

Reprinted Through Change 1
June 1988

2N 45
126/43
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IMPLEMENTING THE PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

(NHB-8800.11) IMPLEMENTING THE
PROVISIONS OF THE NATIONAL
ENVIRONMENTAL POLICY ACT (NASA)
126 p

194-70648

Unclass

29/45 0190948

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1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It includes a detailed description of the experimental procedures and the statistical analysis performed.

3. The third part of the document presents the results of the study. It includes a series of tables and graphs that illustrate the findings of the research. The data shows a clear trend of increasing activity over time.

4. The fourth part of the document discusses the implications of the findings. It suggests that the results have significant implications for the field of research and may lead to further developments in the future.

5. The fifth part of the document concludes the study. It summarizes the key findings and provides a final statement on the importance of the research.

IMPLEMENTING THE PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

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IMPLEMENTING THE PROVISIONS OF THE
NATIONAL ENVIRONMENTAL POLICY ACT


PREFACE

DATE: April 24, 1980

This Handbook provides guidance and assistance to NASA officials in carrying out their responsibilities under the National Environmental Policy Act and the applicable NASA procedures (14 CFR 1216.3, Attachment A to NMI 8800.7). The Handbook, as was contemplated by the regulations of the Council on Environmental Quality, stresses the need for environmental analysis from the time of early planning through environmental assessment and environmental impact statement preparation to implementation of the subject action, and provides for necessary followup. It stresses the need for NASA officials to draw upon all the appropriate disciplines from the natural and social sciences plus the environmental design arts in planning and decision making on actions which may have an impact on the human environment. The Handbook is applicable to NASA Headquarters and field installations.

Comments or suggestions concerning this handbook should be addressed to the Director, Management Support Office (Code LB), NASA Headquarters.

This Handbook will be revised by page changes.


Acting Associate Administrator
Office of External Relations

Distribution:
SDL 1 (SIQ)

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CHAPTER 1: BACKGROUND

100. INTRODUCTION

- a. On November 29, 1978, the Council on Environmental Quality (CEQ) issued final regulations implementing the procedural requirements of the National Environmental Policy Act (NEPA). The regulations became effective on July 30, 1979, superseding the 1973 revised Guidelines and are binding to all Federal agencies. Further, the new regulations implement all aspects of NEPA, not just those provisions governing environmental impact statements as did the previous guidelines. In particular, the new CEQ regulations highlight integration of the consideration of environmental effects and the associated interdisciplinary analyses into the agency's decision processes. Not only do they address the procedural aspects of conducting environmental analyses and preparing and publishing environmental impact statements, but they specify that the agencies shall adopt procedures to ensure that decisions are made in accordance with the policies and purposes of the NEPA. Agency procedures should include provisions for: (1) designating major decision points for the agencies' principal programs and ensuring that the NEPA process corresponds with them; (2) requiring that relevant environmental documents, comments, etc., accompany the proposal through existing agency review processes so that agency officials have the requisite information at hand when making decisions; and (3) requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents. The CEQ Regulations require that each agency, at the time of its decision, prepare a concise public record of decision, explaining the whys and wherefores of that decision.
- b. Implementing NASA procedures were published in the Federal Register as Subparts 1216.1 and 1216.3,

Policy on Environmental Quality and Control and Procedures for Implementing the National Environmental Policy Act (NEPA), respectively; they are incorporated in the NASA Directives System as NMI 8800.7. These procedures address each of the elements contributing to better decisionmaking as required by the CEQ. The purpose of this handbook is to elaborate upon the procedures contained in Subpart 1216.3 by providing additional guidance to NASA personnel responsible for implementing its provisions.

- c. It is not enough that implementing procedures and this explanatory handbook be prepared. In addition, other NASA regulations governing the planning and decision-making of its activities must be examined in order to ensure that they cover explicitly the requirement for environmental impact analyses, assessments, statements, and their findings. Any necessary changes to NASA decision processes and their governing NASA procedures are being considered separately, but in full coordination with these NEPA procedures.

101. FORMAT

This handbook cites NASA/NEPA procedures and provides additional guidance and explanation for each of the important provisions. The handbook contains material on critical decision points, environmental assessments, findings of no significant impact, environmental impact statements and notices of intent to prepare them, the scoping process, public involvement, records of decisions, monitoring, environmental resources documents, other environmental review and consultation requirements, and requirements for consideration of environmental effects abroad. The format identifies a section of the NASA/NEPA procedures, followed by the explanatory notes. The paragraphs in this Handbook correspond to the title and number of the NASA/NEPA procedures.

CHAPTER 2: SUMMARY

200. INTRODUCTION

The NEPA regulations issued by the Council on Environmental Quality (CEQ) in 1978 were intended to reduce NEPA paperwork, to reduce NEPA-related delays in proposed actions, and to produce better decisions in their implementation of that important statute. These purposes are highlighted in the NASA/NEPA procedures and this handbook, as follows:

201. REDUCING PAPERWORK

The CEQ has stated that Federal agencies shall reduce excessive paperwork in implementing the requirements of NEPA.

- a. The NASA environmental impact statement should:
 1. Normally not exceed the CEQ-specified limit of 150 pages in text (300 pages for projects of unusual scope and complexity);
 2. Be written in plain language, discuss only briefly issues other than significant ones, and be less descriptive and more analytic;
 3. Emphasize alternatives and the consequences thereof (see paragraph 308);
 4. Follow a standard format (see paragraph 308); and
 5. Incorporate materials by reference to the maximum extent possible.
- b. NASA should, to the maximum extent possible:
 1. Use an early "scoping" process to determine what the important issues are (see paragraph 307);

2. Eliminate duplication with State and local units of governments which have "little NEPA" requirements (see paragraph 316);
3. Integrate NEPA requirements with other environmental review requirements (see paragraph 320);
4. Use, as practicable, "categorical exclusions" and not prepare environmental assessments or statements for non-qualifying actions (see paragraph 305);
5. Use, as practicable, a "finding of no significant impact" when an action cannot be categorically excluded but will not have a significant effect on the human environment (see paragraph 306); and
6. Use "tiering" of its program and project statements so that those specific actions that rest on prior actions of broader scope do not repeat common information (see paragraph 314).

202. REDUCING DELAY

The Council on Environmental Quality has stated that Federal agencies shall reduce delay when implementing the requirements of NEPA. In addition to actions taken to reduce paperwork, NASA shall:

- a. Integrate the NEPA process with other planning at the earliest possible time (see paragraph 304);
- b. Establish time limits for the environmental impact statement process and prepare statements as early as possible in the planning and decisionmaking process (see paragraph 304);

- c. Use accelerated procedures for proposals for legislation (see paragraph 315);
- d. Cooperate, as practicable, with other Federal agencies before the environmental impact statement is prepared (see paragraph 316); and
- e. Resolve lead agency disputes, fairly and swiftly (see paragraph 316).

203. PRODUCING BETTER DECISIONS

The fundamental purpose of the NEPA process is improvement in decisionmaking. The environmental impact statement should contribute to achieving that purpose. Previous guidelines of the CEQ addressed only the requirement for environmental impact statements, and thus put too much emphasis on the procedures to yield an acceptable document, at the expense of the analysis of environmental factors impacting the decision. The present regulations and the corresponding NASA procedures address NEPA in its entirety, thus attempting to redress this balance. Key elements in the NASA procedures towards this end are:

- a. Identification of key decision points and their relationship to the requirements of NEPA (see paragraph 304);
- b. The requirement that environmental documentation should accompany the other documentation through the decision sequence (see paragraphs 304 and 306);
- c. Preparation of a record of decision (see paragraph 311);
- d. The requirement for implementing and monitoring the decision; and
- e. Simultaneous consideration of other environmental review and consultation requirements.

CHAPTER 3: PROCEDURES FOR IMPLEMENTING THE NATIONAL
ENVIRONMENTAL POLICY ACT (NEPA)

300. SCOPE

" § 1216.300 Scope.

This Subpart sets forth NASA procedures implementing the provisions of Section 102(2) of the National Environmental Policy Act (NEPA). The NASA procedures of this Subpart supplement the regulations of the Council on Environmental Quality (43 FR 55978) which establish uniform procedures for implementing those provisions of NEPA. "

The law and regulations governing NASA/NEPA procedures, are appended to this Handbook.

301. APPLICABILITY

" § 1216.301 Applicability.

(a) This Subpart is applicable to NASA Headquarters and field installations.

(b) The procedures established by this Subpart apply to all NASA actions which may have an impact on the quality of the environment. These actions may fall within any of the three NASA budget categories: Research and Development (R&D), Construction of Facilities (CoF), and Research and Program Management (R&PM), or, if not involving budget authority or other Congressional approval, may be separate from the categories. "

- a. Instructions provided in this Handbook are applicable to all NASA employees at all levels who in any way participate in the formulation, development, and execution of qualifying NASA actions. NASA actions (including those leased, permitted, or financed by NASA) must be in accordance with these instructions unless specific exception is made in writing by the Associate Administrator for External Relations.

- b. The applicability of NEPA and its implementing regulations is broad, covering any action that may have an impact on the quality of the environment. The intent is to ensure that environmental issues are considered in decisionmaking, that the record is complete in the decisionmaking process, and, if the effects are deemed to be significant, that the full agency and public review process for environmental impact statements be completed before the decision is made. The budget categories of R&D, R&PM, and C of F are employed because they usually encompass all the relevant NASA actions. Even the occasional proposed action not covered by them is covered by NEPA and these regulations. Paragraph 305 gives more specific instructions on classes of actions and on corresponding NEPA-related requirements.

302. DEFINITIONS

"§ 1216.302 Definition of key terms.

The definitions contained within Part 1508, *Terminology and Index*, CEQ Regulations, 43 FR 55978, apply to Subpart 1216.3. Additional definitions, necessary for the purpose of this Subpart, are as follows:

(a) *Budget Line Items*. The individual items in the annual NASA authorization legislation which are used here to classify the range of NASA actions. The three main budget line items are:

(1) *Research and Development (R&D)*. Those activities directed towards attaining the objectives of a specific mission, project, or program. All NASA's aeronautics and space program elements are categorized within the R&D program categories. R&D funds are expended chiefly for contracted research and development and for research grants. Some R&D funds are also expended in support of in-house research (e.g., equipment purchases and other research support, but not civil service salaries).

(2) *Research and Program Management (R&PM)*. Those activities directed towards the general support of the NASA institution charged with the conduct of the aeronautics and space program. R&PM funds are expended for the NASA civil service work force (both for performing in-house R&D and for planning, managing, and supporting contractor and grantee R&D), and for other general supporting functions.

(3) *Construction of Facilities (C of F)*. Those activities directed towards construction of new facilities; repair, rehabilitation, and modification of existing facilities; acquisition of related facility equipment; design of facilities projects; and advance planning related to future facilities needs.

(b) *Construction of Facilities Project*. The consolidation of applicable specific individual types of facility work.

including related collateral equipment, which is required to fully reflect all of the needs, generally relating to one facility, which have been or may be generated by the same set of events or circumstances which are required to be accomplished at one time in order to provide for the planned initial operational use of the facility or a discrete portion thereof. Facility projects are subject to the NASA decision processes of § 1216.304.

(c) *Environmental Analysis.* The analysis of the environmental effects of proposed actions, including alternative proposals. The analyses are carried out from the very earliest of planning studies for the action in question, and are the materials from which the more formal environmental assessments, environmental impact statements, and public record of decisions are made.

(d) *Institutional Action.* An action to establish, change, or terminate an aspect of the NASA institution, defined as the total NASA resource (plant, employees, skills).

(e) *R&D Project.* A discrete research and development activity, with a scheduled beginning and ending, which normally involves one of the following primary purposes:

(1) The design, development, and demonstration of major advanced technology hardware items;

(2) The design, construction, and operation of a new launch vehicle (and associated ground support) during its research and development phase; and

(3) The construction and operation of one or more aeronautics or space vehicles (and necessary ground support) in order to accomplish a scientific or technical objective. R&D projects are each subelements in the NASA R&D budget line item. R&D projects are subject to the decision processes of § 1216.304. "

The standard terminology and definitions of the CEQ for their regulation and our procedures appear in 40 CFR 1508. We are required to use the same terms. Note that an "environmental assessment" is one kind of "environmental document" (the other three being environmental impact statement, finding of no significant impact, and notice of intent). Previously, NASA (and many others) used the term "environmental assessment" to mean both the act of analyzing or evaluating (assessing) environmental impacts and the report thereof. Now, the "environmental assessment" is the specific document described in 40 CFR 1508.9. For this reason, we have added "environmental analysis" to the list of terms used; it covers both the act of analyzing and evaluating and the general reports thereof.

303. RESPONSIBILITIES

" § 1216.303 Responsibilities of NASA officials.

(a) The Associate Administrator for External Relations or designee, who is responsible for developing the procedures of this Subpart and for ensuring that environmental factors are properly considered in all NASA planning and decisionmaking, shall:

(1) Monitor these processes to ensure that the agency procedures are achieving their purposes;

(2) Advise line management and inform NASA employees of technical and management requirements of environmental analysis, of appropriate expertise available in and out of NASA, and—with the assistance of the NASA General Counsel—of relevant legal developments; and

(3) Consolidate and transmit to the appropriate parties NASA comments on

environmental impact statements and other environmental reports prepared by other agencies.

(b) Officials-in-Charge of Headquarters Offices (hereafter termed "Headquarters officials") are responsible for implementing the procedures established by these regulations for the consideration and documentation of the environmental aspects of the decision processes in their respective areas of responsibility.

(c) The Director, Office of Legislative Affairs, is responsible for ensuring that legislative environmental impact statements accompany NASA recommendations or reports on proposals for legislation submitted to Congress. The Associate Administrator for External Relations, the Comptroller, and General Counsel will provide guidance as required. "

- a. Beyond the specific responsibilities listed in the Procedures themselves, it is the responsibility of all NASA employees to comply with the NEPA and the CEQ Regulations and to implement these procedures as a part of the normal course of their duties. Consideration of the possible environmental effects of any NASA action must be included at the earliest stages of study and planning, just as are technical and economic factors. Decisions -- or recommendations for decisions -- must be made with as full a knowledge and understanding of the likely environmental effects as is possible, and any necessary environmental documentation must accompany, or be an integral part of, the corresponding decision or recommendation documentation. Managers and supervisors are responsible for instilling in their employees an understanding of the need for consideration of environmental factors and for establishing systems to ensure that the requirements are met.
- b. Although only Headquarters officials are addressed in the Procedures themselves, Directors of Field Installations and installation personnel have the same responsibilities with respect to qualifying NASA actions in which they participate. Indeed, it is expected that early planning studies for a proposed action will often be initiated by the field installation, and center personnel will be responsible for the first identification and consideration of possible environmental effects, which then enter the recommendation and ultimate decision processes.

304. MAJOR DECISION POINTS

" § 1216.304 Major decision points.

