

# Policy and Procedures for the Review of Federal Actions Impacting the Environment

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## **CHAPTER 1 - PURPOSE, POLICY, AND MANDATES**

### **1. PURPOSE.**

**A.** This manual establishes policies and procedures for carrying out the Environmental Protection Agency's (EPA's) responsibilities to review and comment on Federal actions affecting the quality of the environment. EPA has general statutory authority under the National Environmental Policy Act of 1969 and the Council on Environmental Quality's implementing regulations, and has specific authority and responsibility under Section 309 of the Clean Air Act to conduct such reviews, comment in writing, and make those comments available to the public. These responsibilities have been combined into one process and are referred to throughout this Manual as the Environmental Review Process.

**B.** This manual contains EPA's policies and procedures for carrying out the Environmental Review Process, assigns specific responsibilities, and outlines mechanisms for resolving problems that arise in the Environmental Review Process. This Manual is supplemented by, and should be read in conjunction with, the following manuals, which are also prepared, distributed, and maintained by the Office of Federal Activities:

1. Office of Federal Activities Policies and Procedures Manual. Contains current guidance and detailed information related to the Environmental Review Process; and
2. Environmental Review Process Data Management Manual. Contains detailed guidance and reporting requirements for the national level computerized tracking system.

### **2. STATUTORY AUTHORITIES**

**A.** The National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321 et seq., Public Law 91-190, 83 Stat. 852), requires that all Federal agencies proposing legislation and other major actions significantly affecting the quality of the human environment consult with other agencies having jurisdiction by law or special expertise over such environmental considerations, and thereafter prepare a detailed statement of these environmental effects. The Council on Environmental Quality (CEQ) has published regulations and associated guidance to implement NEPA (40 CFR Parts 1500-1508).

**B.** Section 309 of the Clean Air Act, as amended, (42 U.S.C. 7609, Public Law 91-604 12(a), 84 Stat. 1709), requires the EPA to review and comment in writing on the environmental impact of any matter

relating to the duties and responsibilities granted pursuant to the Act or other provisions of the authority of the Administrator, contained in any: (1) legislation proposed by a Federal department or agency; (2) newly authorized Federal projects for construction and as major Federal action, or actions, other than a project for construction, to which Section 102(2)(C) of Public Law 91-190 applies; and (3) proposed regulations published by any department or agency of the Federal Government. Such written comments must be made public at the conclusion of any review. In the event such legislation, action, or regulation is determined to be unsatisfactory from the standpoint of public health, welfare, or environmental quality, the determination will be published and the matter referred to the CEQ.

**C.** Federal environmental laws require, in most circumstances, facilities of the Executive Branch of the Federal Government to comply with Federal, State, and local pollution control requirements promulgated pursuant to, or effective under, those statutes. The review of proposed Federal projects for compliance with these national environmental standards is the responsibility of the EPA through the Environmental Review Process and the Federal Facilities Compliance Program. In addition to these general statutory authorities, the reviews required under Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300 h-3, Public Law 93-523, 88 Stat. 1678) and Section 404(r) of the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. 1344(r), Public Law 92-500, Public Law 95-217, 86 Stat. 884, 91 Stat 1600) are integrated into the Environmental Review Process.

### **3. POLICY.**

**A.** The objective of the Environmental Review Process is to foster the goals of the NEPA process by ensuring that the EPA's environmental expertise, as expressed in its comments on Federal actions and other interagency liaison activity, is considered by agency decision makers. It is EPA's policy to carry out the Environmental Review Process in conjunction with EPA's other authorities to:

1. Participate in interagency coordination early in the planning process to identify significant environmental issues that should be addressed in completed documents;
2. Conduct follow-up coordination on actions where EPA has identified significant environmental impacts to ensure a full understanding of the issues and to ensure implementation of appropriate corrective actions; and
3. Identify environmentally unsatisfactory proposals and consult with other agencies, including the CEQ, to achieve timely resolution of the major issues and problems.

**B.** In implementing this policy, EPA will assist Federal agencies in:

1. Achieving the goals set forth in the NEPA;
2. Meeting the objectives and complying with the requirements of the laws and regulations administered by the EPA; and

3. Developing concise, well-reasoned decision documents which identify project impacts, a range of project alternatives, and mitigation measures that will avoid or minimize adverse effects on the environment.

## **CHAPTER 2 - MANAGEMENT OF THE ENVIRONMENTAL REVIEW PROCESS**

### **1. GENERAL RESPONSIBILITIES.**

The EPA Administrator has delegated responsibility for carrying out the Environmental Review Process to the Assistant Administrator for External Affairs and the Regional Administrators but has retained the responsibility to refer matters to the CEQ. The Assistant Administrator, Office of External Affairs, has in turn delegated program management to the Director, Office of Federal Activities, but has retained the responsibility for concurring on proposed comment letters that have the potential for referral to the CEQ.

### **2. OFFICE OF FEDERAL ACTIVITIES.**

The Office of Federal Activities (OFA) within with' n the Office of External Affairs (OEA) is the program manager for the Environmental Review Process and for the overall coordination and policy development for activities associated with this process. To carry out these responsibilities, the OFA will maintain management support functions consisting of Federal Agency Liaison staff assigned to coordinate with the Headquarters offices of all Federal agencies and a Management Information Unit. The Director, Federal Agency Liaison Division, working through the Director, OFA, has overall policy development and management oversight responsibility for the Environmental Review Process.

**A. Federal Agency Liaisons.** Each Federal Agency Liaison (FAL), working through their Division Director and other appropriate elements within the OFA, has the following responsibilities:

1. Conduct Headquarters-level liaison with other Federal agencies to identify those actions that should be reviewed and to provide information on how the EPA can most effectively review other agencies' proposed actions pursuant to the Environmental Review Process;
2. Provide management oversight of regional review actions carried out under the requirements of this Manual, and provide policy guidance on the Environmental Review Process to Headquarters program offices and regional EIS reviewers;
3. Ensure appropriate Headquarters involvement and support for actions that are elevated under

these Procedures: and

4. Coordinate the EPA review of proposed regulations, national level Environmental Impact Statements (EIS's), and other national level activities and other national level actions.

## **B. Management Information Unit.**

1. The Management Information Unit (MIU) is responsible for the operation of a centralized data management and reporting system for the Environmental Review Process, and for the public availability of comments pursuant to Section 309 of the Clean Air Act. The procedures and requirements for this centralized data system are described in the Environmental Review Process Data Management Manual. The MIU is also responsible for the official filing of all EIS's in accordance with 40 CFR Section 1506.9.
2. The MIU is responsible for preparing the following reports to inform EPA officials and the public of EIS's and other Federal actions received by the EPA for review and comment.
  - **COMDATE.** This weekly computerized report contains a list of all EIS's filed, pursuant to 40 CFR Section 1506.9, during the previous week. COMDATE lists, in part, the EIS title, official filing date, EPA control numbers, location, Federal Register notice date (40 CFR 1506.10(a)), date comments are due to the lead agency, and regional assignment. Other relevant information is also noted such as overall extensions of time granted by lead agencies and EPA ratings of previously filed draft EIS's.
  - **CEQ Notice of EIS Availability.** A Notice of Availability is published in the Federal Register each Friday for EIS's filed during the previous week, pursuant to 40 CFR Section 1506.10(a). The minimum periods for review of the EIS's are calculated from the Federal Register date of this notice.
  - **Notice of Availability of EPA Comments.** A notice will be published weekly announcing the availability of EPA comments on EISs, regulations, and any other action for which an unsatisfactory determination has been made. The notice will include, in part, the title, a summary of comments, and the rating (if applicable) of each review completed.

