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**Title 40 —Protection of Environment**  
**Chapter I —Environmental Protection Agency**  
**Subchapter A —General**

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## PART 6—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT AND ASSESSING THE ENVIRONMENTAL EFFECTS ABROAD OF EPA ACTIONS

**Authority:** 42 U.S.C. 4321 *et seq.*; also 40 CFR parts 1500 through 1508, unless otherwise noted.

**Source:** 72 FR 53662, Sept. 19, 2007, unless otherwise noted.

### Subpart A—General Provisions for EPA Actions Subject to NEPA

#### § 6.100 Policy and purpose.

- (a) The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, as implemented by the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500 through 1508), requires that Federal agencies include in their decision-making processes appropriate and careful consideration of all environmental effects of proposed actions, analyze potential environmental effects of proposed actions and their alternatives for public understanding and scrutiny, avoid or minimize adverse effects of proposed actions, and restore and enhance environmental quality to the extent practicable. The U.S. Environmental Protection Agency (EPA) shall integrate these NEPA requirements as early in the Agency planning processes as possible. The environmental review process shall be the focal point to ensure NEPA considerations are taken into account.
- (b) Through this part, EPA adopts the CEQ Regulations (40 CFR Parts 1500 through 1508) implementing NEPA; subparts A through C of this part supplement those regulations, for actions proposed by EPA that are subject to NEPA requirements. Subparts A through C supplement, and are to be used in conjunction with, the CEQ Regulations.

#### § 6.101 Applicability.

- (a) Subparts A through C of this part apply to the proposed actions of EPA that are subject to NEPA. EPA actions subject to NEPA include the award of wastewater treatment construction grants under Title II of the Clean Water Act, EPA's issuance of new source National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the Clean Water Act, certain research and development projects, development and issuance of regulations, EPA actions involving renovations or new construction of facilities, and certain grants awarded for projects authorized by Congress through the Agency's annual Appropriations Act.
- (b) Subparts A through C of this part do not apply to EPA actions for which NEPA review is not required. EPA actions under the Clean Water Act, except those identified in § 6.101(a), and EPA actions under the Clean Air Act are statutorily exempt from NEPA. Additionally, the courts have determined that certain EPA actions for which analyses that have been conducted under another statute are functionally equivalent with NEPA.
- (c) The appropriate Responsible Official will undertake certain EPA actions required by the provisions of subparts A through C of this part.
- (d) Certain procedures in subparts A through C of this part apply to the responsibilities of the NEPA Official.
- (e) Certain procedures in subparts A through C of this part apply to applicants who are required to provide environmental information to EPA.

- (f) When the Responsible Official decides to perform an environmental review under the *Policy for EPA's Voluntary Preparation of National Environmental Policy Act (NEPA) Documents*, the Responsible Official generally will follow the procedures set out in subparts A through C of this part.

## § 6.102 Definitions.

- (a) Subparts A through C of this part use the definitions found at 40 CFR part 1508. Additional definitions are listed in this subpart.
- (b) **Definitions.**
  - (1) **Administrator** means the Administrator of the United States Environmental Protection Agency.
  - (2) **Applicant** means any individual, agency, or other entity that has:
    - (i) Filed an application for federal assistance;
    - (ii) Applied to EPA for a permit; or
    - (iii) Requested other EPA approval.
  - (3) **Assistance agreement** means an award of federal assistance in the form of money or property in lieu of money from EPA to an eligible applicant including grants or cooperative agreements.
  - (4) **Environmental information document (EID)** means a written analysis prepared by an applicant that provides sufficient information for the Responsible Official to undertake an environmental review and prepare either an EA and FONSI or an EIS and record of decision (ROD) for the proposed action.
  - (5) **Environmental review or NEPA review** means the process used to comply with section 102(2) of NEPA or the CEQ Regulations including development, supplementation, adoption, and revision of NEPA documents.
  - (6) **Extraordinary circumstances** means those circumstances listed in section 6.204 of this part that may cause a significant environmental effect such that a proposed action that otherwise meets the requirements of a categorical exclusion may not be categorically excluded.
  - (7) **NEPA document** is a document prepared pursuant to NEPA.
  - (8) **NEPA Official** is the Associate Administrator for the Office of Policy, who is responsible for EPA's NEPA compliance.
  - (9) **Responsible Official** means the EPA official responsible for compliance with NEPA for individual proposed actions.

[72 FR 53662, Sept. 19, 2007, as amended at 74 FR 5993, Feb. 4, 2009; 83 FR 48546, Sept. 26, 2018]

## § 6.103 Responsibilities of the NEPA and Responsible Officials.

- (a) The NEPA Official will:
  - (1) Ensure EPA's compliance with NEPA pursuant to 40 CFR 1507.2(a) and the regulations in subparts A through C of this part.
  - (2) Act as EPA's liaison with the CEQ and other federal agencies, state and local governments, and federally-recognized Indian tribes on matters of policy and administrative procedures regarding compliance with NEPA.

- (3) Approve procedural deviations from subparts A through C of this part.
  - (4) Monitor the overall timeliness and quality of EPA's compliance with subparts A through C of this part.
  - (5) Advise the Administrator on NEPA-related actions that involve more than one EPA office, are highly controversial, are nationally significant, or establish new EPA NEPA-related policy.
  - (6) Support the Administrator by providing policy guidance on NEPA-related issues.
  - (7) Assist EPA's Responsible Officials with establishing and maintaining adequate administrative procedures to comply with subparts A through C of this part, performing their NEPA duties, and training personnel and applicants involved in the environmental review process.
  - (8) Consult with Responsible Officials and CEQ regarding proposed changes to subpart A through C of this part, including:
    - (i) The addition, amendment, or deletion of a categorical exclusion, or
    - (ii) Changes to the listings of types of actions that normally require the preparation of an EA or EIS.
  - (9) Determine whether proposed changes are appropriate, and if so, coordinate with CEQ, pursuant to 40 CFR 1507.3, and initiate a process to amend this part.
- (b) The Responsible Official will:
- (1) Ensure EPA's compliance with the CEQ regulations and subparts A through C of this part for proposed actions.
  - (2) Ensure that environmental reviews are conducted on proposed actions at the earliest practicable point in EPA's decision-making process and in accordance with the provisions of subparts A through C of this part.
  - (3) Ensure, to the extent practicable, early and continued involvement of interested federal agencies, state and local governments, federally-recognized Indian tribes, and affected applicants in the environmental review process.
  - (4) Coordinate with the NEPA Official and other Responsible Officials, as appropriate, on resolving issues involving EPA-wide NEPA policy and procedures (including the addition, amendment, or deletion of a categorical exclusion and changes to the listings of the types of actions that normally requires the preparation of an EA or EIS) and/or unresolved conflicts with other federal agencies, state and local governments, and federally-recognized Indian tribes, and/or advising the Administrator when necessary.
  - (5) Coordinate with other Responsible Officials, as appropriate, on NEPA-related actions involving their specific interests.
  - (6) Consistent with national NEPA guidance, provide specific policy guidance, as appropriate, and ensure that the Responsible Official's office establishes and maintains adequate administrative procedures to comply with subparts A through C of this part.
  - (7) Upon request of an applicant and consistent with 40 CFR 1501.8, set time limits on the NEPA review appropriate to individual proposed actions.
  - (8) Make decisions relating to the preparation of the appropriate NEPA documents, including preparing an EA or EIS, and signing the decision document.