The possible environmental effects of a proposed action must be considered, along with technical, economic, and other factors, in the earliest planning. At that stage, the responsible Headquarters official shall begin the necessary steps to comply with all the requirements of Section 102(2) of the National Environmental Policy Act of 1969. Major NASA activities, particularly R&D and facility projects, generally have four distinct phases: The conceptual study phase; the detailed planning/definition phase; the development/construction phase; and the operation phase. (Other NASA activities have fewer, less well-defined phases, but can still be characterized by phases representing general or feasibility study, detailed planning or definition, and implementation.) Environmental documentation shall be linked to major decision points as follows:

(a) Completion of an environmental assessment and the determination as to whether an environmental impact statement is required must be made prior to the decision to proceed from the conceptual study phase to the detailed planning/definition phase of the

proposed action. For example, this determination must be concurrent with:

(1) Proposal of an R&D project for detailed planning and project definition;
(2) Proposal of a major Construction of Facilities project for detailed planning and project definition;

(3) Proposal of an institutional action (other than a facility project) for detailed planning and definition; and

(4) Proposal of a plan to define changes in an approved project.

(b) The final environmental impact statement (EIS) should be completed and circulated prior to the decision to proceed from the detailed planning/definition phase to the development/construction (or implementation) phase of the proposed action. For example, the EIS should be completed by, and incorporated with:

(1) Proposal of an R&D project for development/construction;

(2) Proposal of a major Construction of Facilities project for development/construction;

(3) Proposal to undertake a significant institutional action (other than a facility project); and

(4) Proposal to implement a program change.

- a. Section 102(2) of NEPA requires " . . . all agencies of the Federal government to utilize a systematic, interdisciplinary approach which will ensure the integrated use of natural and social sciences and environmental design arts in planning and decisionmaking which may have an impact on man's environment." Federal agencies are additionally required to commence their NEPA process at the earliest possible time and integrate it with other planning to ensure that environmental values are given the requisite consideration. This requires continuous monitoring of study and project activities to determine NEPA requirements.

- b. Although the phasing of NASA activities can take many forms, these forms generally have in common a broad, conceptual study phase, a detailed planning/definition phase, and one or more implementation phases (e.g., design/construction, operation). Common also is the level of intent characteristic of the phases; the conceptual study phase tends to be exploratory, covering the broadest range of alternative approaches to the desired objective and including investigations of the many factors (such as environmental effects) in sufficient depth to permit identification of the more promising alternatives. The environmental analyses (Figure 3.1a) would normally be in sufficient depth to permit (1) the determination whether the proposed action a priori requires an environmental impact statement (EIS), requires an environmental assessment, or is categorically excluded from these requirements, and (2), in the environmental assessment case, a subsequent determination of the need for an EIS. At this stage, the analyses need not be sufficient for the statement itself. The decision to proceed with the detailed planning/definition phase should be made with full awareness of any necessity for an EIS, so that plans may be made for the conduct of the requisite analyses and preparation of the EIS during that phase.
- c. The detailed planning/definition phase includes more in-depth studies and analyses of the more promising of the alternatives and, for the environmental analyses, must be in sufficient depth to meet EIS requirements. As the studies proceed during this phase, material for the requisite EIS is gathered and, at an appropriate time, the EIS should be prepared and circulated as required by the procedures. All EIS-related matters should be completed and any issues resolved by the time of proposal for initiation of the first implementation phase (Figure 3.1b). When we go to implementation, we usually go from studying to doing, from paper to

**FIGURE 3.1a ENVIRONMENTAL IMPACT STATEMENT PROCESS FOR R&D
AND FACILITIES PROJECTS — CONCEPTUAL STUDY
(REQUIREMENTS) PHASE**

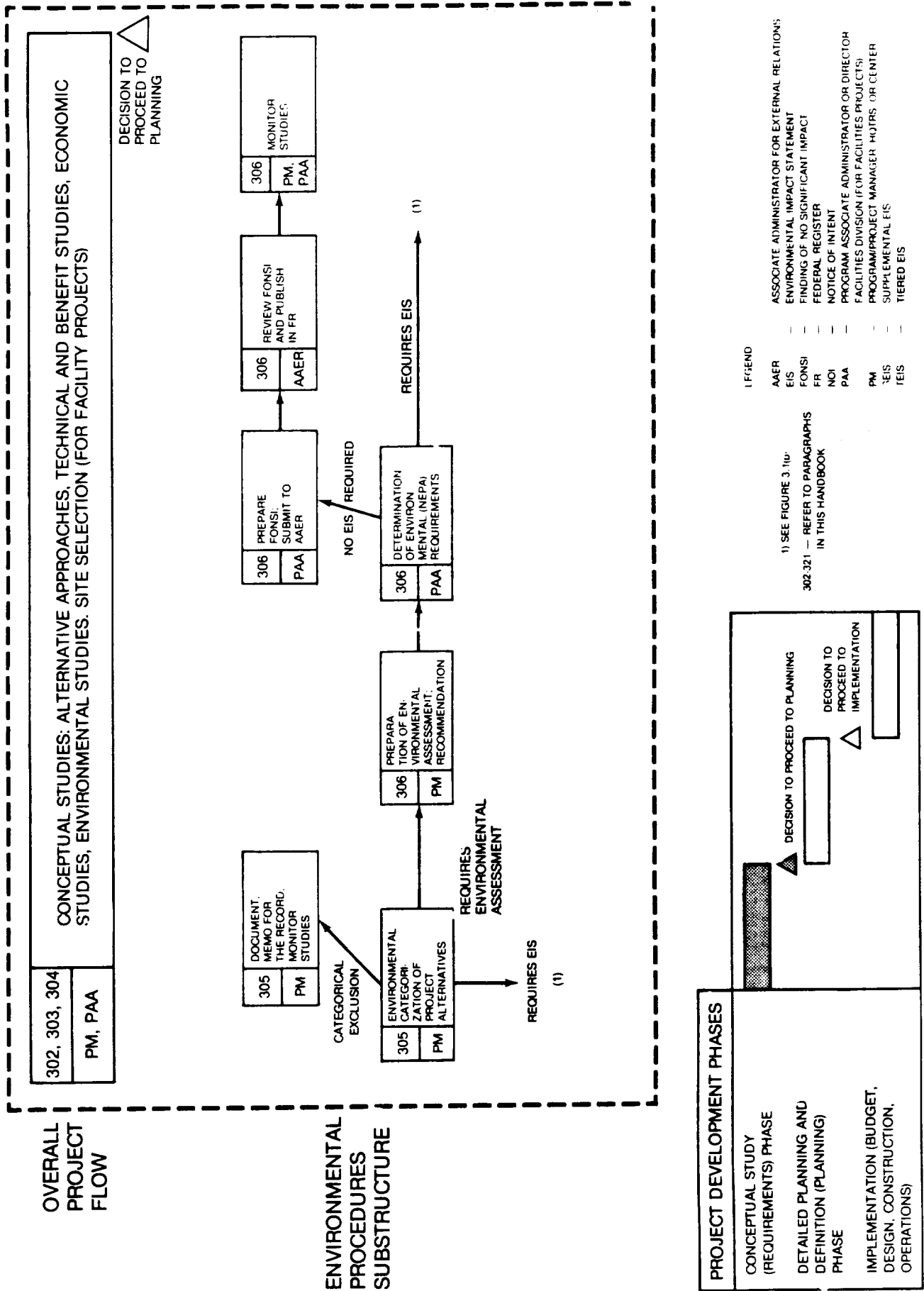
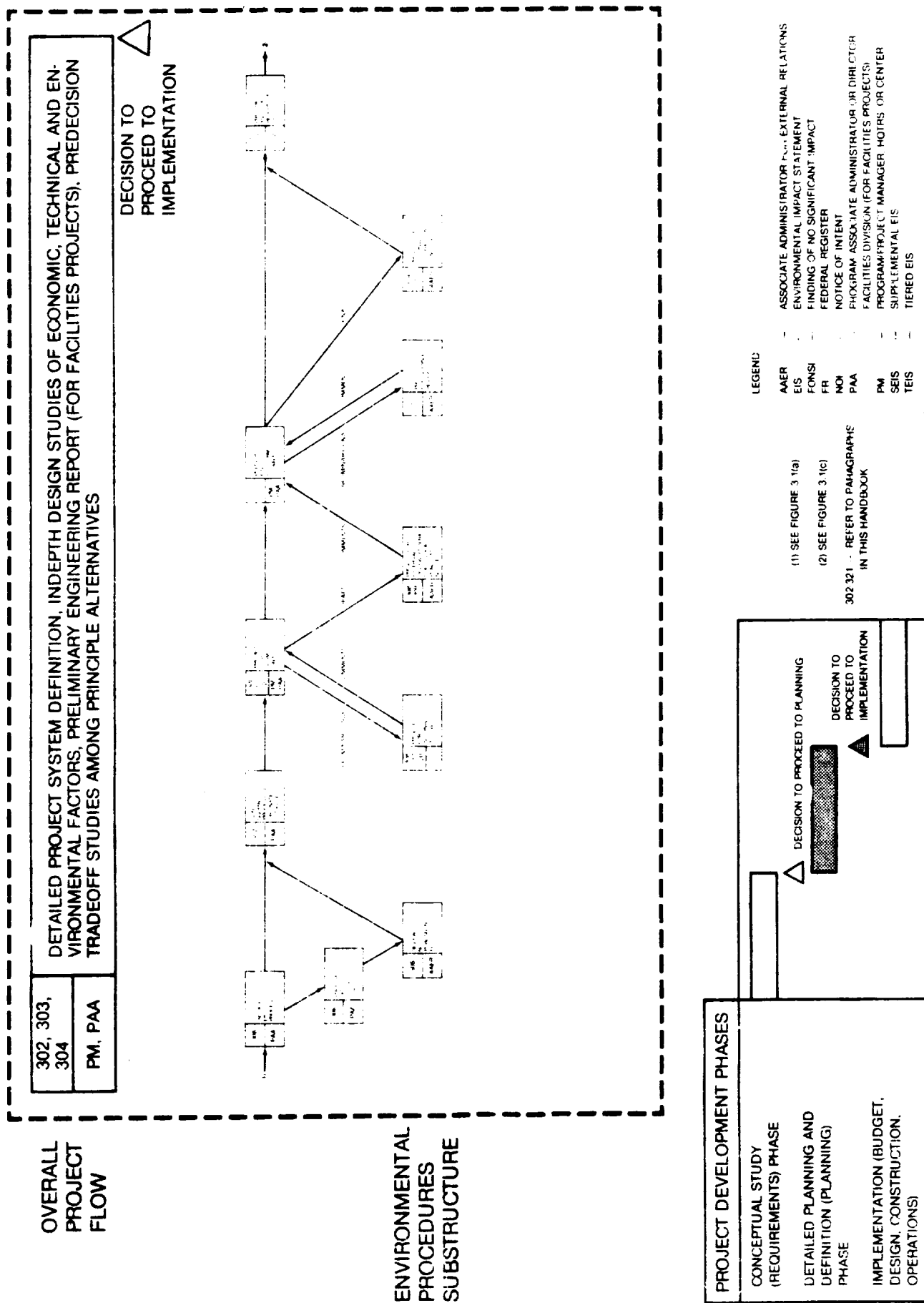


FIGURE 3.1b ENVIRONMENTAL IMPACT STATEMENT PROCESS FOR R&D AND FACILITIES PROJECTS—DETAILED PLANNING AND DEFINITION PHASE



hardware, from possibility to commitment. Thus this is the key decision point by which the NEPA process should have been successfully completed. Further, as required by 40 CFR 1505.1(d) of the CEQ Regulations, it is required 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." To repeat, continuous environmental monitoring of the project is essential to meet NEPA requirements regarding the need for EIS's, supplements, mitigation and tiering (Figure 3.1c).

305. CRITERIA FOR ACTIONS REQUIRING ENVIRONMENTAL ASSESSMENTS

"§ 1216.305 Criteria for actions requiring environmental assessments.

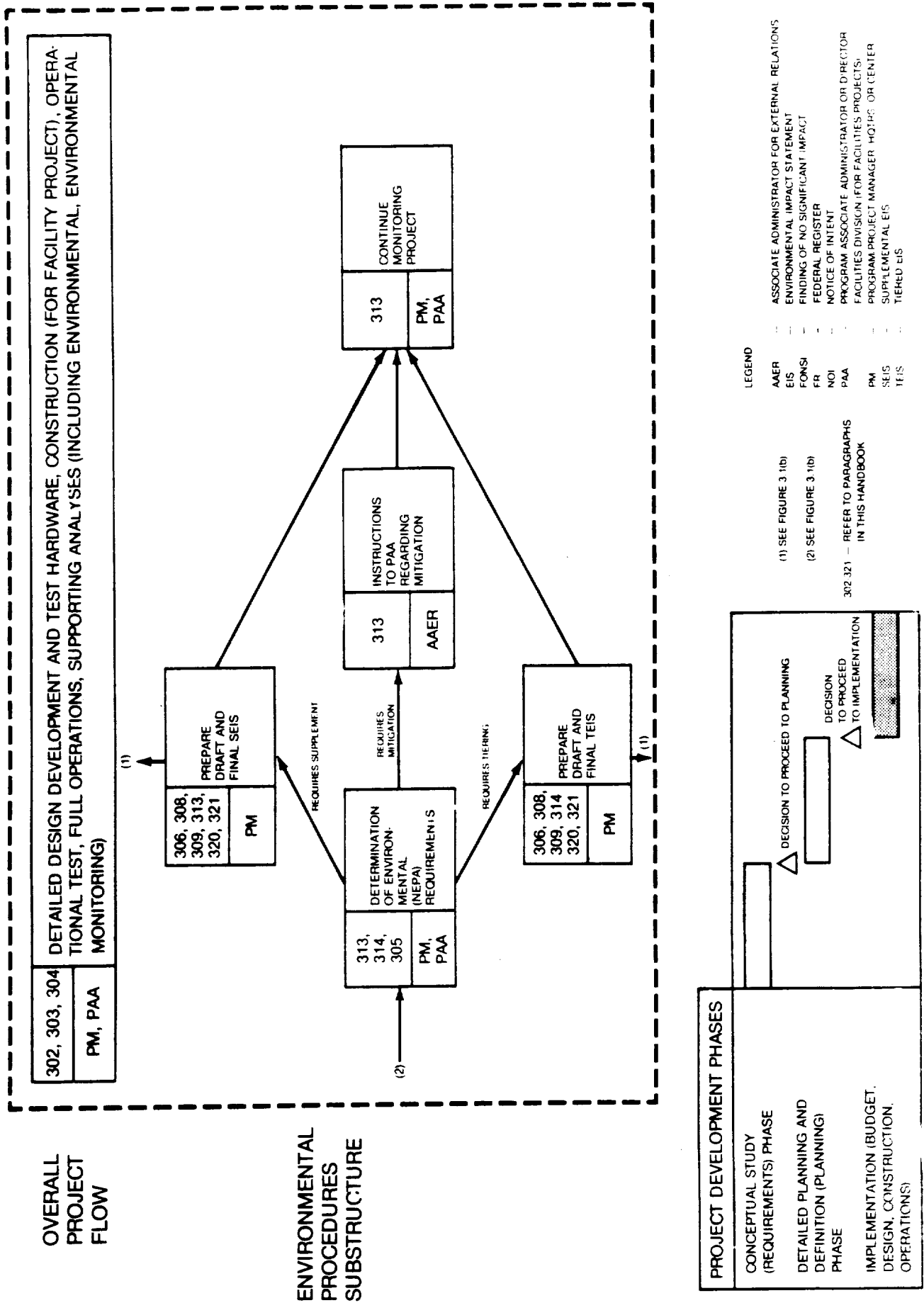
(a) Whether a proposed NASA action within the meaning of the CEQ Regulations (43 FR 55978) requires the preparation of an environmental assessment, an environmental impact statement, both, or neither, will depend upon the scope of the action and the context and intensity of any environmental effects expected to result. A NASA action shall require the preparation of an environmental assessment (§§ 1501.3 and 1508.9 of the CEQ Regulations) provided the action is not one normally requiring an environmental impact statement (paragraph (c)) or it is not categorically excluded from the requirement for an environmental assessment and an environmental impact statement (paragraph (d)).