## **3. REGIONAL OFFICE.**

Each EPA regional office is responsible for carrying out the Environmental Review Process in accordance with the policies and procedures of this Manual for proposed Federal actions affecting its region. Each EPA regional office will designate a regional environmental review coordinator who has overall management responsibility for the Environmental Review Process in that region. It is the responsibility of the regional environmental review coordinator to:

**A.** Ensure that the region is maintaining effective liaison with other Federal agencies at the regional level;

**B.** Carry out lead responsibilities for the review of proposed EIS's and other Federal actions assigned to the coordinator's region or other actions for which it has lead responsibility (see paragraph 6 of this chapter); and

**C.** Ensure that the region is maintaining the official agency files and is properly tracking correspondence generated under the regional Environmental Review Process.

#### **4. PROGRAM OFFICES.**

EPA program offices are responsible for providing technical assistance and policy guidance on review actions directly related to their areas of responsibility. When acting as principal or associate reviewer in accordance with paragraph 5 of this chapter, program offices will follow the policies and procedures set forth in this Manual.

#### **5. SPECIFIC REVIEW MANAGEMENT RESPONSIBILITIES.**

**A. Headquarters and Regional Environmental Review Coordinators.** The term Environmental Review Coordinator (ERC) is used in this Manual to mean either a regional environmental review coordinator or the OFA Division Director managing FAL responsibilities for a particular action agency. It is the ERC's responsibility to manage the environmental review of actions to ensure EPA compliance with the procedures in this Manual and to:

1. Ensure the timely receipt of all assigned EIS's listed in COMDATE, and ensure completion of MIU reporting requirements;
2. Designate a principal reviewer for each assigned action;
3. Coordinate determination of the level of participation in EIS scoping efforts and manage participation efforts;
4. Coordinate determination of EPA's involvement as a cooperating agency under Section 1501.6 of the CEQ regulations;
5. Determine the case-by-case need for reviewing the adequacy of the contents of draft EIS's;
6. Determine the case-by-case need for preparation of comments on final EIS's;
7. Determine the appropriate rating to be assigned to each draft EIS in the comment letter;



8. Determine the need for preparation of comments on non-EIS actions;
9. Ensure timely distribution and public availability of comments; and
10. Initiate and manage agency follow-up efforts on comment letters identifying significant Problem areas.

**B. Principal Reviewer.** The principal reviewer (PR) within a person designated by the ERC to coordinate the review of the action and to prepare the EPA comment letter on the proposed Federal action. The PR will be responsible for ensuring that the views of other EPA offices are adequately represented in the comment letter, and that the comment letter is consistent with agency policy and reflects all applicable EPA environmental responsibilities. In general, the PR for Headquarters lead reviews will be the FAL assigned to the lead agency. The PR will have the responsibility to:

1. Select associate reviewers (AR's) ensuring that all appropriate regional and Headquarters EPA offices are asked to participate;
2. Set due dates for AR comments that will ensure adequate time for review by the signing official;
3. Coordinate with AR's to ensure timely receipt of comments and timely receipt on of disagreements or inconsistencies between reviewers;
4. Review and assure the validity of all comments included in the final EPA response;
5. Resolve and record the disposition of any disagreements with or between AR comments in accordance with subparagraph d, below;
6. Ensure consistency of EPA comments with any previous comments on the action;
7. Recommend the most appropriate rating of the environmental impacts of the proposal and/or the adequacy of the EIS, and include the rating in all draft EIS comment letters; and
8. Ensure the distribution of copies of the signed comment letter to all AR's and other appropriate parties.

**C. Associate Reviewer.** The associate reviewer (AR) is a person designated by the PR to provide technical and policy advice in specific review areas and to provide the views of the office in which the AR is located. AR's will have the responsibility to:

1. Review assigned actions within their areas of responsibility taking into account the policies and procedures of this Manual;

2. Submit comments to the PR on actions in a timely manner;
3. Obtain the appropriate level of concurrence on comments submitted;
4. If significant issues are identified, assist the PR in determining the most appropriate rating for the proposed action; and
5. Upon the request of the PR and within the limits of available resources, provide liaison with, and technical assistance to, the agency that initiated the EIS or other Federal action.

**D. Consolidation of Comments.** The PR will consider all AR comments during preparation of the EPA comment letter. If the PR disagrees with substantive AR comments, the PR will attempt to resolve the differences directly with the AR. If this is not possible, the ERC will be informed and will coordinate resolution of the issue. On comment letters where substantive changes are made to comments generated by an AR, the PR will obtain AR concurrence on the final letter. If major policy issues are involved, the ERC should be informed and policy level concurrence by the AR office should be obtained. All AR comments, with applicable PR notations on disposition of the specific issue, will be retained in the official project file.

## **6. ROUTING AND LEAD RESPONSIBILITY OF EIS'S AND OTHER FEDERAL ACTIONS.**

**A.** Distribution of EIS's should be accomplished by lead agencies on or before the EIS filing date. To ensure that all EIS's are properly distributed, the ERC will check the weekly COMDATE report to make sure that all assigned EIS's have been received. If the ERC has not received an EIS identified in COMDATE, the ERC will inform the MIU immediately and work with the MIU to obtain the EIS. If appropriate, a request for a time extension due to lack of availability of the EIS will be coordinated by the MIU at that time. The following table represents the normal routing and lead responsibility assignment of review actions.

<b>Action</b>	<b>Directed to</b>
Legislation (not accompanied by EIS)	Office of Legislative Analysis
Policy statements, regulations, procedures, and legislation accompanied by an EIS	Office of Federal Activities
Actions that embody a high degree of national controversy or significance, or pioneer Agency policy	Office of Federal Activities
All other actions	Appropriate regional office

**B.** In general, a regional office will have the lead responsibility for reviewing all EIS's and other Federal actions it receives. Specific exceptions occur where:

1. The EIS or other Federal action pertains to an action that is to take place in another region. In such cases, that regional office will have the lead, the MIU will be informed immediately, and the EIS will be forwarded to the lead region.
2. The EIS pertains to more than one region. In this case, the affected regions should refer to COMDATE to determine which is the lead region and which is an AR. If there is a disagreement with the COMDATE assignments, the designated lead region will inform the MIU.
3. The EIS or other Federal action pertains primarily to national EPA policy, regulations, or procedures, or to an action which does not have a geographical focus (e.g., overlapping several regions), or to an action concerning areas in which the regional office does not have adequate expertise. If the ERC suspects this to be the case, the ERC will contact the appropriate FAL to determine lead responsibility. Unless otherwise agreed upon, such cases will be forwarded immediately to the MIU for reassignment of the action.

**C.** A regional or Headquarters office may at any time request that a particular EIS or other Federal action be evaluated by the OFA to determine lead responsibility.