- (9) Monitor the overall timeliness and quality of the Responsible Official's respective office's efforts to comply with subparts A through C of this part.
- (c) The NEPA Official and the Responsible Officials may delegate NEPA-related responsibilities to a level no lower than the Branch Chief or equivalent organizational level.

## Subpart B—EPA's NEPA Environmental Review Procedures

### § 6.200 General requirements.

- (a) The Responsible Official must determine whether the proposed action meets the criteria for categorical exclusion or whether it requires preparation of an EA or an EIS to identify and evaluate its environmental impacts. The Responsible Official may decide to prepare an EIS without first undertaking an EA.
- (b) The Responsible Official must determine the scope of the environmental review by considering the type of proposed action, the reasonable alternatives, and the type of environmental impacts. The scope of an EIS will be determined as provided in 40 CFR 1508.25.
- (c) During the environmental review process, the Responsible Official must:
  - (1) Integrate the NEPA process and the procedures of subparts A through C of this part into early planning to ensure appropriate consideration of NEPA's policies and to minimize or eliminate delay;
  - (2) Emphasize cooperative consultation among federal agencies, state and local governments, and federally-recognized Indian tribes before an EA or EIS is prepared to help ensure compliance with the procedural provisions of subparts A through C of this part and with other environmental review requirements, to address the need for interagency cooperation, to identify the requirements for other agencies' reviews, and to ensure appropriate public participation.
  - (3) Identify at an early stage any potentially significant environmental issues to be evaluated in detail and insignificant issues to be de-emphasized, focusing the scope of the environmental review accordingly;
  - (4) Involve other agencies and the public, as appropriate, in the environmental review process for proposed actions that are not categorically excluded to:
    - (i) Identify the federal, state, local, and federally-recognized Indian tribal entities and the members of the public that may have an interest in the action;
    - (ii) Request that appropriate federal, state, and local agencies and federally-recognized Indian tribes serve as cooperating agencies consistent with 40 CFR 1501.6 and 1508.5; and
    - (iii) Integrate, where possible, review of applicable federal laws and executive orders into the environmental review process in conjunction with the development of NEPA documents.
- (d) When preparing NEPA documents, the Responsible Official must:
  - (1) Utilize a systematic, interdisciplinary approach to integrate the natural and social sciences with the environmental design arts in planning and making decisions on proposed actions subject to environmental review under subparts A through C of this part (see 40 CFR 1501.2(a) and 1507.2);
  - (2) Plan adequate time and funding for the NEPA review and preparation of the NEPA documents. Planning includes consideration of whether an applicant will be required to prepare an EID for the proposed action.

- (3) Review relevant planning or decision-making documents, whether prepared by EPA or another federal agency, to determine if the proposed action or any of its alternatives have been considered in a prior federal NEPA document. EPA may adopt the existing document, or will incorporate by reference any pertinent part of it, consistent with 40 CFR 1506.3 and 1502.21.
- (4) Review relevant environmental review documents prepared by a state or local government or a federally-recognized Indian tribe to determine if the proposed action or any of its alternatives have been considered in such a document. EPA will incorporate by reference any pertinent part of that document consistent with 40 CFR 1502.21.
- (e) During the decision-making process for the proposed action, the Responsible Official must:
  - (1) Incorporate the NEPA review in decision-making on the action. Processing and review of an applicant's application must proceed concurrently with the NEPA review procedures set out in subparts A through C of this part. EPA must complete its NEPA review before making a decision on the action.
  - (2) Consider the relevant NEPA documents, public and other agency comments (if any) on those documents, and EPA responses to those comments, as part of consideration of the action (see 40 CFR 1505.1(d)).
  - (3) Consider the alternatives analyzed in an EA or EIS before rendering a decision on the action; and
  - (4) Ensure that the decision on the action is to implement an alternative analyzed or is within the range of alternatives analyzed in the EA or EIS (see 40 CFR 1505.1(e)).
- (f) To eliminate duplication and to foster efficiency, the Responsible Official should use tiering (see 40 CFR 1502.20 and 1508.28) and incorporate material by reference (see 40 CFR 1502.21) as appropriate.
- (g) For applicant-related proposed actions:
  - (1) The Responsible Official may request that the applicant submit information to support the application of a categorical exclusion to the applicant's pending action.
  - (2) The Responsible Official may gather the information and prepare the NEPA document without assistance from the applicant, or, pursuant to Subpart C of this part, have the applicant prepare an EID or a draft EA and supporting documents, or enter into a third-party agreement with the applicant.
  - (3) During the environmental review process, applicants may continue to compile additional information needed for the environmental review and/or information necessary to support an application for a permit or assistance agreement from EPA.
- (h) For all NEPA determinations (CEs, EA/FONSI, or EIS/RODs) that are five years old or older, and for which the subject action has not yet been implemented, the Responsible Official must re-evaluate the proposed action, environmental conditions, and public views to determine whether to conduct a supplemental environmental review of the action and complete an appropriate NEPA document or reaffirm EPA's original NEPA determination. If there has been substantial change in the proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, the Responsible Official must conduct a supplemental environmental review of the action and complete an appropriate NEPA document.

## § 6.201 Coordination with other environmental review requirements.

Consistent with 40 CFR 1500.5(g) and 1502.25, the Responsible Official must determine the applicability of other environmental laws and executive orders, to the fullest extent possible. The Responsible Official should incorporate applicable requirements as early in the NEPA review process as possible.