(b) Specific NASA actions normally requiring an environmental assessment are:

- (1) Specific spacecraft development and flight projects in space science.
- (2) Specific spacecraft development and flight projects in space and terrestrial applications.
- (3) Specific experimental projects in aeronautics and space technology and energy technology applications.
- (4) Development and operation of new space transportation systems and advanced development of new space transportation and spacecraft systems.
- (5) Reimbursable launches of non-NASA spacecraft or payloads.
- (6) Major Construction of Facilities projects.
- (7) Actions to alter ongoing operations at a NASA installation which could lead, either directly or indirectly, to natural or physical environmental effects. "

- a. Essentially all NASA actions fall initially into one of three categories: they do require an EIS (for a very few classes of actions -- see §1216.305(c), they do not require an EIS (for a wide variety of level-of-effort activities -- see §1216.305(d)) or we cannot say a priori whether they do

FIGURE 3.1c ENVIRONMENTAL IMPACT STATEMENT PROCESS FOR R&D AND FACILITIES PROJECTS—IMPLEMENTATION PHASE



or do not (for a good number of actions that do not fit either extreme -- see §1216.305(b)). In the last case, an environmental assessment is required to lead to the eventual determination of the need for the EIS.

- b. Most project-like activities cannot be a priori identified as either requiring or not requiring an EIS and appear in the category of those actions requiring assessments (§1216.305(b)). The assessment, based on the analyses conducted within the conceptual study phase, will yield a determination of that need. NASA actions having both beneficial and detrimental environmental effects should be treated in the same manner as those having detrimental effects alone. If the detrimental effects are deemed to be significant, an EIS is required even though on balance, the net effects are beneficial.

" (c) NASA actions expected to have a significant effect upon the quality of the human environment shall require an environmental impact statement. For these actions an environmental assessment is not required. Criteria to be used in determining significance are given in § 1508.27 of the CEQ Regulations (43 FR 55978). Specific NASA actions requiring environmental impact statements, all in the R&D budget category, are as follows:

(1) Development and operation of new launch vehicles.

(2) Development and operation of space vehicles likely to release substantial amounts of foreign materials into the earth's atmosphere, or into space.

(3) Development and operation of nuclear systems, including reactors and thermal devices used for propulsion and/or power generation. Excluded are devices with millicurie quantities or less of radioactive materials used as instrument detectors and small radioisotope heaters used for local thermal control, provided they are properly contained and shielded. "

- c. NASA's experience since 1970 has led to the identification of three classes of actions for which environmental effects may have a significant effect upon the quality of the human environment and require preparation of an EIS. They have in common the release -- or potential release -- of large quantities of pollutants (rocket exhaust gases, exotic materials, radioactive substances). For any action falling into this category, an environmental assessment is not required and the environmental analyses should be directed towards the preparation of an EIS. Relevant project documentation should recognize the applicability of this requirement from the earliest planning, notice of intent to prepare an EIS should be published, and the remainder of the EIS process initiated as soon as possible.

" (d) NASA actions categorically excluded from the requirements to prepare either an environmental assessment or an EIS (§ 1508.4 of the CEQ Regulations) fit the following criteria: They are each sub-elements of an approved broadbased level-of-effort NASA science and technology program (basic research, applied research, development of technology, ongoing mission operations), facility program, or institutional program; and they are each managed relatively independently of other related sub-elements by means of separate task orders, Research and Technology Operating Plans, etc. Specific NASA actions fitting these criteria and thus categorically excluded from the requirements for environmental assessments and environmental impact statements are:

(1) R&D activities in space science (e.g., Physics and Astronomy Research and Analysis, Planetary Exploration Mission Operations and Data Analysis) other than specific spacecraft development and flight projects.

(2) R&D activities in space and terrestrial applications (e.g., Resource Observations Applied Research and Data Analysis, Technology Utilization) other than specific spacecraft development and flight projects.

(3) R&D activities in aeronautics and space technology and energy technology applications (e.g., Research and

Technology Base, Systems Technology Programs) other than experimental projects.

(4) R&D activities in space transportation systems engineering and scientific and technical support operations, routine transportation operations, and advanced studies.

(5) R&D activities in space tracking and data systems.

(6) Facility planning and design (funding).

(7) Minor construction of new facilities including rehabilitation, modification, and repair.

(8) Continuing operations of a NASA installation at a level of effort, or altered operations, provided the alterations induce only social and/or economic effects but no natural or physical environmental effects.

(e) Even though an action may be categorically excluded from the need for a formal environmental assessment or environmental impact statement, it is not excluded from the requirement for an environmental analysis conducted during the earliest planning phases. If that analysis shows that the action deviates from the criteria for exclusion and it is concluded that there may be significant environmental effects, an environmental assessment must be carried out. Based upon that assessment, a determination must then be made whether or not to prepare an environmental impact statement."

- d. A wide variety of actions, each of a level-of-effort nature, has been identified as categorically excluded from the requirement for either an environmental assessment or an EIS. These level-of-effort activities are not normally as readily characterized by distinct phases, but the categorical exclusion can usually be identified early in the planning. The categorical exclusion for the proposed action (minor project, SRT activity, etc.) should be documented appropriately (project plan, research and technology operating plan, etc.) and by a memorandum for the record.
- e. The provisions of §1216.305(e) are intended to ensure that analysis of environmental effects continue through the study phases at least to the extent of confirming the validity of the categorical exclusion. They should guard against thoughtless acceptance of the exclusion in an exceptional case. An appropriate level of continuing analysis will also ensure that, should conditions change and lead to the possibility of significant environmental effects, this event will be recognized and the necessary environmental assessment -- and possibly EIS -- will be prepared.

306. PREPARATION OF ENVIRONMENTAL ASSESSMENTS

"§ 1216.306 Preparation of environmental assessments.

(a) For each NASA action meeting the criteria of § 1216.305(b), and for other actions as required, the responsible Headquarters official shall prepare an environmental assessment (§§ 1501.3 and 1506.9 of the CEQ Regulations) and, on the basis of that assessment, determine if an EIS is required. "

- a. The environmental assessment referred to in §1216.306(a) and preceding sections is a specific document serving

the purpose of summarizing the results of the analyses of environmental impacts and the basis for the decision whether or not to prepare an EIS. It is defined in 40 CFR 1508.9:

" § 1508.9 Environmental assessment

"Environmental Assessment":

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

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

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

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

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

- b. The assessment must rest on a foundation of thorough analyses of the environment and other factors. These analyses should be documented in a conventional manner for use as references and supporting documents. They must fulfill the requirements of NEPA by utilizing a "systematic interdisciplinary approach" and should be initiated in conjunction with the earliest planning of a proposed action. The broad scope of the analyses and the need for full interdisciplinary analyses is illustrated by Sec. 101(b) of NEPA:

" 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 diver-

sity 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. Because the environmental assessment is to be completed and the decision whether or not to prepare an environmental statement made prior to the decision to proceed to the detailed planning/definition phase (e.g., Phase B), it is clear that environmental analyses should begin in the very earliest study phases and should constitute an integral part of the total study activity, along with such other project factors as technical approach, cost, etc. Study reports should give a prominent place to the results of the environmental analyses just as they do the other relevant factors, and the many relevant study reports then become the reference documentation on which both the environmental assessments and future project decisions are based.
- d. One factor that must have more prominence in the consideration of environmental impacts than it may otherwise have is that of alternatives. The NEPA requires a detailed "statement on alternatives to the proposed action" (in the EIS, and thus is the subject of analyses). All reasonable alternatives to the proposed action must be considered and their environmental effects evaluated. The alternative of taking no action should also be studied. Although there is no requirement that NASA propose to select that alternative having the least environmental impact, there must be sufficient

information available (in the analyses, in summary form in the environmental assessment, and eventually in an EIS to make clear what those impacts would be and to describe the reasoning for the selection of the favored alternative.

- e. Consultation with others is also an important element of the analyses and studies. The requisite interdisciplinary approach involves a wide range of disciplines not heavily represented in NASA (e.g., environmental science, social science), and specialists in those or other fields may have to be employed or consulted in the conduct of the work. Such expertise is often available through contractors, and advice and assistance can sometimes be acquired from Federal agencies more active in the disciplines involved. When a proposed action is such that it may be controversial, we should actively seek out those who may hold opposing opinions and try to resolve the issues as early as possible. If formal consultation with others is required by statute (e.g., National Historic Preservation Act of 1966) or by regulation, it is desirable to initiate that consultation at the earliest time, also.

- f. The following paragraphs provide a list of requirements for the environmental assessment and a format to be employed to ensure that all requirements are met and the assessment is complete:

1. The environmental assessment should include a brief description of the proposed action and the need for it, comparative information on alternatives, brief discussions of the environmental impact of the proposed action and alternatives, and a listing of agencies and persons consulted.

2. The assessment should have a cover sheet and a table of contents consisting of a summary and conclusions section; sections on purpose and need, alternatives, and environmental impact of alternatives; and a list of agencies and individuals consulted.

(i) The cover sheet should contain essential bibliographic information to facilitate subsequent identifications (see Figure 3.2).

(ii) The table of contents should include at least the section titles and major subsection titles, as shown in Figure 3.3.

(iii) The environmental assessment should contain a section on summary and conclusions which briefly states what the proposed actions and alternatives are, what they are intended to do, and what their environmental effects are likely to be. This section should briefly describe areas of controversy (including issues raised by agencies and individuals consulted) and those issues remaining to be resolved. It should close with the conclusion as to whether or not an EIS is required and the corresponding decision to prepare either a Finding of No Significant Impact or a Notice of Intent to prepare an EIS.

(iv) The section on purpose and need should give relevant background information which explains how the proposed action (and alternatives) would satisfy one or more specific agency objectives or missions, or would correct a deficiency which is detracting from the agency's ability to carry out its responsibilities. The purpose of the proposed action can then be defined by a set of clearly stated, time-bounded objectives which must be accomplished to meet the stated need. This section must also discuss any broad national environmental objectives (of NEPA), referred to in paragraph 306, that are either supported by or in conflict with the proposed action.

(v) The description section should briefly describe the proposed action and each alternative considered. The extent to which each alternative would accomplish the objectives described in the previous section should be explained, and enough descriptive material on the action and the affected environment should be included to help understand the environmental impacts described in the following section. The alternative represented by taking no action

STANDARD DESIGNATION _____	ENVIRONMENTAL ASSESSMENT _____
PROPOSED ACTION, CITY, COUNTY, STATE _____ WHERE LOCATED (IF NOT SITE SPECIFIC LOCATION OF SPONSORING INSTALLATION)	NAME OF ACTION _____ LOCATION _____
NASA OFFICIAL RESPONSIBLE FOR _____ PREPARATION OF ENVIRONMENTAL ASSESSMENT	NAME, TITLE _____ ADDRESS _____ TELEPHONE NUMBER _____
DATE DOCUMENT SUBMITTED TO _____ RESPONSIBLE HEADQUARTERS OFFICIAL	DATE _____
BRIEF (1-2 SENTENCES) DESCRIPTION _____ OF WHAT THE PROJECT IS INTENDED TO DO; AND, A STATEMENT BY THE FIELD INSTALLATION OFFICIAL RECOMMENDING EITHER EIS OR A FINDING OF NO SIGNIFICANT IMPACT	ABSTRACT _____

FIGURE 3.2 — COVER SHEET ENVIRONMENTAL ASSESSMENT (EA)

THE TABLE OF CONTENTS
SHOULD HAVE ENOUGH
DETAIL SO THAT
SEARCHING IS NOT
NECESSARY

<u>TABLE OF CONTENTS</u>	
<u>ITEM</u>	<u>PAGE</u>
I	SUMMARY AND CONCLUSIONS
II	PURPOSE AND NEED
III	DESCRIPTION OF PROPOSED ACTION AND ALTERNATIVES
	A. PROPOSED ACTION.....
	B. NO ACTION
	C. OTHER ALTERNATIVES.....
IV	ENVIRONMENTAL IMPACT OF ALTERNATIVES
	A. PROPOSED ACTION
	B. NO ACTION
	C. OTHER ALTERNATIVES
V	LIST OF INDIVIDUALS AND AGENCIES CONSULTED.....

FIGURE 3.3 — TABLE OF CONTENTS

should be included. In the case of environmental assessments for broad NASA programs, alternatives not within NASA jurisdiction should also be included.

(vi) The section covering the environmental impact of alternatives should include a comparative evaluation of those impacts with respect to the broad spectrum of environmental issues, including air, water, and noise pollution; solid wastes (hazardous and non-hazardous), toxic substances, and pesticides; endangered species and historical resources; radiation; safe drinking water; health and safety for the general populace; farmlands; and any others as appropriate. Particular attention should be given to the manner in which each other alternative would avoid any adverse environmental impact expected from the proposed alternative.

(vii) The list of individuals and agencies consulted should include not only the name of the individual or group but identification of the particular issue of concern and the expertise sought in that consideration.

- g. The environmental assessment should normally not exceed 25 pages in length. It is not intended that it be a complete treatment of environmental impacts in the same sense as is an EIS (which is itself normally limited in text to a total of 150 pages).
- h. Finally, the formal assessment is the responsibility of the Headquarters official responsible for the proposed action and should be signed out by that official (e.g., the Program Associate Administrator, the Director, Facilities Division). Of course, the environmental analyses can be carried out at various levels in Headquarters or in the field, as is the case for all studies and analyses. The environmental assessment, also, can be prepared within the responsible organization

and forwarded to the responsible Headquarters official in the form of a recommendation. Approval of the recommended assessment must be by that official, most simply in the form of a memorandum to the Associate Administrator for External Relations stating the conclusion regarding the need for an EIS, enclosing the approved assessment, and enclosing also a draft Notice of Intent (to prepare an environmental impact statement) or a draft Finding of No Significant Impact, as appropriate.

" (b) If the determination is that no environmental impact statement is required, the Headquarters official shall, in coordination with the Associate Administrator for External Relations, prepare a "Finding of No Significant Impact." (See § 1506.13 of the CEQ Regulations.) The "Finding of No Significant Impact" shall be made available to the affected public through direct distribution and publication in the Federal Register."

