

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

Nov 14 3 43 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Division of Health TITLE NUMBER: 64

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code § 16-13C-2(b)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 49

TITLE OF RULE BEING PROPOSED: Drinking Water Treatment Revolving Fund

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON December 15, 1997 AT 4:30 P.M.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Regulatory Development

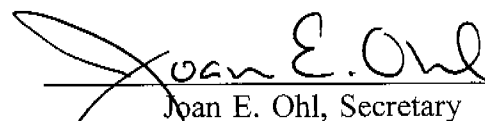
Department of Health & Human Resources

Capitol Complex - Building 3, Room 265

Charleston, WV 25305

ATTN: Kay Howard

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Joan E. Ohl, Secretary

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

\$11.20

Statement of Facts and Circumstances
Relating to the Emergency Filing of the Proposed New
Drinking Water Treatment Revolving Fund Rule, 64 CSR 49
(Continuation)

The 1997 Legislature passed House Bill 2712 in order to position the State to take advantage of a new federal program authorized in 1996 in amendments to the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) This new federal Drinking Water State Revolving Fund Program is designed to assist states to provide loans to public water systems to finance the cost of infrastructure improvements needed to comply with State and federal requirements for safe drinking water. Under this program, the U.S. Environmental Protection Agency (EPA) will provide most of the initial funding to start the West Virginia Drinking Water Treatment Revolving Fund Program and will continue to provide substantial grant funds through the year 2004. The Division expects that the overall federal funds provided for this loan program will total well over \$55 million dollars.

Approximately \$12.5 million can be made available to West Virginia in the current fiscal year if the State receives early approval of its loan program. The Division's goal is to obtain federal approval for West Virginia's program timely to have loan funds available by January 1998. West Virginia has more than 600 small water systems in need of upgrading in order to provide safe drinking water for their customers. Funding these systems at as early a date as possible will help prevent water contamination and illness. These systems do not have adequate financial resources nor do they have the means to secure funding to carry out needed improvements. Maximizing the amount of funds available to provide loans to these systems will be of substantial benefit to the public health and safety. There is already a waiting list of 200 potentially eligible applicants.

This proposed new legislative rule establishes standards and procedures regarding administration and management of the State's loan program. Under various federal and State laws, guidelines, rules and regulations, the loan fund will be administered by the West Virginia Water Development Authority under the direction of the Division of Health. Additionally, all projects must be approved by the West Virginia Infrastructure and Jobs Development Council in order to qualify for a loan under this program.

Under federal guidelines, this rule must be in place in order for the State's application to receive federal approval (see attached letter), thereby making it possible for early loan funds availability.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107-4431**

October 6, 1997

Donald A. Kuntz, P.E., Director
Environmental Engineering Division
Bureau for Public Health
815 Quarrier Street, Suite 418
Charleston, WV 25301

Dear Mr. Kuntz:

We look forward to receiving your Drinking Water State Revolving Fund (DWSRF) application in the near future. In order to expedite our review and approval of your application, please be sure to closely adhere to the requirements as outlined in "Drinking Water State Revolving Fund Program Guidelines" dated February 1997.

In particular, the DWSRF Guidelines outline fifteen assurances that must be addressed in your application. Collectively the assurances demonstrate the State has the necessary authorities, technical capability, and procedures and policies necessary to establish a program that will comply with Federal requirements. Most of the assurances require supporting documentation such as authorizing legislation, approved rules or regulations, approved interagency agreements, commitment letters for the required State match and payment schedules. Without the appropriate certifications and documentation, we cannot complete application review and grant award.

If you have any questions concerning this, please contact me or Cathy McCaffrey, our DWSRF Regional Coordinator. Thanks for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Don C. Niehus".

Don C. Niehus
SRF Team Leader

Customer Service Hotline: 1-800-438-2474

TOTAL P.02

ABSTRACT - PROPOSED RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
DIVISION OF HEALTH
DRINKING WATER TREATMENT REVOLVING FUND

64 CSR 49

Summary: This proposed new legislative rule, Drinking Water Treatment Revolving Fund, establishes standards and procedures regarding providing loans to public water systems to finance the cost of infrastructure improvements needed to comply with State and federal requirements for safe drinking water. The rule contains the following sections: general; definitions; procedure; fund establishment; project eligibility; priority ranking; procedure; financial administration; disadvantaged communities; application procedures and requirements; capacity development; environmental review; and records.

The 1997 Legislature passed House Bill 2712 in order to position the State to take advantage of a new federal program authorized in 1996 in amendments to the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) This new federal Drinking Water State Revolving Fund Program is designed to assist states to provide loans to public water systems to finance the cost of infrastructure improvements needed to comply with State and federal requirements for safe drinking water. Under this program, the U.S. Environmental Protection Agency (EPA) will provide most of the initial funding to start the West Virginia drinking water treatment revolving fund program and will continue to provide substantial grant funds through the year 2004. The Division expects that the overall federal funds provided for this loan program will total well over \$55 million dollars.