## § 6.202 Interagency cooperation.

- (a) Consistent with 40 CFR 1501.5, 1501.6, and 1508.5, the Responsible Official will request other appropriate federal and non-federal agencies to be joint lead or cooperating agencies as a means of encouraging early coordination and cooperation with federal agencies, state and local governments, and federally-recognized Indian tribes with jurisdiction by law or special expertise.
- (b) For an EPA action related to an action of any other federal agency, the Responsible Official must comply with the requirements of 40 CFR 1501.5 and 1501.6 relating to lead agencies and cooperating agencies, respectively. The Responsible Official will work with the other involved agencies to facilitate coordination and to reduce delay and duplication.
- (c) To prepare a single document to fulfill both NEPA and state or local government, or federally-recognized Indian tribe requirements, consistent with 40 CFR 1506.2, the Responsible Official should enter into a written agreement with the involved state or local government, or federally-recognized Indian tribe that sets out the intentions of the parties, including the responsibilities each party intends to assume and procedures the parties intend to follow.

## § 6.203 Public participation.

- (a) *General requirements.*
  - (1) The procedures in this section apply to EPA's environmental review processes, including development, supplementation, adoption, and revision of NEPA documents.
  - (2) The Responsible Official will make diligent efforts to involve the public, including applicants, in the preparation of EAs or EISs consistent with 40 CFR 1501.4 and 1506.6 and applicable EPA public participation regulations (e.g., 40 CFR Part 25).
  - (3) EPA NEPA documents will use plain language to the extent possible.
  - (4) The Responsible Official will, to the greatest extent possible, give notice to any state or local government, or federally-recognized Indian tribe that, in the Official's judgment, may be affected by an action for which EPA plans to prepare an EA or an EIS.
  - (5) The Responsible Official must use appropriate communication procedures to ensure meaningful public participation throughout the NEPA process. The Responsible Official must make reasonable efforts to involve the potentially affected communities where the proposed action is expected to have environmental impacts or where the proposed action may have human health or environmental effects in any communities, including minority communities, low-income communities, or federally-recognized Indian tribal communities.
- (b) *EA and FONSI requirements.*

- (1) At least thirty (30) calendar days before making the decision on whether, and if so how, to proceed with a proposed action, the Responsible Official must make the EA and preliminary FONSI available for review and comment to the interested federal agencies, state and local governments, federally-recognized Indian tribes and the affected public. The Responsible Official must respond to any substantive comments received and finalize the EA and FONSI before making a decision on the proposed action.
- (2) Where circumstances make it necessary to take the action without observing the 30 calendar day comment period, the Responsible Official must notify the NEPA Official before taking such action. If the NEPA Official determines that a reduced comment period would be in the best interest of the Government, the NEPA Official will inform the Responsible Official, as soon as possible, of this approval. The Responsible Official will make the EA and preliminary FONSI available for review and comment for the reduced comment period.

(c) *EIS and ROD requirements.*

- (1) As soon as practicable after the decision to prepare an EIS and before beginning the scoping process, the Responsible Official must ensure that a notice of intent (NOI) (see 40 CFR 1508.22) is published in the FEDERAL REGISTER. The NOI must briefly describe the proposed action; a preliminary list of environmental issues to be analyzed, and possible alternatives; EPA's proposed scoping process including, if available, whether, when, and where any scoping meeting will be held; and the name and contact information for the person designated by EPA to answer questions about the proposed action and the EIS. The NOI must invite comments and suggestions on the scope of the EIS.
- (2) The Responsible Official must disseminate the NOI consistent with 40 CFR 1506.6.
- (3) The Responsible Official must conduct the scoping process consistent with 40 CFR 1501.7 and any applicable EPA public participation regulations (e.g., 40 CFR Part 25).
  - (i) Publication of the NOI in the FEDERAL REGISTER begins the scoping process.
  - (ii) The Responsible Official must ensure that the scoping process for an EIS allows a minimum of thirty (30) days for the receipt of public comments.
  - (iii) The Responsible Official may hold one or more public meetings as part of the scoping process for an EPA EIS. The Responsible Official must announce the location, date, and time of public scoping meetings in the NOI or by other appropriate means, such as additional notices in the FEDERAL REGISTER, news releases to the local media, or letters to affected parties. Public scoping meetings should be held at least fifteen (15) days after public notification.
  - (iv) The Responsible Official must use appropriate means to publicize the availability of draft and final EISs and the time and place for public meetings or hearings on draft EISs. The methods chosen for public participation must focus on reaching persons who may be interested in the proposed action. Such persons include those in potentially affected communities where the proposed action is known or expected to have environmental impacts including minority communities, low-income communities, or federally-recognized Indian tribal communities.



- (v) The Responsible Official must circulate the draft and final EISs consistent with 40 CFR 1502.19 and any applicable EPA public participation regulations and in accordance with the 45-day public review period for draft EISs and the 30-day public review period for final EISs (see § 6.209 of this part). Consistent with section 6.209(b) of this part, the Responsible Official may establish a longer public comment period for a draft or final EIS.
  - (vi) After preparing a draft EIS and before preparing a final EIS, the Responsible Official must solicit the comments of appropriate federal agencies, state and/or local governments, and/or federally-recognized Indian tribes, and the public (see 40 CFR 1503.1). The Responsible Official must respond in the final EIS to substantive comments received (see 40 CFR 1503.4).
  - (vii) The Responsible Official may conduct one or more public meetings or hearings on the draft EIS as part of the public involvement process. If meetings or hearings are held, the Responsible Official must make the draft EIS available to the public at least thirty (30) days in advance of any meeting or hearing.
- (4) The Responsible Official must make the ROD available to the public upon request.

#### **§ 6.204 Categorical exclusions and extraordinary circumstances.**

- (a) A proposed action may be categorically excluded if the action fits within a category of action that is eligible for exclusion and the proposed action does not involve any extraordinary circumstances.
  - (1) Certain actions eligible for categorical exclusion require the Responsible Official to document a determination that a categorical exclusion applies. The documentation must include: A brief description of the proposed action; a statement identifying the categorical exclusion that applies to the action; and a statement explaining why no extraordinary circumstances apply to the proposed action. The Responsible Official must make a copy of the determination document available to the public upon request. The categorical exclusions requiring this documentation are listed in paragraphs (a)(1)(i) through (a)(1)(v) of this section.
    - (i) Actions at EPA owned or operated facilities involving routine facility maintenance, repair, and grounds-keeping; minor rehabilitation, restoration, renovation, or revitalization of existing facilities; functional replacement of equipment; acquisition and installation of equipment; or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities.
    - (ii) Actions relating to existing infrastructure systems (such as sewer systems; drinking water supply systems; and stormwater systems, including combined sewer overflow systems) that involve minor upgrading, or minor expansion of system capacity or rehabilitation (including functional replacement) of the existing system and system components (such as the sewer collection network and treatment system; the system to collect, treat, store and distribute drinking water; and stormwater systems, including combined sewer overflow systems) or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities. This category does not include actions that: involve new or relocated discharges to surface or ground water; will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water; will provide capacity to serve a population 30% greater than the existing population; are not supported by the state, or other regional growth plan or strategy; or directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.

