40 CFR Ch. 1.
Federal Aviation Administration, see 14 CFR 21.1 et seq., 36.1 et seq., 91.1 et seq.

Requirements, standards, etc.—Cont'd

Federal Highway Administration, see 23 CFR 420.101 et seq., 712.101 et seq., 761.1 et seq., 770.200 et seq., 771.1 et seq., 772.1 et seq.

Federal Maritime Commission, see 46 CFR 647.1 et seq.

Federal Trade Commission, see 16 CFR 1.1 et seq.

Food and Drug Administration, see 21 CFR 25.1 et seq.

Housing and Urban Development, see 24 CFR 58.1 et seq.

Interstate Commerce Commission, see 49 CFR 1108.1 et seq.

Law Enforcement Assistance Administration, see 28 CFR 19.1 et seq.

National Aeronautics and Space Administration, see 14 CFR 1204.200 et seq.

National Highway Traffic Safety Administration, see 49 CFR 620.1 et seq.

National Marine Fisheries Service, see 50 CFR 251.1 et seq.

Navy Department, see 32 CFR 775.1 et seq.

Nuclear Regulatory Commission, see 10 CFR 2.1 et seq., 51.1 et seq.

Occupational Safety and Health Administration, see 29 CFR 1999.1 et seq.

Office of Education, see 45 CFR 100a.185, 100b.185.

Soil Conservation Service, see 7 CFR 650.1 et seq.

Tennessee Valley Authority, see 18 CFR 305.1 et seq.

Urban Mass Transportation Administration, see 49 CFR 613.100 et seq.

Law Review Commentaries

Comment, on shore oil and gas leasing on public lands: At what point does NEPA require the preparation of an environmental impact statement? 25 San Diego L.Rev. 161 (1988).

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RCRA immunity from NEPA: The EPA has exceeded the scope of its authority. Comment, 24 San Diego L.Rev. 1249 (1987).

United States Supreme Court

Agency decisions, review, see *Strycker's Bay Neighborhood Council, Inc. v. Karlen*, N.Y., 1980, 100 S.Ct. 497, 444 U.S. 223, 62 L.Ed.2d 433.

Construction with other laws, see *Weinberger v. Catholic Action of Hawaii/Peace Ed. Project*, 1981, 102 S.Ct. 197, 464 U.S. 139, 70 L.Ed.2d 298.

Judicial review of agency actions, duties and functions of court, see *Aberdeen & Rockfish Ry. Co. v. Students Challenging Regulatory Agency Procedures*, 1972, 93 S.Ct. 1, 409 U.S. 1207, 34 L.Ed.2d 21.

§ 4333. Conformity of administrative procedures to national environmental policy [NEPA § 103]

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

(Jan. 1, 1970, Pub.L. 91-190, Title I, § 103, 83 Stat. 854.)

Sol. Env. Law Stats. 89-90 Ed.—12

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

§ 4334. Other statutory obligations of agencies [NEPA § 104]

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

(Jan. 1, 1970, Pub.L. 91-190, Title I, § 104, 83 Stat. 854.)

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

West's Federal Practice Manual

Quotas for minority businesses, see § 16555.

Code of Federal Regulations

Department of Defense, environmental effects, see 32 CFR 214.1 et seq.

§ 4335. Efforts supplemental to existing authorizations [NEPA § 105]

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

(Jan. 1, 1970, Pub.L. 91-190, Title I, § 105, 83 Stat. 854.)

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY**§ 4341. Reports to Congress; recommendations for legislation [NEPA § 201]**

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the

social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation. (Jan. 1, 1970, Pub.L. 91-190, Title II, § 201, 83 Stat. 854.)

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

Library References

Health and Environment ⇐1, 25.5.
C.J.S. Health and Environment §§ 4 et seq., 61 et seq.

§ 4342. Establishment; membership; Chairman; appointments [NEPA § 202]

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment. (Jan. 1, 1970, Pub.L. 91-190, Title II, § 202, 83 Stat. 854.)

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

West's Federal Practice Manual

Council on Environmental Quality, see § 4382.5.

§ 4343. Employment of personnel, experts and consultants [NEPA § 203]

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

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

(Jan. 1, 1970, Pub.L. 91-190, Title II, § 203, 83 Stat. 855; July 3, 1975, Pub.L. 94-52, § 2, 89 Stat. 258; as amended Sept. 13, 1982, Pub.L. 97-258, § 4(b), 96 Stat. 1067.)

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

§ 4344. Duties and functions [NEPA § 204]

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 4341 of this title;

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

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

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

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

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

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

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

(Jan. 1, 1970, Pub.L. 91-190, Title II, § 204, 83 Stat. 856.)

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

West's Federal Practice Manual

Council on Environmental Quality, see § 4382.5.

§ 4345. Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives [NEPA § 205]

In exercising its powers, functions, and duties under this chapter, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

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

(Jan. 1, 1970, Pub.L. 91-190, Title II, § 205, 83 Stat. 855.)

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

§ 4346. Tenure and compensation of members [NEPA § 206]

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive

Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV or¹ the Executive Schedule Pay Rates (5 U.S.C. 5315).

(Jan. 1, 1970, Pub.L. 91-190, Title II, § 206, 83 Stat. 856.)

¹ So in original. Probably should read "of".

§ 4346a. Travel reimbursement by private organizations and Federal, State, and local governments [NEPA § 207]

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council. (Pub.L. 91-190, Title II, § 207, as added July 3, 1975, Pub.L. 94-52, § 3, 89 Stat. 258.)

§ 4346b. Expenditures in support of international activities [NEPA § 208]

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

(Pub.L. 91-190, Title II, § 208, as added July 3, 1975, Pub.L. 94-52, § 3, 89 Stat. 258.)

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

§ 4347. Authorization of appropriations [NEPA § 209]

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

(Jan. 1, 1970, Pub.L. 91-190, Title II, § 209, formerly § 207, 83 Stat. 856, renumbered July 3, 1975, Pub.L. 94-52, § 3, 89 Stat. 258.)

SUBCHAPTER

III—MISCELLANEOUS PROVISIONS

§ 4361. Plan for research, development and demonstration

The Administrator of the Environmental Protection Agency shall transmit to the Congress, within 6

months after October 11, 1976, a comprehensive 5-year plan for environmental research, development, and demonstration. This plan shall be appropriately revised annually, and such revisions shall be transmitted to the Congress no later than two weeks after the President submits his annual budget to the Congress in such year.

(Oct. 11, 1976, Pub.L. 94-476, § 5, 90 Stat. 2071.)

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1976, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

§ 4361a. Budget projections in annual revisions of plan for research, development, and demonstration

The Administrator of the Environmental Protection Agency, in each annual revision of the five-year plan transmitted to the Congress under section 4361 of this title, shall include budget projections for a "no-growth" budget, for a "moderate-growth" budget, and for a "high-growth" budget. In addition, each such annual revision shall include a detailed explanation of the relationship of each budget projection to the existing laws which authorize the Administration's environmental research, development, and demonstration programs.

(Nov. 8, 1977, Pub.L. 95-155, § 4, 91 Stat. 1258.)

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4361b. Implementation by Administrator of Environmental Protection Agency of recommendations of "CHESS" Investigative Report; waiver; inclusion of status of implementation requirements in annual revisions of plan for research, development, and demonstration

The Administrator of the Environmental Protection Agency shall implement the recommendations of the report prepared for the House Committee on Science and Technology entitled "The Environmental Protection Agency Research Program with primary emphasis on the Community Health and Environmental Surveillance System (CHESS): An Inves-

tigative Report", unless for any specific recommendation he determines (1) that such recommendation has been implemented, (2) that implementation of such recommendation would not enhance the quality of the research, or (3) that implementation of such recommendation will require funding which is not available. Where such funding is not available, the Administrator shall request the required authorization or appropriation for such implementation. The Administrator shall report the status of such implementation in each annual revision of the five-year plan transmitted to the Congress under section 4361 of this title.

(Nov. 8, 1977, Pub.L. 95-155, § 10, 91 Stat. 1262.)

Codification

Section was enacted as part of the Environmental Research, Development and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4361c. Staff management

(a) Appointments for educational programs

(1) The Administrator is authorized to select and appoint up to 75 full-time permanent staff members in the Office of Research and Development to pursue full-time educational programs for the purpose of (A) securing an advanced degree or (B) securing academic training, for the purpose of making a career change in order to better carry out the Agency's research mission.

(2) The Administrator shall select and appoint staff members for these assignments according to rules and criteria promulgated by him. The Agency may continue to pay the salary and benefits of the appointees as well as reasonable and appropriate relocation expenses and tuition.

(3) The term of each appointment shall be for up to one year, with a single renewal of up to one year in appropriate cases at the discretion of the Administrator.

(4) Staff members appointed to this program shall not count against any Agency personnel ceiling during the term of their appointment.

(b) Post-doctoral research fellows

(1) The Administrator is authorized to appoint up to 25 Post-doctoral Research Fellows in accordance with the provisions of section 213.3102(aa) of title 5 of the Code of Federal Regulations.

(2) Persons holding these appointments shall not count against any personnel ceiling of the Agency.

(c) Non-government research associates

(1) The Administrator is authorized and encouraged to utilize research associates from outside the Federal Government in conducting the research, development, and demonstration programs of the Agency.