## **CHAPTER 3 - PRE-EIS REVIEW ACTIVITIES**

### **1. POLICY.**

It is EPA's policy to participate early in the NEPA compliance efforts of other Federal agencies to the fullest extent practicable in order to identify EPA matters of concern with proposed agency actions and to assist in resolving these concerns at the earliest possible stage of project development. The ERC will make a concerted effort to resolve project concerns through early coordination, where possible, rather than rely on submission of critical comments on completed documents.

### **2. GENERAL LIAISON.**

**A.** The regional environmental review coordinator and the FAL's will establish and maintain contact at the appropriate levels of other agencies in order to foster an effective working relationship between agencies, to understand the agencies' programs and policies, and to be kept informed of projects of interest to the EPA.

**B.** To the fullest extent practicable, the ERC will assist the action agencies in:

1. Early identification of potential project impacts and the need to prepare assessments or EIS's;

2. Identification of appropriate environmental assessment techniques and methodologies; and
3. Incorporation of all reasonable alternatives and impact mitigation measures in the planning and development of projects.

### **3. EPA'S PARTICIPATION IN SCOPING.**

**A. General.** Scoping is the formal early coordination process required by CEQ's 1979 Regulations (40 CFR 1501.7) and is intended to ensure that problems are identified early and are properly studied, that issues of little significance do not consume time and effort, that the draft EIS is thorough and balanced, and that delays occasioned by an inadequate draft EIS are avoided. To help achieve these objectives, EPA will participate in scoping processes to the fullest extent practicable, emphasizing attendance at scoping meetings.

#### **B. Responding to Scoping Requests.**

1. The ERC will review and respond by letter to all scoping requests specifically made to the EPA. Although Federal Register Notices of Intent to prepare an EIS are not considered specific, the ERC is responsible for being aware of all relevant scoping requests and for participating in those of special interest to the EPA. Responses to these non-EPA specific scoping requests may be made by telephone, but a record of the communication must be kept in the official project file.
2. Scoping letters can be either a form letter of acknowledgment with a list of generic concerns (related to project type or project area), or a letter with detailed action-specific comments. A generic scoping letter or telephone response must define EPA's anticipated level of participation in the scoping process and include at least the following information:
  1. For the general type of project being proposed:
    1. *A list of all EPA permits that might be required;*
    2. *Significant environmental issues that should be emphasized in preparation of the EIS; and*
    3. *References to publications, including guidelines and current research, that would be useful in analyzing the environmental impacts of various alternatives.*
  2. A statement regarding EPA's intention to carry out its independent environmental review responsibilities under Section 309 of the Clean Air Act; and
  3. The name, title, and telephone number of the appropriate working-level contact in the EPA.
3. (3) The level of EPA participation in scoping processes will be determined by the ERC on a case-

by-case basis, taking into account the following factors:

- EPA's statutory responsibility;
- Severity of potential environmental impacts;
- Priority concerns identified in the Administrator's Agency Operating Guidance; and
- Available staff and travel resources.

**C. Input to the Scoping Process.** For those scoping requests where the ERC determines that more substantive EPA participation is warranted, the generic information listed in subparagraph 3b(2) should be supplemented with further detailed guidance to the lead agency. Such guidance will, to the extent possible, include:

1. Specific environmental issues that should be analyzed;
2. Specific information or data related to the area of interest;
3. Specific assessment techniques and methodologies that EPA program offices use or have approved for use;
4. Reasonable alternatives to the proposed action that may avoid potential adverse impacts, including suggestions for an environmentally preferred alternative: and
5. Mitigation measures that should be considered to reduce or substantially eliminate adverse environmental impacts.

#### **4. EPA AS A COOPERATING AGENCY.**

**A. General.** Under 40 CFR 1501.6, the lead agency may request any other Federal agency to serve as a cooperating agency if it has jurisdiction or special expertise (statutory responsibility, agency mission, or related program experience) regarding any environmental issue that should be addressed in the statement. EPA may also request that the lead agency designate it as a cooperating agency. The ERC is responsible for determining whether the EPA will become a cooperating agency. The ERC is encouraged to accept cooperating agency status as often as possible, taking into account the criteria in subparagraph 3b(3).

#### **B. Responding to Requests To Be a Cooperating Agency.**

1. If EPA determines in response to a formal request or makes an independent request to be a cooperating agency, the ERC must inform the lead agency of this decision in writing. The response must clearly state that every effort will be made to raise and resolve issues during scoping and EIS preparation, but that EPA has independent obligations under Section 309 of the Clean Air Act to review and comment on every draft EIS. EPA's response to a request to become a cooperating agency should clearly outline EPA's role in the

preparation of the EIS. EPA's participation may range from participation in the scoping process and reviewing the scope of work, any preliminary drafts, or technical documents to assuming responsibility for developing information, preparing environmental analyses, and actually drafting portions of the EIS.

2. If the ERC determines that resource limitations preclude any involvement in the preparation of another agency's EIS, or preclude the degree of involvement requested by the lead agency, it must inform the lead agency in writing (40 CFR 1501.6(c)). The letter should clearly state that EPA's status as a cooperating agency does not affect its independent responsibilities under Section 309 of the Clean Air Act to review and comment on other agencies' EIS's. A copy of this reply will be submitted to the CEQ.

**C. Providing Guidance as a Cooperating Agency.** Information and/or guidance should be given to the lead agency in those areas where the EPA has special expertise as related to EPA's duties and responsibilities and in those subject areas described in subparagraph 3C. Specific guidance will be given in those areas where the EPA intends to exercise regulatory responsibility.

## **5. EPA AS LEAD AGENCY.**

**Determining Lead Agency .** When, in accordance with 40 CFR Part 6, EPA has an action which is subject to 102(2)(C) of NEPA and the action involves another Federal agency, the ERC and the other Federal agency will determine the lead agency status in accordance with the guidance contained in 40 CFR 1501.5(c), taking into account any relevant Memorandum of Understanding which EPA has executed with the Federal agency in question. Selection of the lead agency should be made at the earliest possible time. If the EPA is the lead agency, EPA will not review the EIS under the Environmental Review Process.

## **6. REPORTING AND CONTROL.**

All responses related to scoping, cooperating, or lead agency issues, together with follow-up correspondence must be made a part of the official project file. Copies of letters in which EPA declines an agency's request to become a cooperating agency must be sent to the CEQ.

# **CHAPTER 4 - REVIEW OF DRAFT ENVIRONMENTAL IMPACT STATEMENTS**

## **I. POLICY.**

It is EPA's policy to review and comment in writing on all draft EIS's officially filed with the EPA, to provide a rating of the draft EIS which summarizes EPA's level of concern, and to meet with the lead agency to resolve significant issues. The EPA review will be primarily concerned with identifying and recommending corrective action for the significant environmental impacts associated with the proposal. Review of the adequacy of the information and analysis contained in the draft EIS's will be done as needed to support this objective.

## **2. DRAFT EIS REVIEW MANAGEMENT.**

Except as noted below, the review management procedures and responsibilities given in chapter 2 apply to the review of draft EIS's.

### **A. Establishing Deadlines and Time Extensions.**

1. **Deadlines.** Unless a different deadline is officially established for receiving comments, EPA will provide comments on a draft EIS to the lead agency within 45 days from the start of the official review period. The official EIS due dates are listed in COMDATE. The PR will set internal deadlines to ensure EPA's comments are received within the official comment period.
2. **Time Extensions.** Requests for extensions of review periods on draft EIS's should be kept to a minimum. In general, review period extensions O.E.M. on draft EIS's should not be requested unless important environmental issues are involved, and detailed substantive comments are being prepared. Time extensions should normally not exceed 15 days.