- (iii) Actions in unsewered communities involving the replacement of existing onsite systems, providing the new onsite systems do not result in substantial increases in the volume of discharge or the loadings of pollutants from existing sources, or relocate existing discharge.
  - (iv) Actions involving re-issuance of a NPDES permit for a new source providing the conclusions of the original NEPA document are still valid (including the appropriate mitigation), there will be no degradation of the receiving waters, and the permit conditions do not change or are more environmentally protective.
  - (v) Actions for award of grants authorized by Congress under EPA's annual Appropriations Act that are solely for reimbursement of the costs of a project that was completed prior to the date the appropriation was enacted.
- (2) Certain actions eligible for categorical exclusion do not require the Responsible Official to document a determination that a categorical exclusion applies. These categorical exclusions are listed in paragraphs (a)(2)(i) through (a)(2)(x) of this section.
- (i) Procedural, ministerial, administrative, financial, personnel, and management actions necessary to support the normal conduct of EPA business.
  - (ii) Acquisition actions (compliant with applicable procedures for sustainable or "green" procurement) and contracting actions necessary to support the normal conduct of EPA business.
  - (iii) Actions involving information collection, dissemination, or exchange; planning; monitoring and sample collection wherein no significant alteration of existing ambient conditions occurs; educational and training programs; literature searches and studies; computer studies and activities; research and analytical activities; development of compliance assistance tools; and architectural and engineering studies. These actions include those conducted directly by EPA and EPA actions relating to contracts or assistance agreements involving such actions.
  - (iv) Actions relating to or conducted completely within a permanent, existing contained facility, such as a laboratory, or other enclosed building, provided that reliable and scientifically-sound methods are used to appropriately dispose of wastes and safeguards exist to prevent hazardous, toxic, and radioactive materials in excess of allowable limits from entering the environment. Where such activities are conducted at laboratories, the Lab Director or other appropriate official must certify in writing that the laboratory follows good laboratory practices and adheres to all applicable federal, state, local, and federally-recognized Indian tribal laws and regulations. This category does not include activities related to construction and/or demolition within the facility (see paragraph (a)(1)(i) of this section).
  - (v) Actions involving emergency preparedness planning and training activities.
  - (vi) Actions involving the acquisition, transfer, lease, disposition, or closure of existing permanent structures, land, equipment, materials or personal property provided that the property: Is either vacant or has been used solely for office functions; has never been used for laboratory purposes by any party; does not require site remediation; and will be used in essentially the same manner such that the type and magnitude of the impacts will not change substantially. This category does not include activities related to construction and/or demolition of structures on the property (see paragraph (a)(1)(i) of this section).

- (vii) Actions involving providing technical advice to federal agencies, state or local governments, federally-recognized Indian tribes, foreign governments, or public or private entities.
  - (viii) Actions involving approval of EPA participation in international “umbrella” agreements for cooperation in environmental-related activities that would not commit the United States to any specific projects or actions.
  - (ix) Actions involving containment or removal and disposal of asbestos-containing material or lead-based paint from EPA owned or operated facilities when undertaken in accordance with applicable regulations.
  - (x) Actions involving new source NPDES permit modifications that make only technical corrections to the NPDES permit (such as correcting typographical errors) that do not result in a change in environmental impacts or conditions.
- (b) The Responsible Official must review actions eligible for categorical exclusion to determine whether any extraordinary circumstances are involved. Extraordinary circumstances are listed in paragraphs (b)(1) through (b)(10) of this section. (See 40 CFR 1508.4.)
- (1) The proposed action is known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time.
  - (2) The proposed action is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.
  - (3) The proposed action is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat.
  - (4) The proposed action is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the National Register of Historic Places.
  - (5) The proposed action is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.
  - (6) The proposed action is known or expected to cause significant adverse air quality effects.
  - (7) The proposed action is known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans.
  - (8) The proposed action is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.
  - (9) The proposed action is known or expected to be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts.
  - (10) The proposed action is known or expected to conflict with federal, state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.

- (c) The Responsible Official may request that an applicant submit sufficient information to enable the Responsible Official to determine whether a categorical exclusion applies to the applicant's proposed action or whether an exceptional circumstance applies. Pursuant to Subpart C of this part, applicants are not required to prepare EIDs for actions that are being considered for categorical exclusion.
- (d) The Responsible Official must prepare an EA or EIS when a proposed action involves extraordinary circumstances.
- (e) After a determination has been made that a categorical exclusion applies to an action, if new information or changes in the proposed action involve or relate to at least one of the extraordinary circumstances or otherwise indicate that the action may not meet the criteria for categorical exclusion and the Responsible Official determines that an action no longer qualifies for a categorical exclusion, the Responsible Official will prepare an EA or EIS.
- (f) The Responsible Official, or other interested parties, may request the addition, amendment, or deletion of a categorical exclusion.
  - (1) Such requests must be made in writing, be directed to the NEPA Official, and contain adequate information to support and justify the request.
  - (2) Proposed new categories of actions for exclusion must meet these criteria:
    - (i) Actions covered by the proposed categorical exclusion generally do not individually or cumulatively have a significant effect on the human environment and have been found by EPA to have no such effect.
    - (ii) Actions covered by the proposed categorical exclusion generally do not involve extraordinary circumstances as set out in paragraphs (b)(1) through (b)(10) of this section and generally do not require preparation of an EIS; and
    - (iii) Information adequate to determine that a proposed action is properly covered by the proposed category will generally be available.
  - (3) The NEPA Official must determine that the addition, amendment, or deletion of a categorical exclusion is appropriate.
- (g) Any addition, amendment, or deletion of a categorical exclusion will be done by rule-making and in coordination with CEQ pursuant to 40 CFR 1507.3 to amend paragraph (a)(1) or paragraph (a)(2) of this section.