- i. The Finding of No Significant Impact should briefly present the reasons why a proposed NASA action, which was the subject of an environmental assessment has been judged not to have a significant effect upon the human environment and, therefore, will not require the preparation of an EIS. It should consist of a brief summary of the environmental assessment (or the assessment itself, if it is appropriately brief). The Finding of No Significant Impact on actions which are state or local in scope shall be coordinated with the affected A-95 clearinghouse(s). The Finding of No Significant Impact on actions which are national in scope should be prepared for publication in the Federal Register. The public should be allowed 30 days to comment on the finding, and supporting information should be readily available on request.
- j. The responsible Headquarters official should prepare the finding and forward it to the Associate Administrator for

External Relations, who will be the NASA official signing the Federal Register notice. The transmittal to the Associate Administrator for External Relations should be accompanied by a proposed distribution list. A proposed format for the Finding of No Significant Impact is Figure 3.4. The contact listed should be a Headquarters manager of the subject action at an appropriate level. After publication of the finding, monitoring of the studies must be continued to ensure that changes in the program which might alter the conclusion of no significant impact are detected and the appropriate action taken (see also paragraph 313).

"(c) If the determination is that an environmental impact statement is required, the Headquarters official shall proceed with the "notice of intent to prepare an EIS" (see § 1508.22 of the CEQ Regulations). The Headquarters official shall transmit this notice to the Associate Administrator for External Relations for review and subsequent publication in the Federal Register (see section 1507.3(e) of the CEQ

Regulations). The Headquarters official shall then apply procedures set forth in § 1216.307 to determine the scope of the EIS and proceed to prepare and release the environmental statement in accordance with the CEQ Regulations and the procedures of this Subpart."

- k. The Notice of Intent (to prepare an EIS -- §1216.306(c)) should include a brief description of the proposed action and possible alternatives, the chief environmental issues uncovered by the assessment, and NASA's proposed scoping procedure, including the time and place of any scoping meeting, that would be held. The notice should state the name and address of the responsible Headquarters official and give other pertinent data on the proposed EIS (see format, Figure 3.5). Any lead agency determination

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NOTICE (81-)

This refers to
appropriate
Calendar Year

National Environmental Policy Act; Finding of No Significant Impact

AGENCY:

ACTION:

SUMMARY:

DATE:

ADDRESS:

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:

FIGURE 3.4—FINDING OF NO SIGNIFICANT IMPACT IN FEDERAL REGISTER

NOTICE OF INTENT TO PREPARE A DRAFT EIS

SHALL INCLUDE:

1. WHAT THE PROPOSED ACTION CONSISTS OF
2. ALTERNATIVES UNDER CONSIDERATION
3. LIST OF SIGNIFICANT ENVIRONMENTAL ISSUES TO BE ANALYZED IN DEPTH IN THE DRAFT EIS
4. DESCRIPTION OF THE SCOPING PROCESS
5. LIST OF ANY ENVIRONMENTAL REVIEW AND CONSULTATION REQUIREMENTS
6. EXPECTED RELEASE DATE OF DRAFT EIS
7. DISCUSSION OF ANY LETTER OF AGREEMENT REGARDING LEAD AND COOPERATING AGENCIES
8. LOCATION (CITY, COUNTY & STATE)

NAME, AND TELEPHONE NUMBER OF RESPONSIBLE HEAD-QUARTERS OFFICIAL

ASSOCIATE ADMINIS-TRATOR FOR EXTERNAL RELATIONS

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NOTICE (81-) This refers to appropriate calendar year

Intent to Prepare a Draft Environmental Impact Statement

AGENCY:

ACTION:

SUMMARY:

DATE:

ADDRESS:

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION :

SIGNATURE

FIGURE 3.5—NOTICE OF INTENT

shall be made prior to publication of the notice. Where NASA has been designated the lead agency in a joint or cooperative EIS, the notice should also include discussion of the respective roles of the cooperating agencies (see 40 CFR 1501.6). As in the case of the Finding of No Significant Impact, the Notice of Intent should be prepared by the responsible Headquarters official (for signature of the Associate Administrator for External Relations) for publication in the Federal Register, transmitted to interested parties, and (where appropriate) coordinated with the affected A-95 clearinghouse(s). The draft notice should be accompanied by the proposed distribution list.

1. If it appears that there will be a lengthy period between the agency's decision to prepare the EIS and the time of actual preparation, the Associate Administrator for External Relations may decide not to release the Notice of Intent immediately but instead hold it for release at a more appropriate time in advance of the preparation of the draft EIS. The responsible Headquarters official will be kept informed.

" (d) Environmental assessments may be prepared for any actions, even those which meet the criteria for environmental impact statements (§ 1216.305(c)) or for categorical exclusion (§ 1216.305(d)), if the responsible Headquarters official believes that the action may be an exception or that an assessment will assist in planning or decisionmaking."

- m. There may be cases where environmental assessments will be conducted for actions not normally requiring them. For example, a proposed action normally categorically excluded from the requirement may be recognized as a possible exception having environmental effects of some significance. Conversely, a proposed action in a category requiring an EIS may be identified as a possible exception having only minor environmental

effects. In either case, an environmental assessment can be prepared to confirm or deny these judgements. The instructions are the same as for proposed actions normally requiring an environmental assessment except that if the assessment confirms that no EIS is needed for an action normally categorically excluded, a Finding of No Significant Impact is not required.

307. SCOPING PROCESS

" § 1216.307 Scoping.

The responsible Headquarters official shall conduct an early and open process for determining the scope of issues to be addressed in environmental impact statements and for identifying the significant issues related to a proposed action. The elements of the scoping process are defined in § 1501.7 of the CEQ Regulations and the process must include considerations of the range of actions, alternatives, and impacts discussed in § 1508.25 of the CEQ Regulations. The range of environmental categories to be considered in the scoping process shall include, but not be limited to:

- (a) Air quality;
- (b) Water quality;
- (c) Waste generation, treatment, transportation disposal and storage;
- (d) Noise, sonic boom, and vibration;
- (e) Toxic substances;
- (f) Biotic resources;
- (g) Radioactive materials and non-ionizing radiation;
- (h) Endangered species;
- (i) Historical, archeological, and recreational factors;
- (j) Wetlands and floodplains; and
- (k) Economic, population and employment factors, provided they are interrelated with natural or physical environmental factors. "

- a. The purpose of the Scoping process is to determine the scope of issues to be addressed and to identify the significant issues related to a proposed action. The intent is to ensure that the eventual EIS addresses significant issues but does

not devote unnecessary attention to interesting, but otherwise insignificant, issues. The scoping process should include inputs from cooperating agencies and affected or interested parties or individuals, and thus requires appropriate public announcement. The Notice of Intent should be used for this purpose, inviting the inputs as discussed in 40 CFR 1501.7 and 1508.22.

- b. Scoping must be carried out very early in the process of preparing the draft EIS so that undue effort is not spent on minor issues. Normally, it would be expected that the earlier analyses of environmental effects and the environmental assessment would have served to identify all the critical issues, so that in most cases the scope of the necessary EIS will be pretty well defined. The formal scoping process then would serve as an opportunity to pick up something we may have missed and to get inputs from groups or individuals having other viewpoints.
- c. The scoping process is the responsibility of the Headquarters official responsible for the action under consideration, working closely with the Associate Administrator for External Relations or designee. The process should consider appropriate background and need for the proposed action and the types of actions, alternatives, and impacts described in 40 CFR 1508.25.
- d. Scoping must consider initially the full range of environmental parameters en route to identifying those which are significant and which must be addressed in the EIS. Examples of the environmental categories and questions that should be asked in the scoping process (as well as in the assessment development process) are:

- 1. Air quality: Is there a potential for violating air quality standards and regulations? Will the expected emissions lead to a potential "significant deterioration"? Do they meet "offset" requirements?

2. Water quality: Is there a potential for violating water quality standards and regulations?

3. Waste generation, treatment, transportation, and storage: What potential environmental problems exist in handling waste?

4. Noise, sonic boom, vibration: What potential effects can be expected on the general populace and biota? Will there be effects on noise sensitive areas?

5. Toxic substances: Does use present a potential unreasonable risk to health and safety of the general populace?

6. Ionizing and nonionizing radiation: Does use present a potential unreasonable risk to health and safety of the general populace?

7. Endangered species: Is there potential to affect listed endangered species or their habitats?

8. Biotic resources: Is there potential to sufficiently disturb their existence?

9. Wetlands and floodplains: Will the action occur in or adversely affect a floodplain or wetland?

10. Historical and archeological sites: Will the action affect properties included in or eligible for inclusion in the National Register of Historic Places?

11. Prime and unique farmlands: Will the action affect prime and unique farmland?

12. Coastal zone consistency determination: Will the action affect the coastal zone in a state with an approved coastal zone management plan? If so, is it consistent with the state plans?

13. Fish and wildlife coordination: Will the action involve the impoundment, diversion, deepening, or other control modification of waters of any stream or other body of water -- attendant loss of wildlife resources?

14. Land quality: What potential effects can be expected on the integrity of the land impacted by the action? Are there any adverse impacts on ground water supplies and other natural resources (minerals, etc.)?

15. Economic population, and employment factors (provided they are interrelated with natural or physical environmental factors): What potential effects may be expected in terms of shifts in the patterns of population movement and growth, public service demands, and changes in business and economic activity?

16. Health and safety: Other than listed above, is there a potential impact on health or safety? To what extent or severity?

- e. Consideration of the preceding questions and others like them for the full range of environmental categories will lead to rational conclusions as to which are the significant issues to be treated in the EIS. If an issue is controversial, it clearly requires coverage in detail. Conversely, issues which are not significant in the scoping process may then be covered in the EIS by brief presentations of why they will not have a significant effect on the human environment or by a reference to their coverage elsewhere (and the referenced documentation must be available on request).
- f. The scoping process is also the process in which assignments to prepare the EIS are allocated among the participants -- within NASA, when the EIS is a NASA-only job, and among NASA and the cooperating agencies, when NASA is the lead agency. Other public environmental assessments, other prospective EIS's which are related to the proposed action, and other

environmental review and consultation requirements (see paragraph 320) should be identified. Further, this is the time when decisions are made of EIS page limits, preparation, time limits, and any other procedural matters (40 CFR 1501.8 and 1502.7).

- g. Because the substance of the environmental assessment and that of the scoping process are so closely related, much of the work of the former will contribute to the latter, and little additional effort to accomplish scoping should normally be required except for external involvement. Indeed, if outside organizations and individuals have been adequately represented in developing the assessment, no new inputs are likely to be introduced by scoping, and the scoping process should be quite simple.

308. PREPARATION OF DRAFT STATEMENTS

" § 1216.308 Preparation of draft statements.

(a) The responsible Headquarters official shall prepare the draft environmental impact statement in the manner provided in Part 1502 of the CEQ Regulations and shall submit the draft statement and any attachments to the Associate Administrator for External Relations for NASA review prior to any formal review outside NASA. This submission shall be accompanied by a list of Federal, state, and local officials (Part 1503 of the CEQ Regulations) and a list of other interested parties (§ 1506.6 of the CEQ Regulations) from whom comments should be requested."

- a. After the analyses have been conducted and the assessment development and scoping processes completed, the responsible Headquarters official shall have obtained a detailed

evaluation of the significant environmental effects and issues that must be covered in the EIS. That official then initiates the preparation of that statement in accordance with the extensive instructions contained in the CEQ Regulations, especially 40 CFR 1502. Preparation itself may be carried out by NASA with or without the assistance of cooperating agencies and/or contractors. If a contractor has been hired to prepare the EIS, the contractor should execute a disclosure statement prepared by NASA indicating that the contractor has no interest in the outcome of the project. The responsible Headquarters official shall perform an independent evaluation of the contractor-prepared EIS to ensure that it fully reflects NASA's position and meets all NASA criteria and standards for such documents.

- b. NASA has adopted the format for EIS's recommended in 40 CFR 1502.10, which should encourage good analysis and clear presentation of alternatives, including the proposed action. If the responsible Headquarters official wishes to deviate from the standard format, that official should obtain the clearance of the Associate Administrator for External Relations, who will obtain the views of the CEQ before making a decision.
- c. The discussion of the contents of an EIS in the CEQ Regulations, 40 CFR 1502.10 through 1502.18, is quite thorough and needs little expansion or clarification. Preparers should adhere closely to the instructions provided there and consider the following additional guidance:

- 1. The discussion of alternatives is an extremely important part of the statement and should be given commensurate attention. It should be a relatively concise comparative display of the environmental effects of each of the alternatives laid out in a way that highlights the choices offered the decisionmakers. While no specific format is proposed, it is suggested that a matrix form, showing the range of alternatives against each category of environmental impact (e.g.,

air pollution, water pollution, endangered species, etc.) in an orthogonal display which describes the magnitude of impact in each matrix element is especially suitable.

2. The description of the affected environment has, in the past, been given attention far beyond its value to the discussion of environmental impacts. To the extent that description of the environment is required (as noted in 40 CFR 1502.15), descriptive material already available should be used where possible. The use of references is encouraged. When the proposed action is at a NASA field installation, the available environmental resources document should be cited for description of the affected environment, augmented only as absolutely necessary.

3. The section on environmental consequences is the analytic heart of the EIS and provides the basis for the comparative evaluation of the alternatives. Again, no specific format for this section is provided here, but the points to be covered are thoroughly described in 40 CFR 1502.16. The categories of "environmental impacts," "adverse environment effects which cannot be avoided," "relationship between short-term uses of man's environment and the maintenance and enhancement of long term productivity," and "irreversible and irretrievable commitments of resources" will be recognized from their appearance in EIS's under the old CEQ Guidelines, and should all be included for each alternative. This section should not duplicate the discussion in alternatives, but should be the basis for the comparisons described there.

- d. NASA review of the draft statement is managed by the Associate Administrator for External Relations. The responsible Headquarters official, upon approval of the draft EIS, should forward enough copies to the Associate Administrator for External Relations for distribution to interested parties in NASA for internal review. In

order to avoid unnecessary built-in delay, normally no more than 30 days will be allowed for that internal review. In cases where other agencies or organizations are cooperating agencies under NASA's lead, the internal review should include review by these cooperating agencies so that the revised draft that is later distributed for public comment has their prior approval.

- e. When the comments have been received, they will be returned to the responsible Headquarters official with recommendations on necessary changes. Should any unresolved issues remain between the responsible official and a commenter, the Associate Administrator for External Relations will assist in working them out.
- f. When the preliminary draft EIS is submitted for NASA review, it should be accompanied by a proposed list of Federal, state, and local officials and other interested parties to whom the revised draft statement should be sent for external review. The Associate Administrator for External Relations will suggest modifications to the list, if necessary, and will retain it for use in distributing, for external comment, the draft as revised by NASA review.

" (b) After the NASA review is completed, the Associate Administrator for External Relations shall submit the approved draft statement to the Environmental Protection Agency (EPA), Office of Environmental Review, and shall seek the views of appropriate agencies and individuals in accordance with Part 1503 and § 1506.6 of the CEQ Regulations."

- g. External review of draft EIS's will be managed by the Associate Administrator for External Relations. Copies of the draft statement will be distributed to all parties on the agreed-to distribution list with the

request for their comments. The Associate Administrator for External Relations will also submit a notice for publication in the Federal Register announcing the release and availability of the draft statement. Upon receipt of the draft the Environmental Protection Agency's (EPA's) Office of Environmental Review will also place a notice in the Federal Register, and the date of that publication is the date that all time limits related to the draft's release begin.

- h. A minimum of 45 days (from publication of the EPA Federal Register notice) must be allowed for comments; a longer period may be allowed if appropriate, and reasonable requests for extension should be granted. Time limits for specific EIS's should be established during the scoping process. CEQ requirements relative to the comment process are contained in 40 CFR 1503 and 1506.6, and timing requirements are in 40 CFR 1506.10.