(2) These persons shall be selected and shall serve according to rules and criteria promulgated by the Administrator.

(d) Women and minority groups

For all programs in this section, the Administrator shall place special emphasis on providing opportunities for education and training of women and minority groups.

(Oct. 18, 1978, Pub.L. 95-477, § 6, 92 Stat. 1510.)

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

§ 4362. Interagency cooperation on prevention of environmental cancer and heart and lung disease

(a) Not later than three months after August 7, 1977, there shall be established a Task Force on Environmental Cancer and Heart and Lung Disease (hereinafter referred to as the "Task Force"). The Task Force shall include representatives of the Environmental Protection Agency, the National Cancer Institute, the National Heart, Lung, and Blood Institute, the National Institute of Occupational Safety and Health, and the National Institute on Environmental Health Sciences, and shall be chaired by the Administrator (or his delegate).

(b) The Task Force shall—

(1) recommend a comprehensive research program to determine and quantify the relationship between environmental pollution and human cancer and heart and lung disease;

(2) recommend comprehensive strategies to reduce or eliminate the risks of cancer or such other diseases associated with environmental pollution;

(3) recommend research and such other measures as may be appropriate to prevent or reduce the incidence of environmentally related cancer and heart and lung diseases;

(4) coordinate research by, and stimulate cooperation between, the Environmental Protection

Agency, the Department of Health and Human Services, and such other agencies as may be appropriate to prevent environmentally related cancer and heart and lung diseases; and

(5) report to Congress, not later than one year after August 7, 1977, and annually thereafter, on the problems and progress in carrying out this section.

(Aug. 7, 1977, Pub.L. 95-95, Title IV, § 402, 91 Stat. 791, 793; Oct. 17, 1979, Pub.L. 96-88, Title V, § 509(b), 93 Stat. 695.)

Codification

Section was enacted as part of the Clean Air Act Amendments of 1977, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

§ 4362a. Task Force on Environmental Cancer and Heart and Lung Disease; membership of Director of National Center for Health Statistics and of head of Center for Disease Control

The Director of the National Center for Health Statistics and the head of the Center for Disease Control (or the successor to such entity) shall each serve as members of the Task Force on Environmental Cancer and Heart and Lung Disease established under section 4362 of this title.

(Nov. 9, 1978, Pub.L. 95-623, § 9, 92 Stat. 3455.)

Codification

Section was enacted as part of the Health Services Research, Health Statistics, and Health Care Technology Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

§ 4363. Continuing and long-term environmental research and development

The Administrator of the Environmental Protection Agency shall establish a separately identified program of continuing, long-term environmental research and development for each activity listed in section 2(a) of this Act. Unless otherwise specified by law, at least 15 per centum of funds appropriated to the Administrator for environmental research and development for each activity listed in section 2(a) of this Act shall be obligated and expended for

such long-term environmental research and development under this section.

(Dec. 22, 1980, Pub.L. 96-569, § 2(f), 94 Stat. 3337.)

References in Text

Section 2(a) of this Act, referred to in text, is section 2(a) of Pub.L. 96-569, Dec. 22, 1980, 94 Stat. 3335, which is not classified to the Code.

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1981, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

§ 4363a. Pollution control technologies demonstrations

(1) The Administrator shall continue to be responsible for conducting and shall continue to conduct full-scale demonstrations of energy-related pollution control technologies as necessary in his judgment to fulfill the provisions of the Clean Air Act as amended [42 U.S.C.A. § 7401 et seq.] the Federal Water Pollution Control Act as amended [33 U.S.C.A. § 1251 et seq.] and other pertinent pollution control statutes.

(2) Energy-related environmental protection projects authorized to be administered by the Environmental Protection Agency under this Act, shall not be transferred administratively to the Department of Energy or reduced through budget amendment. No action shall be taken through administrative or budgetary means to diminish the ability of the Environmental Protection Agency to initiate such projects.

(April 7, 1980, Pub.L. 96-229, § 2(d), 94 Stat. 325, 327.)

References in Text

This Act, referred to in par. (2), is Pub.L. 96-229, Apr. 7, 1980, 94 Stat. 325, known as the Environmental Research, Development, and Demonstration Authorization Act of 1980, which enacted sections 4363, 4363a, 4369a, and 4370 of this title.

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

§ 4364. Expenditure of funds for research and development related to regulatory program activities

(a) Coordination, etc., with research needs and priorities of program offices and Environmental Protection Agency

The Administrator of the Environmental Protection Agency shall assure that the expenditure of any funds appropriated pursuant to this Act or any other provision of law for environmental research and development related to regulatory program activities shall be coordinated with and reflect the research needs and priorities of the program offices, as well as the overall research needs and priorities of the Agency, including those defined in the five-year research plan.

(b) Program offices subject to coverage

For purposes of subsection (a) of this section, the appropriate program offices are—

(1) the Office of Air and Waste Management, for air quality activities;

(2) the Office of Water and Hazardous Materials, for water quality activities and water supply activities;

(3) the Office of Pesticides, for environmental effects of pesticides;

(4) the Office of Solid Waste, for solid waste activities;

(5) the Office of Toxic Substances, for toxic substance activities;

(6) the Office of Radiation Programs, for radiation activities; and

(7) the Office of Noise Abatement and Control, for noise activities.

(c) Report to Congress; contents

The Administrator shall submit to the President and the Congress a report concerning the most appropriate means of assuring, on a continuing basis, that the research efforts of the Agency reflect the needs and priorities of the regulatory program offices, while maintaining a high level of scientific quality. Such report shall be submitted on or before March 31, 1978.

(Nov. 8, 1977, Pub.L. 95-155, § 7, 91 Stat. 1259.)

References in Text

This Act, referred to in subsec. (a), is Pub.L. 95-155, Nov. 8, 1977, 91 Stat. 1257, as amended, known as the Environmental Research, Development, and Demonstration Authorization Act of 1978, which, to the extent classified to the Code, enacted sections 300j-3a, 4361a, 4361b, and 4363 to 4367 of this title.

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and

not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4365. Science Advisory Board

(a) **Establishment; requests for advice by Administrator of Environmental Protection Agency and Congressional committees**

The Administrator of the Environmental Protection Agency shall establish a Science Advisory Board which shall provide such scientific advice as may be requested by the Administrator, the Committee on Environment and Public Works of the United States Senate, or the Committees on Science and Technology, Energy and Commerce, or Public Works and Transportation of the House of Representatives.

(b) **Membership; Chairman; meetings; qualifications of members**

Such Board shall be composed of at least nine members, one of whom shall be designated Chairman, and shall meet at such times and places as may be designated by the Chairman of the Board in consultation with the Administrator. Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.

(c) **Review and comment on plan for research, development, and demonstration and annual revisions; transmission to Congress**

In addition to providing scientific advice when requested by the Administrator under subsection (a) of this section, the Board shall review and comment on the Administration's five-year plan for environmental research, development, and demonstration provided for by section 4361 of this title and on each annual revision thereof. Such review and comment shall be transmitted to the Congress by the Administrator, together with his comments thereon, at the time of the transmission to the Congress of the annual revision involved.

(d) **Review and report to Administrator, President, and Congress concerning authorized health effects research, etc.**

The Board shall conduct a review of and submit a report to the Administrator, the President, and the Congress, not later than October 1, 1978, concerning—

- (1) the health effects research authorized by this Act and other laws;
- (2) the procedures generally used in the conduct of such research;
- (3) the internal and external reporting of the results of such research;

(4) the review procedures for such research and results;

(5) the procedures by which such results are used in internal and external recommendations on policy, regulations, and legislation; and

(6) the findings and recommendations of the report to the House Committee on Science and Technology entitled "The Environmental Protection Agency's Research Program with primary emphasis on the Community Health and Environmental Surveillance System (CHESS): An Investigative Report".

The review shall focus special attention on the procedural safeguards required to preserve the scientific integrity of such research and to insure reporting and use of the results of such research in subsequent recommendations. The report shall include specific recommendations on the results of the review to ensure scientific integrity throughout the Agency's health effects research, review, reporting, and recommendation process.

(e) **Proposed environmental criteria document, standard, limitation, or regulation; functions respecting in conjunction with Administrator**

(1) The Administrator, at the time any proposed criteria document, standard, limitation, or regulation under the Clean Air Act [42 U.S.C.A. § 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.], the Resource Conservation and Recovery Act of 1976 [42 U.S.C.A. § 6901 et seq.], the Noise Control Act [42 U.S.C.A. § 4901 et seq.], the Toxic Substances Control Act [15 U.S.C.A. § 2601 et seq.], or the Safe Drinking Water Act [42 U.S.C.A. § 300f et seq.], or under any other authority of the Administrator, is provided to any other Federal agency for formal review and comment, shall make available to the Board such proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based.

(2) The Board may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed criteria document, standard, limitation, or regulation, together with any pertinent information in the Board's possession.

(f) **Utilization of technical and scientific capabilities of Federal agencies and national environmental laboratories for determining adequacy of scientific and technical basis of proposed criteria document, etc.**

In preparing such advice and comments, the Board shall avail itself of the technical and scientific

capabilities of any Federal agency, including the Environmental Protection Agency and any national environmental laboratories.