[72 FR 53662, Sept. 19, 2007, as amended at 74 FR 5993, Feb. 4, 2009]

## § 6.205 Environmental assessments.

- (a) The Responsible Official must prepare an environmental assessment (EA) (see 40 CFR 1508.9) for a proposed action that is expected to result in environmental impacts and the significance of the impacts is not known. An EA is not required if the proposed action is categorically excluded, or if the Responsible Official has decided to prepare an EIS. (See 40 CFR 1501.3.)
- (b) Types of actions that normally require the preparation of an EA include:
  - (1) The award of wastewater treatment construction grants under Title II of the Clean Water Act;
  - (2) EPA's issuance of new source NPDES permits under section 402 of the Clean Water Act;

- (3) EPA actions involving renovations or new construction of facilities;
  - (4) Certain grants awarded for special projects authorized by Congress through the Agency's annual Appropriations Act; and
  - (5) Research and development projects, such as initial field demonstration of a new technology, field trials of a new product or new uses of an existing technology, alteration of a local habitat by physical or chemical means, or actions that may result in the release of radioactive, hazardous, or toxic substances, or biota.
- (c) The Responsible Official, or other interested parties, may request changes to the list of actions that normally require the preparation of an EA (i.e., the addition, amendment, or deletion of a type of action).
- (d) Consistent with 40 CFR 1508.9, an EA must provide sufficient information and analysis for determining whether to prepare an EIS or to issue a FONSI (see 40 CFR 1508.9(a)), and may include analyses needed for other environmental determinations. The EA must focus on resources that might be impacted and any environmental issues that are of public concern.
- (e) An EA must include:
- (1) A brief discussion of:
    - (i) The need for the proposed action;
    - (ii) The alternatives, including the no action alternative (which must be assessed even when the proposed action is specifically required by legislation or a court order);
    - (iii) The affected environment, including baseline conditions that may be impacted by the proposed action and alternatives;
    - (iv) The environmental impacts of the proposed action and alternatives, including any unresolved conflicts concerning alternative uses of available resources; and
    - (v) Other applicable environmental laws and executive orders.
  - (2) A listing or summary of any coordination or consultation undertaken with any federal agency, state or local government, or federally-recognized Indian tribe regarding compliance with applicable laws and executive orders;
  - (3) Identification and description of any mitigation measures considered, including any mitigation measures that must be adopted to ensure the action will not have significant impacts; and
  - (4) Incorporation of documents by reference, if appropriate, including, when available, the EID for the action.

## § 6.206 Findings of no significant impact.

- (a) The Responsible Official may issue a finding of no significant impact (FONSI) (see 40 CFR 1508.13) only if the EA supports the finding that the proposed action will not have a significant effect on the human environment. If the EA does not support a FONSI, the Responsible Official must prepare an EIS and issue a ROD before taking action on the proposed action.
- (b) Consistent with 40 CFR 1508.13, a FONSI must include:

- (1) The EA, or in lieu of the EA, a summary of the supporting EA that includes a brief description of the proposed action and alternatives considered in the EA, environmental factors considered, and project impacts; and
  - (2) A brief description of the reasons why there are no significant impacts.
- (c) In addition, the FONSI must include:
- (1) Any commitments to mitigation that are essential to render the impacts of the proposed action not significant;
  - (2) The date of issuance; and
  - (3) The signature of the Responsible Official.
- (d) The Responsible Official must ensure that an applicant that has committed to mitigation possesses the authority and ability to fulfill the commitments.
- (e) The Responsible Official must make a preliminary FONSI available to the public in accordance with section 6.203(b) of this part before taking action.
- (f) The Responsible Official may proceed with the action subject to any mitigation measures described in the FONSI after responding to any substantive comments received on the preliminary FONSI during the 30-day comment period, or 30 days after issuance of the FONSI if no substantive comments are received.
- (g) The Responsible Official must ensure that the mitigation measures necessary to the FONSI determination, at a minimum, are enforceable, and conduct appropriate monitoring of the mitigation measures.
- (h) The Responsible Official may revise a FONSI at any time provided the revision is supported by an EA. A revised FONSI is subject to all provisions of paragraph (d) of this section.

## § 6.207 Environmental impact statements.

- (a) The Responsible Official will prepare an environmental impact statement (EIS) (see 40 CFR 1508.11) for major federal actions significantly affecting the quality of the human environment, including actions for which the EA analysis demonstrates that significant impacts will occur that will not be reduced or eliminated by changes to or mitigation of the proposed action.
- (1) EISs are normally prepared for the following actions:
- (i) New regional wastewater treatment facilities or water supply systems for a community with a population greater than 100,000.
  - (ii) Expansions of existing wastewater treatment facilities that will increase existing discharge to an impaired water by greater than 10 million gallons per day (mgd).
  - (iii) Issuance of new source NPDES permit for a new major industrial discharge.
  - (iv) Issuance of a new source NPDES permit for a new oil/gas development and production operation on the outer continental shelf.
  - (v) Issuance of a new source NPDES permit for a deepwater port with a projected discharge in excess of 10 mgd.
- (2) The Responsible Official, or other interested party, may request changes to the list of actions that normally require the preparation of an EIS (i.e., the addition, amendment, or deletion of a type of action).

- (3) A proposed action normally requires an EIS if it meets any of the following criteria. (See 40 CFR 1507.3(b)(2)).
- (i) The proposed action would result in a discharge of treated effluent from a new or modified existing facility into a body of water and the discharge is likely to have a significant effect on the quality of the receiving waters.
  - (ii) The proposed action is likely to directly, or through induced development, have significant adverse effect upon local ambient air quality or local ambient noise levels.
  - (iii) The proposed action is likely to have significant adverse effects on surface water reservoirs or navigation projects.
  - (iv) The proposed action would be inconsistent with state or local government, or federally-recognized Indian tribe approved land use plans or regulations, or federal land management plans.
  - (v) The proposed action would be inconsistent with state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws and regulations for protection of the environment.
  - (vi) The proposed action is likely to significantly affect the environment through the release of radioactive, hazardous or toxic substances, or biota.
  - (vii) The proposed action involves uncertain environmental effects or highly unique environmental risks that are likely to be significant.
  - (viii) The proposed action is likely to significantly affect national natural landmarks or any property on or eligible for the National Register of Historic Places.
  - (ix) The proposed action is likely to significantly affect environmentally important natural resources such as wetlands, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.
  - (x) The proposed action in conjunction with related federal, state or local government, or federally-recognized Indian tribe projects is likely to produce significant cumulative impacts.
  - (xi) The proposed action is likely to significantly affect the pattern and type of land use (industrial, commercial, recreational, residential) or growth and distribution of population including altering the character of existing residential areas.
- (4) An EIS must be prepared consistent with 40 CFR Part 1502.
- (b) When appropriate, the Responsible Official will prepare a legislative EIS consistent with 40 CFR 1506.8.
  - (c) In preparing an EIS, the Responsible Official must determine if an applicant, other federal agencies or state or local governments, or federally-recognized Indian tribes are involved with the project and apply the applicable provisions of § 6.202 and Subpart C of this part.
  - (d) An EIS must:
    - (1) Comply with all requirements at 40 CFR parts 1500 through 1508.
    - (2) Analyze all reasonable alternatives and the no action alternative (which may be the same as denying the action). Assess the no action alternative even when the proposed action is specifically required by legislation or a court order.

