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Draft Regulations to Implement the National Environmental Policy Act

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December 12, 1977

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MEMORANDUM

TO: Heads of Agencies

SUBJECT: Draft Regulations to Implement the National Environmental Policy Act

1. Purpose. We enclose for your and other agencies' review draft regulations to implement the National Environmental Policy Act (NEPA).

2. Background. The National Environmental Policy Act of 1969, as you know, applies to "all agencies of the Federal Government." The most conspicuous requirement of the Act is that agencies prepare environmental impact statements "on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." Executive Order 11514 (1970) directed CEQ to issue Guidelines to all agencies concerning their implementation of the EIS requirement. By Executive Order 11991 (1977) President Carter directed the Council to "issue regulations to Federal agencies for the implementation of the procedural provisions of the Act." The President directed in part that the regulations 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." These regulations are the Council's response to the President's directive and when adopted will replace the existing Guidelines.

The Council held public hearings in June in which we affirmatively involved NEPA's critics as well as its friends. The U.S. Chamber of Commerce coordinated the business presentations. The Building and Construction Trades Department of the AFL-CIO organized the labor presentation. The National Conference of State Legislatures coordinated the testimony of all branches of State government as well as local government. The Natural Resources Defense Council put together the presentations of environmental groups. The scientific and scholarly communities were represented, as was the public generally. The Council was immensely pleased with the results. There was extraordinary consensus. Without exception the witnesses felt NEPA benefited the public. However

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there was an equally widely shared view that the process has become unnecessarily cumbersome and should be streamlined. The Council was made acutely aware of the degree of unanimity when an official spokesman for the oil industry rose to say that he adopted in its entirety the presentation of the President of the Sierra Club.

The Council wishes to build on these shared conceptions of how best to make the NEPA process work. After the hearings we culled the record for witness' identification of both problems and solutions. We organized this information into a 38-page "NEPA Hearing Questionnaire" which we then sent to all witnesses, all governors, all who responded to an invitation in the Federal Register, and (under an August 9 cover memorandum) to all Heads of Agencies. Over 300 agencies, organizations, individuals (representing a broad cross-section) responded in detail. One company official representing the electrical utility industry commented that for the first time in his life he knew the government was listening to him, because all the suggestions made at the hearing turned up in the questionnaire.

The Council then met with every agency of the Federal Government to discuss what should be in the regulations. Guided by this extensive interaction with the public and the agencies the Council has prepared the enclosed draft Regulations to replace the Council's Guidelines (40 C.F.R. Part 1500) which are now in effect. We believe the proposed Regulations represent an extraordinary improvement over the existing Guidelines and look forward to your comments on them.

3. Reducing Paperwork and Reducing Delay. For a brief summary of the measures proposed to reduce paperwork and reduce delay we invite your attention to sections 1500.4 and 1500.5.

4. Period for Comment. There will be a period of six weeks for agency comments on the proposed regulations. The comment period will close January 23, 1978. If an agency finds it absolutely impossible to meet the deadline, the Council has empowered its General Counsel to grant extensions of up to two weeks (until February 6, 1978). No extensions will be granted beyond that date.

Please bear in mind in your comments not only the desirability of particular suggestions, but whether they are in accord with NEPA, the law these regulations are required to implement.

A copy of this memorandum and of these regulations has simultaneously been sent to your agency's General Counsel and your agency's NEPA contact. We will shortly be in touch with all agencies to arrange for briefing meetings on the regulations. The regulations will not be released to the public until the completion of interagency review. Please treat them accordingly.

After all agency comments have been received and appropriate changes made in the regulations, the Council will publish them in the Federal Register and invite public comment. After that period and after appropriate changes they will be finally adopted by the Council.

5. Two Particularly Difficult Problems. Two particularly difficult problems affecting a range of agencies became obvious during our preparation of these Regulations: (1) extent to which NEPA applies to the budget process (see Aluli v. Brown, ___F.Supp.___, 10 ERC 1765 (D.Hawaii 1977), and (2) application of NEPA to major Federal actions the effects of which are international. The Council fully recognizes the complexity of these questions and the controversy which surrounds them. We have not addressed either of them in detail in our Regulations. Instead, we want to sit down with affected agencies and work out appropriate texts for the Regulations that are acceptable to Federal agencies generally. We invite you to join us in doing this. You will shortly receive from us memoranda setting a time and place for meetings to address these two subjects. We will ask you to send to those meetings officials empowered to speak definitively for your agency so we may settle on appropriate resolutions of these difficult problems. We intend to coordinate as closely as possible with OMB on the budget issue and with the Domestic Policy Staff and international agencies on the international issues. We hope that together we can sensibly address these difficult issues in ways that account both for the legal requirements of and the environmental purposes sought to be achieved by NEPA and the practical realities that constrain certain of its applications.