(g) Member committees and investigative panels; establishment; chairmanship

The Board is authorized to constitute such member committees and investigative panels as the Administrator and the Board find necessary to carry out this section. Each such member committee or investigative panel shall be chaired by a member of the Board.

(h) Appointment and compensation of secretary and other personnel; compensation of members

(1) Upon the recommendation of the Board, the Administrator shall appoint a secretary, and such other employees as deemed necessary to exercise and fulfill the Board's powers and responsibilities. The compensation of all employees appointed under this paragraph shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of Title 5.

(2) Members of the Board may be compensated at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of Title 5.

(i) Consultation and coordination with Scientific Advisory Panel

In carrying out the functions assigned by this section, the Board shall consult and coordinate its activities with the Scientific Advisory Panel established by the Administrator pursuant to section 136w(d) of Title 7.

(Nov. 8, 1977, Pub.L. 95-155, § 8, 91 Stat. 1260, H.Res. 549, Mar. 25, 1980; Dec. 22, 1980, Pub.L. 96-569, § 3, 94 Stat. 3387.)

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4366. Identification and coordination of research, development, and demonstration activities

(a) Consultation and cooperation of Administrator of Environmental Protection Agency with heads of Federal agencies; inclusion of activities in annual revisions of plan for research, etc.

The Administrator of the Environmental Protection Agency, in consultation and cooperation with

the heads of other Federal agencies, shall take such actions on a continuing basis as may be necessary or appropriate—

(1) to identify environmental research, development, and demonstration activities, within and outside the Federal Government, which may need to be more effectively coordinated in order to minimize unnecessary duplication of programs, projects, and research facilities;

(2) to determine the steps which might be taken under existing law, by him and by the heads of such other agencies, to accomplish or promote such coordination, and to provide for or encourage the taking of such steps; and

(3) to determine the additional legislative actions which would be needed to assure such coordination to the maximum extent possible.

The Administrator shall include in each annual revision of the five-year plan provided for by section 4361 of this title a full and complete report on the actions taken and determinations made during the preceding year under this subsection, and may submit interim reports on such actions and determinations at such other times as he deems appropriate.

(b) Coordination of programs by Administrator

The Administrator of the Environmental Protection Agency shall coordinate environmental research, development, and demonstration programs of such Agency with the heads of other Federal agencies in order to minimize unnecessary duplication of programs, projects, and research facilities.

(c) Joint study by Council on Environmental Quality in consultation with Office of Science and Technology Policy for coordination of activities; report to President and Congress; report by President to Congress on implementation of joint study and report

(1) In order to promote the coordination of environmental research and development activities, and to assure that the action taken and methods used (under subsection (a) of this section and otherwise) to bring about such coordination will be as effective as possible for that purpose, the Council on Environmental Quality in consultation with the Office of Science and Technology Policy shall promptly undertake and carry out a joint study of all aspects of the coordination of environmental research and development. The Chairman of the Council shall prepare a report on the results of such study, together with such recommendations (including legislative recommendations) as he deems appropriate, and shall submit such report to the President and the Congress not later than May 31, 1978.

(2) Not later than September 30, 1978, the President shall report to the Congress on steps he has taken to implement the recommendations included in the report under paragraph (1), including any recommendations he may have for legislation. (Nov. 8, 1977, Pub.L. 95-155, § 9, 91 Stat. 1261.)

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

Library References

United States ← 29, 31, 40, 41.
C.J.S. United States §§ 31, 34 et seq., 38 et seq.

§ 4367. Reporting requirements of financial interests of officers and employees of Environmental Protection Agency

(a) Covered officers and employees

Each officer or employee of the Environmental Protection Agency who—

- (1) performs any function or duty under this Act; and
- (2) has any known financial interest in any person who applies for or receives grants, contracts, or other forms of financial assistance under this Act,

shall, beginning on February 1, 1978, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) Implementation of requirements by Administrator

The Administrator shall—

- (1) act within ninety days after November 8, 1977—
 - (A) to define the term "known financial interest" for purposes of subsection (a) of this section; and
 - (B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) Exemption of positions by Administrator

In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions of a nonpolicy-making nature within the Administration and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Violations; penalties

Any officer or employee who is subject to, and knowingly violates, this section, shall be fined not more than \$2,500 or imprisoned not more than one year, or both.

(Nov. 8, 1977, Pub.L. 95-155, § 12, 91 Stat. 1263.)

References in Text

This Act, referred to in subsec. (a)(1), (2), is Pub.L. 95-155, Nov. 8, 1977, 91 Stat. 1257, as amended, known as the Environmental Research, Development, and Demonstration Authorization Act of 1978, which, to the extent classified to the Code, enacted sections 300j-3a, 4361a, 4361b, and 4363 of this title.

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

§ 4368. Grants to qualified citizens groups

(1) There is authorized to be appropriated to the Environmental Protection Agency, for grants to qualified citizens groups in States and regions, \$3,000,000.

(2) Grants under this section may be made for the purpose of supporting and encouraging participation by qualified citizens groups in determining how scientific, technological, and social trends and changes affect the future environment and quality of life of an area, and for setting goals and identifying measures for improvement.

(3) The term "qualified citizens group" shall mean a nonprofit organization of citizens having an area based focus, which is not single-issue oriented and which can demonstrate a prior record of interest and involvement in goal-setting and research concerned with improving the quality of life, including plans to identify, protect and enhance significant natural and cultural resources and the environment.

(4) A citizens group shall be eligible for assistance only if certified by the Governor in consultation with the State legislature as a bona fide organization entitled to receive Federal assistance to pursue the aims of this program. The group shall further demonstrate its capacity to employ usefully the funds for the purposes of this program and its broad-based representative nature.

(5) After an initial application for assistance under this section has been approved, the Administrator may make grants on an annual basis, on condition that the Governor recertify the group and that the applicant submits to the Administrator annually—

(A) an evaluation of the progress made during the previous year in meeting the objectives for which the grant was made;

(B) a description of any changes in the objectives of the activities; and

(C) a description of the proposed activities for the succeeding one year period.

(6) A grant made under this program shall not exceed 75 per centum of the estimated cost of the project or program for which the grant is made, and no group shall receive more than \$50,000 in any one year.

(7) No financial assistance provided under this section shall be used to support lobbying or litigation by any recipient group.

(Oct. 18, 1978, Pub.L. 95-477, § 3(d), 92 Stat. 1509.)

References in Text

This section, referred to in par. (6), means section 3 of Pub.L. 95-477, in its entirety, subsec. (d) of which enacted this section, subsecs. (a) and (b) of which were not classified to the Code, and subsec. (c) of which authorized funds for a study and report to be submitted by Oct. 18, 1980.

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

Library References

United States 82(2).
C.J.S. United States § 122.

§ 4368a. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control

(a) **Technical assistance to environmental agencies**

Notwithstanding any other provision of law relating to Federal grants and cooperative agreements,

the Administrator of the Environmental Protection Agency is authorized to make grants to, or enter into cooperative agreements with, private nonprofit organizations designated by the Secretary of Labor under title V of the Older Americans Act of 1965 [42 U.S.C.A. § 3056 et seq.] to utilize the talents of older Americans in programs authorized by other provisions of law administered by the Administrator (and consistent with such provisions of law) in providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control. Funding for such grants or agreements may be made available from such programs or through title V of the Older Americans Act of 1965 [42 U.S.C.A. § 3056 et seq.] and title IV of the Job Training Partnership Act [29 U.S.C.A. § 1671 et seq.].

(b) **Pre-award certifications**

Prior to awarding any grant or agreement under subsection (a) of this section, the applicable Federal, State, or local environmental agency shall certify to the Administrator that such grants or agreements will not—

(1) result in the displacement of individuals currently employed by the environmental agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);

(2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the environmental agency concerned; or

(3) affect existing contracts for services.

(c) **Prior appropriations Acts**

Grants or agreements awarded under this section shall be subject to prior appropriation Acts. (June 12, 1984, Pub.L. 98-313, § 2, 98 Stat. 235.)

Codification

Section was not enacted as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Short Title

Section 1 of Pub.L. 98-313, June 12, 1984, 98 Stat. 235, provided that: "This Act [enacting this section] may be cited as the 'Environmental Programs Assistance Act of 1984'."

§ 4369. Miscellaneous reports

(a) **Availability to Congressional committees**

All reports to or by the Administrator relevant to the Agency's program of research, development, and demonstration shall promptly be made available

not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4365. Science Advisory Board

(a) **Establishment; requests for advice by Administrator of Environmental Protection Agency and Congressional committees**

The Administrator of the Environmental Protection Agency shall establish a Science Advisory Board which shall provide such scientific advice as may be requested by the Administrator, the Committee on Environment and Public Works of the United States Senate, or the Committees on Science and Technology, Energy and Commerce, or Public Works and Transportation of the House of Representatives.

(b) **Membership; Chairman; meetings; qualifications of members**

Such Board shall be composed of at least nine members, one of whom shall be designated Chairman, and shall meet at such times and places as may be designated by the Chairman of the Board in consultation with the Administrator. Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.