- (3) Describe the potentially affected environment including, as appropriate, the size and location of new and existing facilities, land requirements, operation and maintenance requirements, auxiliary structures such as pipelines or transmission lines, and construction schedules.
  - (4) Summarize any coordination or consultation undertaken with any federal agency, state and/or local government, and/or federally-recognized Indian tribe, including copies or summaries of relevant correspondence.
  - (5) Summarize any public meetings held during the scoping process including the date, time, place, and purpose of the meetings. The final EIS must summarize the public participation process including the date, time, place, and purpose of meetings or hearings held after publication of the draft EIS.
  - (6) Consider substantive comments received during the public participation process. The draft EIS must consider the substantive comments received during the scoping process. The final EIS must include or summarize all substantive comments received on the draft EIS, respond to any substantive comments on the draft EIS, and explain any changes to the draft EIS and the reason for the changes.
  - (7) Include the names and qualifications of the persons primarily responsible for preparing the EIS including an EIS prepared under a third-party contract (if applicable), significant background papers, and the EID (if applicable).
- (e) The Responsible Official must prepare a supplemental EIS when appropriate, consistent with 40 CFR 1502.9.

## § 6.208 Records of decision.

- (a) The Responsible Official may not make any decisions on the action until the time periods in 40 CFR 1506.10 have been met.
- (b) A record of decision (ROD) records EPA's decision on the action. Consistent with 40 CFR 1505.2, a ROD must include:
  - (1) A brief description of the proposed action and alternatives considered in the EIS, environmental factors considered, and project impacts;
  - (2) Any commitments to mitigation; and
  - (3) An explanation if the environmentally preferred alternative was not selected.
- (c) In addition, the ROD must include:
  - (1) Responses to any substantive comments on the final EIS;
  - (2) The date of issuance; and
  - (3) The signature of the Responsible Official.
- (d) The Responsible Official must ensure that an applicant that has committed to mitigation possesses the authority and ability to fulfill the commitment.
- (e) The Responsible Official must make a ROD available to the public.
- (f) Upon issuance of the ROD, the Responsible Official may proceed with the action subject to any mitigation measures described in the ROD. The Responsible Official must ensure adequate monitoring of mitigation measures identified in the ROD.



- (g) If the mitigation identified in the ROD will be included as a condition in the permit or grant, the Responsible Official must ensure that EPA has the authority to impose the conditions. The Responsible Official should ensure that compliance with assistance agreement or permit conditions will be monitored and enforced under EPA's assistance agreement and permit authorities.
- (h) The Responsible Official may revise a ROD at any time provided the revision is supported by an EIS. A revised ROD is subject to all provisions of paragraph (d) of this section.

### § 6.209 Filing requirements for EPA EISs.

- (a) The Responsible Official must file an EIS with the NEPA Official no earlier than the date the document is transmitted to commenting agencies and made available to the public. The Responsible Official must comply with any guidelines established by the NEPA Official for the filing system process and comply with 40 CFR 1506.9 and 1506.10. The review periods are computed through the filing system process and published in the FEDERAL REGISTER in the Notice of Availability.
- (b) The Responsible Official may request that the NEPA Official extend the review periods for an EIS. The NEPA Official will publish notice of an extension of the review period in the FEDERAL REGISTER and notify the CEQ.

### § 6.210 Emergency circumstances.

If emergency circumstances make it necessary to take an action that has a significant environmental impact without observing the provisions of subparts A through C of this part that are required by the CEQ Regulations, the Responsible Official must consult with the NEPA Official at the earliest possible time. Consistent with 40 CFR 1506.11, the Responsible Official and the NEPA Official should consult with CEQ about alternative arrangements at the earliest opportunity. Actions taken without observing the provisions of subparts A through C of this part will be limited to actions necessary to control the immediate impacts of the emergency; other actions remain subject to the environmental review process.

## Subpart C—Requirements for Environmental Information Documents and Third-Party Agreements for EPA Actions Subject to NEPA

### § 6.300 Applicability.

- (a) This section applies to actions that involve applications to EPA for permits or assistance agreements, or request other EPA approval.
- (b) The Responsible Official is responsible for the environmental review process on EPA's action (that is, issuing the permit or awarding the assistance agreement) with the applicant contributing through submission of an EID or a draft EA and supporting documents.
- (c) An applicant is not required to prepare an EID when:
  - (1) The action has been categorically excluded or requires the preparation of an EIS; or
  - (2) The applicant will prepare and submit a draft EA and supporting documents.
- (d) The Responsible Official must notify the applicant if EPA will not require submission of an EID.

[72 FR 53662, Sept. 19, 2007, as amended at 74 FR 5994, Feb. 4, 2009]

### § 6.301 Applicant requirements.

- (a) The applicant must prepare an EID in consultation with the Responsible Official, unless the Responsible Official has notified the applicant that an EID is not required. The EID must be of sufficient scope and content to enable the Responsible Official to prepare an EA and FONSI or, if necessary, an EIS and ROD. The applicant must submit the EID to the Responsible Official.
- (b) The applicant must consult with the Responsible Official as early as possible in the planning process to obtain guidance with respect to the appropriate level and scope of environmental information required for the EID.
- (c) As part of the EID process, the applicant may consult with appropriate federal agencies, state and local governments, federally-recognized Indian tribes, and other potentially affected parties to identify their interests in the project and the environmental issues associated with the project.
- (d) The applicant must notify the Responsible Official as early as possible of other federal agency, state or local government, or federally-recognized Indian tribe requirements related to the project. The applicant also must notify the Responsible Official of any private entities and organizations affected by the proposed project. (See 40 CFR 1501.2(d)(2).)
- (e) The applicant must notify the Responsible Official if, during EPA's environmental review process, the applicant:
  - (1) Changes its plans for the project as originally submitted to EPA; and/or
  - (2) Changes its schedule for the project from that originally submitted to EPA.
- (f) In accordance with § 6.204, where appropriate, the applicant may request a categorical exclusion determination by the Responsible Official. If requested by the Responsible Official, the applicant must submit information to the Responsible Official regarding the application of a categorical exclusion to EPA's pending action and the applicant's project.