6. Questions. Please address any questions to our General Counsel, Nicholas C. Yost (202-633-7032).

We look forward to working with you to make the NEPA process work better.

Charles Warren

CHARLES WARREN
Chairman

Enclosure

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Part 1500. Purpose, Policy, and Mandate

Sec. 1500.1 Purpose

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 law. 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 advance 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.

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.

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. We hope through these regulations to achieve that purpose.

Sec. 1500.2 Policy

Federal agencies shall:

(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, to the fullest extent possible.

(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, to the fullest extent possible, run concurrently, rather than consecutively.

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

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

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

Sec. 1500.3 Mandate

Parts 1500-1508 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 (P.L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act). 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. 1857h-7), 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.

Sec. 1500.4 Reducing Paperwork

Agencies shall reduce excess paperwork by:

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

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

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

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

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

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

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

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

(j) Incorporating by reference (section 1502.21).

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

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

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

(n) Eliminating duplication with State and local procedures by providing for joint preparation (section 1506.2) and with other Federal procedures by providing for one agency's adoption of appropriate environmental documents prepared by another agency (section 1506.3).

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

(p) Using categorical exclusions to exclude from environmental impact statement requirements categories of actions which do not individually or cumulatively have a significant effect on the human environment (section 1508.4).

(q) Using a finding of no significant impact and not preparing an environmental impact statement when an action not otherwise excluded will not have a significant effect on the human environment (section 1508.12).

Sec. 1500.5 Reducing Delay

Agencies shall reduce delay by:

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

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

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

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

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

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

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

(h) Eliminating duplication with State and local procedures by providing for joint preparation (section 1506.2) and with other Federal procedures by providing for one agency's adoption of appropriate environmental documents prepared by another agency (section 1506.3).

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

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

(k) Using categorical exclusions to exclude from environmental impact statement requirements categories of actions which do not individually or cumulatively have a significant effect on the human environment (section 1508.4).

(l) Using a finding of no significant impact and not preparing an environmental impact statement when an action not otherwise excluded will not have a significant effect on the human environment (section 1508.12).

Sec. 1500.6 Agency Authority

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional

olicies and missions in the light of the Act's national environmental objectives. In accordance with this purpose, agencies should review their policies, procedures, and regulations accordingly and revise them as necessary to ensure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 is meant to make clear that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

Part 1501. NEPA and Agency Planning

Sec. 1501.1 Purpose

The purposes of this part include:

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

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than 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 dismissing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

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

Sec. 1501.2 Apply NEPA Early in 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) Have and use sufficient capability as specified by sec. 1507.2 so that it may comply with the mandate of Sec. 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."

(b) Identify environmental effects and values in at least as much detail as economic and technical analyses and bring them to the attention of decisionmakers no later than those analyses. Environmental documents shall be circulated to the same officials and reviewed by them 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 or provided by sec. 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by other than Federal agencies and the Federal involvement is late so that:

(1) The sponsor of the proposal initiates studies if Federal involvement is foreseeable.

(2) The Federal agency consults early with appropriate State and local agencies and with interested private persons and organizations.

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

Sec. 1501.3 When to Prepare an Environmental Assessment

An environmental assessment (sec. 1508.9) shall be prepared unless one is not necessary under the procedures adopted under sec. 1507.3(b). Agencies may prepare an assessment on any action and at any time in order to assist agency planning and decisionmaking.

Sec. 1501.4 Whether to Prepare an Environmental Impact Statement

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

(a) Determine under section 1507.3 whether the proposal is one which normally requires an environmental impact statement or one which normally does not (categorical exclusion).

(b) If the proposed action is not covered by subsection (a), prepare an environmental assessment (section 1508.9). The agency shall provide public notice that an environmental assessment is being prepared by means calculated to inform those persons and agencies who may reasonably be expected to be interested.

(c) Make its determination based on the environmental assessment whether or not to prepare an environmental impact statement.

(d) If the agency will prepare an environmental impact statement, the agency shall convene a scoping meeting (section 1501.7).

(e) If the agency tentatively determines based on the environmental assessment not to prepare a statement, the lead agency shall prepare a finding of no significant impact (section 1508.12).

(1) The agency shall make the finding available in a manner calculated to inform the affected public as specified in section 1506.6.

(2) The agency need make the finding of no significant impact available for public review for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin only in one of the following limited circumstances:

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

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

Sec. 1501.5 Lead Agencies

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

(1) proposes 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) More than one Federal, State, or local agency may act as joint lead agencies to prepare an environmental impact statement. (Sec. 1506.2.)

(c) If an action satisfies the provisions of subsection (a) the potential lead agencies concerned 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 in a manner that will not cause delay. If there is disagreement among the agencies, the following factors (which are listed in 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) If potential lead agencies fail to agree as specified in subsection (c), (1) any Federal agency or (2) any State or local agency or private person substantially affected by the absence of agreement as to 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 subsection (d) has not resulted within a reasonable time in a lead agency designation, any of the agencies or persons concerned may file an appeal with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the appeal shall be transmitted to each potential lead agency. The appeal 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 subsection (c).

