



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 6

[EPA-HQ-AO-2025-1080; FRL-8008.1-02-OA]

RIN 2010-AA16

Update of Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions

AGENCY: United States Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA or Agency) is proposing amendments to its procedures for implementing the requirements of the National Environmental Policy Act of 1969 (NEPA). This proposed rule would also include technical amendments to the Agency's procedures to improve clarity, correct errors, and update office names and titles. This proposed rule would amend EPA's NEPA implementing procedures by incorporating proposed revisions to create efficiencies in the implementation of NEPA and to harmonize EPA's NEPA Implementing Procedures with other federal agencies' procedures, where possible. The proposed rule also incorporates the amendments to NEPA enacted through the Fiscal Responsibility Act of 2023 (FRA) and the One Big Beautiful Bill Act of 2025 (OBBBA); makes changes consistent with Executive Order (E.O.) 14154, *Unleashing American Energy*; makes changes based on the Council on Environmental Quality's (CEQ) subsequent rescission of its NEPA regulations; and to reflect the Supreme Court's May 29, 2025 decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168(2025) (hereinafter *Seven County*).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-AO-2025-1080 by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).
Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Federal Activities Division Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center’s hours of operations are 8:30 a.m. to 4:30 p.m., Monday-Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking.

Comments received may be posted without change to <https://www.regulations.gov/>, including personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Nancy Abrams, Deputy Director, Federal Activities Division (MC 2203A), Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460; telephone number: (202) 564-8783; email address: abrams.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Public Participation
 - Written comments
- II. General Information
 - Does this proposed rule apply to me?
- III. Introduction
 - A. Statutory Authority
 - B. Background
 - C. Purpose and Policy
 - D. Exemptions from NEPA for Certain EPA Actions
 - E. Consultation with CEQ
- IV. Proposed Revisions to the Title for EPA’s Regulation at Part 6
 - A. Proposed revisions to incorporate the FRA and OBBBA amendments to NEPA
 - B. Amendments to remove references to the CEQ NEPA regulations and address gaps in

- EPA's NEPA procedures due to the rescission of the CEQ regulations
- C. Amendments related to new and rescinded executive orders
- D. Revisions to improve clarity and/or for harmonization of the EPA's NEPA procedures with other federal agencies
- E. Amendments to correct grammatical and typographical errors
- F. Amendments to update office names and titles
- G. Severability clause
- V. Summary of Cost and Benefits
- VI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Executive Order 14192: Unleashing Prosperity Through Deregulation
 - C. National Environmental Policy Act
 - D. Paperwork Reduction Act
 - E. Regulatory Flexibility Act
 - F. Unfunded Mandates Reform Act
 - G. Executive Order 13132: Federalism
 - H. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - I. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
 - J. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
 - K. National Technology Transfer Advancement Act

I. Public Participation

Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-AO-2025-1080 at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public

comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. General Information

Does this proposed rule apply to me?

Those subject to the proposed rule include EPA employees who must comply with NEPA, and certain funding and permit applicants (1) who must submit environmental information documentation for the EPA's use in its NEPA review process or (2) who are preparing an environmental assessment (EA) or environmental impact statement (EIS) for their proposed projects. To determine whether your project would be subject to these proposed procedures, you should carefully examine the applicability criteria in 40 CFR 6.101, subpart C of the part 6 NEPA implementing procedures, and § 6.401 regarding E.O. 12114 implementing procedures in this proposed rule.

III. Introduction

A. Statutory Authority

NEPA, as amended, 42 U.S.C. 4321-4347, establishes a national environmental policy for protection of the environment and requires all Federal agencies to assess the environmental impact of their actions. 42 U.S.C. 4332(2)(C).

E.O. 12114, *Environmental Effects Abroad of Major Federal Actions* (44 FR 1957, Jan. 4, 1979), is the basis for EPA's policy, criteria, and procedures contained in Subpart D of the proposed rule entitled "Assessing the Environmental Effects Abroad of EPA Actions."

The EPA is also issuing this proposed rule under its housekeeping authority. 5 U.S.C. 301 authorizes an agency head to prescribe regulations governing their department and the performance of its business, among other purposes. The EPA gained all housekeeping authorities under 5 U.S.C. 301 through the Reorganization Plan No. 3 of 1970, 84 Stat. 2086 (July 9, 1970), codified at 5 U.S.C. App.189, as recognized by the U.S. Department of Justice Office of Legal

Counsel. See “Authority of EPA to Hold Employees Liable for Negligent Loss, Damage, or Destruction of Government Personal Property,” 32 O.L.C. 79, 2008 WL 4422366 at *4 (May 28, 2008).

B. Background

The EPA initially established its NEPA implementing regulations as 40 CFR part 6 (part 6), subparts A through H on April 14, 1975 (see 40 FR 16823). Subpart I was added on January 11, 1977 (see 42 FR 2450). On May 24, 1977, President Carter issued E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality*, which amended E.O. 11514, *Protection and Enhancement of Environmental Quality*, by requiring CEQ to issue Governmentwide regulations for the implementation of section 102(2) of NEPA and requiring agencies to comply with these CEQ-issued regulations except where such compliance would be inconsistent with statutory requirements (see 42 FR 26967). On November 29, 1978, the CEQ promulgated regulations establishing uniform Federal procedures for implementing NEPA (see 43 FR 55978). Section 102(2)(B) of NEPA and the CEQ’s NEPA-implementing regulations required Federal agencies to adopt appropriate NEPA procedures to supplement those regulations. As a result, the EPA amended its NEPA regulations on November 6, 1979, to make them consistent with the CEQ NEPA regulations (see 44 FR 64177).

Under the Agency’s 1979 Part 6 amendments, Subparts A through D described general NEPA procedures for preparing environmental reviews applicable to all EPA NEPA actions and established certain categorical exclusions. Subpart A contained an overview of the EPA’s NEPA regulations, including EIS requirements for EPA legislative proposals and requirements for environmental information documents (EIDs) to be submitted to the EPA by applicants, grantees, or permittees as required in subparts E through I. Subpart B described the requirements for the content of an EIS prepared pursuant to subparts E through I. Subpart C described the requirements for coordination of applicable environmental laws and certain executive orders with the environmental review procedures. It provided a brief recitation of the provisions of

those laws or executive orders and EPA implementing procedures. Subpart D described the public information requirements to be undertaken in conjunction with the environmental review requirements under subparts E through I. Subparts E through I established specific criteria for conducting environmental reviews for particular types of actions and categorical exclusions applicable to those actions. Specifically, subpart E established NEPA environmental review procedures for the Wastewater Treatment Construction Grants Program of the Clean Water Act; subpart F for the issuance of new source NPDES permits; subpart G for research and development program actions; subpart H for solid waste demonstration projects; and subpart I for EPA actions for construction of special purpose facilities or facility renovations. The EPA's "Statement of Procedures on Floodplain Management and Wetlands Protection," dated January 5, 1979, was included as Appendix A to clarify the effective date and to emphasize the importance of this Statement of Procedures.

In 1981, Subpart J, "Assessing the Environmental Effects Abroad of EPA Actions," was added as the EPA's general policy, criteria, and procedures for implementing E.O. 12114, "Environmental Effects Abroad of Major Federal Actions" (see 46 FR 3364). E.O. 12114 does not impose NEPA compliance requirements on Federal agencies, rather it "furthers the purpose" of NEPA and identifies the documents, including EISs and EAs, to be used when conducting assessments under E.O. 12114.

In 1982, the Agency revised its Part 6 NEPA regulations by removing CEQ from the consultation process on requests to segment wastewater treatment facility construction grant projects (see 47 FR 9831). In 1983, the EPA revised the categorical exclusions and the criteria for not granting an exclusion and corrected a factual error on the responsibility for preparing a final EA (see 48 FR 1012).

In 1985, the Agency promulgated procedural amendments and minor substantive amendments to its Part 6 NEPA regulations to accommodate changes in EPA's regulations for the construction grants program found at 40 CFR part 35 (see 50 FR 26310). The modifications

in the construction grants program changed the process that EPA grant recipients followed in planning and building wastewater treatment facilities. The amendments to Subpart E and related sections of the EPA NEPA regulations streamlined and clarified the criteria and process for an environmental review and for preparing an EIS, including partitioning of the review process and the public involvement requirements. These amendments also included office name and technical changes to reflect an Agency reorganization.

In 1986, the EPA amended its Part 6 NEPA regulations to clarify and streamline procedures for partitioning and re-evaluating environmental reviews, making categorical exclusion determinations, providing for public participation, and producing and distributing environmental review documents; and to make various technical changes including office name changes due to reorganizations.

In 1991, the EPA amended Subpart G of its Part 6 NEPA regulations by adding categorical exclusions and a list of projects that normally result in preparation of EAs; revising the criteria used to determine whether preparation of an EIS is required; revising the provision directing coordination, where feasible, with other EPA program reviews; and clarifying the NEPA review process for Office of Research and Development actions (see 56 FR 20541). In addition, the EPA amended Subpart D by eliminating the requirement for public notice of categorical exclusion determinations for all EPA programs except the Wastewater Treatment Construction Grants Program.

In 1993, the EPA amended its Part 6 NEPA regulations to address the requirement that EPA actions conform to any air quality state implementation plan, and to clarify that air pollution control requirements need to be considered when performing NEPA reviews for wastewater treatment works (see 58 FR 63214).

In 2006, the EPA amended its Part 6 NEPA regulations to update and revise its procedures for implementing the procedural requirements of NEPA and the CEQ NEPA regulations by consolidating, restructuring, and standardizing the regulations. The 2006

regulations consolidated and standardized the environmental review process applicable to all EPA proposed actions subject to NEPA and removed separate environmental review processes outlined in Subpart E for wastewater treatment construction grants under Title II of CWA and Subpart F for new source NPDES permits. The EPA also made minor technical amendments to Subpart D, “Assessing the Environmental Effects Abroad of EPA Actions” (see 71 FR 76082).

In 2023, NEPA was amended by section 321 of the FRA (Pub. L. No. 118-5). The FRA amendments (1) codified that EISs should include discussion of reasonably foreseeable effects of a proposed action, reasonably foreseeable adverse environmental effects that cannot be avoided, and a reasonable range of alternatives to the proposed action (NEPA section 102(2)(C); 42 U.S.C. 4332(2)(C)); (2) clarified requirements for determining whether to prepare an environmental document and the appropriate level of NEPA review (section 106; 42 U.S.C. 4336); (3) clarified the roles and responsibilities of lead agencies and cooperating agencies, including designation of such agencies (section 107(a); 42 U.S.C. 4336a(a)); (4) required development of a single environmental document to the extent practicable (section 107(b); 42 U.S.C. 4336a(b)); (5) set page limits and deadlines for EISs and EAs (section 107(e) and (g); 42 U.S.C. 4336a(e) and (g)); (6) directed agencies to develop procedures for how, under Federal agency supervision, project sponsors may prepare EAs and EISs (section 107(f); 42 U.S.C. 4336a(f)); (7) provided time lengths and circumstances for when agencies can rely on programmatic environmental documents without additional review (section 108; 42 U.S.C. 4336b); (8) established a process for Federal agencies to use another agency’s categorical exclusions (section 109; 42 U.S.C. 4336c); and (9) defined terms used in NEPA, including cooperating agency, environmental document, lead agency, major Federal action, participating Federal agency, programmatic environmental document, and special expertise (section 111; 42 U.S.C. 4336e).