"(c) Comments received shall be provided to the originating official for consideration in preparing the final statement. To the extent possible, requirements for review and consultation with other agencies on environmental matters established by statutes other than NEPA, such as the review and consultation requirements of the Endangered Species Act of 1973, as amended, should be met prior to or through this review process (§ 1216.320)."

- i. Comments from external reviewers received in the Office of the Associate Administrator for External Relations will be sent to the office responsible for preparing the EIS. Copies of any comments received directly in the latter office should be forwarded to the Office of External Relations for information. Each comment should be incorporated in its entirety in the final EIS in a separate section for that purpose. If a comment is unusually lengthy, it may be cited as a reference, rather

than included. However, the final environmental impact statement should, in that case, provide an accurate and objective summary of the comment in addition to the citation. NASA's response to each substantive element of each comment should be included in the final EIS (usually in close proximity to the comment itself), and, where required, the EIS should be modified in accordance with the NASA response. Such modifications may range from correcting minor errors having little environmental significance to changing the entire project approach (and its EIS), although in the latter extreme, a new draft EIS would more than likely be required.

- j. A number of Federal statutes and regulations require review and consultation with other agencies before taking actions which may affect an identified environmental factor. Examples are the Endangered Species Act of 1973, as amended, and the National Historic Preservation Act. To the extent possible, these requirements should be met prior to or within the EIS review process, so that no open issues remain when the EIS review is completed. Additional information is in paragraph 320 and in a separate procedures document which will be published at a future date.

309. PUBLIC INVOLVEMENT

" § 1216.309 Public Involvement.

(a) Interested persons can get information on NASA environmental impact statements and other aspects of NASA's NEPA process by contacting the Director, Management Support Office (Code LB), NASA, Washington, DC 20546, 202-755-8383. Pertinent information regarding any aspect of the NEPA process may also be mailed to the above address.

(b) Responsible Headquarters officials and NASA Field Installation Directors shall identify those persons, community organizations, and environmental interest groups who may be interested or affected by the proposed NASA action and who should be involved in the NEPA process. They shall submit a list of such persons and organizations to the Associate Administrator for External Relations at the same time they submit:

- (1) A recommendation regarding a "Finding of No Significant Impact,"
- (2) A "Notice of Intent to Prepare an EIS,"
- (3) A recommendation for public hearings,
- (4) A preliminary draft EIS,
- (5) A preliminary final EIS,
- (6) Other preliminary environmental documents (§ 1216.321(d)).
- (c) The Associate Administrator for External Relations may modify such lists referred to in paragraph (b) as appropriate to ensure that NASA shall comply, to the fullest extent practicable, with § 1506.6 of the CEQ Regulations and § 2-4(d) of Executive Order 12114.
- (d) The decision whether to hold public hearings shall be made by the Associate Administrator for External Relations in consultation with the General Counsel.

- a. An important element in the EIS process is involvement of the public. Early involvement can go a long way towards meeting complaints and objections regarding a proposed action, and experience has taught that a fully informed and involved public is considerably more supportive of a proposed action. When a proposed action is believed likely to generate significant public concern, the public should be brought in for consultation in the early planning stages. If an EIS is warranted, the public should be involved both in scoping and in the EIS review. Early involvement can help lead to selection of the best alternative and to the least public objection.
- b. The Management Support Office (External Relations), Code LB, is responsible for providing information on NASA EIS's and other aspects of NASA's NEPA process on request, and must therefore have access to all such information within the agency. Responsible Headquarters officials and Field Installation Directors should see that the office is kept informed of all activities which may be the subject of environmental inquiry.
- c. For proposed actions having chiefly local implications, emphasis should be placed on identifying those persons, community organizations, and environmental interest groups having particular concern about the subject locality and the specific environmental factors that might be at issue. Regional and national interest groups should also be identified with respect to local actions, as well as for proposed actions having geographically broader implications. Such groups may form the main avenue for public involvement.
- d. The Associate Administrator for External Relations will assist in identifying individuals and groups to be involved in the NEPA process. The Management Support Office (External Relations) maintains a list of environmental interest groups and should be consulted appropriately.

- e. Some of the criteria that should be used in deciding whether to hold public hearings are given in 40 CFR 1506.6. Any suggestions on this should be forwarded by the responsible Headquarters official or Field Installation Director to the Associate Administrator for External Relations, who will consult with the General Counsel on the necessity for and rules to be employed in any public hearings.

310. PREPARATION OF FINAL STATEMENTS

" § 1216.310 Preparation of final statements.

(a) After conclusion of the review process with other Federal, state, and local agencies and the public, the responsible Headquarters official shall consider all suggestions, revise the statement as appropriate, and forward the proposed final statement to the Associate Administrator for External Relations. The Associate Administrator for External Relations shall submit the approved final statement to the EPA Office of Environmental Review, to all parties who commented, and to other interested parties in accordance with CEQ Regulations.

(b) Each draft and final statement, the supporting documentation, and the record of decision shall be available for public review and copying at the office of the responsible Headquarters official, or at the office of a suitable designee. Copies of draft and final environment impact statements shall also be available at the NASA Information Center, 600 Independence Avenue, SW, Washington, DC 20546; at information centers at appropriate NASA field installations; and at appropriate state and local clearinghouses. "

- a. The preliminary final EIS, modified as required by the preceding review process, should be forwarded to the Associate Administrator for External Relations for a

last review prior to its printing in quantity and distribution. The final version should include satisfactory responses to all responsible comments. While NASA need not yield to each and every opposing comment, NASA's position should be rational, logical, and based on data and arguments stronger than those cited by the commenters opposing the NASA views.

- b. When the final review is satisfactorily completed, the approved final EIS may be printed and distribution made to the approved distribution list. The Associate Administrator for External Relations will submit the final EIS to EPA and to any other parties requiring a direct transmittal. The bulk of the distribution can be made either by the responsible Headquarters office or by the Office of External Relations, as mutually agreed.
- c. To comply with §1216.310(b), the EIS format provides for identification of a NASA person who can supply information on the subject environmental impact statement. That person should normally be a senior Headquarters manager in the office responsible for the subject proposed action and EIS, such as the program manager. This contrasts with the responsibility of the Director, Management Support Office, who is charged with providing general information on NASA's EIS's and its NEPA process (see paragraph 309). The program manager or a suitable designee should keep copies of the relevant draft and final EIS, the supporting documentation (reference documents and reports, appendixes, hearing transcripts, etc.), and the record of decision available for review and copying on request. Charges for copying should be imposed in accordance with normal practice. Officials are encouraged to take a lenient position towards waiver of charges when possible.
- d. Copies of draft and final EIS's will be sent to the NASA Information centers and to NASA Headquarters Public

Affairs Offices by the Office of External Relations and to the state and local clearinghouses as part of the normal distribution of these statements.

311. RECORD OF THE DECISION

" § 1216.311 Record of the decision.

At the time of the decision on the proposed action, the originating Headquarters official shall consult with the Associate Administrator for External Relations and prepare a concise public record of the decision. (See § 1505.2 of the CEQ Regulations.) "

The EIS is not an end in itself; it is a principal means of describing the likely environmental effects of a proposed action, providing a forum for the consideration of the views of others, and gathering all this information together for the use by decisionmakers. When the EIS process has been completed and the required minimum time intervals have elapsed (paragraph 312), the agency is free to make and implement the decision(s) involving the proposed action. The record of decision, a formal document described in 40 CFR 1505.2, is prepared at this time and becomes the official, public record of the consideration of environmental factors in reaching the decision. A key element in the record of the decision is a description of how environmental considerations (and the EIS itself) entered into the decision, again placing emphasis on the importance of including these factors throughout the decision process. The record of decision is not circulated or published in the Federal Register but must be kept in the official files for the program in question and made available on request. Responsibility for its preparation rests with the Headquarters official responsible for the action itself; concurrence of the Associate Administrator for External Relations should be obtained.

312. TIMING

" § 1216.312 Timing.

(a) Environmental impact statements are drafted when the Headquarters official has determined that the statement shall be prepared. No decision to proceed to the development/ construction (or implementation) phase of the proposed action (the major decision point of § 1216.304(b)) shall be made by NASA until the later of the following dates (§ 1506.10 of the CEQ Regulations):

(1) Ninety days after publication of an EPA notice of a NASA draft EIS.

(2) Thirty days after publication of an EPA notice of a NASA final EIS.

(b) When necessary to comply with other specific statutory requirements, NASA shall consult with and obtain from EPA time periods other than those specified by the Council for timing of agency action. "

- a. To ensure that proposed agency actions are not implemented before others have had a reasonable opportunity to comment on the EIS, the CEQ has established the minimum time intervals as indicated in §1216.312(a), within which the proposing agency cannot make and implement decisions under consideration. In the NASA scheme of things, the EIS process is required to be complete before initiation of the development/construction phase of the subject action, and thus this phase should not be initiated until those specified time intervals have elapsed. Note that the "clock" starts only when the notice of the NASA EIS is published by the EPA. Their notices usually appear one to two weeks after NASA's publication of the EIS and its own Federal Register notice, and care must be taken to tie the action steps to the proper date.
- b. The CEQ Regulations (40 CFR 1506.10) provide for the possibility of waiver of all or part of the minimum waiting periods for reasons of compelling national

policy. Officials desiring such a waiver should consult with the Associate Administrator for External Relations to determine a course of action.

313. IMPLEMENTING AND MONITORING THE DECISION

"§ 1216.313 Implementing and monitoring the decision.

(a) Section 1505.3 of the CEQ Regulations provides for agency monitoring to assure that mitigation measures and other commitments associated with the decision and its implementation and described in the EIS are carried out and have the intended effects.

(b) The responsible Headquarters official shall, as necessary, conduct the required monitoring and shall provide periodic reports as required by the Associated Administrator for External Relations.

If the monitoring activity indicates that resulting environmental effects differ from those described in the current documents, the Headquarters official shall reassess the environmental impact and consult with the Associate Administrator for External Relations to determine the need for additional mitigation measures and whether to prepare a supplement to the EIS (see § 1502.2 of the CEQ Regulations). "

- a. EIS's usually describe impacts based upon the best available theoretical information and empirical data, but in many cases neither theory nor data are sufficiently well founded that the impacts are accurately predictable. Further, statements often commit the agency to mitigation measures that are designed to reduce or eliminate detrimental environmental impacts of some severity. To assure that things go as expected as the proposed action is implemented, the initiating official is responsible for monitoring the effects of the action and of the mitigation measures. The reports of the monitoring shall be made available upon request.

- b. The Associate Administrator for External Relations will establish monitoring requirements for actions which were the subject of EIS's and will specify periodic reporting requirements on a case by case basis. When the monitoring shows effects other than those predicted in the environmental impact statement, a reassessment to determine significance is required. If the unexpected effects are detrimental and can be alleviated with additional mitigation measures, those may be imposed. If, for some reason, additional mitigation measures cannot be taken, the environmental effects of this action and the alternatives should be reevaluated and an assessment made as to environmental significance. If it is determined that the new effects are significant, a supplement to the prior EIS will be required, and should be prepared in much the same manner as was the basic EIS itself (see 40 CFR 1502.9 and paragraph 314(c)).

314. TIERING

" § 1216.314 Tiering.

Actions which are the subject of an environmental impact statement and which represents projects of broad scope may contain within them component actions of narrower scope, perhaps restricted to individual sites of activity or sequential stages of a mission, and which themselves may require environmental assessments and, where necessary, environmental impact statements. The CEQ Regulations provide that agencies may use "Tiering" (§ 1506.28 of the CEQ Regulations) of environmental impact statements to relate such broad and narrow actions. When employing tiering, Headquarters officials shall, by reference, make maximum use of environmental documentation already available, and avoid repetition.

a. Tiering is CEQ's term for ordering of interrelated EIS's. NASA has employed tiering in the past (Space Shuttle Program and related local actions) and maximum use should be made of tiering in the future to avoid the need for extensive repetition of common information. Tiering is appropriate for (1) broad program actions and related individual project components (sequential or otherwise); (2) proposed actions having global, national, or regional effects and specific component actions having effects considerably more localized; and (3) a class of actions having common elements (generic EIS) and each specific action in that class having project-specific impacts.

b. In adopting a system of tiered impact statements, focus shall be placed on the decisions to be made at each separate stage. The broad program statement should consider national, global, or generic issues. The regional statements should analyze impacts and alternatives within defined regions. The site or project specific statement need not and should not repeat analysis of broader issues which have been considered in the programmatic or regional statements.

c. Supplements

1. The NASA/NEPA procedures do not address supplements to EIS's directly, only in terms of reassessment in the event that monitoring shows that the impacts are other than predicted (see paragraph 313). More generally, supplements should be considered whenever new information that changes the analyses contained in a previous EIS becomes available (see 40 CFR 1502.9). Typical reasons to consider the use of supplements are:

(i) NASA proposes significant changes in an action underway and these changes, if implemented, would alter the environmental effects deemed significant in the earlier EIS.

(ii) New knowledge that would change the magnitude or scope of the environmental effects considered in the original EIS becomes available.

(iii) Monitoring of the action shows that the effects are not as expected and that the mitigation measures are not effective.

2. Supplements to EIS's should be prepared in the same manner as are basic environmental impact statements, with an analysis of the effects of the change, new information, or whatever; evaluation of alternative courses of action and their effects; an environmental assessment; decision whether to prepare a supplement; preparation of Finding of No Significant Impact or Notice of Intent; and, if the latter, preparation of draft supplement, consultation and comments, and preparation of final supplement and record of decision. Unless the CEQ approves alternative arrangements for the specific supplement, all the requirements and minimum time intervals are the same as for basic EIS's. Requests for alternative arrangements should be directed to the Associate Administrator for External Relations, who will take them up with CEQ.

315. PROCESSING LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENTS

"§ 1216.315 Processing legislative environmental impact statements.

(a) Preparation of a legislative environmental impact statement shall conform to the requirements of § 1506.8 of the CEQ Regulations. The responsible Headquarters official, in coordination with the Associate Administrator for External Relations, shall identify those legislative proposals or reports on legislation that would require preparation of environmental impact statements in accordance with criteria set forth in § 1216.305.

(b) For the purposes of this provision, "legislation" not only excludes requests for appropriations (§ 1506.17 of the CEQ Regulations), but also excludes the annual authorization bill submitted to the Congress. "

- a. The procedures for processing legislative environmental impact statements are quite explicit in 40 CFR 1506.8. Because both annual appropriation and authorization legislation have been excluded from this requirement for NASA, legislative EIS's will be prepared very infrequently, such as for special NASA proposals for legislation involving new or altered agency missions or such other fundamental change. The legislative EIS shall be considered part of the formal transmittal of a legislative proposal to Congress.
- b. Note that the excluding of annual appropriation and authorization legislation does not exclude new program, project, or facility starts from EIS requirements. Their EIS procedures are tied, however, to the NASA administrative decision process, rather than to the legislative process. The two processes are closely linked. When a new start will require an "administrative" EIS, confidentiality of the President's budget during its formulation stage may well prevent the public release of that draft until the budget has been submitted to the Congress (about January 20 each year). In this event, the draft should be released for review as soon after the budget submittal as possible.