(c) **Review and comment on plan for research, development, and demonstration and annual revisions; transmission to Congress**

In addition to providing scientific advice when requested by the Administrator under subsection (a) of this section, the Board shall review and comment on the Administration's five-year plan for environmental research, development, and demonstration provided for by section 4361 of this title and on each annual revision thereof. Such review and comment shall be transmitted to the Congress by the Administrator, together with his comments thereon, at the time of the transmission to the Congress of the annual revision involved.

(d) **Review and report to Administrator, President, and Congress concerning authorized health effects research, etc.**

The Board shall conduct a review of and submit a report to the Administrator, the President, and the Congress, not later than October 1, 1978, concerning—

(1) the health effects research authorized by this Act and other laws;

(2) the procedures generally used in the conduct of such research;

(3) the internal and external reporting of the results of such research;

(4) the review procedures for such research and results;

(5) the procedures by which such results are used in internal and external recommendations on policy, regulations, and legislation; and

(6) the findings and recommendations of the report to the House Committee on Science and Technology entitled "The Environmental Protection Agency's Research Program with primary emphasis on the Community Health and Environmental Surveillance System (CHES): An Investigative Report".

The review shall focus special attention on the procedural safeguards required to preserve the scientific integrity of such research and to insure reporting and use of the results of such research in subsequent recommendations. The report shall include specific recommendations on the results of the review to ensure scientific integrity throughout the Agency's health effects research, review, reporting, and recommendation process.

(e) **Proposed environmental criteria document, standard, limitation, or regulation; functions respecting in conjunction with Administrator**

(1) The Administrator, at the time any proposed criteria document, standard, limitation, or regulation under the Clean Air Act [42 U.S.C.A. § 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.], the Resource Conservation and Recovery Act of 1976 [42 U.S.C.A. § 6901 et seq.], the Noise Control Act [42 U.S.C.A. § 4901 et seq.], the Toxic Substances Control Act [15 U.S.C.A. § 2601 et seq.], or the Safe Drinking Water Act [42 U.S.C.A. § 300f et seq.], or under any other authority of the Administrator, is provided to any other Federal agency for formal review and comment, shall make available to the Board such proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based.

(2) The Board may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed criteria document, standard, limitation, or regulation, together with any pertinent information in the Board's possession.

(f) **Utilization of technical and scientific capabilities of Federal agencies and national environmental laboratories for determining adequacy of scientific and technical basis of proposed criteria document, etc.**

In preparing such advice and comments, the Board shall avail itself of the technical and scientific

capabilities of any Federal agency, including the Environmental Protection Agency and any national environmental laboratories.

(g) Member committees and investigative panels; establishment; chairmanship

The Board is authorized to constitute such member committees and investigative panels as the Administrator and the Board find necessary to carry out this section. Each such member committee or investigative panel shall be chaired by a member of the Board.

(h) Appointment and compensation of secretary and other personnel; compensation of members

(1) Upon the recommendation of the Board, the Administrator shall appoint a secretary, and such other employees as deemed necessary to exercise and fulfill the Board's powers and responsibilities. The compensation of all employees appointed under this paragraph shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of Title 5.

(2) Members of the Board may be compensated at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of Title 5.

(i) Consultation and coordination with Scientific Advisory Panel

In carrying out the functions assigned by this section, the Board shall consult and coordinate its activities with the Scientific Advisory Panel established by the Administrator pursuant to section 136w(d) of Title 7.

(Nov. 8, 1977, Pub.L. 95-155, § 8, 91 Stat. 1260, H.Res. 649, Mar. 25, 1980; Dec. 22, 1980, Pub.L. 96-569, § 3, 94 Stat. 3387.)

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4366. Identification and coordination of research, development, and demonstration activities

(a) Consultation and cooperation of Administrator of Environmental Protection Agency with heads of Federal agencies; inclusion of activities in annual revisions of plan for research, etc.

The Administrator of the Environmental Protection Agency, in consultation and cooperation with

the heads of other Federal agencies, shall take such actions on a continuing basis as may be necessary or appropriate—

(1) to identify environmental research, development, and demonstration activities, within and outside the Federal Government, which may need to be more effectively coordinated in order to minimize unnecessary duplication of programs, projects, and research facilities;

(2) to determine the steps which might be taken under existing law, by him and by the heads of such other agencies, to accomplish or promote such coordination, and to provide for or encourage the taking of such steps; and

(3) to determine the additional legislative actions which would be needed to assure such coordination to the maximum extent possible.

The Administrator shall include in each annual revision of the five-year plan provided for by section 4361 of this title a full and complete report on the actions taken and determinations made during the preceding year under this subsection, and may submit interim reports on such actions and determinations at such other times as he deems appropriate.

(b) Coordination of programs by Administrator

The Administrator of the Environmental Protection Agency shall coordinate environmental research, development, and demonstration programs of such Agency with the heads of other Federal agencies in order to minimize unnecessary duplication of programs, projects, and research facilities.

(c) Joint study by Council on Environmental Quality in consultation with Office of Science and Technology Policy for coordination of activities; report to President and Congress; report by President to Congress on implementation of joint study and report

(1) In order to promote the coordination of environmental research and development activities, and to assure that the action taken and methods used (under subsection (a) of this section and otherwise) to bring about such coordination will be as effective as possible for that purpose, the Council on Environmental Quality in consultation with the Office of Science and Technology Policy shall promptly undertake and carry out a joint study of all aspects of the coordination of environmental research and development. The Chairman of the Council shall prepare a report on the results of such study, together with such recommendations (including legislative recommendations) as he deems appropriate, and shall submit such report to the President and the Congress not later than May 31, 1978.

(2) Not later than September 30, 1978, the President shall report to the Congress on steps he has taken to implement the recommendations included in the report under paragraph (1), including any recommendations he may have for legislation. (Nov. 8, 1977, Pub.L. 95-155, § 9, 91 Stat. 1261.)

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

Library References

United States ← 29, 31, 40, 41.
C.J.S. United States §§ 31, 34 et seq., 38 et seq.

§ 4367. Reporting requirements of financial interests of officers and employees of Environmental Protection Agency

(a) Covered officers and employees

Each officer or employee of the Environmental Protection Agency who—

- (1) performs any function or duty under this Act; and
- (2) has any known financial interest in any person who applies for or receives grants, contracts, or other forms of financial assistance under this Act,

shall, beginning on February 1, 1978, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) Implementation of requirements by Administrator

The Administrator shall—

- (1) act within ninety days after November 8, 1977—
 - (A) to define the term "known financial interest" for purposes of subsection (a) of this section; and
 - (B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) Exemption of positions by Administrator

In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions of a nonpolicymaking nature within the Administration and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Violations; penalties

Any officer or employee who is subject to, and knowingly violates, this section, shall be fined not more than \$2,500 or imprisoned not more than one year, or both. (Nov. 8, 1977, Pub.L. 95-155, § 12, 91 Stat. 1263.)

References in Text

This Act, referred to in subsec. (a)(1), (2), is Pub.L. 95-155, Nov. 8, 1977, 91 Stat. 1257, as amended, known as the Environmental Research, Development, and Demonstration Authorization Act of 1978, which, to the extent classified to the Code, enacted sections 300j-3a, 4361a, 4361b, and 4363 to 4367 of this title.

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

§ 4368. Grants to qualified citizens groups

(1) There is authorized to be appropriated to the Environmental Protection Agency, for grants to qualified citizens groups in States and regions, \$3,000,000.

(2) Grants under this section may be made for the purpose of supporting and encouraging participation by qualified citizens groups in determining how scientific, technological, and social trends and changes affect the future environment and quality of life of an area, and for setting goals and identifying measures for improvement.

(3) The term "qualified citizens group" shall mean a nonprofit organization of citizens having an area based focus, which is not single-issue oriented and which can demonstrate a prior record of interest and involvement in goal-setting and research concerned with improving the quality of life, including plans to identify, protect and enhance significant natural and cultural resources and the environment.

(4) A citizens group shall be eligible for assistance only if certified by the Governor in consultation with the State legislature as a bona fide organization entitled to receive Federal assistance to pursue the aims of this program. The group shall further demonstrate its capacity to employ usefully the funds for the purposes of this program and its broad-based representative nature.

(5) After an initial application for assistance under this section has been approved, the Administrator may make grants on an annual basis, on condition that the Governor recertify the group and that the applicant submits to the Administrator annually—

(A) an evaluation of the progress made during the previous year in meeting the objectives for which the grant was made;

(B) a description of any changes in the objectives of the activities; and

(C) a description of the proposed activities for the succeeding one year period.

(6) A grant made under this program shall not exceed 75 per centum of the estimated cost of the project or program for which the grant is made, and no group shall receive more than \$50,000 in any one year.

(7) No financial assistance provided under this section shall be used to support lobbying or litigation by any recipient group.

(Oct. 18, 1978, Pub.L. 95-477, § 3(d), 92 Stat. 1509.)

References in Text

This section, referred to in par. (6), means section 3 of Pub.L. 95-477, in its entirety, subsec. (d) of which enacted this section, subsec. (a) and (b) of which were not classified to the Code, and subsec. (c) of which authorized funds for a study and report to be submitted by Oct. 18, 1980.

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d § 1782.

Library References

United States 82(2).
C.J.S. United States § 122.