Congress again amended NEPA in 2025 through section 60026 of the OBBBA, Pub. L. 119-21 (July 4, 2025), adding section 112 of NEPA, entitled “Project Sponsor Opt-in Fees for

Environmental Reviews.” This provision allows project sponsors to pay a fee to obtain shortened NEPA review deadlines.

E.O. 14154, *Unleashing American Energy* (90 FR 8353, Jan. 29, 2025), rescinded E.O. 11991, directed the CEQ to rescind its regulations implementing NEPA, and directed Federal agencies, including the EPA, to revise their NEPA procedures to align with the requirements of NEPA, as amended by the FRA. CEQ issued an interim final rule rescinding its regulations at 40 CFR parts 1500-1508, effective on April 11, 2025, and issued a final rule on January 8, 2026.

C. Purpose and Policy

The purpose of this proposed rulemaking is to revise the EPA’s NEPA regulations to integrate recent NEPA developments into the EPA’s existing NEPA processes. This proposed rule would also fill in gaps in the EPA’s NEPA regulations caused by the withdrawal of CEQ’s NEPA regulations. In addition, the EPA is making minor amendments to improve clarity and other minor technical corrections, including correcting office names and titles.

NEPA requires Federal agencies to consider the environmental effects of proposed actions as part of agencies’ decision-making processes, but it does not mandate particular results or substantive outcomes. *See Seven County*, 605 U.S. at 177. NEPA provides requirements to facilitate timely and unified Federal reviews 42 U.S.C. 3336a.

On May 29, 2025, the Supreme Court issued the landmark *Seven County Infrastructure Coalition* decision. In that decision, the Supreme court noted that NEPA transformed from its roots as “a modest procedural requirement,” into a significant “substantive roadblock” that “paralyze[s]” “agency decisionmaking.” 605 U.S. at 173, 183. (quotations omitted). The Supreme Court explained that part of that problem had been caused by decisions of lower courts, which it rejected, issuing a “course correction” mandating that courts give “substantial deference” to reasonable agency conclusions underlying their NEPA processes. *Id.* at 1513-14. But the Court also acknowledged, and through its course correction sought to address, the effect on “litigation-averse agencies” which, in light of judicial “micromanage[ment],” had been

“tak[ing] ever more time and...prepar[ing] ever longer EISs for future projects.” *Id.* at 1513. The EPA is therefore also proposing, in part, to amend its NEPA regulations to align its actions with the Supreme Court’s decision and streamline its NEPA process.

The EPA is also proposing this rule to update and revise EPA’s NEPA procedures to incorporate the FRA and OBBBA NEPA amendments. Additionally, the EPA is proposing revisions both in response to E.O. 14154’s direction to Federal agencies to revise their NEPA procedures to align with the requirements of NEPA, and because the EPA had previously adopted CEQ’s now rescinded NEPA regulations as part of its own NEPA regulations, potentially creating confusion and gaps in EPA’s implementation of NEPA. The EPA is also proposing revisions to comply with E.O. 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (90 FR 8633, Jan. 31, 2025), which rescinds E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, Feb. 16, 1994). The proposed rule incorporates efficiencies into the NEPA process, and harmonizes EPA’s NEPA procedures with other Federal agencies, where possible. The proposed rule also makes technical corrections, including correcting office names and titles, and edits to improve clarity. Finally, the proposed rule adds a severability clause.

D. Exemptions from NEPA for Certain EPA Actions

Certain EPA actions are statutorily exempt from the procedural requirements of NEPA. Congress has provided specific statutory exemptions for most EPA actions taken under the Clean Water Act (CWA) and all EPA actions taken under the Clean Air Act (CAA) from the procedural requirements of NEPA. Specifically, under CWA section 511(c)(1) (33 U.S.C. 1371), the EPA is exempt from the procedural requirements of NEPA for all actions taken under the CWA except for issuance of National Pollution Discharge Elimination System (NPDES) permits under CWA section 402 for “new sources” as defined in CWA section 306 (33 U.S.C. 1342), and Federal financial assistance for the construction of publicly owned treatment works under CWA section 201 (33 U.S.C. 1281). Under the Energy Supply and Environmental Coordination Act of

1974 (15 U.S.C. 793(c)(1)), all actions taken under the CAA are deemed not to be major Federal actions significantly affecting the environment. The EPA is also exempt from the procedural requirements of environmental laws, including NEPA, for Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) response actions. *See* CERCLA section 121(d)(2)(A), as interpreted by the EPA in 40 CFR 300.5 and 300.400(g).

Further, the courts have recognized certain EPA actions as being the functional equivalent to the requirements of NEPA. Under the functional equivalence doctrine, courts have found the EPA to be exempt from the procedural requirements of NEPA for certain actions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), the Safe Drinking Water Act (SDWA), and the Marine Protection, Research, and Sanctuaries Act (MPRSA). The courts reasoned that the EPA actions under these statutes perform the functional equivalent of a NEPA review because they are undertaken with consideration of environmental impacts and opportunities for public involvement. *See, e.g., Merrill v. Thomas*, 807 F.2d 776 (9th Cir. 1986) (FIFRA); *State ex rel. Siegleman v. EPA*, 911 F.2d 499 (11th Cir. 1990) (RCRA); *Warren County v. North Carolina*, 528 F.Supp. 276 (E.D.N.C. 1981) (TSCA); *Western Nebraska Resources Council v. EPA*, 943 F.2d 867 (8th Cir. 1991) (SDWA); *Maryland v. Train*, 415 F.Supp. 116 (D. Md. 1976) (MPRSA). In this proposed rule, the EPA intends to identify the statutory exemptions and authorities that have been found to be functionally equivalent to NEPA. This will provide for consistency and predictability for actions under these authorities.

E. Consultation with CEQ

The EPA has consulted with CEQ on this proposed revision to EPA's NEPA implementing procedures, in accordance with NEPA section 102(2)(B), 42 U.S.C. 4332(B).

IV. Proposed Revisions to the Title for EPA's Regulation at Part 6

A. Proposed revisions to incorporate the FRA and OBBBA amendments to NEPA

The EPA proposes revisions throughout 40 CFR part 6 to incorporate the FRA and

OBBBA amendments to NEPA into EPA's Part 6 regulations.

In section 6.101(b)(2)(A)-(E), the EPA proposes to incorporate the threshold determinations language for when an agency is not required to prepare an environmental document with respect to a proposed agency action listed in NEPA section 106(a)(1)-(4), 42 U.S.C. 4336(a), and non-major Federal action in section 111(10)(B), 42 U.S.C. 4336e(10)(B).

The EPA proposes certain changes to comply with NEPA section 107(f), 42 U.S.C. 4336a(f), which directs agencies to “prescribe procedures to allow a project sponsor to prepare an environmental assessment or an environmental impact statement[.]” In section 6.101(e), the EPA adds the term “project sponsors” as described in NEPA section 107(f), 42 U.S.C. 4336a(f) to ensure coverage of entities subject to 40 CFR part 6.

In section 6.102(a), the proposed rule cites the definitions listed in NEPA section 111, 42 U.S.C. 4336e, for context and ease of use. In § 6.102(b)(2), the EPA adds the word “project sponsor” for consistency with NEPA section 107(f), 42 U.S.C. 4336a(f), referring to “Sponsor Preparation” and clarifies that the terms “applicant” and “project sponsor” are used interchangeably throughout 40 CFR part 6 to incorporate the term “project sponsor” as described in NEPA section 107(f), 42 U.S.C. 4336a(f). In § 6.102(b)(7), the EPA adds the word “environmental document” for consistency with NEPA section 111(5), 42 U.S.C. 4336e(5).

In § 6.103(a)(8), the EPA clarifies that the Agency will consult, as needed, with CEQ in a manner that is consistent with NEPA section 102(2)(B), 42 U.S.C. 4332(B). In § 6.103(b)(7), the EPA adds a citation to the deadlines for the completion of NEPA reviews as established in NEPA section 107(g), 42 U.S.C. 4336a(g). In § 6.103(b)(10), the EPA adds a sentence to reference the Responsible Official's duty to coordinate and approve environmental documents prepared by applicants, consistent with NEPA section 107(f), 42 U.S.C. 4336a(f).

In § 6.200(a), the EPA amends procedures that explain the sequence of review in which the Responsible Official will determine whether a categorical exclusion, environmental assessment (EA) or environmental impact statement (EIS) is needed as established in NEPA

section 106, 42 U.S.C. 4336. This change would remove the last sentence of § 6.200(a) because it is redundant language, and eliminating the last sentence would not preclude the Responsible Official from proceeding directly to an EIS. In § 6.200(c)(4)(ii), the EPA adds a citation to the definition of “cooperating agencies” as provided in NEPA sections 107(a)(3) and 111(2), 42 U.S.C. 4336a(a)(3) and 4336e (2). In 6.200(h)(3), EPA aligns with NEPA section 106(b)(3) to allow the Agency to rely on another agency’s determination (and its data) that a categorical exclusion applies to a particular proposed action. 42 U.S.C. 4336(b)(3). In § 6.200(i), the EPA incorporates the requirements in NEPA section 108, 42 U.S.C. 4336b, regarding programmatic environmental documents, including when EPA may create a programmatic environmental document and how EPA may rely upon programmatic environmental documents within and after five years.

In § 6.202(a), the EPA revises the responsibilities of the lead agency to incorporate the requirements in NEPA sections 107(a)(1) and (2), 42 U.S.C. 4336a(a)(1) and (2). For example, when the EPA is the lead agency, it is responsible for completing the NEPA process, coordinating with cooperating and participating agencies, and determining the scope of the proposed action at hand. In § 6.202(b), the EPA adds a reference to NEPA section 107(a)(5), 42 U.S.C. 4336a(a)(5), for circumstances when participating Federal agencies are unable to agree on the designation of a lead agency; in those instances, the EPA may consult with or request CEQ to designate a lead agency.

In § 6.203 and throughout Part 6, the EPA adds “reasonably foreseeable” before environmental impacts or effects for consistency with NEPA section 102(2)(C). 42 U.S.C. 4332(2)(C). This proposed change is consistent with NEPA section 102(2)(C) and the U.S. Supreme Court’s decision in *Seven County*, 605 U.S. 168 (2025). According to the Court, when determining the scope of a NEPA review for a proposed action, the agency must consider the proposed action at hand and *that proposed action’s* reasonably foreseeable environmental effects. 605 U.S. at 189-90 (clarifying that NEPA generally does not require an agency to

analyze environmental effects from other projects that are separate in time and place, that fall outside of the agency's regulatory authority, or that would have to be initiated by a third party). Also, for greater clarity, the EPA adds a definition for "reasonably foreseeable" and "effects or impacts" in § 6.102(b)(20) and (6), respectively.

In § 6.203(c)(1), the EPA incorporates provisions of public notice and request for public comments for notices of intent to prepare an EIS pursuant to NEPA section 107(c), 42 U.S.C. 4336a(c).

In § 6.204(b)(1), the EPA replaces "high" environmental effects with "significant" environmental effects to be consistent with NEPA terminology at section 111(1), 42 U.S.C. 4336e. The replacement text avoids confusion by using NEPA's statutory terms for determining whether an extraordinary circumstance exists. In § 6.204(f)(2)(i), the EPA amends a criterion for adding new categorical exclusions to ensure consistency with NEPA sections 102(2)(C) and 111(1). 42 U.S.C. 4332(2)(C). In § 6.204, the EPA adds subsection (h), which allows EPA to adopt categorical exclusions listed in another agency's NEPA procedures pursuant to NEPA section 109, 42 U.S.C. 4336c. Specifically, the EPA adds § 6.204(h) to describe how the EPA adopts another agency's categorical exclusion by following NEPA section 109's requirements for interagency consultation, public notice, and documentation of the adoption.