316. COOPERATING WITH OTHER AGENCIES AND INDIVIDUALS

" § 1216.316 Cooperating with other agencies and individuals

(a) The Associate Administrator for External Relations shall ensure that NASA officials have an opportunity to cooperate with other agencies and individuals. He/she shall keep abreast of the activities of Federal, state, and local agencies, particularly activities in which NASA has expertise or jurisdiction by law (see § 1506.15 of the CEQ Regulations). He/she shall inform the responsible Headquarters official of the need for cooperation as necessary.

(b) At the request of the Associate Administrator for External Relations, Headquarters officials shall initiate discussions with another Federal agency concerning those activities which may be the subject of that agency's EIS on which NASA proposes to comment.

(c) At the request of the Associate Administrator for External Relations, the responsible Headquarters official shall, in the interest of eliminating duplication, prepare joint analyses, assessments, and statements with state and local agencies. These joint environmental documents shall conform with the requirements of these procedures and overall NASA policy.

(d) Because of the uniqueness of NASA's aerospace activities, it is unlikely that NASA will have the opportunity to "adopt" environmental statements prepared by other agencies (§ 1506.3 of the CEQ Regulations). However, should the responsible NASA official wish to adopt a Federal draft or

final environmental impact statement or portion thereof, he/she shall consult with the Associate Administrator for External Relations to determine whether that statement meets NASA requirements.

(e) From time to time, there may be disagreements between NASA and other Federal agencies regarding which agency has primary responsibility to prepare an environmental impact statement in which both parties are involved. The Headquarters official with primary responsibility for the activity in question shall consult with the Associate Administrator for External Relations to resolve such questions in accordance with § 1501.5 of the CEQ Regulations.

(f) Responsibility for the environmental analyses and any necessary environmental assessments and environmental impact statements required by permits, leases, easements, etc., proposed for issuance to non-Federal applicants rests with the Headquarters official responsible for

granting of that permit, lease, easement, etc. The responsible Headquarters official shall consult with the Associate Administrator for External Relations for advice on the type of environmental information needed from the applicant and on the extent of the applicant's participation in the necessary environmental studies and their documentation. "

- a. The CEQ Regulations provide for interagency cooperation in all phases of the NEPA process. Such cooperating efforts are detailed in 40 CFR 1501.5, Lead Agencies, and 40 CFR 1501.6, Cooperating Agencies. In addition to the joint activities covered in those sections, cooperation, as noted in §1216.316(a), may take the form of the utilization of another agency's expertise in environmental analysis and commenting on the environmental impact statements of another agency.
- b. In accordance with §1216.316(b), NASA should comment on the EIS's of other agencies when it has jurisdiction by law, special expertise, or an interest in the proposed action of the other agency through the possible impact of that action on NASA, its installations, or its programs. The Associate Administrator for External Relations will normally receive the draft EIS from the initiating agency and will circulate it in NASA for comment. Comments will be collected by the Associate Administrator for External Relations and a single NASA response to the requesting agency will be prepared in this office. The offices having interests in the proposed action are encouraged to discuss its tentative comments with the originating agency so that any serious issues can be resolved at the earliest time.

- c. Preparation of joint analyses, assessments, and statements with state and local agencies are unlikely to be a major component of NASA's NEPA work. However, they should not be precluded, and if a useful purpose is to be served by joint work, it should be encouraged, as noted in §1216.316(c). More generally, overall consultation with state and local agencies on NASA actions is required and covered elsewhere in this Handbook.
- d. In a like manner, NASA's work makes unlikely the possibility of "adopting" another agency's EIS (see §1216.316(d)). However, in the interest of reduced paperwork and elimination of duplication in analysis, adoption should be considered when another agency's EIS is relevant. The prospective adopted EIS must meet the standards established for NASA EIS's to be eligible for adoption.
- e. It is difficult to imagine reasonable NASA and other agency officials being unable to agree on which agency has primary responsibility for a proposed joint action and thus unable to agree which is the lead agency (see §1216.316(e)). While no fixed rules can be established for this purpose, it seems logical that one principal factor of the proposed action will dominate and thus point towards the lead agency. For example, joint studies with the Department of Energy (DOE) of a Satellite Power System as a possible future element in the national energy program are underway. Because of its responsibility for overall national energy policy, the DOE serves as lead agency in this activity even though such a system would depend totally on the space segments. Each such case should be considered on its own merits. 40 CFR 1501.5 gives additional guidance on resolution of lead agency disputes.
- f. If a permit, lease, easement, or similar such license is requested of NASA by a non-Federal party, and if the action of granting that permit, lease, easement, etc., may lead to a significant effect upon the environment, an EIS is required just as for direct Federal actions (see §1216.316(f)). All the procedures of the preceding

paragraphs of this Handbook apply to these actions as well. While the applicant can be required to provide the supporting information, the responsible Headquarters official must take on the full responsibility for the action and its EIS, and must be sure of the validity of the applicant's inputs.

317. CLASSIFIED INFORMATION

" § 1216.317 Classified Information.

Environmental assessments and impact statements which contain classified information to be withheld from public release in the interest of national security or foreign policy shall be organized so that the classified portions are appendices to the environmental document itself. The classified portion shall not be made available to the public.

In developing EIS's and other public documents which involve classified information, care must be taken not only to separate the classified information into appendixes not available to the public, but to avoid inadvertent disclosure of any or all of this information through guarded references in the public documents themselves. Maximum effort should be employed to develop fully unclassified statements using unclassified source material. Classified information should be used, under the stated limitations, only when its omission and the use of available unclassified information will yield an erroneous, misleading, or otherwise inadequate EIS.

318. DEVIATIONS

" § 1216.318 Deviations.

From time to time there will arise good and valid reasons for a deviation from these procedures. These procedures are not intended to be a substitute for sound professional judgment. Accordingly, if and as problems arise which justify a deviation, the proposed deviation and supporting rationale shall be forwarded to the Associate Administrator for External Relations. Unless such documentation is received, it will be assumed that each planning and decisionmaking action is in accordance with these procedures. "

Preceding paragraphs of this Handbook have identified some instances where the specific regulations of the CEQ permit deviations from otherwise standard procedures (e.g., time limits, format). More generally, deviations may be proposed for almost any of the specific elements of these procedures, and will receive serious consideration if they promote the purposes of NEPA and do not contradict any of the major substantive rules of the CEQ regarding such basic aspects as the relevance to the decision process, public involvement, etc. Approval of any proposed deviations of significance will normally be cleared with CEQ. In instances where emergency circumstances make it necessary to take an action with significant environmental impact without observing the NASA/NEPA procedures and the overall provisions of NEPA, various arrangements must be devised to control the immediate impact of the emergency, and mitigation measures must be developed to control any potential long-term adverse effects. Again, this matter will be taken up with CEQ.

319. ENVIRONMENTAL RESOURCES DOCUMENT

" § 1216.319 Environmental resources document.

Each Field Installation Director shall ensure that there exists an environmental resources document which describes the current environment at that field installation, including current information on the effects of NASA operations on the local environment. This document shall include information on the same environmental effects as included in an environmental impact statement (See § 1216.307). This document shall be coordinated with the Associate Administrator for External Relations and shall be published in an appropriate NASA report category for use as a reference document in preparing other environmental documents (e.g., environmental impact statements for proposed actions to be located at the NASA field installation in question). The Director of each NASA field installation shall ensure that existing resource documents are reviewed and updated, if necessary, by December 31, 1980, and at appropriate intervals thereafter. "

Previous NASA/NEPA procedures provided for a class of EIS's called "Institutional Environmental Impact Statements," defining the continuing operation of each NASA field installation as a major Federal action significantly affecting the environment, even though those statements did not relate to a specific action/decision and usually showed only modest environmental effects. Under the present procedures, most individual institutional actions are categorically excluded from the EIS requirement and thus Institutional EIS's are no longer required. Instead, the procedures require each NASA installation to have an Environmental Resources Document to serve as a succinct baseline description of all environmental aspects of the operations of the installation at the time of its preparation and, in effect, form a "baseline ecology" description against which the effects of subsequent proposed actions may be judged to determine significance. The Environmental Resources Document, when completed, should be published in an appropriate NASA report series (e.g., TM-X) so that it is readily available for reference. It should be updated continually as required by changing conditions (by page change or other simple technique) and reviewed thoroughly at 5-year intervals (and revised, if necessary) to ensure adequacy. The ERD's should conform to the following standard format:

- a. Title Page, including all required data for citation purposes and the name, address, and phone number of a contact at the installation for inquiries.
- b. Table of Contents, including at least the section titles in the following paragraphs.
- c. Description of Installation, including a discussion of the programs and activities conducted at the installation:
 1. An explicit, but brief, description of the location of the installation which includes the boundaries on all sides;

2. A table which specifies the name, size, and unique features (implications for environmental health and safety) for all major facilities, along with a site map to indicate the location of such facilities.

d. Air Resources, including:

1. A description of the climate, including relative humidity, mean and extreme temperature variation, surface wind variations, visability, and precipitation;

2. A table which lists both Federal and State ambient air quality standards for air pollutants, including but not limited to: SO₂, particulates, NO₂, CO, ozone, and lead; and any special requirements of the affected State;

3. A brief general discussion of current condition of air quality at the installation -- a discussion on each ambient standard -- a table on major sources of air pollution at the installation and the nature of existing techniques for control;

e. Water Resources, including:

1. A description of ground and surface waters at the installation. This should indicate whether any aquifer at the installation has been designated as the sole and principal drinking water source for the area under Section 1424(2)g of the Safe Drinking Water Act, whether there are ground water pollution sources (deep well injection, etc.), and whether there are rivers in the area designated as wild or scenic under the Wild and Scenic Rivers Act or designated as having the potential for inclusion under the Act;

2. A table which lists both Federal and State regulated water quality parameters, including but not limited to: biochemical oxygen demanding (BOD), total suspended solids (TSS), pH, fecal coliform, oils and grease, and temperature;

3. A brief general discussion of the current condition of water quality at the installation, including each water quality parameter. Major sources of water pollution at the installation should be identified along with the nature of existing techniques for control and the status of any National Pollution Discharge Elimination System (NPDES) permit;

f. Land Resources, including:

1. A description of topography (slope of terrain and elevation), geology, seismology, soils, and drainage;

2. A discussion of land use plans, policies, and controls including: any cooperation or participation with state and local and regional agencies in coastal zone management and planning; the extent to which the installation activities are consistent with existing state coastal zone management plans; the existence of prime and unique farmlands in the vicinity of the installation and the extent to which existing or future activities at the installation may threaten their continued use.

g. Biotic Resources, including:

1. A description of plants and animals in the area of impact of the installation, along with a description of important habitats and sensitive food chains;

2. A generalized vegetation map of the entire installation and a brief discussion thereof.

h. Endangered Species, including:

1. A table listing both Federally designated and State designated endangered or threatened species in the area of impact of the installation;

2. A brief description of those endangered or threatened species, their ranges, habitats, life history and ecology, unique characteristics, basis for status classification, and species status.

i. Wetlands and Floodplains, including:

1. A base floodplain map of the installation which delineates both the 100-year and 500-year floodplains;

2. A brief discussion of activities currently located in floodplain or wetlands and existing measures to minimize harm to lives, property, and the natural and beneficial values of floodplains and wetlands;

j. Solid Waste Generation, Treatment, Storage, and Disposal, including:

1. A table which identifies the name and current and projected quantities of garbage, refuse, sludges and other discarded materials, including liquids, semisolids, and contained gases from industrial sources -- and indication whether such waste is hazardous or non-hazardous;

2. A brief description of the installation's management control system for hazardous waste and a description of current disposal and management practices for non-hazardous waste.

k. Toxic Substances exposure standards and effluent limits under the Clean Water Act and Clean Air Act, including:

1. A table which list standards and prohibitions for hazardous air pollutants such as vinyl chloride, asbestos, beryllium, and mercury; standards and prohibitions for toxic water pollutants such as PCB's, benzidine, aldrin/dieldrin, DDT, DDE, DDD, endrin, and toxaphene -- if they are present or discharged at the installation;

2. A table which identifies the quantities and major sources of these pollutants and describes the nature of existing techniques for control.

1. Pesticides, including a table which identifies each pesticide, its use, method of application, quantities used per year, quantities stored per year, method of disposal, and method of storage.
- m. Radioactive Materials and Non-Ionizing Radiation, including a table which identifies the type of radiation, potential population exposed, source of the radiation, degree of hazard, and nature of control techniques (i.e., for nuclear materials, radio transmitters, radar transmitters, lasers, ultraviolet, x-rays, gamma rays).
- n. Noise, Sonic Boom, and Vibration, including a table which identifies the major sources, levels, population affected, and any clarifying remarks regarding noise, sonic boom, and vibration.
- o. Historical, Archaeological, and Cultural Factors, including:
 1. A description of the historical setting, a list of historical and archaeological resources at or in the vicinity of the installation, and a list of properties (in the vicinity) which may be eligible for inclusion in the National Register of Historic Places;
 2. A description of schools, hospitals, churches, social focus, and recreational opportunities, activities, and facilities.
- p. Economic, Population, and Employment Factors, including:
 1. A description of overall and employee population density, composition, and distribution with respect to the installation.

2. A description of police and fire protection, health services, public transportation, nature of traffic and transportation routes;

3. A description of the general nature of employment opportunities and general size and nature of labor force.

q. Definitions, Abbreviations, and Conversion Factors.

r. Index.

320. ENVIRONMENTAL REVIEW AND CONSULTATION REQUIREMENTS

" § 1216.320 Environmental review and consultation requirements.

(a) Headquarters officials and Field Installation Directors shall, to the maximum extent possible, conduct environmental analyses, assessments, and any impact statement preparation concurrently with environmental reviews required by the laws and regulations listed below:

(1) Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470(f)) requires identification of National Register properties, eligible properties, or properties which may be eligible for the National Register within the area of the potential impact of a NASA proposed action. Evaluation of the impact of the NASA action on such properties shall be discussed in draft environmental impact statements and transmitted to the Advisory Council on Historic Preservation for comments.

(2) Section 7 of the Endangered Species Act (16 U.S.C. 1531 et seq.) requires identification of and consultation on aspects of the NASA action that may affect listed species or

their habitat. A written request for consultation, along with the draft statement, shall be conveyed to the Regional Director of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, for the Region where the action will be carried out.

(3) Executive Order 11988 (Floodplains Management) and Executive Order 11990 (Wetlands), as implemented by 14 CFR Subpart 1216.2—Floodplains and Wetlands Management, prescribe procedures to avoid adverse impacts associated with the occupancy and modification of floodplains and wetlands and require identification and evaluation of actions which are proposed for location in or which may affect a floodplain or wetland. A comparative evaluation of such actions shall be discussed in draft environmental impact statements and transmitted to appropriate A-85 clearing-houses for comments.

(b) Other environmental review and consultation requirements peculiar to NASA, if any, shall be identified as a part of a NASA environmental handbook to be prepared.

- a. Early in the conduct of environmental analyses and assessment it may be desirable to establish contact with and make use of the advice of environmental resource agencies, both state and Federal, that have environmental review responsibilities. Specific consultation requirements have been established by the following statutes and regulations.