(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 within 20 days after receiving the appeal and all responses which Federal agency shall be the lead agency and the extent to which the other Federal agencies concerned shall be cooperating Federal agencies.

Sec. 1501.6 Cooperating Agencies

Any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental issue which should be addressed in the statement may be and upon request of the lead agency shall be a cooperating agency. A State or local agency of similar qualifications may at its option become a cooperating agency. The purpose of this section is to emphasize agency cooperation early in the process.

(a) The lead agency shall:

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

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

(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 any scoping meeting.

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including a portion of any 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. Normally the lead agency will fund such support.

Sec. 1501.7 Scoping

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues. This process shall be termed scoping. After an agency decides to prepare an environmental impact statement the agency shall hold an early scoping meeting or meetings, which may be integrated with any other early planning meeting the agency has.

(a) At the scoping meeting the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, the proponent of the action, and other interested persons (including those who might not be in accord with the action).

(2) Determine the scope (sec. 1508.23) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (sec. 1506.3), narrowing the discussion in the statement accordingly.

(4) Allocate responsibility for the environmental impact statement among the lead and cooperating agencies.

(5) Indicate any 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 which is the subject of the meeting.

(6) Identify other environmental review and consultation requirements so the lead agencies may comply with section 1502.25.

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

(b) At the scoping meeting the lead agency may:

(1) Set page limits on environmental documents (sec. 1502.6).

(2) Set time limits (sec. 1501.8).

(c) After the scoping meeting the lead agency shall publish a notice of intent (sec. 1508.20) in the Federal Register.

(d) An agency shall revise the determinations made under subsections (a) and (b) if substantial changes are made later in the proposed action or if significant new circumstances (including information) arise which bear on the proposal or its impacts.

Sec. 1501.8 Time Limits

Although the Council has decided that universal time limits for the entire NEPA process are too inflexible to prescribe, Federal agencies are encouraged to set time limits appropriate to individual actions.

(a) The lead agency shall:

(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.
(v) Number of persons and agencies affected.
(vi) Degree to which relevant information is known and if not known the difficulty of obtaining it.

(2) Set limits if an applicant for the proposed action requests them, provided that they are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The lead agency may:

(1) 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 and comments on the draft environmental impact statement by the public and agencies.

(v) Preparation of the final environmental impact statement.

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

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

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

Part 1502. Environmental Impact Statements

Sec. 1502.1 Purpose

The primary purpose of an environmental impact statement is 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 environmental impacts and shall inform decisionmakers and the public of all reasonable alternatives available for achieving Federal goals and shall compare the impacts of those alternatives on 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.

Sec. 1502.2 Implementation

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

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

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

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary with: first, potential environmental problems, and second, 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) Environmental impact statements shall contain the same alternatives the ultimate agency decisionmaker considers.

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

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

Sec. 1502.3 Statutory Requirements for Statements

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

- on proposals (section 1508.21)
- for legislation and (section 1508.15)
- other major Federal actions (section 1508.16)
- significantly (section 1508.24)
- affecting (sections 1508.3, 1508.8)
- the quality of the human environment (section 1508.13).

Sec. 1502.4. Major Federal Actions Requiring the Preparation of Environmental Impact Statements

(a) Agencies shall make sure the proposed action which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (sec. 1508.23) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (sec. 1508.16). Agencies shall take special care to insure that statements on broad actions are policy relevant and are timed to coincide with meaningful points in agency planning and decisionmaking.

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

(1) Geographic, including actions occurring in the same general location, such as an ocean, region, or metropolitan area.

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

(3) Technological development, including federal or federally assisted research, development or demonstration programs aimed at developing 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 employ scoping (sec. 1501.7), tiering (sec. 1502.20), and other methods listed in sec. 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

Sec. 1502.5 Timing

An environmental impact statement shall be prepared as close as possible to the time an agency makes a proposal (section 1508.21). The statement shall be prepared early enough so that it can practically

serve as an important contribution to the decisionmaking process and shall not be used to rationalize or justify decisions already made (secs. 1500.2(c), 1501.2, and 1502.2.).

(a) For projects directly undertaken by Federal agencies such statements shall be prepared at the feasibility analyis (go-no go) stage rather than the engineering design stage (and may be supplemented at the latter stage if necessary).

(b) For applications to the agency statements shall be prepared at the latest immediately after the application is received, but federal agencies are encouraged (preferably jointly with applicable State or local agencies) to prepare them earlier.

(c) For adjudication, the final environmental impact statement shall precede the staff recommendation and public hearing.