The EPA revises § 6.205 "Environmental Assessments" to incorporate the relevant EA provisions in NEPA sections 106 and 107, 42 U.S.C. 4336 and 4336a. Specifically, in § 6.205(a), the EPA clarifies when the Agency shall prepare an EA pursuant to NEPA section 106(b)(2). In the proposed § 6.205(f), the EPA updates the content requirements for an EA to incorporate the FRA amendments by adding the "purpose and need" statement requirement for an EA under NEPA section 107(d), 42 U.S.C. 4336a(d).

In § 6.205, the EPA proposes to add new subsection (h) that would incorporate the page limit requirements for EAs as established in NEPA section 107(e)(2), 42 U.S.C. 4336a(e)(2). Specifically, to implement NEPA section 107(e)(2) and CEQ guidance, the proposed § 6.205(h)

requires that an EA shall not exceed 75 pages and that the Responsible Official certify that EPA complied with NEPA's page limit. The proposed § 6.205(h) also clarifies what information may be included in the 75 pages or in the appendices and how pages should be formatted. The EPA also adds a new § 6.205(i) to incorporate the language on the deadlines for the completion of an EA as established in NEPA section 107(g)(1)(B), 42 U.S.C. 4336a(g)(1)(B). Specifically, the additions of proposed § 6.205(i) require that the EPA complete an EA within one year and that the Responsible Official certify that the Agency has complied with the statutorily mandated deadlines. Section 6.205(i) also clarifies the publication timing requirements for an EA and when deadline extensions for an EA are appropriate. Further, the Supreme Court has repeatedly held, NEPA is governed by a "rule of reason." Congress supplied the measure of that reason in the 2023 revision of NEPA by setting the deadlines in NEPA section 107(g) of NEPA, 42 U.S.C. 4336a(g). These deadlines indicate Congress's determination that an agency, working within Congress's allocation of resources, has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such circumstances, an extension will be given only for such time as is necessary to complete the analysis.

In this proposed rule, the EPA revises § 6.207 "Environmental Impact Statements" to incorporate the FRA amendments to EIS requirements. In § 6.207(a), the EPA incorporates NEPA section 106(b)(1) to lay out the circumstances of when the EPA will generally prepare an EIS, highlighting that this is not an exhaustive list. Pursuant to NEPA sections 107(g)(1)(A) and (g)(2), 42 U.S.C. 4336a(g)(1)(A) and (g)(2), and CEQ guidance, the proposed § 6.207(d) requires that the EPA complete an EIS within two years and provide a certification that the Agency has complied with the statutorily mandated deadlines. Proposed § 6.207(d)(2) clarifies when and how to establish a new deadline for completion if an extension is necessary to complete the EIS. The EPA also adds a new § 6.207(e) to incorporate the page limits requirements for EISs as established in NEPA section 107(e)(1), 42 U.S.C. 4336a(e)(1).

Specifically, pursuant to NEPA section 107(e)(1), the additions to proposed § 6.207(e) require that EISs shall not exceed 150 pages—or 300 pages, in the case of agency action of extraordinary complexity—and per CEQ guidance, certify that the Agency has complied with NEPA’s page limits. As stated above, the Supreme Court has repeatedly held that NEPA is governed by a “rule of reason.” Congress supplied the measure of that reason in the 2023 revision of NEPA by setting the deadlines in NEPA section 107(g), 42 U.S.C. 4336a(g). These deadlines indicate Congress’s determination that an agency, working within Congress’s allocation of resources, has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. Proposed § 6.207(e)(2) also clarifies what information may be included in the 150 pages or in the appendices and how pages should be formatted.

In § 6.207(f), the EPA incorporates the FRA amendments to NEPA section 102(2)(C), 42 U.S.C. 4332(2)(C), which details the content requirements for an EIS. Further, the EPA also incorporates NEPA section 107(d)’s “Statement for the Purpose and Need,” 42 U.S.C. 4336a(d), requirement into § 6.207(f)(2).

In § 6.210 “Emergency Circumstances” provisions, the EPA replaces “significant environmental impacts” with “reasonably foreseeable significant environmental effects” to incorporate the FRA amendments to NEPA section 102(2)(C), 42 U.S.C. 4332(2)(C).

In proposed § 6.303(a), the EPA incorporates NEPA section 107(f), 42 U.S.C. 4336a(f), by amending the existing procedures that allow both applicants and applicant-hired contractors to prepare environmental documents and making explicit the coordination steps needed to facilitate this effort. The EPA is ultimately responsible for the environmental documents and will independently evaluate the contents of the environmental documents. The EPA adds § 6.303(a)(5) to include the time limits and schedules provided in NEPA section 107(g), 42 U.S.C. 4336a(g).

Pursuant to section 60026 of the OBBBA, the EPA incorporates NEPA section 112

requirements into § 6.303(d) to allow project sponsors to pay a fee in order to obtain shortened NEPA review deadlines. Under section 112(a), NEPA requires CEQ to provide the project sponsor notice of the amount of the fee to be paid within 15 days of a request with specific information from the project sponsor. The proposed § 6.303(d) requests that project sponsors consult with EPA before submitting a request to CEQ.

B. Amendments to remove references to the CEQ NEPA regulations and address gaps in EPA's NEPA procedures due to the rescission of the CEQ regulations

The EPA proposed rule makes revisions throughout 40 CFR part 6 to remove references to the rescinded CEQ NEPA regulations and add terminology to address gaps in the EPA's NEPA procedures. The proposed text additions address possible implementation gaps caused by the EPA's adoption of the now rescinded CEQ NEPA regulations in its NEPA regulations. The EPA's goal with the proposed changes is to avoid confusion, ensure consistent EPA practice for implementing NEPA, and promote efficiencies and certainty in the NEPA process. Through consultation with CEQ, the EPA has strived to harmonize the EPA's Part 6 procedures with other agencies' NEPA procedures while meeting the Agency's unique statutory authorities and mission.

The EPA also removes citations and references to the now rescinded CEQ NEPA regulations throughout, replacing those citations with citations to NEPA and Part 6 when appropriate. Additionally, the EPA removes § 6.100(b) where the EPA adopted the CEQ NEPA regulations (40 CFR parts 1500 through 1508), and the EPA removes § 6.207(a)(4), which stated *“An EIS must be prepared consistent with 40 CFR Part 150.”*

The EPA proposes definitions for the following terms that were previously defined in CEQ NEPA regulations: “incorporation by reference” at § 6.102(b)(12), “mitigation” at § 6.102(b)(14), “publish and publication” at § 6.102(b)(19), “reasonable alternatives” at § 6.102(b)(20), “scope” at the new § 6.102(b)(24), and “tiering” at § 6.102(b)(25). Further, the

EPA inserts the word “NEPA” to clarify that the NEPA Official will ensure EPA’s compliance with NEPA and the subparts A through C of part 6.

The EPA revises § 6.402 to reference the EPA’s NEPA regulations, including replacing the reference to “CEQ” regulations with “EPA”, and replacing the reference to “40 CFR 1508.27” with “*Subparts A through C of Part 6*”.

The EPA seeks comment on whether the proposed changes in section B above properly account for the rescission of the CEQ NEPA regulations.

C. Amendments related to new and rescinded executive orders

The EPA proposes to amend three regulatory sections in part 6 to comply with E.O. 14173 *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (90 FR 8633, Jan. 31, 2025), which rescinds E.O. 12898 *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, Feb. 11, 1994). The proposed rule amends § 6.203(a)(5), proposed 6.203(c)(3)(v), and 6.204(b)(1). In all three sections, the EPA removes references to specific populations and further clarifies that the EPA considers the impacts of human health and environmental effects on all individuals.

D. Revisions to improve clarity and/or for harmonization of EPA’s NEPA procedures with other federal agencies

The proposed rule makes revisions throughout 40 CFR part 6 to improve clarity in the regulatory text and support the harmonization of EPA’s NEPA procedures with other federal agencies. After rescinding its regulations, CEQ provided guidance to Federal agencies to ensure consistency, predictability, coordination, and efficiency in the implementation of NEPA. Furthermore, in accordance with section 102(2)(B), 42 U.S.C. 4332(2)(B), the EPA consulted with CEQ during the proposed revisions to its NEPA implementing procedures. The EPA considered CEQ’s guidance as it may be implemented consistent with EPA’s specific statutory responsibilities, organizational structures, and programmatic needs.

In this proposed rule, the EPA clarifies that the scope of required NEPA analysis is

limited to the proposed action at hand and reasonably foreseeable environmental effects. *See Seven County*, 605 U.S. at 182 (“The textual focus of NEPA is the ‘proposed action’—that is, the project at hand.”). EPA’s current NEPA regulations generally only use the term “proposed action.” Thus, the EPA makes the following changes to clarify the scope of analysis conducted in the following sections: § 6.101(b)(1) (determining whether NEPA applies to a proposed action); § 6.200(a) (determining the appropriate level of NEPA review); § 6.200(h) (relying on a Federal NEPA document); § 6.202 (engaging in interagency cooperation); § 6.205(b) (determining whether the reasonably foreseeable environmental effects are significant); and § 6.207(f)(5) (considering reasonably foreseeable environmental effects). This proposed change clarifies that the EPA will apply the requirements of NEPA in a manner fully consistent with *Seven County*. The EPA is seeking comment on whether other provisions in Part 6 require additional clarification on the scope of EPA’s NEPA review.

In § 6.101(b)(2)(F), the proposed rule revises the list of EPA actions that are statutorily exempt from NEPA and adds a list, which is not intended to be limiting, of EPA-administered statutes that courts have determined to be functionally equivalent with NEPA. The EPA does not intend that this change has a substantive effect on law or policy.

In § 6.102(b), the proposed rule revises the definitions of “applicant or project sponsor,” “environmental information document,” and “NEPA document.” The EPA also adds a sentence clarifying that the terms “applicant” and “project sponsor” can be used interchangeably throughout Part 6. The proposed rule also adds definitions for the following terms, which EPA intends to implement consistent with current practices: “authorization,” “connected action,” “environmental document,” “human environment,” “jurisdiction by law,” “notice of intent,” “participating agency,” and “related action.”

In § 6.103(a)(8), the EPA cites to NEPA section 102(2)(B) to clarify the statutory basis for consultation with CEQ and adds “but not limited to” to clarify that the list of examples when CEQ consultation is necessary is non-exhaustive.

In § 6.200(b), the proposed rule clarifies how the EPA will analyze the potentially affected environment and degree of the effects of the proposed action. For example, after the EPA determines the reasonably foreseeable environmental effects of the proposed action, it would then consider the affected area and the degree of those effects, such as the short- and long-term effects, effects on public health and safety, and economic effects. The EPA notes that, consistent with current policy, effects that are solely economic or social do not by themselves necessitate the development of an EIS. In § 6.200(e)(5), the EPA adds that the Responsible Official would be required to ensure that the EPA does not take action concerning a proposed action that would have an adverse environmental effect or limit the choice of reasonable alternatives until a categorical exclusion determination, a FONSI, or a ROD is issued.