1. National Historic Preservation Act of 1966, as amended (16 U.S.C. Sections 470-470t), and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. Sections 469-469c).

2. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

3. Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.).

4. Fish and Wildlife Coordination Act (16 U.S.C. Sections 661-666c).

5. Wild and Scenic River Act of 1965, as amended (16 U.S.C. 1271 et seq.).

6. Analysis of Prime and Unique Agricultural Lands in Implementing the National Environmental Policy Act (CEQ Memorandum, dated August 11, 1980).

7. Environmental Review Pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974, and its Relationship to the National Environmental Policy Act of 1969 (CEQ Memorandum, dated November 19, 1976).

8. Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands).

- b. In general, these laws or regulations require that proposed agency actions which may affect the specified environmental parameter be coordinated with the organization or agency (Federal, and often state) responsible for that parameter and that its views on avoidance or mitigation of the effects be considered by the agency proposing the action. Differing degrees and levels of coordination (review and consultation) are specified or suggested and differing mechanisms are identified for resolving any differences of view which arise.

- c. Except where otherwise specified, review and consultation for proposed actions of a local nature (e.g., a field center action having possible local effects) should be initiated by that center with the local or regional office of the responsible Federal agency or department. For actions having possible effects involving more than one region, the review and consultation should be initiated by NASA Headquarters with the Washington Headquarters of the responsible agency. But even for local actions, the responsible NASA Headquarters office should be informed of consultations as they are initiated and should become involved should the center and the other agency's regional office be unable to resolve any issues which arise. Summary reports of findings of each completed consultation containing the essential information should be sent to both the responsible Headquarters official and the Associate Administrator for External Relations.
- d. Specific review and consultation requirements and procedures are listed in the following paragraphs:

1. Historic Preservation

(a) The Headquarters Official/Field Installation Director shall consult the State Historic Preservation Officer, the published lists of National Register of Historic Places and eligible properties, public records, other individuals, and organizations with historical and cultural expertise to determine what historic and cultural properties are known to be in the planning area and potentially impacted by the proposed NASA action. When the Headquarters Official/Field Installation Director and the State Historic Preservation Officer agree that a property meets the National Register of Historic Places criteria (36 CFR 60.6), the Headquarters Official/Field Installation Director shall initiate a request for a determination of eligibility from the Secretary of Interior. When the process for determination of eligibility is completed, the Headquarters Official/Field Installation Director may initiate a request to the Advisory Council on Historic Preservation for their comments on the proposed NASA action.

(b) If it is uncertain whether significant cultural resources are located in the area impacted by the proposed NASA action, the Headquarters Official/Field Installation Director shall prepare appropriate documentation which indicates that:

(1) Construction will be discontinued if resources are uncovered.

(2) A qualified professional will be employed to evaluate the importance of resources.

(3) A request will be forwarded to the Secretary of Interior for recovery and preservation activities.

2. Endangered Species

(a) Prior to entering into contracts for construction or prior to the initiation of any action under NASA authorization and funding, the Headquarters Official/Field Installation Director shall request information from the Regional Director, Fish and Wildlife Service (FWS), or the Regional Director, National Marine Fisheries Service (NMFS), on whether any species listed or proposed to be listed as "endangered" or "threatened" may be present in the planning area of the proposed NASA action.

(b) When advised by the Regional Director, FWS or the Regional Director, NMFS, that an endangered species may be present in the planning area, the Headquarters Official/Field Installation Director shall conduct a biological assessment and submit the assessment to the Regional Director, FWS, or the Regional Director, NMFS. Once the assessment has been submitted, no resources shall be committed to the NASA action which would have the effect of foreclosing alternative measures which would avoid jeopardizing the continued existence of the endangered or threatened species or adversely modifying the critical habitat of the endangered species.

3. Coastal Zone Management

(a) The Headquarters Official/Field Installation Director who proposes an action which may affect a coastal zone area shall, at the earliest time in the planning of the action, and in all cases at least 90 days before final approval of the proposed action, assess the impact of the action on the coastal zone. If the action significantly affects the coastal zone and the state has an approved coastal zone management plan, the Headquarters Official/Field Installation Director shall submit a consistency determination in accordance with the applicable coastal zone management procedures (15 CFR 930)

(b) The applicable state agency will inform NASA of its agreement or disagreement with the consistency determination. State agency agreement is presumed if the state fails to provide a response within 45 days from receipt of the NASA notification. If the state agency disagrees with NASA's consistency determination, the NASA response to the state agency shall be coordinated through the Associate Administrator for External Relations.

4. Fish and Wildlife Protection

(a) The Fish and Wildlife Coordination Act (FWCA) (16 U.S.C. Sections 661-666c), requires that for all NASA actions which will result in the control or structural modification of any natural stream or body of water for any purpose, NASA shall take action to protect the fish and wildlife resources which may be affected.

(b) The Headquarters Official/Field Installation Director who proposes such an action shall, at the earliest stages of project planning, initiate consultation with the appropriate Regional Director, Fish and Wildlife Service, and the applicable state agency (through OMB Circular A-95 Clearinghouse). The consultation process shall be initiated with a submission prepared in accordance with the current Fish and Wildlife Service procedures. A discussion of this consultation should be included in the draft EIS.

5. Wild and Scenic Rivers

(a) The Wild and Scenic Rivers Act of 1965 (16 U.S.C. 1271 et seq.) requires identification of rivers designated as wild and scenic under the Act (or those having a potential for inclusion under the Act) within the area of impact of a NASA proposed action.

(b) The Headquarters Official/Field Installation Director who proposes a NASA action which may affect rivers in the Nationwide Inventory of Wild and Scenic Rivers, (hereafter referred to as "Inventory Rivers") shall consult with the Regional Heritage Conservation and Recreation Service (RHCRS) Office to determine whether "Inventory Rivers" are located in the planning area and whether such rivers are affected by the proposed action. The Headquarters Official/Field Installation Director shall check the current regional list of "Inventory Rivers" to determine whether the proposed action could affect the "Inventory Rivers."

(1) If it is determined that the proposed action would not affect the "Inventory Rivers," documentation of the determination shall be filed for future reference.

(2) If it is determined that the "Inventory Rivers" could be affected by the proposed action, an environmental assessment or environmental impact statement may be required depending upon the significance of the effects. The Headquarters Official/Field Installation Director shall determine whether the proposed action could adversely affect the natural, cultural, or recreational values of the "Inventory Rivers" segment. Adverse effects may occur under conditions which include, but are not limited to:

(i) Destruction or alteration of all or part of the free natural flowing nature of the river.

(ii) Introduction of visual, audible, or other sensory intrusions which are out of character with the river or alter its setting.

(iii) Transfer or sale of property adjacent to the "Inventory Rivers" without adequate conditions or restrictions for protecting the river and its surrounding environment.

(3) If it is determined that there would be no adverse effects, the Headquarters Official/Field Installation Director shall prepare a "Finding of No Significant Impact," and transmit it to the Associate Administrator for External Relations for public release, as appropriate.

(4) If it is determined that there will be adverse effects, an EIS shall be prepared.

6. Prime and Unique Agricultural Lands

(a) The Council on Environmental Quality Memorandum, dated 11 August 1980, entitled "Analysis of Prime and Unique Agricultural Lands in Implementing the National Environmental Policy Act," requires identification of and cooperation in retention of significant agricultural lands in areas of impact of a proposed NASA action.

(b) The Headquarters Official/Field Installation Director who proposes a NASA action which may affect prime and/or unique agricultural lands shall consult with the

Chairperson of the appropriate state, U.S. Department of Agriculture (USDA) Land Use Committee, to determine whether prime and/or unique agricultural farmlands are affected by the proposed NASA action. An environmental assessment for the proposed action should be documented and used to coordinate this review by the USDA Land Use Committee. Other Federal agencies with technical data on the occurrence, value, or potential impact of the NASA action on these farmlands shall also be contacted to provide data that may be useful in preparing an environmental assessment.

(c) If the USDA Land Use Committee finds that prime and/or unique agricultural lands are located in the planning area and that such lands may be significantly affected by the proposed NASA action, the USDA Land Use Committee will indicate that more analysis is needed and an environmental impact statement shall be prepared to address probable effects on agricultural production and any disruption of the farming community (either as a direct result of construction or by changes in land use associated with the action). The cumulative effects of the proposed action must also be addressed as must any mitigation measures that could be taken to lessen the impact on prime and/or unique farmlands. NASA must also cooperate with state and local government in its efforts to help retain these lands.

(d) When it has been determined that an EIS is needed, the Headquarters Official/Field Installation Director shall initiate the scoping process (paragraph 307, NHB 8800.11) and ask the USDA Land Use Committee to be a cooperating agency in preparing the NASA EIS.

7. Safe Drinking Water

(a) The Council on Environmental Quality Memorandum, dated 19 November 1976, entitled "Environmental Review Pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974, and its Relationship to the National Environmental Policy Act of 1969," requires that for NASA actions planned to occur in aquifer areas designated as the sole and principal drinking water resource for the area, NASA must prepare an EIS.

(b) Consultation under the Safe Drinking Water Act of 1974, shall be initiated when appropriate with the Regional Environmental Protection Agency (EPA) Administrator who will also be given a copy of the NASA decision to prepare an EIS. Close coordination between NASA and the EPA

is essential during the environmental review process under NEPA, to minimize any adverse impact on aquifers designated or under consideration for designation pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974.

8. Floodplain and Wetlands

In managing all Federal lands and facilities under its control, NASA shall avoid adverse impacts associated with the occupancy and modification of floodplain and wetlands, and shall restore, preserve, and protect the natural and beneficial values served by floodplain and wetlands, wherever practicable. NASA actions which may affect floodplain or wetlands must be coordinated with the appropriate OMB Circular A-95 Clearinghouse in accordance with the procedures specified in NMI 8800.10, Floodplain and Wetlands Management, (14 CFR 1216.2).

321. ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS

" § 1216.321 Environmental effects abroad of major Federal actions.

(a) In accordance with these procedures and E.O. 12114, "Environmental Effects Abroad of Major Federal Actions" (44 FR 1957), dated January 4, 1979, the Headquarters official shall analyze actions under his/her cognizance with due regard for the

environmental effects abroad of such actions. The Headquarters official shall consider whether such actions involve:

(1) Potential environmental effects on the global commons (i.e., oceans and the upper atmosphere);

(2) Potential environmental effects on a foreign nation not participating with or not otherwise involved in the NASA activity;

(3) The export of products or facilities producing products (or emissions/effluents) which in the U.S. are prohibited or strictly regulated because their effects on the environment create a serious public health risk. The Associate Administrator for External Relations will provide additional guidance regarding the types of chemical, physical, and biological agents involved.

(4) A physical project which, in the U.S., would be prohibited or strictly regulated by Federal law to protect the environment against radioactive substances;

(5) Potential environmental effects on natural and ecological resources of global importance and which the President in the future may designate (or which the Secretary of State designates pursuant to international treaty). A list of any such designations will be available from the Office of the Associate Administrator for External Relations.

(b) Prior to decisions (§ 1216.304) on any action falling into the categories specified in paragraph (a), the Headquarters official shall make a determination whether such action may have a significant environmental effect abroad.

(c) If the Headquarters official determines that the action *will not have* a significant environmental effect abroad, he/she shall prepare a memorandum for the record which states the reasoning behind such a determination. A copy of the memorandum shall be forwarded to the Associate Administrator for External Relations. Note that these procedures do not allow for categorical exclusions (E.O. 12114, section 2-5(d)).

(d) If the Headquarters official determines that an action *may have* a significant environmental effect abroad, he/she shall consult with the Associate Administrator for External Relations and the Director, International Affairs Division. The Associate Administrator for External Relations, in coordination with the Director, International Affairs Division, shall (as specified in E.O. 12114) make a determination whether the subject action requires:

(1) An environmental impact statement (an EIS will be required if

there are significant effects on the global commons);

(2) Bilateral or multilateral environmental studies; or

(3) Concise reviews of environmental issues.

(e) When informed of the determination of the Associate Administrator for External Relations, the Headquarters official shall proceed to take the necessary actions in accordance with these implementing procedures.

(f) The Associate Administrator for External Relations shall, in coordination with the Director, International Affairs Division, determine when an affected nation shall be informed regarding the availability of documents referred to in paragraph (d) and coordinate with the Department of State all NASA communications with foreign governments concerning environmental matters as related to E.O. 12114 (44 FR 1957). "

- a. Not only does NASA have responsibility for environmental protection and enhancement within the borders of the U.S. and its territories, it also has responsibility for the environmental effects felt outside those borders (in foreign nations, the global commons). Responsible NASA officials are required to determine the environmental effects abroad of their proposed actions, and must take

these effects into account, along with other pertinent considerations of national policy, in making decisions regarding NASA actions.

- b. Environmental analyses shall be conducted early in the NASA planning/decision making process to identify those actions which may have a significant effect abroad. Responsible NASA officials should apply the criteria identified in paragraph 305 to activities which have impacts abroad to determine their possible significance.
- c. A determination by the responsible NASA official that the impacts are not significant should be submitted to the Associate Administrator for External Relations in the form of a memorandum for the record. This memorandum for the record shall state the reasoning behind the determination of no significant impact, including those considerations of national policy which led to the conclusion (essentially a Finding of No Significant Impact).
- d. A determination that the impacts may be significant shall be discussed with the Associate Administrator for External Relations and the Director, International Affairs Division, for their decision as to the appropriate NASA procedure.
 - 1. If the impacts would be felt on the global commons, an EIS will be required.
 - 2. If the impacts would be imposed on one or more foreign countries, a concise review of environmental issues or bilateral/multilateral study will be required. Such documents should follow the format of the environmental assessment (paragraph 306), except that reference to the need for an EIS or Finding of No Significant Impact should be omitted. The Associate Administrator for External Relations and the Director, International Affairs Division, will determine what participation can be expected from affected countries in collecting data, conducting analyses, and considering alternatives. If it is determined that adequate participation is not forthcoming, the responsible NASA official should develop the best possible concise review of environmental issues to assist in reaching a decision on the proposed action.

APPENDIX A

THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, AS AMENDED*

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

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

PURPOSE

SEC. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

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

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

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

*Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, and Pub. L. 94-83, August 9, 1975.

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

Sac. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

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

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

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

- (i) The environmental impact of the proposed action,
- (ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) Alternatives to the proposed action,
- (iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

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

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

- (i) the State agency or official has statewide jurisdiction and has the responsibility for such action,
- (ii) the responsible Federal official furnishes guidance and participates in such preparation,
- (iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and
- (iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

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

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

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

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

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

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

SEC. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

SEC. 104. Nothing in section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

SEC. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

SEC. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

SEC. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to

the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203. The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

Sec. 204. It shall be the duty and function of the Council—

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

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

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

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

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

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

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

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

Sec. 205. In exercising its powers, functions, and duties under this Act, the Council shall—

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

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

Sec. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

Sec. 207. The Council may accept reimbursements from any private non-profit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the sup-

port of international exchange programs in the United States and in foreign countries.

Sac. 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.

APPENDIX B

Executive Order 11514. March 5, 1970

PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

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

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:

Section 1. Policy. The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

Sec. 2. Responsibilities of Federal agencies. Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

*The Preamble to Executive Order 11991 is as follows:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the purpose and policy of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Environmental Quality Improvement Act of 1970 (42 U.S.C. 4371 *et seq.*), and Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), it is hereby ordered as follows:

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act.