### **B. Categorization and Agency Notification System for Draft EIS's.**

1. After completing the review of a draft EIS, the PR will categorize or rate the EIS according to the alpha numeric system described below and in paragraph 4 of this chapter, and include the designated rat in the comment letter. In general, the rating will be based on the lead agency's preferred alternative. If, however, a preferred alternative is not identified, or if the preferred alternative has significant environmental problems that could be avoided by selection of another alternative, or if there is reason to believe that the preferred alternative may be changed at a later stage, the reviewer should rate individual alternatives. The purpose of the rating system is to synthesize the level of EPA's overall concern with the proposal and to define the associated follow-up that will be conducted with the lead agency.
2. The alphabetical categories LO, EC, EO, and EU signify EPA's evaluation of the environmental impacts of the proposal. Numerical categories 1, 2, and 3 signify an evaluation of the adequacy of the draft EIS. A summary of the rating definitions and the associated follow-up action is given in figure 4-1 at the end of this chapter. This figure

should be attached to draft EIS comment letters when the lead agency may be unfamiliar with the EPA rating system. To the maximum extent possible, assignments of the alphabetical rating will be based on the overall environmental impact of the proposed project or action, including those project impacts that are not adequately addressed in the draft EIS. When there is insufficient information in the draft EIS, the determination of potential project impact may be based on other documents, information, or on-site surveys. The comment letter should clearly identify the source of information used by the EPA in evaluating the proposal.

3. The rating of a draft EIS will consist of one of the category combinations shown in the table below. As noted in the table and described in chapter 5, the ERC must follow up with the lead agency in those cases where significant problem areas are identified.

<b>Category</b>	<b>Lead Agency Pre-Notification</b>	<b>Follow-up on Draft EIS Comment Letter</b>
LO	None	None
EC-1, EC-2	None	Phone Call
EO-1, EO-2	Phone Call	Meeting
EO-3, EU-1, EU-2, EU-3, 3	Meeting	Meeting

4. For categories EO, EU, or 3, the ERC will ensure that the lead agency is notified of the general EPA concerns prior to receipt of EPA's comment letter. For categories EU and 3, the ERC must attempt to meet with the lead agency to discuss EPA's concerns prior to submission of the comment letter to the lead agency. The purposes of such a meeting are to describe the specific EPA concerns and discuss ways to resolve those concerns, to ensure that the EPA review has correctly interpreted the proposal and supporting information, and to become aware of any ongoing lead agency actions that might resolve the EPA concerns. To assure the objectivity and independence of the EPA review responsibility, the EPA comment letter itself and the assigned rating are not subject to negotiation and should not be changed on the basis of the meeting unless errors are discovered in EPA's understanding of the issues. However, the reviewer may add in the letter an acknowledgment of any relevant new lead agency activities that the reviewer believes could resolve the EPA concerns.

### **3. SCOPE OF COMMENTS ON THE DRAFT EIS**

**A. General.** In general, EPA's comments will focus on the proposal but will, if necessary, review the complete range of alternatives, identifying those that are environmentally unacceptable to EPA and identifying EPA's preferred alternative. EPA's comment letter on the draft EIS will reflect all of EPA's environmental responsibilities that may bear on the action. The review will include EPA's assessment of the expected environmental impacts of the action and, if substantive



impacts are identified, an evaluation of the adequacy of the supporting information presented in the EIS with suggestions for additional information that is needed. The EPA comment letter on draft EIS's will:

1. Explicitly reference EPA's review responsibilities under NEPA/Section 309;
2. Acknowledge positive lead agency responses to EPA scoping suggestions or early coordination efforts;
3. Provide a clear and concise description of EPA's substantive concerns and recommendations with supporting details given in attachments;
4. Include a rating of the proposal and, if appropriate, the adequacy of the EIS in accordance with the criteria established in paragraphs 2 and 4 of this chapter; and
5. Give the name and phone number of an appropriate EPA contact person.

**B. Mitigation (40 CFR 1508.20).** EPA's comments should include measures to avoid or minimize damage to the environment, or to protect, restore, and enhance the environment. Suggestions for mitigation should be oriented towards selection of mitigation measures that are technically feasible, of long-term effectiveness, and have a high likelihood of being implemented.

**C. Statutory Authorities Special efforts** should be made to identify project impacts that may lead to possible violation of national environmental standards or that might preclude or bias future issuance of EPA related environmental permits. EPA comments regarding potential violations of standards must be clearly stated in the letter, and an offer should be made to work with the proposing agency to develop appropriate measures to reduce impacts.

**D. Alternatives.** If significant impacts are associated with the proposal and they cannot be adequately mitigated, EPA's comments should suggest an environmentally preferable alternative, including if necessary, a new alternative. The suggested alternatives should be both reasonable and feasible. In this context, such an alternative is one that is practical in the technical, economic, and social sense, even if the alternative is outside the jurisdiction of the lead agency.

**E. Purpose and Need.** If a detailed review of alternatives is required, the reviewer may have to address the purpose of and need for the proposed action in order to determine to what degree an alternative would meet project objectives. In these cases, the reviewer may comment on the technical adequacy and accuracy of the EIS's methods for estimating the need for the proposed action in cases where this affects the definition of reasonable and feasible alternatives. Within the context of reviewing purpose and need, the EPA may also comment on the economic justification of the project, and the relationship between the lead agency's economic analysis and any unquantified environmental impacts, values, and amenities. The comments may also address the technical validity and adequacy of the supporting data for the EIS's economic analyses.

**F. Projects Subject to Section 404(r) of the Clean Water Act.** The Section 404 Coordinator will serve as an associate reviewer for those projects for which an agency is seeking an exemption under Section 404(r), and shall concur with the EPA comment letter. Section 404(r) provides that discharges of dredged or fill material which are part of Federal construction projects specifically authorized by Congress are not subject to regulation under Sections 301, 402, or 404 of the Clean Water Act if the information on the effects of such discharge including consideration of the Section 404(b)(1) Guidelines, is included in the EIS for the project, and the EIS has been submitted to Congress before the discharge occurs and before the authorization for the project occurs. In accordance with the CEQ's guidance of November 17, 1980, EPA's comments on the EIS will serve as the vehicle for informing the agency of EPA's determination whether the proposed Section 404(r) exemption will be in compliance with the requirements of the Section 404(b)(1) Guidelines. The comments should reference the CEQ Memorandum for Heads of Agencies, which provides guidance on applying Section 404(r) and should include EPA's determination regarding:

1. Whether the EIS contains requisite information on the proposed discharges and other effects; and
2. Whether the proposal is consistent with Section 404(b)(1) Guidelines.