In § 6.200(g)(3), the proposed rule revises the text to clarify that, during the environmental review process, applicants are not precluded from developing plans or designs needed for the environmental review and/or compiling information or performing other activities necessary to support an application for a permit or assistance agreement from the EPA. In § 6.200(j), the proposed rule adds “other” to distinguish NEPA determinations in documents (CEs, EA, FONSI, or EIS) from programmatic documents discussed in § 6.200(i). Section 6.200(j) is further modified to require the Responsible Official, when making a determination whether to conduct a supplemental environmental review, to re-evaluate changes to the reasonably foreseeable environmental effects of the action in addition to the other criteria stated in the paragraph. The Responsible Official is also required to complete an appropriate NEPA document or reaffirm EPA’s original NEPA determination.

The proposed rule also separates § 6.200(j)(1) into its own subparagraph to cover instances where the Agency will conduct a supplemental environmental review of a NEPA document.

In § 6.202(b), the proposed rule clarifies the interagency cooperation process of NEPA reviews for related actions.

In § 6.203 and throughout Part 6, the proposed rule amends the EPA's process for the solicitation of public comments during the preparation of EAs, FONSI, and EISs. Currently, the EPA's NEPA regulations provide specific timing requirements for seeking public comment on draft EAs and FONSI and draft and final EISs. In the proposed rule, the EPA may publish and solicit public comments on draft materials when preparing EAs, FONSI, or EISs if the Agency determines it would assist in fulfilling the responsibilities under NEPA and/or other statutory authorities. The EPA will use appropriate means to make materials available, such as within EPA's NEPA Compliance Database. The purpose of this change is to more closely align the EPA's process with NEPA requirements and to provide Responsible Officials with more flexibility to implement those requirements and non-NEPA statutory requirements, as applicable, to the proposed action. This is relevant for the EPA because coordination and public participation may occur when the EPA complies with the public comment requirements under other applicable statutes.

Other proposed changes to § 6.203(c) clarify the public participation requirements for the notice of intent (NOI) and scoping process. For example, in § 6.203(c)(3)(i), the proposed rule adds text clarifying when the scoping process may begin, which may not be limited to when the NOI is published. In § 6.203(c)(3)(iii), the EPA removed the timing requirement that if the EPA chooses to hold an optional public scoping meeting, then the EPA would provide public notice within fifteen days of the meeting. The EPA notes that the fifteen-day time period is not a requirement of NEPA, and the EPA will rely on and adhere to any other applicable public participation requirements including those at 40 CFR part 25. The EPA will still provide public notice for any scoping meetings held.

In § 6.204, the proposed rule modifies the process for the addition, amendment, or removal of categorical exclusions and when extraordinary circumstances may apply. For example, NEPA does not require Federal agencies to engage in notice and comment rulemaking to add, remove, or amend categorical exclusions. Further, the EPA did not receive any public

comments when it last updated § 6.204 in 2007. Thus, the EPA is proposing to modify its procedures for the addition, amendment, and removal of categorical exclusions accordingly at § 6.204(g). The proposed rule updates the process to create efficiencies and to harmonize EPA's procedures with other Federal agencies and guidance from CEQ. The EPA will still consult with CEQ and publish any changes for public awareness regarding the addition, amendment or removal of categorical exclusions. In 6.204(a), the proposed rule adds text to clarify that the presence of extraordinary circumstances does not necessarily preclude the use of a categorical exclusion if the proposed action is not likely to result in significant reasonably foreseeable environmental effects or if the action is modified to avoid such effects. In § 6.204(a)(1), the EPA adds that the documentation of the applicability of the categorical exclusion include an explanation of why there are no extraordinary circumstances that are likely to significantly affect the quality of the human environment.

In § 6.204(a)(2), the EPA adds a sentence to explain that certain actions that do not require the Responsible Official to document a determination of the applicability of a categorical exclusion includes actions necessary to support the normal conduct of EPA business, actions conducted directly by the EPA or EPA-funded actions relating to contracts or assistance agreements involving such actions. The addition of the sentence expands the scope of the categorical exclusions in § 6.204(a)(2).

In § 6.204(c), the proposed rule replaces the word "exceptional" with "extraordinary" circumstance for consistency with the terminology used in § 6.204 without changing the interpretation of the text.

In § 6.204(d), the EPA revises the text to add that the Responsible Official must prepare an EIS instead of relying on a categorical exclusion when the extraordinary circumstances present have the potential to significantly affect the quality of the human environment and the proposed action cannot be modified to avoid or mitigate those effects and may prepare an EA when the proposed action involves extraordinary circumstances, the significance of the effects is

unknown, or the significant effects can be mitigated.

In § 6.204(i), the EPA provides a process for applying categorical exclusions established through Congressional legislation.

In § 6.205(a), the proposed rule clarifies when the EPA prepares an EA for a proposed action. In § 6.205(b), the proposed rule clarifies where and how the EPA will draw a reasonable and manageable line relating to its consideration of any environmental effects from the action at hand that extend outside the geographical territory of the action or might materialize later in time. In § 6.205(f), the EPA proposes to update the content requirements for an EA for consistency with the requirements in NEPA applicable to EAs. For example, the EPA revises § 6.205(f) to clarify that the alternatives discussion is aligned with NEPA section 102(2)(H) and that the environmental effects and adverse environmental effects discussed are reasonably foreseeable in accordance with NEPA sections 102(2)(C) and 106(b)(2). In addition, the EPA adds § 6.205(g) to clarify that EAs may include, as appropriate, a discussion of alternatives beyond NEPA section 102(2)(H) requirements, as well as other applicable environmental laws and executive orders. This addition addresses instances where such discussions are necessary, particularly when an EA is prepared concurrently with agency analyses required by other Federal statutes, to reduce duplication and paperwork.

The EPA modifies § 6.205(i)(1) to state that the EPA generally will publish an EA “at the latest, on the day the deadline elapses, in as substantially complete form as is possible” and § 6.205(i)(2) to add language to specify when the EPA would establish a new deadline for an EA and how the EPA would announce that new deadline. The EPA would implement these provisions consistent with NEPA sections 107(g)(1)(B) and 107(g)(2). The EPA would also add § 6.205(i)(3) to provide that the Responsible Official would certify that the EA complied with the statutory deadline, that it considered the factors required by NEPA, and that the contents of the EA are adequate to explain the EPA’s final decision.

In proposed § 6.206 “Findings of No Significant Impact” (FONSI), the EPA clarifies

when the Responsible Official will issue a FONSI and what FONSI must include. In § 6.206(b)(3), the proposed rule clarifies that FONSI must state the authority for any mitigation that the EPA has adopted and any applicable monitoring or enforcement provisions. Further, if the EPA finds no significant effects based on mitigation, the mitigated FONSI will state any mitigation requirements enforceable by the agency or voluntary mitigation commitments that will be undertaken to avoid significant effects.

In § 6.207(f)(6), when identifying and analyzing mitigation measures under § 6.207(f)(6), the EPA recognizes that NEPA does not authorize, let alone require, EPA to impose any mitigation measures. Also, for §§ 6.207(f)(8) and (9), the EPA revises the requirements to include the additions of a summary of any public meeting held and the consideration of substantive comments received in the EIS. Further, in § 6.207(h), the EPA requires the Responsible Official to publish the entire EIS in the manner required in § 6.209.

In § 6.208 regarding the requirements for RODs, the proposed rule no longer requires RODs to include an explanation if the environmentally preferred alternative was not selected because it is not required by NEPA.

In § 6.209, the proposed rule updates filing requirements for EPA NEPA documents. For example, a unique identification number for tracking purposes will be required for all NEPA documents and will be referenced on all associated environmental review documents prepared for the proposed action. Further, § 6.209(b) explains that EPA will coordinate with CEQ and other Federal agencies to ensure uniformity of such numbers.

In § 6.210, the EPA replaces the word “should” with “must” to clarify that Responsible Officials are required to consult with CEQ on alternative arrangements at the earliest opportunity.

In the title for Subpart C, the EPA replaces “Third-Party Agreements” with “Applicant Prepared Documents” for consistency with the terms used in this Subpart. The proposed rule modifies the requirements for EID and applicant-prepared documents for EPA actions subject to

NEPA. For example, § 6.302(d), requires the Responsible Official to ensure that NEPA procedures and objectives are met when the applicant is proposing to or undertake an action that would have an adverse environmental effect prior to the completion of the NEPA review for a project.

In § 6.303, the proposed rule makes revisions that would streamline the evaluation process and responsibilities for applicant-hired contractors. For example, in § 6.303(a) and (c), the EPA removes the term “a third-party” and replaces it with “an applicant-hired” for consistency with the terminology used in the subpart. In addition, in § 6.303(a), the EPA changes “must approve” to “must confirm”, to clarify the EPA does not need to approve the selection of an applicant-hired contractor, rather the Responsible Official must confirm with the applicant that the applicant-hired contractor is qualified and that there are no conflicts of interests. For clarity, in § 6.303(a)(2), the EPA adds a sentence explaining that an EA or EIS prepared by the contractor must be consistent with subparts A through C of part 6. The EPA deletes the original § 6.303(c), since the focus of the section is on applicant-hired contractors where the EPA would not be part of the agreement between the applicant and its contractor.

The proposed text makes minor modifications to Subpart D for clarity. For example, in the last sentence of § 6.400(a), the proposed text removes “duties and” and “required” to avoid confusion given that executive orders do not create requirements on Federal agencies that are externally enforceable. Furthermore, in § 6.400(b), the proposed text adds “applicable federal statutes” and “this subpart” to provide clarity on the procedures it will follow under Subpart D. In § 6.401, the proposed text adds “under this subpart” to provide clarity on actions that require environmental reviews.

E. Amendments to correct grammatical and typographical errors

The proposed rule makes minor changes throughout 40 CFR part 6 to address grammatical and typographical errors.

In § 6.102(b)(9), the EPA adds a comma after “section 102(2) of NEPA.” In §

6.102(b)(10), the EPA removes the “s” in the word “means” because “extraordinary circumstances” is in plural. In § 6.207(a)(1)(iii), the EPA adds an “a” before “new source” for consistency with the wording in § 6.207(a)(1)(iv)-(v).

In § 6.207(a)(3)(ii), the proposed rule changes “effect” to “effects” for consistency with the wording in the following subparagraph, § 6.207(a)(3)(iii). In § 6.303(a), the EPA the term “or applicant-hired” with “applicant-hired.”

In § 6.401(a)(5), the EPA replaces “§” with the word “section.” In § 6.403(a), the EPA adds a comma in the following sentence to read as follows: “If the undertaking significantly affects a foreign nation, the EPA shall prepare a unilateral, bilateral or multilateral environmental study.” In § 6.403(c), the EPA removes the capitalization of “section” in the second sentence.

F. Amendments to update office names and titles

The proposed rule includes amendments to update EPA office names and titles in subpart D. The following office names and titles are identified according to the paragraph numbers. In §§ 6.401(a)(5) and 6.405, the “Office of Federal Activities (OFA)” would be amended to “Federal Activities Division (FAD).” In § 6.406 (a)-(c), “OFA” would be amended to “FAD.” In § 6.405, “Office of International Affairs (OIA)” would be amended to “Office of International and Tribal Affairs (OITA);” the “Assistant Administrator, OIA” would be amended to “Assistant Administrator, OITA.” In §§ 6.401(a)(5), 6.403(e), and 6.406(a)-(c), “OIA” would be amended to “OITA.”