§ 4368a. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control

(a) **Technical assistance to environmental agencies**

Notwithstanding any other provision of law relating to Federal grants and cooperative agreements,

the Administrator of the Environmental Protection Agency is authorized to make grants to, or enter into cooperative agreements with, private nonprofit organizations designated by the Secretary of Labor under title V of the Older Americans Act of 1965 [42 U.S.C.A. § 3056 et seq.] to utilize the talents of older Americans in programs authorized by other provisions of law administered by the Administrator (and consistent with such provisions of law) in providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control. Funding for such grants or agreements may be made available from such programs or through title V of the Older Americans Act of 1965 [42 U.S.C.A. § 3056 et seq.] and title IV of the Job Training Partnership Act [29 U.S.C.A. § 1671 et seq.].

(b) **Pre-award certifications**

Prior to awarding any grant or agreement under subsection (a) of this section, the applicable Federal, State, or local environmental agency shall certify to the Administrator that such grants or agreements will not—

(1) result in the displacement of individuals currently employed by the environmental agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);

(2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the environmental agency concerned; or

(3) affect existing contracts for services.

(c) **Prior appropriations Acts**

Grants or agreements awarded under this section shall be subject to prior appropriation Acts. (June 12, 1984, Pub.L. 98-313, § 2, 98 Stat. 235.)

Codification

Section was not enacted as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Short Title

Section 1 of Pub.L. 98-313, June 12, 1984, 98 Stat. 235, provided that: "This Act [enacting this section] may be cited as the 'Environmental Programs Assistance Act of 1984'."

§ 4369. Miscellaneous reports

(a) **Availability to Congressional committees**

All reports to or by the Administrator relevant to the Agency's program of research, development, and demonstration shall promptly be made available

to the Committee on Science and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate, unless otherwise prohibited by law.

(b) Transmittal of jurisdictional information

The Administrator shall keep the Committee on Science and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate fully and currently informed with respect to matters falling within or related to the jurisdiction of the committees.

(c) Comment by Government agencies and the public

The reports provided for in section 5910 of this title shall be made available to the public for comment, and to the heads of affected agencies for comment and, in the case of recommendations for action, for response.

(d) Transmittal of research information to the Department of Energy

For the purpose of assisting the Department of Energy in planning and assigning priorities in research development and demonstration activities related to environmental control technologies, the Administrator shall actively make available to the Department all information on research activities and results of research programs of the Environmental Protection Agency.

(Oct. 18, 1978, Pub.L. 95-477, § 5, 92 Stat. 1510.)

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4369a. Reports on environmental research and development activities of the Agency

(a) Reports to keep Congressional committees fully and currently informed

The Administrator shall keep the appropriate committees of the House and the Senate fully and currently informed about all aspects of the environmental research and development activities of the Environmental Protection Agency.

(b) Annual reports relating requested funds to activities to be carried out with those funds

Each year, at the time of the submission of the President's annual budget request, the Administrator shall make available to the appropriate committees of Congress sufficient copies of a report fully describing funds requested and the environmental

research and development activities to be carried out with these funds.

(April 7, 1980, Pub.L. 96-229, § 4, 94 Stat. 328.)

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4370. Reimbursement for use of facilities

(a) Authority to allow outside groups or individuals to use research and test facilities; reimbursement

The Administrator is authorized to allow appropriate use of special Environmental Protection Agency research and test facilities by outside groups or individuals and to receive reimbursement or fees for costs incurred thereby when he finds this to be in the public interest. Such reimbursement or fees are to be used by the Agency to defray the costs of use by outside groups or individuals.

(b) Rules and regulations

The Administrator may promulgate regulations to cover such use of Agency facilities in accordance with generally accepted accounting, safety, and laboratory practices.

(c) Waiver of reimbursement by Administrator

When he finds it is in the public interest the Administrator may waive reimbursement or fees for outside use of Agency facilities by nonprofit private or public entities.

(April 7, 1980, Pub.L. 96-229, § 5, 94 Stat. 328.)

Codification

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

Federal Practice and Procedure

Environmental class actions, see Wright, Miller & Kane: Civil 2d 1782.

§ 4370a. Assistant Administrators of Environmental Protection Agency; appointment; duties

(a) The President, by and with the advice and consent of the Senate, may appoint three Assistant Administrators of the Environmental Protection Agency in addition to—

(1) the five Assistant Administrators provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970;

(2) the Assistant Administrator provided by section 2625(g) of Title 15; and

(3) the Assistant Administrator provided by section 6911a of this title.

(b) Each Assistant Administrator appointed under subsection (a) of this section shall perform such duties as the Administrator of the Environmental Protection Agency may prescribe.

(Aug. 23, 1983, Pub.L. 98-80, § 1, 97 Stat. 485.)

Codification

Section was not enacted as part of the National Environmental Policy Act of 1969 which comprises this chapter.

APPENDIX B
CODE OF FEDERAL REGULATIONS
TITLE 40—PROTECTION OF ENVIRONMENT

CHAPTER V
COUNCIL ON ENVIRONMENTAL QUALITY

Table of Contents

Part

- 1500. Purpose, policy, and mandate.
 - 1501. NEPA and Agency planning.
 - 1502. Environmental impact statement.
 - 1503. Commenting.
 - 1504. Predecision referrals to the Council of proposed Federal actions determined to be environmentally unsatisfactory.
 - 1505. NEPA and Agency decisionmaking.
 - 1506. Other requirements of NEPA.
 - 1507. Agency compliance.
 - 1508. Terminology and index.
 - 1515. Freedom of Information Act procedures.
 - 1516. Privacy Act implementation.
 - 1517. Public meeting procedures of the Council on Environmental Quality.
-

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.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

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

§ 1500.1 Purpose

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

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

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

§ 1500.2 Policy

Federal agencies shall to the fullest extent possible:

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

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

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

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

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

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

§ 1500.3 Mandate

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

§ 1500.4 Reducing paperwork

Agencies shall reduce excessive paperwork by:

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

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

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

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

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

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

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

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

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

(j) Incorporating by reference (§ 1502.21).

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

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

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

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

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

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

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

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

§ 1500.5 Reducing delay

Agencies shall reduce delay by:

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

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

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

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

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

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

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

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

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

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

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

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

§ 1500.6 Agency authority

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

Part 1501

NEPA and Agency Planning

Sec.

- 1501.1 Purpose.
- 1501.2 Apply NEPA early in the process.
- 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.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

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

§ 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 (§ 1507.7), 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.

**Sequence of agency's involvement.**

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

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

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

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

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

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

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

§ 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.

Sec.

- 1502.10 Recommended format.
- 1502.11 Cover sheet.
- 1502.12 Summary.
- 1502.13 Purpose and need.
- 1502.14 Alternatives including the proposed action.
- 1502.15 Affected environment.
- 1502.16 Environmental consequences.
- 1502.17 List of preparers.
- 1502.18 Appendix.
- 1502.19 Circulation of the environmental impact statement.
- 1502.20 Tiering.
- 1502.21 Incorporation by reference.
- 1502.22 Incomplete or unavailable information.
- 1502.23 Cost-benefit analysis.
- 1502.24 Methodology and scientific accuracy.
- 1502.25 Environmental review and consultation requirements.

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

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

§ 1502.1 Purpose

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

§ 1502.2 Implementation

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

- (a) Environmental impact statements shall be analytic rather than encyclopedic.
- (b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues.

As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

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

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

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

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

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

§ 1502.3 Statutory requirements for statements

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

On proposals (§ 1508.23).

For legislation and (§ 1508.17).

Other major Federal actions (§ 1508.18).

Significantly (§ 1508.27).

Affecting (§§ 1508.3, 1508.8).

The quality of the human environment (§ 1508.14).

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

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

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

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

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

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

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

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

§ 1502.5 Timing

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

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

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

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

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

§ 1502.6 Interdisciplinary preparation

Environmental impact statements shall be prepared using an interdisciplinary 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 (sections 102(2)(C)(iii) and 102(2)(E) of the Act).
- (f) Affected environment.
- (g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).
- (h) List of preparers.
- (i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.
- (j) Index.
- (k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in §§ 1502.11 through 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 sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

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

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

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

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

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

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

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

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

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

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

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the



agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement: (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

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

[51 FR 15625, Apr. 25, 1986]

§ 1502.23 Cost-benefit analysis

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between the 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. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders.

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

Part 1503

Commenting

Sec.

- 1503.1 Inviting comments.
- 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.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

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

§ 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.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

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

§ 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 state-

ment does not contain adequate information to permit an assessment of the matter's environmental acceptability.

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

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

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

(c) The referral shall consist of:

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

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

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

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

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

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

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

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

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

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

(2) Be supported by evidence.

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

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

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

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

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

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

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

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.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

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

§ 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.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

33

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

§ 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 lead-time equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

§ 1506.2 Elimination of duplication with State and local procedures

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

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

- (1) Joint planning processes.

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

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

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

§ 1506.3 Adoption

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

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

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

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

§ 1506.4 Combining documents

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

§ 1506.5 Agency responsibility

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

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

(c) *Environmental impact statements.* Except as provided in §§ 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 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 memo-

Memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

§ 1506.7 Further guidance

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

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

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

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

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

§ 1506.8 Proposals for legislation

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

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

(1) There need not be a scoping process.