**G. Projects Potentially Affecting a Designated "Sole Source" Aquifer Subject to Section 1424(e) of the Safe Drinking Water Act.**

1. The regional office responsible for implementing the Safe Drinking Water Act (SDWA) will act as an AR on any EIS for a project potentially affecting a sole source aquifer designated under Section 1424(e) of the SDWA. EPA's comments on the draft EIS will serve as EPA's preliminary comments for the groundwater impact evaluation required under Section 1424(e), which stipulates that no commitment to a project of Federal financial assistance may be made, if the Administrator determines that a project has the potential to contaminate a designated aquifer, so as to create a significant hazard to public health. (Rules proposed to implement 1424(e) are found at 42 FR 51620, September 29, 1977.)
2. If it is determined that a project may contaminate the aquifer through the recharge zone so as to create a significant hazard to public health, the ERC will, in consultation with the drinking water staff, prepare a briefing memorandum and comment letter for the Regional Administrator. Copies of the briefing memorandum and the proposed comment letter shall first be sent to the appropriate FAL, who will coordinate concurrence by the appropriate Headquarters offices. The comment letter should cite EPA's authorities under Section 309/NEPA and Section 1424(e) of SDWA, and state that the project is a candidate for both referral to the CEQ and a Section 1424(e) determination.

#### 4. RATING SYSTEM CRITERIA.

##### A. Rating the Environmental Impact of the Action.

1. LO (Lack of Objections). The review has not identified any potential environmental impacts requiring substantive changes to the preferred alternative. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposed action.
2. EC (Environmental Concerns). The review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact.
3. EO (Environmental Objections). The review has identified significant environmental impacts that should be avoided in order to adequately protect the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). The basis for environmental Objections can include situations:
  1. *Where an action might violate or be inconsistent with achievement or maintenance of a national environmental standard;*
  2. *Where the Federal agency violates its own substantive environmental requirements that relate to EPA's areas of jurisdiction or expertise;*
  3. *Where there is a violation of an EPA policy declaration;*
  4. *Where there are no applicable standards or where applicable standards will not be violated but there is potential for significant environmental degradation that could be corrected by project modification or other feasible alternatives; or*
  5. *Where proceeding with the proposed action would set a precedent for future actions that collectively could result in significant environmental impacts.*
4. EU (Environmentally Unsatisfactory). The review has identified adverse environmental impacts that are of sufficient magnitude that EPA believes the proposed action must not proceed as proposed. The basis for an environmentally unsatisfactory determination consists of identification of environmentally objectionable impacts as defined above and one or more of the following conditions:
  1. *The potential violation of or inconsistency with a national environmental standard*

*is substantive and/or will occur on a long-term basis;*

- 2. There are no applicable standards but the severity, duration, or geographical scope of the impacts associated with the proposed action warrant special attention; or*
- 3. The potential environmental impacts resulting from the proposed action are of national importance because of the threat to national environmental resources or to environmental policies.*

## **B. Adequacy of the Impact Statement.**

1. 1 (Adequate). The draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.
2. 2 (Insufficient Information). The draft EIS does not contain sufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the proposal. The identified additional information, data, analyses, or discussion should be included in the final EIS.
3. 3 (Inadequate). The draft EIS does not adequately assess the potentially significant environmental impacts of the proposal, or the reviewer has identified new, reasonably available, alternatives, that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. The identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. This rating indicates EPA's belief that the draft EIS does not meet the purposes of NEPA and/or the Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS.

## **5. APPROVING AND DISTRIBUTING COMMENTS ON DRAFT EIS'S.**

**A.** Categories LO, EC, EO, 1, or 2. For draft EIS's rated LO, EC, EO, 1, or 2 the comments will be signed by the appropriate regional or Headquarters official and the ERC will distribute EPA's comments in accordance with subparagraph 5c of this chapter.

**B.** Categories EU or 3. For draft EIS's where the ERC is proposing a rating of EU or 3, the EPA comment letter must be cleared by the Assistant Administrator for External Affairs prior to release. If the review within a reg regional action, the draft letter will be submitted through the

OFA for clearance. The draft comment letter must be submitted at least 5 working days prior to the due date and the proposed rating must have been approved by the regional signing official. In every case where a draft statement has been rated EU or 3, the Assistant Administrator, OEA, will send a copy of the EPA comment letter to the CEQ. In addition, where the EPA has commented to a regional office of the originating agency, appropriate officials within the headquarters office of the originating agency will also be informed. If a communications strategy has been developed for the action, the release of information should follow that strategy.

**C. Checklist for Distribution of Agency Comments on the Draft EIS.\***

Addressee	Number of Copies
Agency submitting statement	Original
CEQ (if EU or 3) with transmittal letter	1 copy
Office of Public Affairs ( if comments are rated EU or 3)	1 copy
EPA offices which served as associate reviewers	1 copy
Office of Federal Activities Attn: MIU	2 copies

**6. REPORTING AND CONTROL.**

All draft EIS's under review, all time extensions, and all comment letters on draft EIS's will be entered in the MIU data management system. All EPA comment letters and associated correspondence on draft EISs will be retained in the official project file.

*\*To the maximum extent practicable, the comment letter should not be distributed to parties outside of the EPA until after the original has been received by the lead agency.*

**CHAPTER 5 - POST-DRAFT EIS FOLLOW-UP**

**I. POLICY.**

It is EPA's policy to conduct follow-up discussions with the lead agency to ensure that EPA's concerns raised at the draft EIS stage are fully understood and considered by the lead agency. To the extent resources allow, follow-up efforts should exceed the minimum required by this chapter and paragraph 2b(3) of chapter 4.

## **2. POST-DRAFT CONSULTATIONS.**

In cases where a draft EIS is rated EO, EU, or 3, the ERC must initiate consultation with the lead agency. Agency consultation will continue at increasing levels of management, through the EPA Assistant Administrator level, as appropriate, until EPA's concerns are resolved or further negotiations are pointless. For those actions where the region is the PR, the ERC will work through the appropriate FAL to coordinate the consultation efforts at the regional and Headquarters levels. The ERC and/or FAL should be prepared to review the project in the field, to develop additional information, and/or to work with the agency to improve the proposed action and the supporting final EIS. When substantive consultation meetings are held, the ERC must document the outcome and, as appropriate, respond in writing to the lead agency to acknowledge any points of agreement, and to restate any unresolved issues.

## **3. STATUS REPORTS.**

**A.** After consulting or meeting with the lead agency concerning draft EIS's rated EU or 3, the ERC will prepare a status memorandum for the Assistant Administrator, OEA, through the Director, OFA, and, if it is a regional action, for the Regional Administrator. This memorandum should summarize: (1) the progress of the consultations; (2) the remaining unresolved issues; (3) the positions of other affected Federal agencies; and (4) a prognosis for the resolution of remaining issues.

**B.** The ERC will periodically assess the lead agency's progress in respond to EPA's concerns on draft EIS's rated EU or 3. It s the ERC's responsibility to anticipate, and make early preparation for, those final EIS's which will be so unresponsive ve to EPA's concerns that a recommendation on for referral of the final EIS to the CEQ will be required.

## **4. REPORTING AND CONTROL.**

All correspondence regarding post-draft consultations and agreements must be retained in the official project file. For all draft EIS's which have been rated EU or 3, the official file must also contain all material that may be needed for a formal referral package.

# **CHAPTER 6 - REVIEW OF FINAL EIS'S**

## **I. POLICY.**

It is EPA's policy to conduct detailed reviews of those final EIS's which had significant issues

raised by the EPA at the draft EIS stage. Each final EIS will be checked to determine whether the statement adequately resolves the problems identified in the EPA review of the draft EIS, or whether there has been a substantive change in the proposal. A detailed review and submission of comments on the final EIS will be done for those actions rated EO, EU, or 3 at the draft stage. A detailed review on other f; final EIS's may be done if the ERC determines that conditions warrant it.