G. Severability Clause

The EPA adds a severability clause in § 6.500. While many of the provisions of this rule reinforce each other, it is EPA’s intent that each one is merited on its own and they are thus severable.

V. Summary of Costs and Benefits

The EPA did not estimate the costs and benefits of the 40 CFR part 6 procedural updates because the EPA does not anticipate any quantifiable cost or economic impacts to affected

applicants. The proposed rule would implement minor changes to EPA's NEPA procedures applicable to the EPA for implementing NEPA. The EPA expects that this proposed rule would yield minimal administrative cost savings because of better intra- and interagency coordination and more efficient program management.

Provisions that could result in administrative cost savings due to changes in current practice include shortening review times and setting environmental document page limits. CEQ conducted studies on EIS timelines and document lengths. Based on its review of final EISs published from 2019-2024, CEQ found the average completion time (from NOI to final EIS) was 2.8 years.¹ Furthermore, for the EISs issued in 2024, the average completion time (from NOI to final EIS) was 2.2 years.² In its review of document length (for final EISs published over 2013-2018, across all Federal agencies), CEQ found the average length was 575 and 661 pages for draft and final EISs, respectively.³ The recent FRA amendments to NEPA section 107(e) and (g), 42 U.S.C. 4336(e) and (g), require EISs to be completed in two years and to not exceed 150 pages in length (or 300 pages for agency actions of extraordinary complexity) to ensure that agencies conduct NEPA reviews as efficiently and expeditiously as practicable. The EPA expects that these changes could reduce the time required for proposed actions to move through the environmental review process. Shorter environmental documents could facilitate more timely reviews by decisionmakers and the public. As a result, projects may be completed earlier. Another provision that could result in administrative cost savings is the incorporation of the FRA amendments to NEPA section 109, 42 U.S.C. 4336c, regarding the adoption of categorical exclusions listed in another agency's NEPA procedures. For example, adopting another agency's established categorical exclusion for the same applicable action will allow EPA to reduce its paperwork, as well as save the Agency's time and resources.

¹ Council on Environmental Quality, *Environmental Impact Statement Timelines (2010–2024)*, (January 13, 2025), available at https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2025-1-13.pdf.

² *Id.*

³ Council of Environmental Quality, *Length of Environmental Impact Statements (2013–2018)*, (June 12, 2020), available at https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Length_Report_2020-6-12.pdf.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is expected to be an E.O. 14192 deregulatory action. This proposed rule is expected to provide burden reduction by codifying portions of EPA's NEPA procedures and incorporating section 321 amendments of the 2023 FRA, such as shorter NEPA review times and page limitations, that would reduce Agency resources and administrative costs. This proposed rule also addresses gaps to avoid confusion and ensure consistency in EPA's implementation of its NEPA procedures, which would further conserving agency and non-agency time and resources. While the reduction in these administrative costs is not quantified, this action is expected to generate cost saving and have total costs less than zero.

C. National Environmental Policy Act

The proposed rule, if finalized, is a procedural rule that assists the EPA in fulfilling its responsibilities under NEPA. Regulations establishing or updating agency NEPA procedures do not require NEPA analysis and documentation. *See, e.g., Heartwood, Inc. v. U.S. Forest Service*, 230 F.3d 947, 954-55 (7th Cir. 2000).

D. Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2020-0033. This action addresses only internal procedures applicable to the EPA for implementing NEPA and is believed to result in no changes to the information collection requirements.

E. Regulatory Flexibility Act

The EPA certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. This action will not impose any new requirements on small entities. The proposed rule applies to the EPA and its procedures for implementing the provisions of NEPA.

F. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in Unfunded Mandate Reform Act, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or Tribal governments or the private sector.

G. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

H. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as expected under E.O. 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, Nov. 9, 2000).

Neither the proposed amendments to EPA’s NEPA implementing regulations nor the minor, technical amendments to EPA’s procedures implementing E.O. 12114 impose new regulatory obligations on Tribes. They will not have substantial direct effects on Tribes, on the relationship between the Federal Government and Tribes, or on the distribution of power and responsibilities between the Federal Government and Tribes. Under EPA’s current regulations, as well as the proposed rule, Tribes are required to submit environmental information only when the Tribes are project-applicants for EPA actions subject to NEPA or E.O. 12114, for example, when Tribes apply for grants for special projects identified in EPA’s State and Tribal Assistance account, or for new source NPDES permits issued by the EPA. The requirement to submit environmental information to the EPA for the environmental review process does not impose

substantial compliance costs because it is not likely to result in the expenditure by State, local, and Tribal governments in the aggregate of \$100 million or more in any one year. Further, these requirements do not preempt Tribal law. Thus, E.O. 13175 does not apply to this proposed rule.

Although this proposed rule does not have E.O. 13175 implications, as with EPA's current rule, some parts of the proposed NEPA regulations might require the EPA to involve Tribes in the environmental review process. For example, § 6.202 would encourage early coordination and cooperation with Federal, State, Tribal and local agencies with jurisdiction by law or special expertise. Proposed § 6.203 requires the Responsible Official to ensure meaningful public participation. The EPA anticipates that Tribes would engage in the public participation process as appropriate. Proposed § 6.204 lists extraordinary circumstances that would bar the Responsible Official from determining that a categorical exclusion applies to the action. The Responsible Official may ask the relevant Tribe(s) for assistance in determining whether the proposed action meets these criteria.

The EPA specifically solicits additional comment on this proposed rule from Tribal officials.

I. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets E.O.13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the E.O. Therefore, this action is not subject to E.O. 13045 because it does not concern an environmental health risk or safety risk in a manner that may disproportionately affect children. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

J. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

K. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards.

List of Subjects in 40 CFR Part 6

Environmental protection, Environmental impact statements, Foreign relations, Grant programs, Reporting and recordkeeping requirements, Waste treatment and disposal.

Lee Zeldin,
Administrator.

For the reasons set forth in the preamble, EPA proposes to revise 40 CFR part 6 to read as follows:

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

Sec.

Subpart A—General Provisions for EPA Actions Subject to NEPA

6.100 Policy and purpose.

6.101 Applicability.

6.102 Definitions.

6.103 Responsibilities of the NEPA and Responsible Officials.

Subpart B—EPA’s NEPA Environmental Review Procedures

6.200 General requirements.

6.201 Coordination with other environmental review requirements.

6.202 Interagency cooperation.

6.203 Public participation.

6.204 Categorical exclusions and extraordinary circumstances.

6.205 Environmental assessments.

6.206 Findings of no significant impact.

6.207 Environmental impact statements.

6.208 Records of decision.

6.209 Filing requirements for EPA NEPA documents.

6.210 Emergency circumstances.

Subpart C—Requirements for Environmental Information Documents and Applicant Prepared Documents for EPA Actions Subject to NEPA

6.300 Applicability.

6.301 Applicant requirements for an EID.

6.302 Responsible Official requirements.

6.303 Applicant or applicant-hired contractor prepared environmental documents.

Subpart D—Assessing the Environmental Effects Abroad of EPA Actions

6.400 Purpose and policy.

6.401 Applicability.

6.402 Definitions.

6.403 Environmental review and assessment requirements.

6.404 Lead or cooperating agency.

6.405 Exemptions and considerations.

6.406 Implementation.

Subpart E—Severability

6.500 Severability.

Authority: 42 U.S.C. 4321 *et seq.*

Subpart A—General Provisions for EPA Actions Subject to NEPA

§ 6.100 Policy and purpose.

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* requires that Federal agencies include in their decision-making processes appropriate and careful consideration of all reasonably foreseeable 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.

§ 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) The EPA Responsible Official will determine whether to prepare an environmental document for a proposed agency action.

(1) In determining whether to prepare an environmental document for the proposed agency action, the Responsible Official will generally consider only the proposed action at hand.

(2) The Responsible Official does not need to prepare an environmental document for a proposed action if:

(A) The proposed action is not a final agency action within the meaning of such term in chapter 5 of title 5 of United States Code;

(B) The proposed action is excluded pursuant to one of the Agency's categorical exclusions; another agency's categorical exclusions consistent with NEPA section 109, 42 U.S.C. 4336c; or another provision of law;

(C) The preparation of an environmental document would clearly and fundamentally conflict with the requirements of another provision of law;

(D) The proposed action is a non-discretionary action where EPA does not have authority to take environmental factors into consideration in determining whether to take the proposed action;

(E) The proposed action is not a "major Federal action," under NEPA section 111(10)(B), 42 U.S.C. 4336e(10)(B); or

(F) 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); the Clean Air Act; and Comprehensive Environmental Response, Compensation, and Liability Act are statutorily exempt from NEPA. Additionally, the courts have determined that certain EPA actions for which analyses have been conducted under another statute are functionally equivalent with NEPA, including, but not limited to, the Resource Conservation and Recovery Act; Safe Drinking Water Act; Federal Insecticide, Fungicide, and Rodenticide Act; Toxic Substances Control Act; and Marine Protection, Research, and Sanctuaries Act.

(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 or project

sponsors who are required to provide environmental information to EPA, or applicants or project sponsors who choose to prepare EAs and EISs in accordance with § 6.303.

(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 section 111 of NEPA, 42 U.S.C. 4336e. Additional definitions, and frequently used definitions from section 111, are listed in this subpart.

(b) *Definitions.*

(1) *Administrator* means the Administrator of the United States Environmental Protection Agency.

(2) *Applicant or Project sponsor* 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.

The terms “applicant” and “project sponsor” are used interchangeably throughout this part.

(3) *Assistance agreement* means an award of Federal assistance in the form of money or property in lieu of money from EPA loan eligible applicant including grants or cooperative agreements.

(4) *Authorization* means any license, permit, finding, determination, approval, or other administrative decision issued by an agency that is required or authorized under Federal law to implement a proposed action.

(5) *Connected action* means a separate Federal action within the authority of EPA that is closely related to the proposed action and should be addressed in a single environmental document because the proposed agency action:

(i) Automatically triggers the separate action, which independently would require the preparation of additional environmental documents;

(ii) Cannot proceed unless the separate action is taken previously or simultaneously; or

(iii) Is an interdependent part of a larger Federal action that includes a separate Federal action, which mutually depend on the larger Federal action for its justification.

(6) *Effects* or *impacts* are used interchangeably and mean changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.

(i) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects. Effects appropriate for analysis under NEPA may be either beneficial or adverse, or both, with respect to these values.

(ii) A “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to the limits of its regulatory authority, would occur regardless of the proposed action, or would need to be initiated by a third party.

(7) *Environmental document* means an EA, EIS, or FONSI prepared pursuant to NEPA.

(8) *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 an environmental assessment (EA) and finding of no significant impact (FONSI) or an environmental impact statement (EIS) and record of decision (ROD) for the proposed action.

(9) *Environmental review or NEPA review* means the process used to comply with section 102(2) of NEPA, including development, supplementation, adoption, and revision of NEPA documents.

(10) *Extraordinary circumstances* mean those circumstances listed in § 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.

(11) *Human environment* means comprehensively the natural and physical environment and the relationship of Americans with that environment. (See also the definition of “effects” in paragraph (7) of this section.)

(12) *Incorporation by reference* means material, such as planning, studies, analyses, or other relevant information, that is incorporated into the NEPA document by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The Responsible Official shall cite the incorporated material in the NEPA document and briefly describe its content. Any material incorporated by reference should be available for inspection by potentially interested persons.

(13) *Jurisdiction by law* means agency authority to approve, veto, or finance all or part of the proposal.