Sec. 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 correlated to the scope and issues identified in the scoping process (sec. 1501.7).

Sec. 1502.7 Page Limits

The text of final environmental impact statements (e.g., subsections (d) through (g) of sec. 1502.10) shall normally not exceed 150 pages and 300 pages (with the same exclusions) for proposals of unusual scope or complexity.

Sec. 1502.8 Writing

Environmental impact statements shall be written in plain language so that they may be understood by decisionmakers and the public. Agencies should use writers of clear prose or editors to write, review, or edit statements, based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

Sec. 1502.9 Draft, Final, and Supplemental Statements

Except as provided in section 1506.8, environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon at the scoping meeting. The lead

agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503. At the time the draft statement is prepared it 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 is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft on the appropriate portion. In the draft the agency shall make every effort to disclose and discuss 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. In the final statement the agency shall discuss the existence of any responsible opposing view 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; or

(ii) There are significant new circumstances (including information) bearing on the proposed action or its impacts.

(2) May prepare such supplements when the agency determines after consultation with the Council that the purposes of the Act will be furthered by doing so.

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

Sec. 1502.10 Recommended Format

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives to it, including the proposed actions. The following standard format for environmental impact statements shall be followed unless 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 (sec. 102(2)(C)(iii) and 102(2)(E) of the Act)

(f) Environmental Consequences (sec. 102(2)(C)(i), (ii), (iv), and (v) of the Act)

(g) Affected Environment

(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 subsections (a), (b), (c), (h), (i) and (j) and shall include the substance of subsections (d), (e), (f), (g), and (k) as further described in sections 1502.11-1502.18 in any appropriate format.

Sec. 1502.11 Cover Sheet

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

(a) The name of the responsible agencies including the lead agency and any cooperating agencies.

(b) The name of the proposed action that is the subject of the statement, together with the State(s) and county(ies) (or the country 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.

Sec. 1502.12 Summary

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall

stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally be 5 to 15 pages long.

Sec. 1502.13 Purpose and Need

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the action and alternatives. Normally this section shall not exceed one page.

Sec. 1502.14 Alternatives Including the Proposed Action

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

(a) Rigorously explore and objectively evaluate all reasonable alternatives.

(b) Devote substantially equal treatment to each alternative including the proposed action.

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

(d) Include the no action alternative.

(e) Identify the environmentally preferable alternative (or alternatives if two or more are equally preferable) and the reasons for identifying it. If the alternative chosen is for no action, the agency shall also identify the alternative other than no action that is environmentally preferable and the reasons for identifying it.

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

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

Sec. 1502.15 Environmental Consequences

This section shall consolidate the discussions of those elements of an environmental impact statement required by secs. 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement. It forms the scientific and analytic basis for the comparisons under sec. 1502.14. This includes the environmental impact of the proposed action and alternatives, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented. This section shall include discussions of:

(a) Direct effects and their significance.

(b) Indirect effects and their significance. Indirect effects may include health effects, 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 or other natural resources, including ecological systems.

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local land use plans, policies, and controls for the area concerned.

(d) The environmental effects of both the proposed action and alternatives described under sec. 1502.14, devoting substantially treatment to each.

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

(f) How adverse environmental impacts can be mitigated.

Sec. 1502.16 Affected Environment

The environmental impact statement shall succinctly describe the environment of the area or areas to be affected 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. These regulations are intended to eliminate useless bulk in statements and to 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.

Sec. 1502.17 List of Preparers

The environmental impact statement shall briefly state the disciplines and qualifications of the individuals who have contributed to the preparation of the environmental impact statement (sections 1502.6 and 1502.8) or who have contributed background papers for the statement. Where possible the name of the preparer who assumes professional responsibility for a particular analysis shall be identified. Normally the list will not exceed two pages.

Sec. 1502.18 Appendix

An appendix to an environmental impact statement:

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

(b) Normally consists of material a decisionmaker or reviewer questioning any analysis which is fundamental to the impact statement would want to review.

(c) Should be analytic and policy relevant.

(e) Shall be circulated with the environmental impact statement or be readily available on request.

Sec. 1502.19 Circulation of the Environmental Impact Statement

Agencies shall circulate the entire draft and final environmental impact statements except as provided in section 1503.5(b). 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 Federal, State or local agency authorized to develop and enforce environmental standards.

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

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

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

Sec. 1502.20 Tiering

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review. Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement need not repeat the issues discussed in the broader statement, but may incorporate those discussions by reference and concentrate on the issues specific to the subsequent action. Tiering is appropriate when the sequence of statements is:

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

(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 at a later stage (such as design detail and 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.

Sec. 1502.21 Incorporation by Reference

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

Sec. 1502.22 Duty to Know

Agencies dealing with gaps in relevant information, including scientific uncertainty shall always make clear that such information is lacking or that uncertainty exists.