## **2. FINAL EIS REVIEW MANAGEMENT.**

Except as noted below, the review management procedures and responsibilities given in chapter 2 apply to the review of final EIS's.

**A. Designating Lead Responsibility and Principal and Associate Reviewers.** Lead responsibility for the final EIS will be the same as for the draft EIS unless other arrangements have been made with the MIU. If possible, the same principal and associate reviewers who dealt with the draft EIS will be assigned to review the final EIS.

**B. Establishing Deadlines and Time Extensions.**

1. **Deadlines.** Unless a different deadline is officially established for receiving comments, EPA will respond to a final EIS within 30 days from the start of the official review period. The official EIS due dates are listed in COMDATE. The PR will set internal deadlines to ensure EPA's comments are received within the official comment period. All final EIS's which are candidates for referral to the CEQ, will be given priority review in accordance with the internal deadlines specified in chapter 9.
2. **Time Extensions.** Requests for extensions of review periods on final EIS's should be kept to a minimum. In general, review period extensions on final EIS's should not be requested unless important environmental issues are involved and detailed substantive comments are being prepared. Time extensions should normally not exceed 15 days. Time extensions for a referral 8 line will be requested in accordance with the procedures in chapter 9.

**C. Categorizing Final EIS's.** The alpha numeric rating system used for draft EIS's will be applied to final EIS's for internal management purposes only (see chapter 4, paragraph 4). The EPA rating is not to be included in comment letters on final EIS's. Instead, the comments will rely wholly on narrative explanations to describe the environmental impact of the proposed action or the responsiveness or unresponsiveness of the EIS. The PR will include the assigned rating when entering the action into the MIU data management system.

## **3. SCOPE OF COMMENTS ON FINAL EIS'S.**

**A. General.**

1. Except in unusual circumstances, the review of final EIS's will be directed to the major unresolved issues, focusing on the impacts of the project rather than on the adequacy of the statement. Except in unusual circumstances, the scope of review will be limited to issues raised in EPA's comments on the draft EIS that have not been resolved in the final EIS, and any new, potentially significant impacts that have been identified as a result of information made available after publication of with the draft EIS.
2. Within 5 days after the start of the review period for the final EIS, the PR will make a preliminary determination as to whether the action meets the criteria for "environmentally unsatisfactory" as set forth in chapter 4, paragraph 4 of this Manual. If the action is determined to be environmentally unsatisfactory, the procedures set forth in chapter 9 of this Manual will be followed.
3. For final EIS's which had drafts categorized as LO, the PR may decide that no formal comments on the final EIS will be submitted to the lead agency. Written comments will be prepared in other cases and when the agency has made substantive modifications in the proposed action in comparison to the draft EIS. In addition, written comments will be prepared for final EIS's that involve Section 404(r) or Section 1424(e) issues.
4. In those cases involving significant mitigation requirements or where the proposed agency action is not clear, EPA's comments on the final EIS will also include a request for a copy of the Record of Decision.

**B. Mitigation Measures.** If a final EIS identifies for the first time, or modifies the agency's preferred alternative, EPA's review should include consideration of any additional specific mitigation measures necessary to reduce any adverse impacts of that alternative. When mitigation measures are recommended, the comment letter should suggest that the lead agency include these measures in their Record of Decision as specific conditions on their permits or grants. Where mitigation measures are directly related to the acceptability of the action, the comment letter should include a request that the lead agency keep EPA informed of progress in carrying out the mitigation measures proposed by the EPA.

**C. Projects Under Section 404(r) of the Clean Water Act.**

1. The Section 404 Coordinator will serve as an associate reviewer on all final EIS's involving a potential 404 permit. In order to satisfy the provisions of Section 404(r), the EIS process must be completed before Congress approves requests for authorizations and appropriations. Pursuant to the CEQ Memorandum for Heads of Agencies, November 17, 1980, completion of the EIS process includes resolution of any pre-decision referrals.
2. The comment letter on a final EIS seeking a 404(r) exemption will include EPA's determination regarding: (a) whether the EIS contains requisite information on the



proposed discharges and other effects, and (b) whether the proposal is consistent with the 404(b)(1) Guidelines.

3. If a negative determination on either (2)(a) or (b) is made, the appropriate FAL will be informed and will coordinate with the lead agency to ensure that the required statement of EPA's determination is included in the lead agency's congressional submission. The FAL will also ensure that EPA's views regarding an exemption are effectively represented in the Office of Management and Budget's (OMB's) legislative and budget processes.

#### **D. Projects Subject to Groundwater Evaluation Under Section 1424(e) of the SDWA.**

1. The regional drinking water program staff will serve as an AR on the review of any EIS for a project potentially affecting a designated "sole source" aquifer and will be responsible for the preliminary determination of project compliance with the requirements of Section 1424(e) of the SDWA.
2. If the regional drinking water program staff determines that a project may contaminate the aquifer through the recharge zone so as to create a significant hazard to public health, the ERC will, in consultation with the regional drinking water staff and appropriate Headquarters FAL, prepare a briefing memorandum and comment letter for the Regional Administrator. Upon approval, the Regional Administrator shall submit the package to the Director, OFA, who shall coordinate the appropriate Headquarters approval and submission to the Administrator for action.

#### **4. UNRESPONSIVE FINAL EIS.**

1. If the lead agency prepares a final EIS rather than a supplement or revised draft EIS in response to an EPA "3" rating, or if there are significant new circumstances or information relevant to areas of significant environmental impact, the review should follow the procedures of chapter 4 to determine if the proposal is either "environmentally unsatisfactory" or "inadequate." If it is determined that either of these situations apply, the procedures of chapter 9 should be initiated to determine if a referral of the proposal to the CEQ is warranted.
2. If a referral is not warranted, but the EIS contains insufficient information to assess potentially significant environmental impacts of the proposed action, a request should be made for the agency to prepare a supplemental EIS. In such cases, the EPA comment letter must demonstrate that the final EIS is unresponsive to EPA's comments on the draft EIS and state EPA's belief that the final EIS is inadequate to meet the purposes of the NEPA and/or the EPA review, and therefore should be formally supplemented (40 CFR 1502.9(c)).

## **5. DISTRIBUTION OF THE FINAL EIS COMMENT LETTER.**

The ERC will coordinate distribution of the final EIS comment letter in accordance with chapter 4, paragraph 5 of this Manual (or in the case of a referral, chapter 9, paragraph 5) and any applicable communications strategy. To the maximum extent practicable, the comment letter will not be distributed externally until after the lead agency has received the original.

## **6. REPORTING AND CONTROL.**

All final EIS's, comment letters, no comment memoranda, and correspondence related to time extensions will be entered in the MIU data management system and retained in the official project file. The final EIS rating must also be entered into the MIU system (even if no comment letter was sent).