The loan fund will be administered and managed by the West Virginia Water Development Authority as directed by the Division of Health and as required under federal law. The Division of Health (Bureau for Public Health) expects the required State matching funds to be provided by the State West Virginia Jobs and Infrastructure Council. Projects are required to be approved by the Council in order to obtain loans from the fund.

For further information contact: Katy Mallory, Office of Environmental Health Services, Bureau for Public Health, Department of Health and Human Resources, 815 Quarrier Street, Charleston, West Virginia, 25301, telephone (304) 558-2981; or the Office of Regulatory Development, Bureau of Operations, Department of Health and Human Resources, State Capitol Complex, Building 3, Room 265, Charleston, West Virginia, 25305, telephone (304) 558-3223.

Copies of the proposed rule may be purchased from the Administrative Law Division of the Office of the Secretary of State, State Capitol Complex, Building 1, Suite 157K, Charleston, WV 25305-0771, phone (304) 558-6000.

10/3/97

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Drinking Water Treatment Revolving Fund Rule, 64 CSR 49

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency: Bureau for Public Health (For the Division of Health)
Department of Health and Human Resources

Address: Building 3, Capitol Complex
Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 12,770,560	\$ 9,245,560	\$ 9,245,560
Personal Services			668,000	668,000	668,000
Current Expense			3,198,116	1,373,166	1,373,166
Repairs & Alterations			-0-	-0-	-0-
Equipment			155,600	32,876	32,876
Other			11,748,844	7,171,518	7,171,518
Revenue			12,558,800	7,121,300	7,121,300

2. Explanation of above estimates.

The table above provides an overall summary of the revenue estimated to be received from the federal government and the costs of administering the State Drinking Water Treatment Revolving Fund Program. Federal revenue to be received the first year is estimated at \$12,558,800. Of this, \$11,748,844 is designated to go directly to local community water systems in the form of loans to be used to finance the cost of infrastructure improvements needed to comply with State and federal requirements thereby providing safe drinking water for their customers. The overall State funds match for the first year is \$2,511,800 in construction loan funds and \$700,000 for the "set-aside" accounts (see pp 3-4). Some of the match funds will be used for State administrative costs; some will be used to benefit local programs.

The addendum (pp 3-4) supplies additional details.

3. Objectives of this rule:

This proposed new legislative rule establishes standards and procedures regarding providing loans to public water systems to finance the cost of infrastructure improvements needed to comply with State and federal requirements for safe drinking water.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The Department estimates that West Virginia will receive \$12,558,800 in federal grant money for the State fiscal year 1998 for use in the new drinking water treatment revolving fund program. The federal grants are expected to continue through at least FY 2004, with an estimated annual allocation of \$7,121,300 totaling over \$55 million in federal grant money during the next seven (7) years.

States are required to provide a twenty percent match for the federal grant money. The State match for construction loans will be \$2,511,760 for the 1998 fiscal year and \$1,424,260 annually for the six (6) years thereafter. This State match is projected to come from the West Virginia Jobs and Infrastructure Council funds. An additional appropriation of general revenue funds in the amount of \$700,000 will serve as match funds for the activities conducted under the four (4) "set-aside" accounts.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.


The impact on specific groups will be determined by which projects are awarded loans as laid out in the annual intended use plan, this proposed rule and the requirements of the Water Development Authority and the West Virginia Jobs and Infrastructure Council.

C. Economic Impact on Citizens/Public at Large.

The drinking water treatment revolving fund program will assist public water systems in financing the cost of infrastructure needed to provide State citizens with safe drinking water. These construction and associated activities will provide both short and long term job opportunities. The presence of safe drinking water should improve public health and also facilitate long-range economic development.

Date: November 1, 1997

Signature of Agency Head or Authorized Representative



Joan E. Ohl, Secretary
Department of Health and Human Resources

**Addendum to Item 2 of the Fiscal Note for
Drinking Water Treatment Revolving Fund Rule, 64, CSR 49**

**Details of Estimated Expenditures Under the
State Drinking Water Treatment Revolving Fund Program**

Expenditures associated with the State Drinking Water Treatment Revolving Fund Program are divided among the loan fund account and four (4) "set-aside" accounts. A State match is required for each of the four (4) set-aside accounts, in addition to the State match for construction loans.

- The **Loan Construction Account** will be used solely for loans to local community water systems to finance the cost of infrastructure improvements needed to comply with State and federal requirements, thereby providing safe drinking water for their customers. This account includes only revenue from the federal government.

<u>LOAN CONSTRUCTION ACCOUNT</u>	<u>FY 98</u>	<u>FY 99 & THEREAFTER</u>
Positions	0	0
Personal Services	0	0
Current Expenses	0	0
Equipment	0	0
Other	\$11,540,428	\$6,963,102
Total	\$11,540,428	\$6,963,102

- The **Program Oversight Account (Administration of Loan Fund)** is used to finance the cost to the division or its agents of administering the program. A maximum of 4% of the federal funds may be used for this purpose.