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

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

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

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

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

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

§ 1506.9 Filing requirements

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, D.C. 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and § 1506.10.

§ 1506.10 Timing of agency action

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

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

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement.

§ 1506.12

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

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

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see § 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council. [43 FR 56000, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

§ 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 section

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.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

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

§ 1507.1 Compliance

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

§ 1507.2 Agency capability to comply

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

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmen-

tal design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

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

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

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

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

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

§ 1507.3 Agency procedures

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

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

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

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

(i) Which normally do require environmental impact statements.

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

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

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

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

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

Part 1508

Terminology and Index

| Sec. | |
|--------|------------------------|
| 1508.1 | Terminology. |
| 1508.2 | Act. |
| 1508.3 | Affecting. |
| 1508.4 | Categorical exclusion. |
| 1508.5 | Cooperating agency. |
| 1508.6 | Council. |
| 1508.7 | Cumulative impact. |

Sec.

- 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.*), sec. 309 of the Clear Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

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

§ 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 section 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 section 102(2)(C) of the Act.

§ 1508.12 Federal agency

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

§ 1508.13 Finding of no significant impact

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

§ 1508.14 Human environment

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (§ 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

§ 1508.15 Jurisdiction by law

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

§ 1508.16 Lead agency

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

§ 1508.17 Legislation

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

§ 1508.18 Major Federal action

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

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

agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

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

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

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.

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

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

§ 1508.19 Matter

"Matter" includes for purposes of Part 1504:

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

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

§ 1508.20 Mitigation

"Mitigation" includes:

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

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

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

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

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

§ 1508.21 NEPA process

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

§ 1508.22 Notice of intent

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

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

§ 1508.23 Proposal

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

§ 1508.24 Referring agency

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

§ 1508.25 Scope

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

- (a) Actions (other than unconnected single actions) which may be:
 - (1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:
 - (i) Automatically trigger other actions which may require environmental impact statements.

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

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

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

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

(b) Alternatives, which include: (1) No action alternative.

(2) Other reasonable courses of actions.

(3) Mitigation measures (not in the proposed action).

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

§ 1508.26 Special expertise

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

§ 1508.27 Significantly

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

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

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

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

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

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

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

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

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

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

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

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

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

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

§ 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.

Part 1515

Freedom of Information Act Procedures

PURPOSES

Sec.

1515.1 What are these procedures?

ORGANIZATION OF CEQ

1515.2 What is the Council on Environmental Quality (CEQ)?

1515.3 How is CEQ organized?

PROCEDURES FOR REQUESTING RECORDS

1515.5 How to make a Freedom of Information Act request.

AVAILABILITY OF INFORMATION

1515.10 What information is available, and how can it be obtained?

COSTS

1515.15 What fees may be charged, and how should they be paid?

AUTHORITY: 5 U.S.C. 552, as amended by Pub.L. 93-502.

SOURCE: 42 FR 65158, Dec. 30, 1977, unless otherwise noted.

PURPOSES

§ 1515.1 What are these procedures?

The Freedom of Information Act (5 U.S.C. 552, commonly known as FOIA) is a law which creates a procedure for any person to request official documents and other records from United States Government agencies. The law requires every Federal agency to make available to the public the material requested, unless the material falls under one of the limited exceptions stated in section 552(b)(5) of the Act, and the agency has good reason to refuse the request. These procedures explain how the Council on Environmental Quality—one of several offices in the Executive Office of the President—will carry out the Freedom of Infor-



mation Act. They are written from the standpoint of a member of the public requesting material from the Council.

ORGANIZATION OF CEQ

§ 1515.2 What is the Council on Environmental Quality (CEQ)?

(a) The Council on Environmental Quality ("CEQ" or "the Council") was created by the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347). The Council's authority is derived from that Act, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371-4374), Reorganization Plan No. 1 of 1977 (July 15, 1977), and Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

(b) The Council's primary responsibilities include the following:

(1) To review and evaluate the programs and activities of the Federal Government to determine how they are contributing to the attainment of the national environmental policy;

(2) To assist Federal agencies and departments in appraising the effectiveness of their existing and proposed facilities, programs, policies, and activities affecting environmental quality;

(3) To develop and recommend to the President policies to improve environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(4) To advise and assist the President in achieving international cooperation for dealing with environmental problems;

(5) To assist in coordinating among Federal agencies and departments those programs which affect, protect, and improve environmental quality, including Federal compliance with the environmental impact statement process, and to seek resolution of significant environmental issues;

(6) To foster research relating to environmental quality and the impacts of new or changing technologies; and

(7) To analyze long and short term environmental problems and trends and assist in preparing an annual Environmental Quality Report to the President and the Congress.

(c) The Council maintains a "Quarterly Index" which lists its current policies and procedures, as required by section 552(a)(2) of the Freedom of Information Act. This index is updated and published in the FEDERAL REGISTER quarterly, starting in 1976. The Quarterly Index—and the specific items listed in the index—are available on request from the Freedom of Information Officer. You may also inspect or copy any of these materials at the Council's office during the hours stated below in § 1515.3(f).

§ 1515.3 How is CEQ organized?

(a) The Council is made up of three members appointed by the President and subject to approval by the Senate. One member is designated as chairman by the President. All three serve in a full-time capacity.

(b) The National Environmental Policy Act and the Environmental Quality Improvement Act give the Council the authority to hire any officers and staff that may be necessary to carry out responsibilities and functions specified in these two Acts. Also, the use of consultants and experts is permitted.

(c) In addition to the three members, the Council has program and legal staff.

(d) The Council has no field or regional offices.

(e) The Council has a public affairs office which is responsible for providing information to the general public, the Congress, and the press. If you are interested in general information about the Council or have questions about the Council's recent activities or policy positions, you should call this office at (202) 633-7005 or write to the "Public Affairs Office" of the Council at the address given in the next paragraph.

NOTE: The CEQ public affairs office can respond fully and promptly to most questions you may have; the Council suggests that the Freedom of Information Act procedures be used when you are seeking a specific document and have had difficulty obtaining it.

(f) The Council is located at 722 Jackson Place NW., Washington, D.C. 20006. Office hours are 9-5:30, Monday through Friday, except legal holidays. If you wish to meet with any of the staff, please write or phone ahead for an appointment. The main number is 202-633-7027.

PROCEDURES FOR REQUESTING RECORDS

§ 1515.5 How to make a Freedom of Information Act request

(a) The Chairman has appointed a Freedom of Information Officer who will be responsible for overseeing the Council's administration of the Freedom of Information Act and for receiving, routing, and overseeing the processing of all Freedom of Information requests. The Chairman has also appointed an Appeals Officer who is responsible for processing any appeals.

(b) *Requesting information from the Council.* (1) When you make a Freedom of Information Act request to the Council, the Freedom of Information Officer shall decide how to respond to—or "make an initial determination on"—your request within 10 working days from the date the Officer receives the request. The Freedom of Information Officer will then provide you with written notification of the determination.

(2) You can make a Freedom of Information Act request by writing a letter which states that you are making a Freedom of Information Act request. Address your letter to:

Freedom of Information Officer, Council on Environmental Quality, Executive Office of the President, 722 Jackson Place NW., Washington, D.C. 20006.

(3) In your request you should identify the desired record or reasonably describe it. The request should be as specific as possible so that the item can be readily found. You should not make blanket requests, such as requests for "the entire file of" or "all materials relating to" a specified subject.

(4) The Council will make a reasonable effort to assist you in defining the request to eliminate extraneous and unwanted materials and to keep search and copying fees to a minimum. If you have budgetary constraints and anticipate that your request might be costly you may wish to indicate the maximum fee you are prepared to pay for acquiring the information. (See § 1515.15(c) also.)

(5) The 10 day period for making a determination on a request will begin when the records requested are specified or reasonably identifiable.

(6) Despite its name, the Freedom of Information Act does not require a government agency to create or research information that you would like or that you may think the agency should have. The Act only requires that existing records be made available to the public.

(c) *Council's response to a request.* (1) Upon receipt of any request under the Act, the Freedom of Information Officer shall direct the request to the appropriate staff member at the Council, who will review the request and advise the Freedom of Information Officer as soon as possible.

(2) If it is appropriate to grant the request, the staff member will immediately collect the requested materials in order to accompany, wherever possible, the Freedom of Information Officer's letter notifying you of the decision.

(3) If your request is denied, in part or in full, the letter notifying you of the decision will be signed by the Freedom of Information Officer, and will include the names of any other individuals who participated in the decision. The letter will include the reasons for any denial and the procedure for filing an appeal.

(d) *Appeals.* (1) If you are not satisfied with the response you have received from the Freedom of Information Officer, you may ask the Council to reconsider the decision. You should explain what material you still wish to receive, and why you believe the Council should disclose this to you. This is called an "appeal." You must make your appeal within 45 days of the date on the letter which denied your request.

(2) You can make an appeal by writing a letter to:

FOIA Appeals Officer, Council on Environmental Quality, Executive Office of the President, 722 Jackson Place NW., Washington, D.C. 20006.

(3) Your letter should specify the records being requested and ask the Appeals Officer to review the determination made by the Freedom of Information Officer. The letter should explain the basis for the appeal.