### § 6.302 Responsible Official requirements.

- (a) Consistent with 40 CFR 1501.2(d), the Responsible Official must ensure early involvement of applicants in the environmental review process to identify environmental effects, avoid delays, and resolve conflicts.
- (b) The Responsible Official must notify the applicant if a determination has been made that the action has been categorically excluded, or if EPA needs additional information to support the application of a categorical exclusion or if the submitted information does not support the application of a categorical exclusion and that an EA, or an EIS, will be required.
- (c) When an EID is required for a project, the Responsible Official must consult with the applicant and provide the applicant with guidance describing the scope and level of environmental information required.
  - (1) The Responsible Official must provide guidance on a project-by-project basis to any applicant seeking such assistance. For major categories of actions involving a large number of applicants, the Responsible Official may prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide.

- (2) The Responsible Official must consider the extent to which the applicant is capable of providing the required information. The Responsible Official may not require the applicant to gather data or perform analyses that unnecessarily duplicate either existing data or the results of existing analyses available to EPA. The Responsible Official must limit the request for environmental information to that necessary for the environmental review.
- (d) If, prior to completion of the environmental review for a project, the Responsible Official receives notification, that the applicant is proposing to or taking an action that would result in significant impacts or would limit alternatives, the Responsible Official must notify the applicant promptly that EPA will take appropriate action to ensure that the objectives and procedures of NEPA are achieved (see 40 CFR 1506.1(b)). Such actions may include withholding grant funds or denial of permits.
- (e) The Responsible Official must begin the NEPA review as soon as possible after receiving the applicant's EID or draft EA. The Responsible Official must independently evaluate the information submitted and be responsible for its accuracy (see 40 CFR 1506.5).
- (f) At the request of an applicant and at the discretion of the Responsible Official, an applicant may prepare an EA or EIS and supporting documents or enter into a third-party contract pursuant to § 6.303.
- (g) The Responsible Official must review, and take responsibility for the completed NEPA documents, before rendering a final decision on the proposed action.

### § 6.303 Third-party agreements.

- (a) If an EA or EIS is to be prepared for an action subject to subparts A through C of this part, the Responsible Official and the applicant may enter into an agreement whereby the applicant engages and pays for the services of a third-party contractor to prepare an EA or EIS and any associated documents for consideration by EPA. In such cases, the Responsible Official must approve the qualifications of the third-party contractor. The third-party contractor must be selected on the basis of ability and absence of any conflict of interest. Consistent with 40 CFR 1506.5(c), in consultation with the applicant, the Responsible Official shall select the contractor. The Responsible Official must provide guidance to the applicant and contractor regarding the information to be developed, including the project's scope, and guide and participate in the collection, analysis, and presentation of the information. The Responsible Official has sole authority for final approval of an EA or EIS.
  - (1) The applicant must engage and pay for the services of a contractor to prepare the EA or EIS and any associated documents without using EPA financial assistance (including required match).
  - (2) The Responsible Official, in consultation with the applicant, must ensure that the contractor is qualified to prepare an EA or EIS, and that the substantive terms of the contract specify the information to be developed, and the procedures for gathering, analyzing and presenting the information.
  - (3) The Responsible Official must prepare a disclosure statement for the applicant to include in the contract specifying that the contractor has no financial or other interest in the outcome of the project (see 40 CFR 1506.5(c)).
  - (4) The Responsible Official will ensure that the EA or EIS and any associated documents contain analyses and conclusions that adequately assess the relevant environmental issues.

- (b) In order to make a decision on the action, the Responsible Official must independently evaluate the information submitted in the EA or EIS and any associated documents, and issue an EA or draft and final EIS. After review of, and appropriate changes to, the EA or EIS submitted by the applicant, the Responsible Official may accept it as EPA's document. The Responsible Official is responsible for the scope, accuracy, and contents of the EA or EIS and any associated documents (see 40 CFR 1506.5).
- (c) A third-party agreement may not be initiated unless both the applicant and the Responsible Official agree to its creation and terms.
- (d) The terms of the contract between the applicant and the third-party contractor must ensure that the contractor does not have recourse to EPA for financial or other claims arising under the contract, and that the Responsible Official, or other EPA designee, may give technical advice to the contractor.

## Subpart D—Assessing the Environmental Effects Abroad of EPA Actions

**Authority:** 42 U.S.C. 4321, note, E.O. 12114, 44 FR 1979, 3 CFR, 1979 Comp., p. 356.

### § 6.400 Purpose and policy.

- (a) **Purpose.** On January 4, 1979, the President signed Executive Order 12114 entitled “Environmental Effects Abroad of Major Federal Actions.” The purpose of this Executive Order is to enable responsible Federal officials in carrying out or approving major Federal actions which affect foreign nations or the global commons to be informed of pertinent environmental considerations and to consider fully the environmental impacts of the actions undertaken. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and the Marine Protection, Research, and Sanctuaries Act (MPRSA) (33 U.S.C. 1401 *et seq.*). It should be noted, however, that in fulfilling its responsibilities under Executive Order 12114, EPA shall be guided by CEQ regulations only to the extent that they are made expressly applicable by this subpart. The procedures set forth below reflect EPA's duties and responsibilities as required under the Executive Order and satisfy the requirement for issuance of procedures under section 2-1 of the Executive Order.
- (b) **Policy.** It shall be the policy of this Agency to carry out the purpose and requirements of the Executive Order to the fullest extent possible. EPA, within the realm of its expertise, shall work with the Department of State and the Council on Environmental Quality to provide information to other Federal agencies and foreign nations to heighten awareness of and interest in the environment. EPA shall further cooperate to the extent possible with Federal agencies to lend special expertise and assistance in the preparation of required environmental documents under the Executive Order. EPA shall perform environmental reviews of activities significantly affecting the global commons and foreign nations as required under Executive Order 12114 and as set forth under these procedures.

### § 6.401 Applicability.

- (a) Administrative actions requiring environmental review. The environmental review requirements apply to the activities of EPA as follows:
  - (1) Major research or demonstration projects which affect the global commons or a foreign nation.
  - (2) Ocean dumping activities carried out under section 102 of the MPRSA which affect the related environment.

- (3) Major permitting or licensing by EPA of facilities which affect the global commons or the environment of a foreign nation. This may include such actions as the issuance by EPA of hazardous waste treatment, storage, or disposal facility permits pursuant to section 3005 of the Resource Conservation and Recovery Act (42 U.S.C. 6925), NPDES permits pursuant to section 402 of the Clean Water Act (33 U.S.C. 1342), and prevention of significant deterioration approvals pursuant to Part C of the Clean Air Act (42 U.S.C. 7470 et seq.)
- (4) Wastewater Treatment Construction Grants Program under section 201 of the Clean Water Act when activities addressed in the facility plan would have environmental effects abroad.
- (5) Other EPA activities as determined by OFA and OIA (see § 6.406(c)).