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

(b) If the information is relevant 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.

Sec. 1502.23 Cost-Benefit Analysis

Any cost-benefit analysis that is being considered with respect to the proposed action shall be incorporated by reference or appended to the statement. To assess the adequacy of compliance with sec. 102(2)(B) of the Act the agency shall when a cost-benefit analysis is prepared discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities.

Sec. 1502.24 Methodology and Scientific Accuracy

Agencies shall insure the professional, 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.

Sec. 1502.25 Environmental Review and Consultation Requirements

To the maximum 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.

Part 1503. Commenting

Sec. 1503.1 Inviting Comments

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

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any

environmental impact involved or which is authorized to develop and enforce environmental standards. An agency which has acted as a cooperating agency may reply that it has no comment.

(2) Request the comments of appropriate State and local agencies which are authorized to develop and enforce environmental standards, or any agency which has requested that it receive statements on actions of the kind proposed.

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

(b) After preparing a final environmental impact statement an agency may request comments on it before the decision is finally made. In any case other agencies or persons may make comments before the final decision.

Sec. 1503.2 Duty to Comment

Agencies with jurisdiction by law or special expertise with respect to any environmental impact involved or which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority unless a Federal agency is a cooperating agency and is satisfied that its views are adequately reflected in the environmental impact statement and therefor replies that it has no comment.

Sec. 1503.3 Specificity of Comments

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.

Sec. 1503.4 Response to Comments

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

(1) Modify 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 are minor and are confined to the responses described in subsections (a)(4) and (5), agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such case only the comments, the responses, and the changes and not the final statement need be circulated (sec. 1502.19). The entire document with a new cover sheet shall be filed as the final statement (sec. 1506.9).

Part 1504. Predecision Referrals to the Council of Proposed Federal Actions Found to be Environmentally Unsatisfactory

Sec. 1504.1 Purpose

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

Under Section 309 of the Clean Air Act (42 U.S.C. 1857h-7), 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" (hereafter "environmental referrals"), Section 309 directs that the matter be referred to the Council.

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

Sec. 1504.2 Criteria for Referral

It is the Council's policy that environmental referrals from EPA and other agencies should reflect a careful determination that the matter raises issues deserving national attention. Referrals should only be made to the Council after concerted, timely 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.

Sec. 1504.3 Procedure for Referrals and Response

(a) An agency making a 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 the matter is changed as recommended.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement in all cases 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 sec. 1504.3(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 the referring agency believes the matter is environmentally unsatisfactory,

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

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

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

(d) Not later than twenty (20) days after the delivery of 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) After receipt of the referral and any response, 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) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(5) On matters of clear national importance, submit the referral and the response together with the Council's recommendation to the President for decision.

Part 1505. NEPA and Agency Decisionmaking

Sec. 1505.1 Agency Decisionmaking Procedures

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

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

(b) Designating the major decision points for the agency's principal programs and assuring that the NEPA process corresponds with them.

(c) Specifying in advance how environmental impact statements are to be used when agencies depart from usual practice.

(d) Requiring that the environmental impact statement be part of the record in formal rulemaking or adjudicatory proceedings.

(e) Requiring that the environmental impact statement and comments accompany the proposal through existing agency review processes so agency officials use the statements in making decisions.

(f) Requiring that the alternatives considered by the decision maker are included among the alternatives discussed in the environmental impact statements. If another decision document accompanies the

environmental impact statement to the decision maker, agencies are encouraged to make available to the public before the decision is made any part of that document as relates to the comparison of alternatives.

Sec. 1505.2 Record of Decision

At the time of its decision each agency shall produce a concise public record of decision stating how the environmental impact statement was considered and used by the agency in its decisionmaking. The record, which may be integrated into any other record prepared by the agency, shall state:

(a) What the decision was.

(b) That if an alternative other than that which involves the least harm to the environment has been selected, the reasons why other specific considerations of national policy overrode the environmentally preferable alternative.

(c) Whether all practicable means to avoid or minimize environmental harm have been adopted. For any mitigation adopted a monitoring and enforcement program, where applicable, shall be adopted and specified.

Sec. 1505.3 Implementating the Decision

Mitigation (sec. 1505.2(c)) and other conditions established in or during the review of the environmental impact statement and committed as part of the decision shall be implemented by the agency. The agency shall:

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

(b) Condition funding of actions on mitigation.

(c) Report to cooperating or commenting agencies on its progress in carrying out the mitigation measures proposed by any such agency and adopted by the agency making the decision.

(d) Make available to the public the results of its monitoring.

Part 1506. Other Requirements of NEPA

Sec. 1506.1 Limitations on Actions During NEPA Process

(a) Until an agency issues a record of decision as provided in sec. 1505.2 (except as provided in subsection (c)), 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 an agency is considering an application from a nonfederal entity, and is aware that the applicant is planning to take an action that would meet either of the criteria in section 1506.1(a), then the agency shall promptly notify the applicant that its application will be rejected if the applicant proceeds as planned.