(4) The Appeals Officer shall decide the appeal—or “make a final determination”—within 20 working days from the date the Officer receives the appeal. The Appeals Officer (or designee) will send you a letter informing you of the decision as soon as it is made. If the Appeals Officer denies your request, in part or in whole, the letter will also notify you of the provisions for judicial review and the names of any persons who participated in the final determination of the appeal.

(e) *Extending the Council's time to respond.* In unusual circumstances, the time limits for response to your request (paragraphs (b) and (d) of this section) may be extended by the Council for not more than 10 working days. Extensions may be granted by the Freedom of Information Officer in the case of initial requests and by the Appeals Officer in the case of any appeals. The extension period may be split between the initial request and the appeal but may not exceed 10 working days overall. Any extension will be made or confirmed to you in writing and will set forth the reasons for the extension and the date that the final determination is expected. The term “unusual circumstances” means:

(i) The need to search for and collect the requested records from * * * establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(5 U.S.C. 552(a)(6)(B))

AVAILABILITY OF INFORMATION

§ 1515.10 What information is available, and how can it be obtained?

(a) When a request for information has been approved, in whole or in part, you may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the Freedom of Information Officer at the address or phone number given in § 1515.3(f). You may be charged reasonable fees for copying materials, as explained by § 1515.15. The Council on Environmental Quality will permit copying of any available material but will reserve the right to limit the number of copies made with the Council's copying facilities.

(b) In general, all records of the Council are available to the public, as required by the Freedom of Information Act. The Council claims the

right, where it is applicable, to withhold material under the provisions specified in the Freedom of Information Act as amended (5 U.S.C. 552(b)).

(c) The legislative history of the establishment of the Council states that the Congress intended the Council to be a confidential advisor to the President on matters of environmental policy. Therefore, members of the public should presume that communications between the Council and the President (and their staffs) are confidential and ordinarily will not be released; they will usually fall, at a minimum, within Exemption 5 of the Act. The Freedom of Information Officer shall review each request, however, to determine whether the record is exclusively factual or may have factual portions which may be reasonably segregated and made available to the requester. Furthermore, on the recommendation of the FOIA Officer or Appeals Officer, the Council will consider the release of an entire record, even if it comes within an exemption or contains policy advice, if its disclosure would not impair Executive policy-making processes or the Council's participation in decisionmaking.

COSTS

§ 1515.15 What fees may be charged, and how should they be paid?

(a) Following is the schedule of fees you may be charged for the search and reproduction of information available under the Freedom of Information Act, 5 U.S.C. 552, as amended.

(1) *Search for records.* Five dollars per hour when the search is conducted by a clerical employee. Eight dollars per hour when the search is conducted by a professional employee. There will be no charge for searches of less than one hour.

(2) *Duplication of records.* Records will be duplicated at a rate of \$0.10 per page for copying of 10 pages or more. There will be no charge for duplicating 9 pages or less.

(3) *Other.* When no specific fee has been established for a service, or the request for a service does not fall under categories (1) and (2), the Administrative Officer is authorized to establish an appropriate fee based on "direct costs" as provided in the Freedom of Information Act. Examples of services covered by this provision include searches involving computer time or special travel, transportation, or communication costs.

(b) If the Council anticipates that the fees chargeable under this section will amount to more than \$25, or the maximum amount specified in your request, you shall be promptly notified of the amount of the anticipated fee or the closest estimate of the amount. In such instances you will be advised of your option to consult with Council personnel in order to reformulate the request in a manner which will reduce the fees, yet still meet your needs. A reformulated request shall be considered a new request, thus beginning a new 10 working day period for processing.

(c) Fees must be paid in full prior to issuance of the requested copies. In the event you owe money for previous request, copies of

records will not be provided for any subsequent request until the debt has been paid in full.

(d) Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts have been made, or if the FOI Officer determines that a record which has been requested is exempt under the Freedom of Information Act as amended and is to be withheld.

(e) Payment shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Checks shall be made payable to General Services Administration. You should mail or deliver any payment for services to the Administrative Office, Council on Environmental Quality, 722 Jackson Place NW., Washington, D.C. 20006.

(f) A receipt for fees paid will be given upon request. Refunds of fees paid for services actually rendered will not be made.

(g) The Council may waive all or part of any fee provided for in this section when the Freedom of Information Officer (or designee) deems it to be in either the Council's interest or in the general public's interest.

Part 1516

Privacy Act Implementation

Sec.

- 1516.1 Purpose and scope.
- 1516.2 Definitions.
- 1516.3 Procedures for requests pertaining to individual records in a record system.
- 1516.4 Times, places, and requirements for the identification of the individual making a request.
- 1516.5 Disclosure of requested information to the individual.
- 1516.6 Request for correction or amendment to the record.
- 1516.7 Agency review of request for correction or amendment of the record.
- 1516.8 Appeal of an initial adverse agency determination on correction or amendment of the record.
- 1516.9 Disclosure of a record to a person other than the individual to whom the record pertains.
- 1516.10 Fees.

AUTHORITY: 5 U.S.C. 552a; Pub.L. 93-579.

SOURCE: 42 FR 92537, June 27, 1977, unless otherwise noted.

§ 1516.1 Purpose and scope

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the Council on Environmental Quality (hereafter known as the Council) maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 1516.2 Definitions

For the purpose of these regulations:

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" means maintain, collect, use or disseminate;

(c) The term "record" means any item or collection or grouping of information about an individual that is maintained by the Council (including, but not limited to, his or her employment history, payroll information, and financial transactions), and that contains his or her name, or an identifying number, symbol, or other identifying particular assigned to the individual such as a social security number;

(d) The term "system of records" means a group of any records under the control of the Council from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term "routine use" means with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 1516.3 Procedures for requests pertaining to individual records in a record system

An individual shall submit a written request to the Administrative Officer of the Council to determine if a system of records named by the individual contains a record pertaining to the individual. The individual shall submit a written request to the Administrative Officer of the Council which states the individual's desire to review his or her record. The Administrative Officer of the Council is available to answer questions regarding these regulations and to provide assistance in locating records in the Council's system of records.

[42 FR 32537, June 27, 1977; 42 FR 35960, July 13, 1977]

§ 1516.4 Times, places, and requirements for the identification of the individual making a request

An individual making a request to the Administrative Officer of the Council pursuant to § 1516.3 shall present the request at the Council's office, 722 Jackson Place, N.W., Washington, D.C. 20006, on any business day between the hours of 9 a.m. and 5 p.m. and should be prepared to identify himself by signature. Requests will also be accepted in writing if mailed to the Council's offices and signed by the requester.

§ 1516.5 Disclosure of requested information to the individual

Upon verification of identity, the Council shall disclose to the individual the information contained in the record which pertains to that individual.

(a) The individual may be accompanied for this purpose by a person of his choosing.

(b) Upon request of the individual to whom the record pertains, all information in the accounting of disclosures will be made available. [42 FR 35960, July 13, 1977]

§ 1516.6 Request for correction or amendment to the record

The individual may submit a request to the Administrative Officer of the Council which states the individual's desire to correct or to amend his or her record. This request must be made in accordance with the procedures of § 1516.4 and shall describe in detail the change which is requested.

[42 FR 32537, June 27, 1977. Redesignated at 42 FR 35960, July 13, 1977]

§ 1516.7 Agency review of request for correction or amendment of the record

Within ten working days of the receipt of a request to correct or to amend a record, the Administrative Officer of the Council will acknowledge in writing such receipt and promptly either:

(a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of his or her refusal to correct or amend the record in accordance with the request, the reason for the refusal, and the procedure established by the Council for the individual to request a review of that refusal.

§ 1516.8 Appeal of an initial adverse agency determination on correction or amendment of the record

An individual may appeal refusal by the Administrative Officer of the Council to correct or to amend his or her record by submitting a request for a review of such refusal to the General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006. The General Counsel shall, not later than thirty working days from the date on which the individual requests such a review, complete such review and make a final determination unless, for good cause shown, the General Counsel extends such thirty day period. If, after his or her review, the General Counsel also refuses to correct or to amend the record in accordance with the request, the individual may file with the Council a concise statement setting forth the reasons for his or her

disagreement with the General Counsel's decision and may seek judicial relief under 5 U.S.C. 552a(g)(1)(A).

§ 1516.9 Disclosure of a record to a person other than the individual to whom the record pertains

The Council will not disclose a record to any individual other than to the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, unless the disclosure either has been listed as a "routine use" in the Council's notices of its systems of records or falls within the special conditions of disclosure set forth in section 3 of the Privacy Act of 1974.

§ 1516.10 Fees

If an individual requests copies of his or her record, he or she shall be charged ten cents per page, excluding the cost of any search for the record, in advance of receipt of the pages.

Part 1517

Public Meeting Procedures of the Council on Environmental Quality

Sec.

- 1517.1 Policy and scope.
- 1517.2 Definitions.
- 1517.3 Open meeting requirement.
- 1517.4 Exceptions.
- 1517.5 Procedure for closing meetings.
- 1517.6 Notice of meetings.
- 1517.7 Records of closed meetings.

AUTHORITY: 5 U.S.C. 552b(g); Pub.L. 94-409.

SOURCE: 42 FR 20818, Apr. 22, 1977, unless otherwise noted.