(14) *Mitigation* means measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in a NEPA document and that have a nexus to those effects. While NEPA requires consideration of mitigation, it does not mandate or authorize the form or adoption of any mitigation. Mitigation may include:

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

(ii) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(iii) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

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

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

(15) *NEPA document* is a document (EA, EIS, FONSI, or categorical exclusion determination) prepared pursuant to NEPA.

(16) *NEPA Official* is the Associate Administrator for the Office of Policy and Regulatory Management, who is responsible for EPA's NEPA compliance.

(17) *Notice of intent* means a public notice that an agency will prepare and consider an environmental document for a proposed action.

(18) *Participating agency* means a Federal, State, Tribal, or local agency participating in an environmental review or authorization of an action.

(19) *Publish* and *publication* mean methods found by EPA to efficiently and effectively make its NEPA documents and information available for review by interested persons, including electronic publication.

(20) *Reasonable alternatives* mean a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.

(21) *Reasonably foreseeable* means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

(22) *Related action* means an action undertaken by a Federal agency (*e.g.*, a permitting action, some other type of authorization action, an analysis required by statute, or the like) that bears a relationship to other actions undertaken by other agencies relevant to NEPA..

(23) *Responsible Official* means the EPA official responsible for compliance with NEPA for individual proposed actions.

(24) *Scope* consists of the range of actions, alternatives, and effects to be considered in an environmental document.

(25) *Tiering* refers to the coverage of general matters in broader EISs or EAs (such as national program or policy statements) with subsequent narrower statements, EAs and categorical exclusions (such as regional or site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement, assessment or categorical exclusion subsequently prepared.

§ 6.103 Responsibilities of the NEPA and Responsible Officials.

(a) The NEPA Official will:

(1) Ensure EPA's compliance with NEPA 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, consistent with NEPA section 102(2)(B), 42 U.S.C. 4332(2)(B), regarding proposed changes to subpart A through C of this part.

(9) Determine whether proposed changes are appropriate, and if so, coordinate with CEQ, and initiate a process to amend this part.

(b) The Responsible Official will:

(1) Ensure EPA's compliance with NEPA 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 removal of a categorical exclusion and changes to the listings of the types of actions that normally require 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) Consistent with NEPA section 107(g), 42 U.S.C. 4336a, set deadlines for 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.

(10) Coordinate and approve environmental documents prepared by applicants under section 107(f).

(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) If EPA determines that NEPA applies to a proposed action, then the Responsible Official will determine the appropriate level of NEPA review in the following sequence and manner. At all steps in the following process, EPA will consider the proposed action at hand and its reasonably foreseeable environmental effects.

(1) If EPA has established, or adopted pursuant to NEPA section 109, 42 U.S.C. 4336c, a categorical exclusion that covers the proposed action, EPA will analyze whether a categorical exclusion applies to the proposed action and apply the categorical exclusion, if appropriate.

(2) If another Federal agency has already established a categorical exclusion that covers the proposed action, EPA will consider whether it can adopt that exclusion pursuant to § 6.204(h) and NEPA section 109, 42 U.S.C. 4336c.

(3) EPA will consider whether the proposed action warrants the establishment of a new categorical exclusion, or the revision of an existing categorical exclusion, pursuant to § 6.204(g).

(4) If EPA cannot apply a categorical exclusion to the proposed action, then EPA will consider the proposed action's reasonably foreseeable environmental effects consistent with

paragraph (b), and will:

(A) Develop an EA if the proposed action is not likely to have reasonably foreseeable significant effects or the significance of the effects is unknown, as described in § 6.205; or

(B) Develop an EIS if the proposed action is likely to have reasonably foreseeable significant effects, as described in § 6.207.

(b) The Responsible Official must determine the scope of the environmental review by considering the type of proposed action, the reasonable range of alternatives, and the reasonably foreseeable environmental effects, consistent with the factors for identifying the scope of the environmental review applicable to EAs (§ 6.205) and EISs (§ 6.207). When considering whether the reasonably foreseeable environmental effects of the proposed action at hand are significant, EPA will analyze the potentially affected environment and degree of the effects of the proposed action.

(1) In considering the potentially affected environment, EPA may consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources.

(2) In considering the degree of the effects, EPA may consider the following, as appropriate to the specific action:

(i) Both short- and long-term effects.

(ii) Both beneficial and adverse effects.

(iii) Effects on public health and safety.

(iv) Economic effects.

(v) Effects on the quality of life of the American people.

(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, where applicable.

(3) Identify at an early stage any potentially notable or consequential environmental issues to be evaluated in detail and relatively minor 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) Designate appropriate Federal, State, and local agencies and Federally-recognized Indian Tribes serve as cooperating agencies consistent with NEPA sections 107(a)(3) and 111(2), 42 U.S.C. 4336a(a)(3) and 4336e(2); 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) Consistent with NEPA section 102(2)(A), 42 U.S.C. 4332(2)(A), 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.

(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 rely upon the existing NEPA document or will incorporate by reference any pertinent part of it, consistent with § 6.102(b)(12) and 6.200(h).

(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 § 6.102(b)(12).

(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;

(3) Consider the alternatives analyzed in an EA or EIS before rendering a decision on the action;

(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; and

(5) Ensure that until EPA issues a ROD or FONSI, or makes a categorical exclusion determination, EPA will take no action concerning a proposed action that would:

(A) Have an adverse environmental effect; or

(B) Limit the choice of reasonable alternatives.

(f) To eliminate duplication and to foster efficiency, the Responsible Official should use tiering and incorporate material by reference 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 an 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, including plans or designs, needed for the environmental review and/or compile

information or perform other activities necessary to support an application for a permit or assistance agreement from EPA.

(h) The Responsible Official will determine whether EPA relies upon a Federal EIS, EA, or portion thereof, or categorical exclusion determination provided that the EIS, EA, portion thereof, or categorical exclusion determination meets the standards for an adequate EIS, EA, or determination under these subparts. When relying on an EIS, EA, or portion thereof, or categorical exclusion determination, the Responsible Official will ensure that EPA cite, briefly describe the content and relevance to the NEPA document and may make modifications that are necessary to render the relied-upon document, or portion thereof, fit for fulfilling NEPA's analytic requirements for the action at hand.

(1) If the actions covered by the original EIS and the proposed action are substantially the same, the Responsible Official will ensure that EPA republish the relied-upon EIS. If the actions are not substantially the same, EPA may modify the EIS as necessary to render the EIS sufficient for fulfilling NEPA's requirements for the proposed action at hand, and publish the relied-upon EIS, as modified. Where appropriate, EPA may solicit public comment. If EPA was a cooperating agency, EPA may rely upon the EIS in its ROD without republishing the EIS of the lead agency.

(2) If the actions covered by the original EA and the proposed action are substantially the same, EPA may rely upon the EA in its FONSI and provide notice. If the actions are not substantially the same, EPA may modify the EA as necessary to render the statement sufficient for fulfilling NEPA's analytic requirements for the action at hand, and publish the relied-upon statement or assessment, as modified. A comment period is not required for the relied upon EA.

(3) If the actions covered by the original categorical exclusion determination and the proposed action are substantially the same or if EPA's proposed action is a subset of the agency

action covered by that determination, EPA may rely on the other agency's determination that a categorical exclusion applies to a particular proposed action. EPA will document its reliance on another agency's categorical exclusion determination.

(i) Consistent with NEPA section 108, 42 U.S.C. 4336b, EPA may prepare an environmental document for programmatic Federal actions.

(1) EPA may evaluate proposed actions for programmatic environmental documents in groupings that include, but are not limited to:

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

(B) Generically, including actions that have relevant similarities, such as common timing, effects, alternatives, methods for implementation, media, or subject matter.

(C) By stage of technological development.

(2) Consistent with NEPA section 108, 42 U.S.C. 4336b, after completing a programmatic EA or EIS, EPA may rely on that document for five years if there are not substantial new circumstances or information about the significance of adverse effects that bear on the analysis. After five years, as long as EPA reevaluates the analysis in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid and briefly documents its reevaluation and explains why the analysis remains valid considering any new and substantial information or circumstances, EPA may continue to rely on the programmatic environmental document.

(j) For all other NEPA documents (categorical exclusions, EAs, FONSI, or EISs) that are

five years old or older, and for which the subject action has not yet been implemented, the Responsible Official must reevaluate the proposed action, environmental conditions, and any changes to the reasonably foreseeable environmental effects 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.

(1) EPA will conduct a supplemental environmental review of the NEPA document only if

a major Federal action remains to occur and:

(A) EPA makes substantial changes to the proposed action that are relevant to environmental concerns; or

(B) EPA, in its discretion, decides that there are substantial new circumstances related to the proposed action or newly discovered adverse environmental impacts that may be significant.

(2) [Reserved]

§ 6.201 Coordination with other environmental review requirements.

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) When serving as the lead agency under NEPA section 107(a), EPA is responsible for completing the NEPA process and for coordinating with cooperating and participating Federal, State, Tribal, and local agencies. As the lead agency, EPA will also determine and document the scope of the proposed action at hand. When EPA is a joint lead agency, EPA will work with the other joint lead agency or agencies to fulfill the role described in section 107(a)(2), 42 U.S.C.

4336a(a)(1)(B).

(b) In many instances, a proposed action requires “related actions” by other federal agencies. In such instances, Congress has provided that the multiple agencies involved shall determine which of them will be the lead agency pursuant to the criteria identified in NEPA section 107(a)(1)(A), 42 U.S.C. 4336a(a)(1)(A).

(1) For an EPA action related to an action of any other Federal agency, the Responsible Official must comply with the requirements of NEPA section 107(a), 42 U.S.C. 4336a(a), relating to designation of lead agencies and cooperating agencies, respectively.

(2) If EPA is unable to reach agreement with participating agencies on the designation of a lead agency, then EPA may consult with or request CEQ to designate a lead agency pursuant to NEPA section 107(a)(5), 42 U.S.C. 4336a(a)(5). 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, 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, relied-upon, and revision of EAs, FONSI, and EISs.

(2) The Responsible Official will make diligent efforts to involve the public, including

applicants, in the preparation of EAs or EISs consistent with applicable EPA public participation requirements (e.g., 40 CFR part 25) and, for EISs, NEPA section 107(c), 42 U.S.C. 4336a(c).

(3) EAs, FONSI, and EISs will use plain language to the extent possible.

(4) The Responsible Official will, to the greatest extent possible, give notification 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 (see § 6.205) or an EIS (see § 6.207).

(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 reasonably foreseeable environmental impacts or where the proposed action may have reasonably foreseeable human health or environmental effects in any communities.

(b) *EA and FONSI.*

(1) While preparing an EA and FONSI, EPA may publish and solicit comments on draft, pre-decisional materials that in its judgment will assist in fulfilling its responsibilities under NEPA and/or other statutory authorities. If drafts are made available for public comment, then EPA will publish such documents at EPA's NEPA Compliance Database.

(2) [Reserved]

(c) *EIS and ROD.*

(1) When EPA determines that a proposal requires an EIS, EPA will publish in the *Federal Register* a notice of intent (NOI) to prepare an EIS as soon as a proposal is sufficiently

developed to allow for meaningful public comment. The NOI should include the purpose and need for the proposed action, a preliminary description of the proposed action and alternatives the EIS will consider, a brief summary of expected reasonably foreseeable environmental effects, anticipated permits and other anticipated related actions, a schedule for the decision-making process, contact information for a person within EPA who can answer questions about the proposed action and the EIS, and identification of any cooperating and participating agencies (*i.e.*, agencies responsible for related actions) and any information that such agencies require in the notice to facilitate their decisions or authorizations. The NOI will include a request for public comment on alternatives or potential environmental effects and on relevant information, studies, or analyses with respect to the proposed agency action pursuant to NEPA section 107(c), 42 U.S.C. 4336a(c).