(c) While work on a required program environmental impact statement is in progress, agencies shall not undertake in the interim major Federal actions covered by the program unless such action:

(1) Is justified independently of the program;

(2) Will not prejudice the utlimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent develop ment or foreclose alternatives; and

(3) Is itself accompanied by an adequate environmental impact statement.

Sec. 1506.2 Elimination of Duplication with State and Local Procedures

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to 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 in NEPA and comparable State and local requirements unless they are specifically barred from doing so by some other law. Except where an agency is proceeding in the manner specified by subsection (a), such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings.

(4) Joint environmental assessments and 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 those in NEPA, Federal agencies shall cooperate in fulfilling the requirements of those as well as Federal laws so that one document will comply with all applicable laws.

(c) To integrate environmental impact statements better into State or local planning processes such statements shall discuss any inconsistancy of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned).

Sec. 1506.3 Adoption

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

(b) A cooperating agency may adopt the environmental impact statement of a lead agency when the lead agency fully incorporated the comments and suggestions of the cooperating agency.

(c) Except for an agency covered by subsection (b), a Federal agency adopting an environmental impact statement shall recirculate it as a draft.

(d) No environmental impact statement may be adopted if:

(1) it is not final within the agency which prepared it;

(2) the action it assesses is the subject of a referral under Part 1504; or

(3) its adequacy is the subject of a judicial action which is not final.

Sec. 1506.4 Combining Documents

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

Sec. 1506.5 Agency Responsibility Avoiding conflicts of interest

Except as provided in sections 1506.2 and 1506.3 any environmental document prepared pursuant to the requirements of NEPA shall be prepared directly by or under contract to the lead agency. In the case of such contract 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 to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency specifying that they have no financial 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. Nothing shall prohibit any agency from requesting any person to submit information to it or any person from submitting information to any agency.

Sec. 1506.6 Public Involvement

Agencies shall:

(a) Make every effort to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of hearings, meetings, and the availability of environmental documents by means calculated to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall provide written notice to those who have requested it.

(2) In the case of an action with effects of national concern such notice shall include publication in the Federal Register and may include publication in the 102 Monitor.

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

(i) Notice to State and local agencies pursuant to OMB Circular A-95.
(ii) Following the affected State's public notice procedures for comparable actions.
(iii) Publication in local newspapers (in papers of general circulation rather than legal papers).
(iv) Notice through other local media.
(v) Notice to potentially interested community organizations.
(vi) Publication in newsletters that may be expected to reach potentially interested persons.
(vii) Direct mailing to owners and occupants of nearby or affected property.
(iix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold public hearings whenever appropriate. Criteria shall include whether there is:

(1) Substantial 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.

(d) Establish a procedure for interested persons to get status reports on environmental impact statements and other elements of the NEPA process.

(e) 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 of intra- or interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action.

Sec. 1506.7 Further Guidance

The Council shall provide further guidance concerning NEPA and its procedures as appears useful, 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:

(i) research activities;

(ii) meetings and conferences related to NEPA; and

(iii) successful and innovative procedures used by agencies to implement NEPA.

Sec. 1506.8 Proposals for Legislation

The NEPA process for proposals for legislation (section 1508.15) shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law which shall accompany proposed legislation to the Congress. Preparation of a legislative statement shall include consultation with appropriate agencies and conform with the requirements of these regulations except as follows:

(a) There need not be a scoping meeting.

(b) The legislative statement shall otherwise be treated in the same manner as a draft statement except as further specified. There need not be a final environmental impact

statement. Provided, that both a draft and a final environmental impact statement shall be prepared and circulated as provided by sections 1503.1 and 1506.10 when any of the following conditions exist:

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

(2) 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. et seq.)).

(3) Legislative approval is sought for federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations.

(4) 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.

(d) The Environmental Protection Agency may reduce the period for review required by section 1506.10 to insure that comments and responses are received by the appropriate Congressional committee prior to hearings on the proposal.

Sec. 1506.9 Filing Requirements

Environmental impact statements shall be filed with the Environmental Protection Agency, attention Office of Federal Activities, 401 M Street, S.W., Washington, D.C. 20460. Statements shall be filed with EPA no earlier than they are also made available to commenting agencies and the public. EPA shall deliver one copy of each statement to the Council.

Sec. 1506.10 Timing of Agency Action

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

(1) ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, or

(2) thirty (30) days after the final environmental impact statement is filed with the Environmental Protection Agency.

(b) 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.

(c) Agencies shall allow not less than 45 days for comments on draft statements.