# **CHAPTER 7 - MONITORING AND FOLLOW-UP**

## **1. POLICY.**

It is EPA's policy to conduct, on a selected basis, follow-up activities on comments on final EIS's to ensure that: (1) the EPA participates as fully as possible in any post-EIS efforts designed to assist agency decision making; (2) agreed upon mitigation measures are identified in the Record of Decision; and (3) the agreed upon mitigation measures are fully implemented (e.g., permit conditions, operating plan stipulations, etc.).

## **2. MONITORING AND FOLLOW - UP.**

**A.** After transmittal of EPA's comments on the final EIS, the PR will, as appropriate, ensure that:

1. EPA receives a copy of the Record of Decision;
2. The lead agency has incorporated into the Record of Decision all agreed upon mitigation and other impact reduction measures; and
3. The lead agency has included all agreed upon measures as conditions in grants, permits, or other approvals, where appropriate.

**B.** Officials who could be subsequently involved in the proposed action should be informed of the final EPA position on the EIS (e.g., regional or State enforcement officials for NPDES permitting,

regional enforcement officials for Section 404 enforcement, regional air program or enforcement officials for transportation control strategy compliance and State implementation plan requirements).

C. Where resources allow, the ERC is encouraged to assess the level of compliance and effectiveness of Federal agency mitigation measures. The ERC is responsible for determining when and how EPA's final EIS follow-up and monitoring should be carried out.

### **3. REVIEW OF THE RECORD OF DECISION.**

A. The PR should review the Record of Decision on all final EIS's on which the EPA has expressed environmental Objections, and/or those where the EPA has negotiated mitigation measures or changes in project design.

B. The ERC will bring problems or discrepancies between the Record of Decision and agreed upon mitigation measures to the attention of the lead agency. Any unresolved issues should be coordinated with the appropriate FAL, and, through the FAL, with the lead agency's headquarters office, and if appropriate, with the CEQ.

### **4. REPORTING AND CONTROL.**

All correspondence regarding the Record of Decision will be recorded in the official project file.

## **CHAPTER 8 - REVIEW OF DOCUMENTS OTHER THAN EIS'S**

### **1. POLICY.**

The Environmental Review Process will include review of those proposed Federal agency actions, legislation, regulations, and notices which may not be contained in an EIS, but which could lead to or have significant environmental, impacts.

### **2. GENERAL REVIEW PROCEDURES.**

A. Lead Responsibility for Review of Other Actions. Lead responsibilities for non-EIS actions are, in general, as defined below but may be adjusted ,n accordance with the procedures in chapter 2 of this Manual.

1. The OFA will have lead responsibility on all regulation reviews and the appropriate FAL

With will determine which proposed regulations should be reviewed:

2. The Office of Legislative Analysis (OLA), within the Office of External Affairs, will have lead responsibility on all non-EIS legislation reviews and will determine when the EPA will prepare formal comments on legislation; and
3. Overall management of the review of non-EIS agency actions, including environmental assessments and Findings of No Significant Impact (FONSI's), license applications, etc., is the responsibility of the ERC managing the liaison activity that involves the action.

**B. Conducting Reviews of Other Actions.** The ERC will follow the review coordination procedures of chapter 2 to ensure that EPA's comments are coordinated and comprehensive and are received by the originating agency within its decision making period. If the ERC believes that an EIS is needed on the proposed action, the procedures found in paragraph 6 of this chapter should be followed.

**C. Rating Other Federal Actions.** Except for the referral criteria, the rating system for draft impact statements pursuant to chapter 4 of this Manual will not be used for non-EIS actions. If the PR determines that a Federal agency action covered by this chapter is environmentally unsatisfactory in accordance with the criteria listed in chapter 4, thus warranting a referral to the CEQ, then the procedures found in paragraph 7 of this chapter will apply.

### **3. LEGISLATION REVIEWS.**

The OLA has lead responsibility on all proposed legislation not accompanied by an EIS. The OLA is responsible for coordinating with other EPA program and regional offices, and for preparing EPA's comments on all legislation. Any ERC receiving proposed legislation from another Federal agency should forward it directly to the OLA for action.

### **4. REGULATION REVIEWS.**

The FAL's will monitor the Federal Register regularly to determine which environmental regulations proposed by their assigned Federal agencies are significant and should be reviewed. FAL's will normally act as PR's for regulations proposed by the agencies assigned to them. The Director, OFA, will be the signatory official for comments on these regulations. The FAL will be responsible for ensuring that the regions and EPA program offices impacted by the regulations will be designated as AR's.

### **5. OTHER AGENCY ACTION REVIEWS.**

The ERC may determine that other non-EIS Federal actions such as environmental assessments (40 CFR 1508.9), FONSI's (40 CFR 1508.13), issue papers, or technical support documents

should be reviewed. The ERC's decision to review these actions will take into account the relationship of the proposed action to other Federal actions and how the document fits into the overall decision making process.

## **6. DETERMINING THE NEED FOR AN EIS.**

Whenever the ERC determines on the basis of investigating a public inquiry, reviewing a regulation or environmental assessment/FONSI, or by other means, that a Federal agency has not or does not intend to prepare an EIS on an action that the EPA believes could significantly affect the quality of the human environment, the following procedures pertain.

**A.** If it is a regional action, the ERC will immediately contact the appropriate FAL and develop a coordinated regional/headquarters approach for working with the lead agency.

**B.** The ERC will initiate consultation with the Federal agency responsible for the major action to explore the necessity for EIS preparation. Discussions with the agency will be couched in terms of suggested action for the Federal agency's consideration rather than as an EPA requirement. It is the lead agency's responsibility to decide if an EIS will be prepared.

**C.** If, after such consultation, the ERC believes that the requirements of Section 102(2)(C) of NEPA are applicable, the PR will prepare a comment letter to the Federal agency responsible for the proposed action. The comment letter should include EPA's assessment of the action and reasons why the EPA believes the agency should prepare an EIS.

## **7. ENVIRONMENTALLY UNSATISFACTORY ACTIONS.**

If the ERC determines that a non-EIS action is environmentally unsatisfactory at the draft stage (in accordance with the EU criteria specified in chapter 4), the proposed comment letter must be cleared by the Assistant Administrator, OEA, prior to release. The procedures of chapter 4 must be followed in obtaining this clearance. At the time of the clearance request, or if the non-EIS action is a final action, the ERC and/or appropriate FAL will set up internal consultation and referral procedures similar to those outlined in chapter 9 of this Manual. The procedures will also consider the option of request an EIS. The procedures will ensure that the referral will take place no later than 5 days before the "final" lead agency action. For example, in the case of proposed regulations, the referral must occur prior to publication of the final rule.

## **8. REPORTING AND CONTROL.**

Regulations under review and the resulting comment letters, as well as comment letters on any other non-EIS action determined to be environmentally unsatisfactory, will be entered into the MIU data management system. All agency comment letters and official agency actions related to the Environmental Review Process will be retained in the official project file.

# **CHAPTER 9 - REFERRALS TO THE COUNCIL ON ENVIRONMENTAL QUALITY**

## **1. POLICY.**

The EPA authority for referring proposed regulations or major Federal actions to the Council on Environmental Quality (40 CFR 1504 and Section 309 of the Clean Air Act) will be used only when significant environmental issues are involved and only after every effort to resolve these issues at the agency level has been exhausted.

## **2. CRITERIA FOR REFERRAL.**

In order to meet a determination of "unsatisfactory from the standpoint of public health or welfare or environmental quality," the proposed action must satisfy the "environmentally unsatisfactory" criteria given in chapter 4.