(b) [Reserved]

## § 6.402 Definitions.

As used in this subpart, *environment* means the natural and physical environment and excludes social, economic and other environments; *global commons* is that area (land, air, water) outside the jurisdiction of any nation; and *responsible official* is either the EPA Assistant Administrator or Regional Administrator as appropriate for the particular EPA program. Also, an action *significantly* affects the environment if it does *significant* harm to the environment even though on balance the action may be beneficial to the environment. To the extent applicable, the responsible official shall address the considerations set forth in the CEQ regulations under 40 CFR 1508.27 in determining significant effect.

## § 6.403 Environmental review and assessment requirements.

- (a) **Research and demonstration projects.** The appropriate Assistant Administrator is responsible for performing the necessary degree of environmental review on research and demonstration projects undertaken by EPA. If the research or demonstration project affects the environment of the global commons, the applicant shall prepare an environmental analysis. This will assist the responsible official in determining whether an EIS is necessary. If it is determined that the action significantly affects the environment of the global commons, then an EIS shall be prepared. If the undertaking significantly affects a foreign nation EPA shall prepare a unilateral, bilateral or multilateral environmental study. EPA shall afford the affected foreign nation or international body or organization an opportunity to participate in this study. This environmental study shall discuss the need for the action, analyze the environmental impact of the various alternatives considered and list the agencies and other parties consulted.
- (b) **Ocean dumping activities.**
  - (1) The Assistant Administrator for Water shall ensure the preparation of appropriate environmental documents relating to ocean dumping activities in the global commons under section 102 of the MPRSA. For ocean dumping site designations prescribed pursuant to section 102(c) of the MPRSA and 40 CFR part 228, and for the establishment or revision of criteria under section 102(a) of the MPRSA, EPA shall prepare appropriate environmental documents consistent with EPA's Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents dated October 29, 1998.
  - (2) For individual permits issued by EPA under section 102(b) an environmental assessment shall be made by EPA. Pursuant to 40 CFR part 221, the permit applicant shall submit with the application an environmental analysis which includes a discussion of the need for the action, an outline of

alternatives, and an analysis of the environmental impact of the proposed action and alternatives consistent with the EPA criteria established under section 102(a) of MPRSA. The information submitted under 40 CFR part 221 shall be sufficient to satisfy the environmental assessment requirement.

- (c) **EPA permitting and licensing activities.** The appropriate Regional Administrator is responsible for conducting concise environmental reviews with regard to permits issued under section 3005 of the Resource Conservation and Recovery Act (RCRA permits), section 402 of the Clean Water Act (NPDES permits), and section 165 of the Clean Air Act (PSD permits), for such actions undertaken by EPA which affect the global commons or foreign nations. The information submitted by applicants for such permits or approvals under the applicable consolidated permit regulations (40 CFR parts 122 and 124) and Prevention of Significant Deterioration (PSD) regulations (40 CFR part 52) shall satisfy the environmental document requirement under Section 2-4(b) of Executive Order 12114. Compliance with applicable requirements in part 124 of the consolidated permit regulations (40 CFR part 124) shall be sufficient to satisfy the requirements to conduct a concise environmental review for permits subject to this paragraph.
- (d) **Wastewater treatment facility planning.** 40 CFR part 6, subparts A through C, detail the environmental review process for the facilities planning process under the wastewater treatment works construction grants program. For the purpose of these regulations, the facility plan shall also include a concise environmental review of those activities that would have environmental effects abroad. This shall apply only to the Step 1 grants awarded after January 14, 1981, but on or before December 29, 1981, and facilities plans developed after December 29, 1981. Where water quality impacts identified in a facility plan are the subject of water quality agreements with Canada or Mexico, nothing in these regulations shall impose on the facility planning process coordination and consultation requirements in addition to those required by such agreements.
- (e) **Review by other Federal agencies and other appropriate officials.** The responsible officials shall consult with other Federal agencies with relevant expertise during the preparation of the environmental document. As soon as feasible after preparation of the environmental document, the responsible official shall make the document available to the Council on Environmental Quality, Department of State, and other appropriate officials. The responsible official with assistance from OIA shall work with the Department of State to establish procedures for communicating with and making documents available to foreign nations and international organizations.

#### § 6.404 Lead or cooperating agency.

- (a) **Lead Agency.** Section 3-3 of Executive Order 12114 requires the creation of a lead agency whenever an action involves more than one Federal agency. In implementing section 3-3, EPA shall, to the fullest extent possible, follow the guidance for the selection of a lead agency contained in 40 CFR 1501.5 of the CEQ regulations.
- (b) **Cooperating Agency.** Under Section 2-4(d) of the Executive Order, Federal agencies with special expertise are encouraged to provide appropriate resources to the agency preparing environmental documents in order to avoid duplication of resources. In working with a lead agency, EPA shall to the fullest extent possible serve as a cooperating agency in accordance with 40 CFR 1501.6. When other program commitments preclude the degree of involvement requested by the lead agency, the responsible EPA official shall so inform the lead agency in writing.

## § 6.405 Exemptions and considerations.

Under section 2-5 (b) and (c) of the Executive Order, Federal agencies may provide for modifications in the contents, timing and availability of documents or exemptions from certain requirements for the environmental review and assessment. The responsible official, in consultation with the Director, Office of Federal Activities (OFA), and the Assistant Administrator, Office of International Affairs (OIA), may approve modifications for situations described in section 2-5(b). The responsible official, in consultation with the Director, OFA and Assistant Administrator, OIA, shall obtain exemptions from the Administrator for situations described in section 2-5(c). The Department of State and the Council on Environmental Quality shall be consulted as soon as possible on the utilization of such exemptions.

## § 6.406 Implementation.

- (a) **Oversight.** OFA is responsible for overseeing the implementation of these procedures and shall consult with OIA wherever appropriate. OIA shall be utilized for making formal contacts with the Department of State. OFA shall assist the responsible officials in carrying out their responsibilities under these procedures.
- (b) **Information exchange.** OFA with the aid of OIA, shall assist the Department of State and the Council on Environmental Quality in developing the informational exchange on environmental review activities with foreign nations.
- (c) **Unidentified activities.** The responsible official shall consult with OFA and OIA to establish the type of environmental review or document appropriate for any new EPA activities or requirements imposed upon EPA by statute, international agreement or other agreements.