(2) The Responsible Official must disseminate the NOI to interested parties, including Federal agencies, State and local governments, and Federally-recognized Indian Tribes, and members of the public, as appropriate.

(3) The Responsible Official must conduct the scoping process consistent with any applicable EPA public participation regulations (*e.g.*, 40 CFR part 25).

(i) Scoping may begin as soon as practicable after the proposal for action is sufficiently developed for consideration. Scoping may be informed by appropriate pre-application procedures or work conducted prior to publication of the notice of intent.

(ii) 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 documents in the *Federal Register*, news releases to the local media, or letters to affected parties.

(iii) When preparing an EIS provided under § 6.207, EPA may publish and solicit

comments on draft, predecisional materials that in its judgment may assist in fulfilling its responsibilities under NEPA and/or other statutory authorities. If drafts are made available for public comment, then EPA will publish such documents at EPA's NEPA Compliance Database.

(iv) The Responsible Official must use appropriate means to publicize the availability of EISs, including EPA's NEPA Compliance Database. EPA may use additional methods chosen for public participation that 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.

(v) The Responsible Official shall consult with and obtain the comments, consistent with NEPA sections 102(2)(C) and 107(a)(3), of any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact of the proposed action or is authorized to develop and enforce environmental standards that govern the proposed action and shall obtain the comments from appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards.

(vi) The Responsible Official may request the comments of State, Tribal, or local governments that may be affected by the proposed action; any agency that has requested it receive statements on actions of the kind proposed; the applicant, if any; and the public, including by affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action.

(vii) If EPA publishes a draft EIS, then the Responsible Official may conduct public meetings or hearings on the draft EIS as part of the public involvement process.

(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 actions that is eligible for exclusion and the proposed action does not involve any extraordinary circumstances. EPA may apply a categorical exclusion to a proposed action if it determines that, notwithstanding an extraordinary circumstance, the proposed action is not likely to result in significant reasonably foreseeable environmental effects or if it modifies the proposed action to mitigate or avoid those effects.

(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 there are no extraordinary circumstances that are likely to result in significantly affecting the quality of the human environment. 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. These actions include those necessary to support the normal conduct of EPA business, which are conducted directly by EPA or are EPA funded actions relating to contracts or assistance agreements involving such actions subject to NEPA.

(i) Actions at 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. These actions include those necessary to support the normal conduct of EPA business, which are conducted directly by EPA or are EPA funded actions relating to contracts or assistance agreements involving such actions subject to NEPA.

(i) Procedural, ministerial, administrative, financial, personnel, and management actions.

(ii) Acquisition actions (compliant with applicable procedures for sustainable or “green” procurement) and contracting actions.

(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.

(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 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 include, but are not limited to, those provided in paragraphs (b)(1) through (b)(9) of this section.

(1) The proposed action is known or expected to have potentially significant and adverse human health or environmental effects on any community.

(2) The proposed action is known or expected to significantly affect Federally listed threatened or endangered species or their designated critical habitat.

(3) 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.

(4) 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.

(5) The proposed action is known or expected to cause significant adverse air quality effects.

(6) 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.

(7) The proposed action is known or expected to cause significant scientific controversy about a potential environmental impact of the proposed action.

(8) 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.

(9) 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 extraordinary 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 EIS when a proposed action involves extraordinary circumstances that have the potential to significantly affect the quality of the human environment and the proposed action cannot be modified to avoid or mitigate those effects. The Responsible Official may prepare an EA when the proposed action involves extraordinary circumstances, the significance of the effects is unknown, or the significant effects can be mitigated.

(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 a type of 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 removal 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 normally do not significantly affect the quality of the human environment within the meaning of NEPA section 102(2)(C), 42 U.S.C. 4332(2)(C), and have been found by EPA to have no such effect; and

(ii) Actions covered by the proposed categorical exclusion generally do not involve extraordinary circumstances as set out in paragraphs (b)(1) through (b)(9) 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 removal of a categorical exclusion is appropriate.

(g) Any addition, amendment, or removal of a categorical exclusion will be completed in a manner directed by paragraphs (g)(1) or (g)(2) and in consultation with CEQ.

(1) To remove a categorical exclusion, EPA will:

(i) Develop a written justification for the removal of the categorical exclusion;

(ii) Consult with CEQ on its proposed removal of the categorical exclusion, including the written justification prior to providing public notice as described in subparagraph (3); and

(iii) Provide public notice of EPA's removal of the categorical exclusion and the location of where the written justification is publicly available in the *Federal Register*.

(2) To add or amend a categorical exclusion, EPA will:

(i) Develop a written record containing information to substantiate its determination that the category of actions normally does not significantly affect the quality of the human environment;

(ii) Consult with CEQ on its proposed categorical exclusion, including the written record prior to providing public notice as described in subparagraph (3); and

(iii) Provide public notice in the *Federal Register* of EPA's new or amended categorical exclusion and where to find the written record (*e.g.*, website).

(h) Consistent with NEPA section 109, 42 U.S.C. 4336c, EPA may adopt a categorical

exclusion listed in another agency's NEPA procedures. The Responsible Official must coordinate with the NEPA Official on NEPA section 109 adoptions.

(1) When adopting a categorical exclusion listed in another agency's NEPA procedures, EPA will:

(i) Identify the categorical exclusion listed in another agency's NEPA procedures that covers its category of proposed or related actions.

(ii) Consult with the agency that established the categorical exclusion to ensure that the proposed adoption of the categorical exclusion is appropriate.

(2) Provide public notification of the categorical exclusion that EPA is adopting, including a brief description of the proposed action or category of proposed actions to which EPA intends to apply the adopted categorical exclusion. The notification should include the process EPA will use to evaluate for extraordinary circumstances when applying the adopted categorical exclusion and a brief description of EPA's consultation with any applicable agency.

(3) Document the adoption of another agency's categorical exclusion in the EPA NEPA Compliance Database.

(i) If EPA determines that a categorical exclusion established through legislation, or a categorical exclusion that Congress through legislation has directed EPA to establish, covers a proposed agency action, EPA will conclude review consistent with applicable law. If appropriate, EPA may examine extraordinary circumstances, modify the proposed agency action, or document the determination that the legislative categorical exclusion applies, consistent with this section and the legal authority for the establishment of the legislative categorical exclusion.

(ii) [Reserved]

§ 6.205 Environmental assessments.

(a) If an action is subject to NEPA and no categorical exclusion applies, EPA will prepare a concise EA with respect to a proposed agency action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown. NEPA section 106(b)(2); 42 U.S.C. 4336(b)(2).

(b) EPA will document in the EA where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.

(c) 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.

(d) 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).

(e) An EA must provide sufficient information and analysis for determining whether to prepare an EIS or to issue a FONSI 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.

(f) An EA must include a brief discussion of:

(1) The purpose and need for the proposed action based on EPA's statutory authority. When the proposed action concerns an application, the purpose and need for the proposed action will also be informed by the goals of the applicant;

(2) The alternatives pursuant to NEPA section 102(2)(H), 42 U.S.C. 4332(2)(H); and

(3) The reasonably foreseeable environmental effects of the proposed agency action and the alternatives considered.

(g) An EA may include, as appropriate:

(1) A discussion of:

(i) Alternatives beyond the scope of NEPA section 102(2)(H), 42 U.S.C. 4332(2)(H), including a no action alternative; and

(ii) 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.

(h) The text of an EA shall not exceed 75 pages, not including any citations or appendices.

(1) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the EA. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.

(2) EAs will be formatted for an 8.5"x11" page with one-inch margins with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material within the text of an EA, and not within the appendices, do count towards the page limit. When an item of graphical material is larger than 8.5"x11", each such item will count as one page if it is in the text of an EA.

(3) *Certification related to page limits.* The breadth and depth of analysis in an EA will be tailored to ensure that the environmental analysis does not exceed this page limit. In this regard, as part of the finalization of the EA, a Responsible Official will certify in the EA that EPA, in the preparation of the document, has considered the factors mandated by NEPA; that the EA represents EPA's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects EPA's expert judgment; and that any considerations addressed briefly or

left unaddressed were, in EPA's judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed.

(i) EPA will complete and publish an EA not later than the date that is one (1) year after the date on which the agency determines that the preparation of an EA is required for the proposed action and can meaningfully evaluate the effects of the proposed action; the date on which the agency notifies the applicant that the application is complete; or the date on which the agency issues a notice of intent to prepare an EA for the proposed action, and ends on the date of the publication of the EA.

(1) *Deadlines.* Generally, an EA will be published, at the latest, on the day the deadline elapses, in as substantially complete form as is possible, unless the deadline is extended pursuant to § 6.205(i)(2).

(2) *Deadline extensions.* If EPA determines it is not able to meet the one-year deadline, it may extend the deadline, in consultation with the applicant, if applicable, to establish a new deadline that provides only so much additional time is necessary to complete the EA. Cause for establishing a new deadline is only established if the EA is so incomplete, at the time at which EPA determines it is not able to meet the statutory deadline, that issuance would, in EPA's view, result in an inadequate analysis. The announcement of the new deadline will specify the reason why the EA was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline.

(3) *Certification related to deadline.* The Responsible Official will certify in the EA that EPA, in the preparation of the document, has fulfilled NEPA's requirements within the congressional timeline; that such effort is substantially complete; that, in EPA's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in EPA's judgment, the

analysis contained therein is adequate to inform and reasonably explain EPA's final decision regarding the proposed federal action.

§ 6.206 Findings of no significant impact.

(a) The Responsible Official will prepare a finding of no significant impact (FONSI) if the Responsible Official determines, based on the EA, not to prepare an EIS because 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) 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 the Responsible Official has determined that the proposed action will not have a significant effect on the quality of the human environment.

(3) Any commitments to mitigation that are essential to render the impacts of the proposed action not significant. State the authority for any mitigation that EPA has adopted and any applicable monitoring or enforcement provisions. If EPA finds no significant effects based on mitigation, the mitigated FONSI will state any mitigation requirements enforceable by the agency or voluntary mitigation commitments that will be undertaken to avoid significant effects;

(4) A statement that an EIS will not be prepared, concluding the NEPA process for the proposed action;

(5) An identification of other documents related to the FONSI;

(6) The date of issuance; and

(7) The signature of the Responsible Official.

(c) The Responsible Official must ensure that an applicant that has committed to mitigation possesses the authority and ability to fulfill the commitments.

(d) The Responsible Official must ensure that the mitigation measures necessary to the FONSI determination, at a minimum, are enforceable by EPA, and conduct appropriate monitoring of the mitigation measures.

(e) 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 (c) of this section.

§ 6.207 Environmental impact statements.

(a) EPA, through its Responsible Official, will prepare an EIS for proposed actions that otherwise require preparation of an environmental document and that have a reasonably foreseeable significant effect on the quality of the human environment pursuant to NEPA section 106(b)(1), 42 U.S.C. 4336(b)(1). Whether an impact rises to the level of “significant” is a matter of EPA’s expert judgment.

(1) The following types of action generally significantly affect the quality of the human environment, consistent with NEPA section 102(2)(C), 42 U.S.C. 4332(2)(C):

(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 a 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.