(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

Sec. 3. Responsibilities of Council on Environmental Quality.
The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and

Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act.

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

Sec. 4. *Amendments of E.O. 11472.* Executive Order No. 11472 of May 29, 1969, including the heading thereof, is hereby amended:

(1) By substituting for the term "the Environmental Quality Council", wherever it occurs, the following: "the Cabinet Committee on the Environment".

(2) By substituting for the term "the Council", wherever it occurs, the following: "the Cabinet Committee".

(3) By inserting in subsection (f) of section 101, after "Budget," the following: "the Director of the Office of Science and Technology."

(4) By substituting for subsection (g) of section 101 the following:

"(g) The Chairman of the Council on Environmental Quality (established by Public Law 91-190) shall assist the President in directing the affairs of the Cabinet Committee."

(5) by deleting subsection (c) of section 102.

(6) By substituting for "the Office of Science and Technology", in section 104, the following: "the Council on Environmental Quality (established by Public Law 91-190)".

(7) By substituting for "(hereinafter referred to as the 'Committee')", in section 201, the following: "(hereinafter referred to as the 'Citizens' Committee')".

(8) By substituting for the term "the Committee", wherever it occurs, the following: "the Citizens' Committee".

Council on Environmental Quality
Executive Office of the President

REGULATIONS
For Implementing The Procedural Provisions Of The
NATIONAL
ENVIRONMENTAL
POLICY ACT

Reprint
43 FR 55978-56007
November 29, 1978
40 CFR Parts 1500-1508

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PART 1500—PURPOSE, POLICY, AND MANDATE

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

§ 1500.1 Purpose.

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

procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

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

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

§ 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

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

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

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run con-

currently rather than consecutively.

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

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

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

§ 1500.3 Mandate.

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

result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

§ 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

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

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

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

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

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

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

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

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

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

(j) Incorporating by reference (§ 1502.21).

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

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

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

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

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

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

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

§ 1500.5 Reducing delay.

Agencies shall reduce delay by:

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

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

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

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

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

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

(g) Integrating NEPA requirements with other environmental

review and consultation requirements (§ 1502.25).

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

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

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

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

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

§ 1500.6 Agency authority.

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

PART 1501—NEPA AND AGENCY PLANNING

Sec.

1501.1 Purpose.

1501.2 Apply NEPA early in the process.

Sec.

- 1501.3 When to prepare an environmental assessment.
- 1501.4 Whether to prepare an environmental impact statement.
- 1501.5 Lead agencies.
- 1501.6 Cooperating agencies.
- 1501.7 Scoping.
- 1501.8 Time limits.

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

§ 1501.1 Purpose.

The purposes of this part include:

- (a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.
- (b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.
- (c) Providing for the swift and fair resolution of lead agency disputes.
- (d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.
- (e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

§ 1501.2 Apply NEPA early in the process.

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

- (a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in

planning and in decisionmaking which may have an impact on man's environment," as specified by § 1507.2.

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

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

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

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

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

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

§ 1501.3 When to prepare an environmental assessment.

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

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

§ 1501.4 Whether to prepare an environmental impact statement.

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

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

(1) Normally requires an environmental impact statement, or

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

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

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

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

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

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

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

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

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

§ 1501.5 Lead agencies.

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

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

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

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

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

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

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

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

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

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

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

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

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

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

§ 1501.6 Cooperating agencies.

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

(a) The lead agency shall:

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

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

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

(b) Each cooperating agency shall:

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

(2) Participate in the scoping process (described below in § 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance

the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

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

§ 1501.7 Scoping.

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

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

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

(2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review

(§ 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in § 1502.25.

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

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

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

(2) Set time limits (§ 1501.8).

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

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

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

§ 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by § 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

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

(b) The agency may:

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

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

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

(v) Number of persons and agencies affected.

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

(vii) Degree to which the action is controversial.

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

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

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

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

(iii) Preparation of the draft environmental impact statement.

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

(v) Preparation of the final environmental impact statement.

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

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

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

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

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Sec.

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

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

§ 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to

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

§ 1502.2 Implementation.

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

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

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

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

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

(e) The range of alternatives discussed in environmental impact

statements shall encompass those to be considered by the ultimate agency decisionmaker.

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

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

§ 1502.3 Statutory requirements for statements.

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

On proposals (§ 1508.23)

For legislation and (§ 1508.17)

Other major Federal actions (§ 1508.18)

Significantly (§ 1508.27)

Affecting (§§ 1508.3, 1508.8)

The quality of the human environment (§ 1508.14).

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

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

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

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the

proposal(s) in one of the following ways:

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

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

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

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

§ 1502.5 Timing.

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

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

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately

after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

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

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

§ 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an 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 environmen-

tal impact statements shall be prepared in two stages and may be supplemented.

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

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

(c) Agencies:

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

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

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

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

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

(4) Shall prepare, circulate, and file a supplement to a statement in

the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

§ 1502.10 Recommended format.

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

- (a) Cover sheet.
- (b) Summary.
- (c) Table of Contents.
- (d) Purpose of and Need for Action.
- (e) Alternatives Including Proposed Action (secs. 102(2)(C)(iii) and 102(2)(E) of the Act).
- (f) Affected Environment.
- (g) Environmental Consequences (especially sections 102(2)(C) (i), (ii), (iv), and (v) of the Act).
- (h) List of Preparers.
- (i) List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent.
- (j) Index.
- (k) Appendices (if any).

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

§ 1502.11 Cover sheet.

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

- (a) A list of the responsible agencies including the lead agency and any cooperating agencies.
- (b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.
- (c) The name, address, and telephone number of the person at the

agency who can supply further information.

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

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA under § 1506.10).

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

§ 1502.12 Summary.

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

§ 1502.13 Purpose and need.

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

§ 1502.14 Alternatives including the proposed action.

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

- (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
- (b) Devote substantial treatment to each alternative considered in detail including the proposed action

so that reviewers may evaluate their comparative merits.

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

(d) Include the alternative of no action.

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

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

§ 1502.15 Affected environment.

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

§ 1502.16 Environmental consequences.

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

versible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

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

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

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

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

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

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

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

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

§ 1502.17 List of preparers.

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

§ 1502.18 Appendix.

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

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

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

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

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

§ 1502.19 Circulation of the environmental impact statement.

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

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

(b) The applicant, if any.

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

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

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

§ 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision

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

§ 1502.21 Incorporation by reference.

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

§ 1502.22 Incomplete or unavailable information.

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

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

in the environmental impact statement.

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

§ 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with sec. 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

§ 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and

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

§ 1502.25 Environmental review and consultation requirements.

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

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

PART 1503—COMMENTING

Sec.

1503.1 Inviting Comments.

1503.2 Duty to Comment.

1503.3 Specificity of Comments.

1503.4 Response to Comments.

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

§ 1503.1 Inviting comments.

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

(1) Obtain the comments of any Federal agency which has jurisdic-

tion by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

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

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

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

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

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

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

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

§ 1503.2 Duty to comment.

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

§ 1503.3 Specificity of comments.

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

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

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

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

§ 1503.4 Response to comments.

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

(1) Modify alternatives including the proposed action.

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

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

(4) Make factual corrections.

(5) Explain why the comments do

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

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

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

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

Sec.

1504.1 Purpose.

1504.2 Criteria for Referral.

1504.3 Procedure for Referrals and Response.

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

§ 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements

concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

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

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

§ 1504.2 Criteria for referral.

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

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

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

§ 1504.3 Procedure for referrals and response.

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

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

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

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

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

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

(c) The referral shall consist of:

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

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

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

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

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

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

(v) Review the steps taken by the referring agency to bring its con-

cerns to the attention of the lead agency at the earliest possible time, and

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

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

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

(2) Be supported by evidence.

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

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

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

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

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

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

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

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

agencies report to the Council that the agencies' disagreements are irreconcilable.

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

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

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

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

PART 1505—NEPA AND AGENCY DECISIONMAKING

Sec.

1505.1 Agency decisionmaking procedures.

1505.2 Record of decision in cases requiring environmental impact statements.

1505.3 Implementing the decision.

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

§ 1505.1 Agency decisionmaking procedures.

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

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

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment

and assuring that the NEPA process corresponds with them.

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

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

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

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

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

(a) State what the decision was.

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

those considerations entered into its decision.

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

§ 1505.3 Implementing the decision.

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

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

(b) Condition funding of actions on mitigation.

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

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

PART 1506—OTHER REQUIREMENTS OF NEPA

Sec.

1506.1 Limitations on actions during NEPA process.

1506.2 Elimination of duplication with State and local procedures.

1506.3 Adoption.

1506.4 Combining documents.

1506.5 Agency responsibility.

1506.6 Public involvement.

1506.7 Further guidance.

1506.8 Proposals for legislation.

1506.9 Filing requirements.

1506.10 Timing of agency action.

1506.11 Emergencies.

1506.12 Effective date.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section

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

§ 1506.1 Limitations on actions during NEPA process.

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

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

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

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

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of

minimal expenditures not affecting the environment (e.g. long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

§ 1506.2 Elimination of duplication with State and local procedures.

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

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

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

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

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsisten-

cy of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

§ 1506.3 Adoption.

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

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

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

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

§ 1506.4 Combining documents.

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

§ 1506.5 Agency responsibility.

(a) *Information.* If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of

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

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

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

to prohibit any person from submitting information to any agency.

§ 1506.6 Public involvement.

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

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

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

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

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

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

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

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

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

(v) Notice through other local media.

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

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

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

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

(c) Hold or sponsor public hearings or public meetings whenever appro-

appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

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

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

(d) Solicit appropriate information from the public.

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

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

§ 1506.7 Further guidance.

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

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

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

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

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

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

§ 1506.8 Proposals for legislation.

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

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

(1) There need not be a scoping process.

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

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

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

1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)).

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

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

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

§ 1506.9 Filing requirements.

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

§ 1506.10 Timing of agency action.

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

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

(1) Ninety (90) days after publication of the notice described above in

paragraph (a) of this section for a draft environmental impact statement.

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

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

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

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy

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

§ 1506.11 Emergencies.

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

§ 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under sec. 102(2)(D) of the Act or under sec. 104(h) of the Housing and Community Development Act of 1974 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 reason of these regulations. Until these regulations are applicable, the Council's guidelines published in the **FEDERAL REGISTER** of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the

guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

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

PART 1507—AGENCY COMPLIANCE

Sec.

1507.1 Compliance.

1507.2 Agency Capability to Comply.

1507.3 Agency Procedures.

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

§ 1507.1 Compliance.

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

§ 1507.2 Agency capability to comply.

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

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

(b) Identify methods and procedures required by Sec. 102(2)(B) to

insure that presently unquantified environmental amenities and values may be given appropriate consideration.

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

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

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

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

§ 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the **FEDERAL REGISTER**, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the **FEDERAL REGISTER** for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting simi-

lar 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 por-

tions 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 § 1508.10 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

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

§ 1508.1 Terminology.

The terminology of this part shall

be uniform throughout the Federal Government.

§ 1508.2 Act.

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

§ 1508.3 Affecting.

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

§ 1508.4 Categorical exclusion.

"Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

§ 1508.5 Cooperating agency.

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

§ 1508.6 Council.

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

§ 1508.7 Cumulative impact.

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

§ 1508.8 Effects.

"Effects" include:

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

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

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

§ 1508.9 Environmental assessment.

"Environmental Assessment":

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

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

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

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

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

§ 1508.10 Environmental document.

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

§ 1508.11 Environmental impact statement.

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

§ 1508.12 Federal agency.

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

§ 1508.13 Finding of no significant impact.

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

§ 1508.14 Human Environment.

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

§ 1508.15 Jurisdiction By Law.

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

§ 1508.16 Lead agency.

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

§ 1508.17 Legislation.

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

§ 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of sig-

nificantly (§ 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 (§§ 1508.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

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

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

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

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

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

§ 1508.19 Matter.

"Matter" includes for purposes of Part 1504:

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

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

§ 1508.20 Mitigation.

"Mitigation" includes:

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

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

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

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

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

§ 1508.21 NEPA process.

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

§ 1508.22 Notice of intent.

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

(a) Describe the proposed action and possible alternatives.

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

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

§ 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a

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

§ 1508.24 Referring agency.

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

§ 1508.25 Scope.

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

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

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

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

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

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

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

(3) Similar actions, which when

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

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

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

§ 1508.26 Special expertise.

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

§ 1508.27 Significantly.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1508.28 Tiering.

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

the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

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

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

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APPENDIX D

Environmental Effects Abroad of
Major Federal Actions

Executive Order 12114. January 4, 1979

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

SECTION 1.

1-1. *Purpose and Scope.* The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy, in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act and the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act consistent with the foreign policy and national security policy of the United States, and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

SEC. 2.

2-1. *Agency Procedures.* Every Federal agency taking major Federal actions encompassed hereby and not exempted herefrom having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2-2. *Information Exchange.* To assist in effectuating the foregoing purpose, the

Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decisionmakers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2-3. *Actions Included.* Agencies in their procedures under Section 2-1 shall establish procedures by which their officers having ultimate responsibility for authorizing and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2-4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or

ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

2-4. Applicable Procedures. (a) There are the following types of documents to be used in connection with actions described in Section 2-3:

(i) environmental impact statements (including generic, program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one or more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2-4(a), with respect to actions described in Section 2-3, as follows:

(i) for effects described in Section 2-3(a), an environmental impact statement described in Section 2-4(a) (i);

(ii) for effects described in Section 2-3(b), a document described in Section 2-4(a) (ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2-3(c), a document described in Section 2-4(a) (ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2-3(d), a document described in Section

2-4(a) (i), (ii) or (iii), as determined by the agency.

Such procedures may provide that an agency need not prepare a new document when a document described in Section 2-4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act and other environmental laws, including the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act, consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2-5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under this Order.

Agencies in their procedures under Section 2-1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3-2 of this Order of the availability of environmental documents prepared pursuant to those procedures.

In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

2-5. Exemptions and Considerations.

(a) Notwithstanding Section 2-3, the following actions are exempt from this Order:

(i) actions not having a significant effect on the environment outside the

United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2-1 implementing Section 2-4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required;

(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities; or

(iii) ensure appropriate reflection of:

(1) diplomatic factors;

(2) international commercial, competitive and export promotion factors;

(3) needs for governmental or commercial confidentiality;

(4) national security considerations;

(5) difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedures under Section 2-1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances. In utilizing such additional exemptions agencies shall,

as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2-5 do not apply to actions described in Section 2-3(a) unless permitted by law.

SEC. 3.

3-1. *Rights of Action.* This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3-2. *Foreign Relations.* The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3-3. *Multi-Agency Actions.* Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3-4. *Certain Terms.* For purposes of this Order, "environment" means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term "export approvals" in Section 2-5(a) (v) does not mean or include direct loans to finance exports.

3-5. *Multiple Impacts.* If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

JIMMY CARTER

The White House,
January 4, 1979.

[Filed with the Office of the Federal Register,
3:38 p.m., January 5, 1979]

NOTE: The text of the Executive order was released on January 5.

APPENDIX E

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