§ 1517.1 Policy and scope

Consistent with the policy that the public is entitled to the fullest information regarding the decisionmaking processes of the Federal Government, it is the purpose of this part to open the meetings of the Council on Environmental Quality to public observation while protecting the rights of individuals and the ability of the Council to carry out its primary responsibility of providing advice to the President. Actions taken by the Chairman acting as Director of the Office of Environmental Quality and Council actions involving advice to the President when such advice is not formulated collegially during a meeting are outside the scope of this part. In addition to conducting the meetings required by this part, it is the Council's policy to conduct, open to public observation, periodic meetings involving Council discussions of Council business, including where appropriate, matters outside the scope of this part. This

part does not affect the procedures set forth in Part 1515 pursuant to which records of the Council are made available to the public for inspection and copying, except that the exemptions set forth in § 1517.4(a) shall govern in the case of any request made to copy or inspect the transcripts, recording or minutes described in § 1517.7. [47 FR 6277, Feb. 11, 1982]

§ 1517.2 Definitions

For the purpose of this part:

(a) The term "Council" shall mean the Council on Environmental Quality established under Title II of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347).

(b) The term "meeting" means the deliberations of at least two Council members where such deliberations determine or result in the joint conduct or disposition of official collegial Council business, but does not include deliberations to take actions to open or close a meeting under §§ 1517.4 and 1517.5 or to release or withhold information under §§ 1517.4 and 1517.7. "Meeting" shall not be construed to prevent Council members from considering individually Council business that is circulated to them sequentially in writing.

(c) "Director" means the Chairman of the Council on Environmental Quality acting as the head of the Office of Environmental Quality pursuant to the Environmental Quality Improvement Act of 1970, Pub.L. 91-224, 42 U.S.C. 4371-4374.

[44 FR 34946, June 18, 1979, as amended at 47 FR 6277, Feb. 11, 1982]

§ 1517.3 Open meeting requirement

(a) Every portion of every meeting of the Council is open to public observation subject to the exemptions provided in § 1517.4. Members of the Council may not jointly conduct or dispose of the business of the Council other than in accordance with this part.

(b) The Council will conduct open to public observation periodic meetings involving Council discussions of Council business including where appropriate matters outside the scope of this part. Such meetings will be noticed pursuant to § 1517.6.

(c) Members of the public may attend open meetings of the Council for the sole purpose of observation and may not participate in or photograph any meeting without prior permission of the Council. Members of the public who desire to participate in or photograph an open meeting of the Council may request permission to do so from the General Counsel of the Council before such meeting. Members of the public may record open meetings of the Council by means of any mechanical or electronic device unless the Council determines such recording would disrupt the orderly conduct of such meeting.

[44 FR 34946, June 18, 1979, as amended at 47 FR 6277, Feb. 11, 1982]

§ 1517.4 Exceptions

(a) A meeting or portion thereof may be closed to public observation, and information pertaining to such meeting or portion thereof may be withheld from the public, if the Council determines that such meeting or portion thereof or disclosure of such information is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) in fact properly classified pursuant to that Executive order;

(2) Relate solely to the internal personnel rules and practices of the Council;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that the statute: (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose the trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of those records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or,

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the

use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Council. This exception shall not apply in any instance where the Council has already disclosed to the public the content or nature of the proposed action, or where the Council is required by law to make such disclosure on its own initiative prior to taking final action on the proposal; or

(10) Specifically concern the issuance of a subpoena by the Council, or the participation of the Council in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Council of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Before a meeting is closed to public observation the Council shall determine whether or not the public interest requires that the meeting be open. The Council may open a meeting to public observation which could be closed under paragraph (a) of this section, if the Council finds it to be in the public interest to do so.

§ 1517.5 Procedure for closing meetings

(a) A majority of the entire membership of the Council may vote to close to public observation a meeting or a portion or portions thereof, or to withhold information pertaining to such meeting. A separate vote of the members of the Council shall be taken with respect to each meeting of the Council, a portion or portions of which are proposed to be closed to the observation of the public or with respect to any information concerning such meetings or portion thereof. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each member of the Council participating in a vote shall be recorded and no proxies shall be allowed.

(b) Whenever any person whose interest may be directly affected by a portion of a meeting requests that the Council close that portion to public observation for any of the reasons referred to in § 1517.4(a) the Council, upon request of any of the members of the Council, shall decide by recorded vote whether to close that portion of the meeting.

(c) For every meeting or portion thereof closed under this part, the General Counsel of the Council before such meeting is closed shall publicly certify that, in his or her opinion, the meeting may properly be closed to the public stating each relevant exemptive provision. The Council shall retain a copy of the General Counsel's certification, togeth-

er with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and listing the persons present.

(d) Within one day of any vote taken on a proposal to close a meeting, the Council shall make publicly available a record reflecting the vote of each member on the question. In addition, within one day of any vote which closes a portion or portions of a meeting to the public, the Council shall make publicly available a full written explanation of its closure action together with a list naming all persons expected to attend and identifying their affiliation, unless such disclosure would reveal the information that the meeting itself was closed to protect.

(e) Following any announcement that the Council intends to close a meeting or portion thereof, any person may make a request that the meeting or portion thereof be opened. Such request shall be made of the Chairman of the Council who shall ensure that the request is circulated to all members of the Council on the same business day on which it is received. The request shall set forth the reasons why the requestor believes the meeting should be open. The Council upon the request of any member or its General Counsel, shall vote on the request.

§ 1517.6 Notice of meetings

(a) Except as otherwise provided in this section, the Council shall make a public announcement at least one week before a meeting, to include the following:

- (1) Time, place, and subject matter of the meeting;
- (2) Whether the meeting is to be open or closed; and
- (3) Name and telephone number of the official who will respond to requests for information about the meeting.

(b) A majority of the members of the Council may determine by recorded vote that the business of the Council requires a meeting to be called with less than one week's notice. At the earliest practicable time, the Council shall publicly announce the time, place and subject matter of the meeting, and whether or not it is to be open or closed to the public.

(c) If announcement of the subject matter of a closed meeting would reveal the information that the meeting itself was closed to protect, the subject matter shall not be announced.

(d) Following the public announcement required by paragraphs (a) or (b) of this section:

(1) A majority of the members of the Council may change the time or place of a meeting. At the earliest practicable time, the Council shall publicly announce the change.

(2) A majority of the entire membership of the Council may change the subject matter of a meeting, or the determination to open or close a meeting to the public, if it determines by a recorded vote that the change is required by the business of the Council and that no earlier announcement of the change was possible. At the earliest

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practicable time, the Council shall publicly announce the change, and the vote of each member upon the change.

(e) Individuals or organizations having a special interest in activities of the Council may request the Council to place them on a mailing list for receipt of information available under this section.

(f) Following public announcement of a meeting, the time or place of a meeting may be changed only if the change is announced publicly at the earliest practicable time. The subject matter of a meeting or the determination to open or close a meeting may be changed following public announcement of a meeting only if both of the following conditions are met:

(1) There must be a recorded vote of a majority of the Council that the business of the Council requires the change and that no earlier announcement of such change was possible; and

(2) There must be a public announcement of the change and of the individual Council members' votes at the earliest practicable time.

(g) Immediately following each public announcement required by this section, the following information, as applicable, shall be submitted for publication in the FEDERAL REGISTER.

(1) Notice of the time, place, and subject matter of a meeting;

(2) Whether the meeting is open or closed;

(3) Any change in one of the preceding; and

(4) The name and telephone number of the official who will respond to requests for information about the meeting.

§ 1517.7 Records of closed meetings

(a) A record of each meeting or portion thereof which is closed to the public shall be made and retained for two years or for one year after the conclusion of any Council proceeding involved in the meeting which ever occurs later. The record of any portion of a meeting closed to the public shall be a verbatim transcript or electronic recording. In lieu of a transcript or recording, a comprehensive set of minutes may be produced if the closure decision was made pursuant to § 1517.4(a)(8) or (10).

(b) If minutes are produced, such minutes shall fully and clearly describe all matters discussed, provide a full and accurate summary of any actions taken and the reasons expressed therefor, and include a description of each of the views expressed on any item. The minutes shall also reflect the vote of each member of the Council on any roll call vote taken during the proceedings and identify all documents produced at the meeting.

(c) The following documents shall be retained by the Council as part of the transcript, recording, or minutes of the meeting:

(1) Certification by the General Counsel that the meeting may properly be closed; and

(2) Statement from the presiding officer of the meeting setting forth the date, time, and place of the meeting and listing the persons present.

(d) The Council shall make promptly available to the public at its offices at 722 Jackson Place, N.W., Washington, D.C. the transcript, electronic recording, or minutes maintained as a record of a closed meeting, except for such information as may be withheld under one of the provisions of § 1517.5. Copies of such transcript, minutes, or transcription of an electronic recording, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(e) [Reserved]

(f) Requests to review or obtain copies of records other than transcripts, electronic recordings or minutes of a meeting will be processed under the Freedom of Information Act (5 U.S.C. 552) or, where applicable, the Privacy Act of 1974. (5 U.S.C. 552a). Nothing in these regulations authorizes the Council to withhold from any individual any record, including the transcripts or electronic recordings described in § 1517.8, to which the individual may have access under the Privacy Act of 1974 (5 U.S.C. 552a).