(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 effects 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 reasonably foreseeable 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.

(b) When appropriate, the Responsible Official will prepare a legislative EIS. Only when EPA has primary responsibility for the subject matter of the legislation will the agency prepare a legislative EIS.

(1) A legislative EIS shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later to allow time for completion of an accurate statement that can serve as the basis for public and Congressional debate.

(2) Preparation of a legislative EIS shall conform to the requirements in subparts A through C of this part, except as follows:

(i) There need not be a scoping process; and

(ii) A draft is considered the final statement.

(3) 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.

(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) EPA will complete and publish an EIS not later than the date that is two (2) years after the date on which the agency determines that the preparation of an EIS is required for the proposed action and can meaningfully evaluate the effects of the proposed action; the date on which the agency notifies the applicant that the application is complete; or the date on which the agency issues a notice of intent to prepare an EIS for the proposed action, and ends on the date of the publication of the EIS.

(1) *Deadlines.* Generally, an EIS will be published, on the day the deadline elapses, in as substantially complete form as is possible, unless the deadline is extended pursuant to § 6.207(d)(1).

(2) *Deadline extensions.* If the Responsible Official determines EPA is unable to meet the deadline, then the Responsible Official may extend the deadline, in consultation with the applicant if applicable, to establish a new deadline that provides only so much additional time as is necessary to complete the EIS. In consulting with the applicant, the Responsible Official will

provide a new completion date, provide an Agency point of contact for the applicant for further communications, and document the consultation. Cause for establishing a new deadline is only established if the environmental impact statement is so incomplete, at the time at which EPA determines it is not able to meet the statutory deadline, that issuance pursuant to subsection (1) above would, in EPA's view, result in an inadequate analysis. As stated, such new deadline must provide only so much additional time as is necessary to complete such environmental impact statement. The announcement of the new deadline will specify the reason why the environmental impact statement was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline.

(3) *Certification related to deadlines.* The Responsible Official will certify in the EIS that EPA, in the preparation of the document, has complied with NEPA's requirements within the congressional timeline; that such effort is substantially complete; that, in the EPA's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the EPA's judgment, the analysis contained therein is adequate to inform and reasonably explain EPA's final decision regarding the proposed federal action.

(e) The text of an EIS shall not exceed 150 pages, except for instances in subparagraph (1), not including any citations or appendices.

(1) An EIS for a proposed agency action of extraordinary complexity shall not exceed 300 pages, not including any citations or appendices. EPA will determine at the earliest possible stage of preparation of an EIS whether a proposed action of extraordinary complexity is present.

(2) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the EIS. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.

(3) EISs will be prepared on 8.5"x11" paper with one-inch margins with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material within the text of an EIS, and not within the appendices, do count towards the page limit. When an item of graphical material is larger than 8.5"x11", each such item will count as one page if it is within the text of an EIS.

(4) *Certification related to page limits.* The breadth and depth of analysis in an EIS will be tailored to ensure that the environmental analysis does not exceed this page limit. In this regard, as part of the finalization of the EIS, a Responsible Official will certify in the EIS that EPA, in the preparation of the document, has considered the factors mandated by NEPA; that the EIS represents EPA's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects EPA's expert judgment and that any considerations addressed briefly or left unaddressed were, in EPA's judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed.

(f) The EIS will include a detailed statement containing:

(1) A summary that adequately and accurately summarizes the statement. The summary should stress the major conclusions, areas of disputed issues raised by agencies and the public, and the issues to be resolved (including the choice among alternatives).

(2) The underlying purpose and need for the proposed action based on EPA's statutory authority.

(3) The reasonable range of alternatives, including an analysis of any adverse

environmental effects of not implementing the proposed agency action in the case of a no action alternative, that are, in EPA's expert judgment, technically and economically feasible, and meet the need of the proposal.

(4) 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.

(5) The reasonably foreseeable environmental effects and reasonably foreseeable adverse environmental effects to the proposed agency action at hand. The discussion should include whether the environmental effects of the proposed action are significant, any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of Federal resources which would be involved in the proposal should it be implemented. EPA will document in the EIS where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.

(6) Identification and analysis of any means to mitigate adverse environmental effects of the proposed action. EPA is mindful in this response that NEPA itself does not require or authorize EPA to impose any mitigation measures.

(7) A summary of 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.

(8) A summary of any public meetings held during the scoping process including the date,

time, place, and purpose of the meetings. If EPA held any public meetings after the scoping process, then the EIS must summarize those meetings, including the date, time, place, and purpose of the meetings held.

(9) A summary of the substantive comments received during the public participation process. The EIS must reflect consideration of the substantive comments received during the scoping process. If applicable, the EIS must also include or summarize all substantive comments received after the scoping process and respond to those substantive comments.

(10) Include the names and qualifications of the persons primarily responsible for preparing the EIS including an EIS prepared under an applicant-hired contractors (if applicable), significant background papers, and the EID (if applicable).

(g) The Responsible Official must prepare a supplemental EIS if a major Federal action remains to occur, and the EPA makes substantial changes to the proposed action that are relevant to environmental concerns, or there are substantial new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(h) The Responsible Official will publish the EIS in the manner detailed in § 6.209.

§ 6.208 Records of decision.

(a) A record of decision (ROD) documents EPA's decision on the action. A ROD must include:

(1) A brief description of the proposed action and alternatives considered in the EIS, environmental factors considered, and project impacts; and

(2) Any commitments to mitigation.

(b) In addition, the ROD must include:

(1) Responses to any substantive comments on the EIS, if applicable;

(2) The date of issuance; and

(3) The signature of the Responsible Official.

(c) The Responsible Official must ensure that an applicant that has committed to mitigation possesses the authority and ability to fulfill the commitment.

(d) The Responsible Official must make a ROD available to the public.

(e) 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.

(f) 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.

(g) 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 NEPA Documents.

(a) The Responsible Official must file an EIS, together with comments and any responses, for publication 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 Environmental Protection Agency's EIS filing system process.

(b) For all documented categorical exclusions, EAs, FONSIIs, and EISs, EPA will provide a unique identification number for tracking purposes, which EPA will reference on all associated environmental review documents prepared for the proposed agency action and in the NEPA Compliance Database. EPA will coordinate with the CEQ and other Federal agencies to ensure uniformity of such identification numbers across Federal agencies.

§ 6.210 Emergency circumstances.

If emergency circumstances make it necessary to take an action with reasonably foreseeable significant environmental effects without observing the provisions of subparts A through C of this part, the Responsible Official must consult with the NEPA Official at the earliest possible time. The Responsible Official and the NEPA Official must consult with CEQ about alternative arrangements for compliance with NEPA section 102(2)(C), 42 U.S.C. 4332(2)(C), 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 Applicant Prepared Documents for EPA Actions Subject to NEPA

§ 6.300 Applicability.

(a) This section applies to actions subject to NEPA 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 an 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 an EA and supporting documents.

(d) The Responsible Official must notify the applicant if EPA will not require submission of an EID.

§ 6.301 Applicant requirements for an EID.

(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.

(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) 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 have an adverse environmental effect or would limit reasonable 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. 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 EA or EIS. The Responsible Official must independently evaluate the information submitted and be responsible for its accuracy.

(f) At the request of an applicant and at the discretion of the Responsible Official, an applicant, in lieu of an EID, 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 environmental documents, before rendering a final decision on the proposed action.

§ 6.303 Applicant or applicant-hired contractor prepared environmental documents.

(a) Consistent with NEPA section 107(f), 42 U.S.C. 4336a(f), EPA may allow an applicant or sponsor, or their hired contractor to prepare an EA or EIS under EPA's supervision. 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 an applicant-hired contractor to prepare an EA or EIS and any associated documents, consistent with subparts A through C of this part, for consideration by EPA. In such cases, the Responsible Official must confirm the qualifications of the applicant-hired contractor with the applicant. The applicant-hired contractor must be selected on the basis of ability and absence of any conflict of interest. The Responsible Official will assist applicants and applicant-hired contractors by providing guidance and outlining the types of information required for the preparation of the environmental document. EPA may also provide appropriate guidance and assist in environmental document preparation. EPA will work with the applicant to define the purpose and need, and when appropriate, to develop a reasonable range of alternatives to meet that purpose and need. EPA may request from an applicant environmental information, as required in § 6.301, for use by EPA in preparing or evaluating an environmental document. This may include any factual, scientific, or technical information used, developed, or considered by the applicant or applicant-hired contractor in the course of preparing the environmental document, including any correspondence with EPA or with third parties. The Responsible Official will independently evaluate the environmental document and will take responsibility for its contents and 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 consistent with subparts A through C of Part 6, 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.

(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.

(5) The Responsible Official will work with the applicant to develop and modify, as appropriate, a schedule for the preparation of the environmental document. Major changes to the schedule will be documented in writing.

(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 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.

(c) The terms of the contract between the applicant and the applicant-hired 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.

(d) Project sponsors intending to pay a fee for an expedited EIS or EA deadline, pursuant to NEPA section 112 for which EPA would be the lead agency, should consult with the EPA Responsible Official before submitting a request to the CEQ. EPA will use such consultation to determine an accurate description of the proposed action, the anticipated scope of environmental review including whether to prepare an EA or EIS, and the anticipated EIS or EA-associated costs.

Subpart D—Assessing the Environmental Effects Abroad of EPA Actions

§ 6.400 Purpose and policy.

(a) *Purpose.* On January 4, 1979, the President signed Executive Order 12114 titled “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.*). The procedures set forth below reflect EPA’s responsibilities as 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, applicable Federal statutes, and as set forth under this subpart.

§ 6.401 Applicability.

(a) Administrative actions requiring environmental review under this subpart. 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 the Federal Activities Division (FAD) and Office of International and Tribal Affairs (OITA) (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 (as stated in Executive Order 12114); *global commons* is that area (land, air, water) outside the jurisdiction of any nation; and the *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 (as stated in Executive Order 12114). To the extent applicable, the Responsible Official shall address the considerations set forth in the EPA regulations under subparts A through C of Part 6 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.* 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.

(1) 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 EA 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 EA 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 (Prevention of Significant Deterioration (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 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. 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

Official 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 OITA 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 NEPA section 107(a), 42 U.S.C. 4336a(a).

(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 NEPA section 107(a), 42 U.S.C. 4336a(a). 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, Federal Activities Division (FAD), and the Assistant

Administrator, OITA, may approve modifications for situations described in section 2-5(b). The Responsible Official, in consultation with the Director, FAD, and Assistant Administrator, OITA, shall obtain exemptions from the Administrator for situations described in section 2-5(c). The Department of State and the CEQ shall be consulted as soon as possible on the utilization of such exemptions.

§ 6.406 Implementation.

(a) *Oversight.* FAD is responsible for overseeing the implementation of these procedures and shall consult with OITA wherever appropriate. OITA shall be utilized for making formal contacts with the Department of State. FAD shall assist the Responsible Official in carrying out his/her responsibilities under these procedures.

(b) *Information exchange.* FAD with the aid of OITA, shall assist the Department of State and the CEQ in developing the informational exchange on environmental review activities with foreign nations.

(c) *Unidentified activities.* The Responsible Official shall consult with FAD and OITA 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.

Subpart E—Severability

§ 6.500 Severability.

The sections of this part are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is EPA's intention that the validity of the remainder of those parts will not be affected, with the remaining sections or portions therein shall continue in effect.