## **3 . REFERRAL PROCEDURES.**

**A.** The CEQ has established a 25-day time period, starting from the date of the Notice of Availability of the final EIS In the Federal Register, for referring final EIS's (40 CFR 1504.3(b)). Extensions of EIS referral periods can be granted only by the lead agency (40 CFR 1504.3(b)) and must be specific to the 25-day referral period rather than the overall comment period.

**B.** Since EPA has author quality under Section 309 of the Clean Air Act to refer proposed regulations and maj or Federal actions for which no EIS has been prepared, the intent of the 25 day deadline is incorporated in the procedures of this section by requiring all EPA referrals to be made no later than 5 days before the end of the comment period or, in any case, 5 days before the final action takes place.

## **4. REFERRAL PACKAGE DEVELOPMENT SEQUENCE.**

**A.** The objective of the referral package development sequence requirements in this section is to ensure that the referral package is ready within the rigid 25-day time limit and, simultaneously, allow for a final attempt to resolve EPA's concerns with the lead agency. The key elements in this sequence are:

1. Early identification of the potential referral action by the PR/ERC;

2. Approval of the referral action by the Regional Administrator (if a regional action) and the Assistant Administrator, OEA;
3. An attempt to meet with the lead agency and work out EPA's concerns; and
4. Preparation of the referral package to preserve the referral option if discussions with the lead agency do not resolve EPA's concerns.

**B.** Specific procedures for the referral development sequence are described below. To facilitate this description, it is assumed that the referral action is taken by a region. The same procedures apply where Headquarters has the referral action except there would be no regional requirements.

1. Within 5 days after the beginning of the review period the PR, in consultation with the ERC, will make a preliminary determination as to whether the action is unsatisfactory from the standpoint of public health, welfare, or environmental quality in accordance with the EU criteria in chapter 4. If a referral is indicated, the ERC will notify the appropriate FAL and proceed with development of the materials described below.
2. Within 10 days from the start of the 25-day referral period, the ERC, in consultation with the FAL, will prepare and submit to the Regional Administrator and the Assistant Administrator, OEA, through the Director, OFA, a briefing memorandum and interim response to the lead agency. The interim response will state that the EPA is considering a referral to the CEQ and will request a meeting and time extension to allow for a resolution of EPA's concerns. The briefing memorandum will contain the following information:
  1. *Brief description of the proposed action;*
  2. *Reason the action is environmentally unsatisfactory;*
  3. *Description of the attempts to resolve differences with the lead agency;*
  4. *Positions of other affected Federal agencies, groups, and public officials; and*
  5. *Recommended strategy for resolution of remaining issues.*
3. If the lead agency grants a time extension, EPA negotiations will take place and, if necessary, the referral package will be developed according to the extended referral time period. If the lead agency grants a time extension of the referral period by phone, the ERC will immediately prepare a letter to the lead agency documenting the agreement. If a time extension is not granted, the referral preparation will proceed on the basis of the original referral deadline.
4. No later than 10 days before the referral deadline, the FAL will prepare a short information memorandum for the Administrator describing potential referral and the status of unresolved issues; a one page "talking points" paper; and an outline of a communication

strategy for notifying all interested groups of EPA's action. Development of the communication strategy is to be coordinated with the immediate Office of the Assistant Administrator for External Affairs.

5. No later than 7 days before the referral deadline, the final referral package, prepared in accordance with paragraph 6 of this chapter and approved by the Regional Administrator, will be forwarded to the Director, OFA.
6. No later than 5 days before the referral deadline, the Director, OFA, will ensure that the referral package is in final form with all letters and appropriate concurrences ready for the Administrator's signature, and working through the Assistant Administrator for OEA, to ensure that a briefing has been arranged for the Administrator.

## **5. CONTENT AND ORGANIZATION OF THE REFERRAL PACKAGES.**

**A. Administrator's Referral Package.** The referral package for the Administrator will include the package to be submitted to the CEQ and the lead agency, and the following:

1. An action memorandum to the Administrator (not to exceed two pages) briefly outlining the proposed action, EPA's concerns with the proposed action, and positions of other affected Federal agencies, public interest groups, and congressional delegations.
2. A communications strategy for notifying all interested groups of the referral. This strategy will be coordinated with the immediate Office of the Assistant Administrator for External Affairs and will follow the established strategy development format.

**B. CEQ Referral Package.** The CEQ referral package will consist of a letter for the Administrator's signature to the Chairman of the CEQ setting forth the basis of EPA's determination and the lead agency referral package described below.

**C. Lead Agency Referral Package.** This package will consist of the following:

1. A letter for the Administrator's signature to the head of the lead agency informing the lead agency of EPA's unsatisfactory determination, and of the referral of the matter to the CEQ. The letter should request that no action be taken on the proposed action until the CEQ acts on the matter.
2. Detailed comments supporting EPA's conclusion that the matter is unsatisfactory from the standpoint of public health, welfare, or environmental quality. The detailed comments will include the following information:

1. *The unacceptable impacts related to EPA's areas of jurisdiction or expertise;*



2. *The reasons EPA believes the matter is unsatisfactory;*
3. *Description of those national resources or environmental policies that would be adversely affected;*
4. *Identification of environmentally preferable alternatives;*
5. *Identification of agreed upon facts;*
6. *Identification of material facts in controversy; and*
7. *Brief review of attempts by the EPA to resolve the concerns with the lead agency.*

## **6. APPROVING AND DISTRIBUTING THE REFERRAL PACKAGE.**

After the Administrator signs the referral comment letters to the lead agency and to the CEQ, the letters will be hand carried to the addressees. The appropriate FAL will then ensure follow-up distribution of the CEQ referral package as follows and/or in accordance with the communications strategy:

<b>Addressee</b>	<b>Number of Copies</b>
Lead agency	3 copies
CEQ	4 copies
EPA Administrator	2 copies
Assistant Administrator, OEA	2 copies
Headquarters Office of Public Affairs	2 copies
Appropriate regional office	3 copies
Appropriate regional Office of Public Affairs	2 copies
Director, OFA	1 copy
Management Information Unit, OFA	1 copy
EPA offices which served as associate reviewers	1 copy
Appropriate elected officials	Determined by the Office of Congressional Liaison

## **7. REPORTING AND CONTROL.**

The referral package, all related correspondence, and documentation of time extensions will be retained in the official project file. Time extensions will be entered into the MIU data management system.

# Appendix

## SUMMARY OF RATING DEFINITIONS AND FOLLOW-UP ACTION\*

### Environmental Impact of the Action

**LO -- Lack of Objections** The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

**EC--Environmental Concerns** The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

**EO--Environmental Objections** The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

**EU--Environmentally Unsatisfactory** The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

### Adequacy of the Impact Statement

**Category 1--Adequate** EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

**Category 2--Insufficient Information** The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided. In order to fully protect the environment, the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS which could reduce the environmental impacts of the action. The identified additional information, data analyses, or

discussion should be included in with the final EIS.

**Category 3--Inadequate** EPA does not believe that with the draft EIS adequately assesses potentially significant environmental impacts of the action, or with the EPA reviewer his identified new reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information data analyses or discussions are of such a s magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\*From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting with the Environment.