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

(e) The lead agency may extend prescribed periods. The Environmental Protection Agency (Office of Federal Activities) 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. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

Sec. 1506.11 Emergencies

If an agency believes that emergency circumstances make it necessary to take an action with significant environmental impact without observing some requirement of these regulations, the agency may apply to the Council for a waiver of the requirement. The Council shall only grant a waiver upon a showing to its satisfaction that a true emergency exists and that essential considerations of national policy require that the waiver be granted.

Sec. 1506.12 Effective Date

The effective date of these regulations is six months after their final publication in the Federal Register.

(a) These regulations shall apply to the fullest extent practicable environmental documents begun before that date. These regulations do not apply to an environmental impact statement 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. 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

The phrase "to the fullest extent possible" in section 102 of the Act means that each Federal agency shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible. 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 section 1507.3 to the requirements of other applicable laws.

Sec. 1507.2 Agency Capability to Comply

Each agency shall have sufficient capability, including personnel and other resources, to:

(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 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.

Sec. 1507.3 Agency Procedures

(a) Not later than six months after publication of these regulations as finally adopted in the Federal Register, or three months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. 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. The procedures shall be adopted only after an opportunity for public review and shall not be effective until approved by the Council as in conformity with the Act and these regulations. 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 the agency's procedures. Agencies shall continue to review their policies and procedures and to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall include:

(1) Those procedures required by section 1505.1.

(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 (categorical exclusions (section 1508.4)).

(iii) Which normally require other environmental documents.

Part 1508. Terminology and Index

Sec. 1508.1 Terminology

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

Sec. 1508.2 Act

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

Sec. 1508.3 Affecting

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

Sec. 1508.4 Categorical Exclusion What about legislative exclusions which exempt significant actions?

"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 (section 1507.3). Any such procedures shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Sec. 1508.5 Cooperating Agency

"Cooperating Agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. A State or local agency of similar qualifications may at its option become a cooperating agency.

Sec. 1508.6 Council

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

Sec. 1508.7 Cumulative Impact

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

Sec. 1508.8 Effects

"Effects" include:

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

(b) Indirect effects are those caused by the taking of the action but which are later in time or farther removed in distance, but which are still reasonably foreseeable.

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), economic, social, or health, whether direct, indirect, or cumulative. Effects may also include actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Sec. 1508.9 Environmental Assessment

"Environmental Assessment"

(a) Means a document by a Federal agency which serves to:

(1) Briefly provide sufficient evidence and analysis for the determination 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 such 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 impact of the proposed action and alternatives, and a listing of agencies and persons consulted. Normally environmental assessment shall not exceed several pages in length.

Sec. 1508.10 Environmental Document

"Environmental Document" includes the documents specified in secs. 1508.9, 1508.11, 1508.12 and 1508.20.

Sec. 1508.11 Environmental Impact Statement

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

Sec. 1508.12 Finding of No Significant Impact

"Finding of No Significant Impact" means a statement by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (section 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 and shall note any other environmental documents related to it (section 1501.6).

Sec. 1508.13 Human Environment

"Human Environment" shall be interpreted comprehensively to include the natural and physical environment and the interaction of people with that environment. The human environment is not confined to the geographical borders of the United States and includes [to be added].

Sec. 1508.14 Lead Agency

"Lead Agency" means the Federal agency or agencies which have prepared or have taken primary responsibility among Federal agencies to prepare the environmental impact statement.

Sec. 1508.15 Legislation

"Legislation" includes a bill or legislative proposal developed by or with the significant cooperation and support of a Federal agency. 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 includes requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

Sec. 1508.16 Major Federal Action

"Major Federal action" includes action the effects of which may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (section 1508.24). 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. If a Federal program is delegated or otherwise transferred to State or local government, the Federal agency shall continue to be responsible for compliance with the Act and shall insure the preparation of environmental impact statements

if otherwise required. If the Federal agency may legally require the State or local agency to prepare statements, it shall do so. If not, the Federal agency shall prepare the statements.

(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 (section 1506.8, 1508.15).

(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 are located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Sec. 1508.17 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. 1857h-7).

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

Sec. 1508.18 Mitigation

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain 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 impacted environment.

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

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

Sec. 1508.19 NEPA Process

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

Sec. 1508.20 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.

(b) Summarize the determinations made at the scoping meeting (sec. 1501.7(a) and (b)).

(c) State the name and address of the official responsible for preparing the environmental impact statement.

Sec. 1508.21 Proposal

"Proposal" refers to that stage in the development of an action when an agency subject to the Act has a goal and is actively considering one or more alternative means of accomplishing that goal. A proposal may exist in fact as well as by agency declaration that one exists.

Sec. 1508.22 Referring Agency

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

Sec. 1508.23 Scope

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. In scoping environmental impact statements agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) 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 and should do so when the combined impacts of similar actions or the availability of a reasonble alternative to such actions can be adequately assessed only by treating the proposed actions in a single impact statement.

(b) Alternatives, which include:

(i) No action alternative.
(ii) Other courses of action.
(iii) Mitigation measures (not in the proposed action).

(c) Impacts, which may be:

(i) Direct.
(ii) Indirect.
(iii) Cumulative.

Sec. 1508.24 Significantly

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

(a) Context. This means that significance of an action must be analyzed in several contexts such as society as a whole (global, 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 be a function of the effects in the locale rather than in the world as a whole.

(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 threatens public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic sites, park lands, prime farm lands, 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) Whether 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) Whether the action may have a significant adverse effect on an area or site 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) Whether the action may have a significant adverse effect on the habitat of a species by the Endangered Species Act of 1973 determined to be critical.

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

Sec. 1508.25 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 (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. The purpose of tiering from the more general to the more specific is to eliminate repetitive discussions of the same issues and to focus on the issues ripe for decision. The effect is to reduce paperwork.

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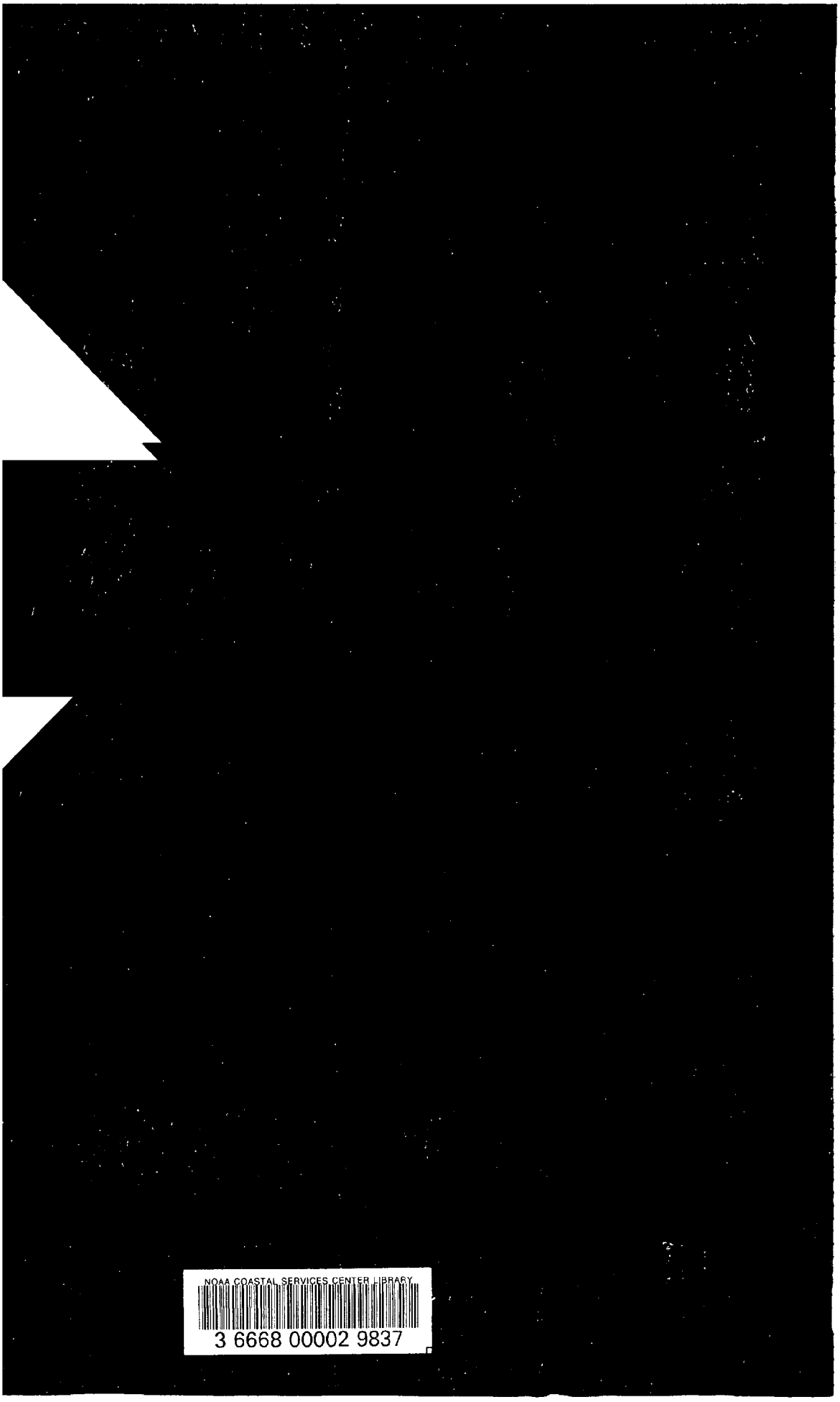
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