PROGRAM OVERSIGHT (ADMINISTRATION OF LOAN FUND) ACCOUNT

	<u>FY 98</u>	<u>FY 99 & Thereafter</u>
Positions	5	5
Personal Services	\$142,000	\$142,000
Current Expenses	289,386	90,500
Equipment	26,250	7,676
Other	44,304	44,304
Total	\$501,940	\$284,480

**Addendum to Item 2 of the Fiscal Note for
Drinking Water Treatment Revolving Fund Rule, 64, CSR 49**

• The **Technical Assistance Account** is used to provide technical assistance services for small systems to assist those systems in maintaining compliance with the federal safe drinking water act. A maximum of 2% of the federal funds may be used for this purpose.

<u>TECHNICAL ASSISTANCE ACCOUNT</u>	<u>FY 98</u>	<u>FY 99 & Thereafter</u>
Positions	0	0
Personal Services	0	0
Current Expenses	\$251,176	\$142,426
Equipment	0	0
Other	0	0
Total	\$251,176	\$142,426

• The **Local Assistance Account** is used for local assistance including, but not limited to, delineation and assessment of source water protection areas, loans for source water protection programs and well-head protection programs, and capacity development assistance. Under federal guidelines, these services may be accomplished through contractual services. A maximum of 12% of the federal funds may be used for this purpose in the first year of the program and 7% in the second and succeeding years.

<u>LOCAL ASSISTANCE (SOURCE WATER PROTECTION)</u>	<u>FY 98</u>	<u>FY 99 & Thereafter</u>
Positions	6	6
Personal Services	\$ 189,000	\$ 189,000
Current Expenses	1,207,016	212,000
Equipment	67,000	10,600
Other	58,968	58,968
Total	\$1,521,984	\$ 470,568

• The **State Activities Account** is used for various State activities including, but not limited to, the public water supply supervision program, source water protection, capacity development, and operator certification. A maximum of 10% of the federal funds may be used for this purpose.

<u>STATE ACTIVITIES ACCOUNT</u>	<u>FY 98</u>	<u>FY 99 & Thereafter</u>
Positions	12	12
Personal Services	\$ 337,000	\$ 337,000
Current Expenses	1,450,538	928,240
Equipment	62,350	14,600
Other	105,144	105,144
Total	\$1,955,032	\$1,384,984

WEST VIRGINIA DIVISION OF HEALTH LEGISLATIVE RULE

TITLE 64, SERIES 49

DRINKING WATER TREATMENT REVOLVING FUND

For a Public Comment Period Ending

[dates to be inserted]

WEST VIRGINIA DIVISION OF HEALTH LEGISLATIVE RULE
DRINKING WATER TREATMENT REVOLVING FUND

TABLE OF CONTENTS

§64-49-1. General	1
§64-49-2. Definitions	1
§64-49-3. Procedure	3
§64-49-4. Fund Establishment	4
§64-49-5. Project and System Eligibility	5
§64-49-6. Priority Ranking Procedure	7
§64-49-7. Financial Administration	8
§64-49-8. Disadvantaged Communities	10
§64-49-9. Application Procedures and Requirements	10
§64-49-10. Capacity Development	14
§64-49-11. Environmental Review	14
§64-49-12. Records	14
§64-49-13. Administrative Due Process	15

FILED

NOV 14 3 49 PM '97
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§64-49-1. General.

1.1. Scope. -- The 1996 Safe Drinking Water Act Amendments authorized a drinking water treatment revolving fund program. The federal government will provide most of the initial funding to start the West Virginia drinking water treatment revolving fund program. This program allows the State to provide financial assistance to public water systems to finance the cost of infrastructure improvements needed to comply with the requirements of the federal Safe Drinking Water Act. The fund will be administered by the water development authority. This rule establishes State-level procedures, standards for project eligibility, and gives direction to the State water development authority.

1.2. Authority. -- W. Va. Code §16-13C-2(b).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Administration. -- This rule is administered by the division of health of the department of health and human resources.¹

§64-49-2. Definitions.

2.1. Capacity Development. -- The technical, managerial and financial capability of a public water system.

2.2. Capitalization Grant. -- The assistance agreement by which the U. S. Environmental Protection Agency obligates to award funds allotted to a State for purposes of capitalizing the State's revolving fund and funds for other purposes authorized in Section 1452 of the safe drinking water act.

2.3. Community Water System. -- A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

2.4. Compliance. -- Compliance with State and Federal laws, rules and regulations applicable to public water systems.

¹ The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of State government in 1989. The Department of Public Health was renamed the Division of Health and made a part of the DHHR (W. Va. Code § 5F-1-1 et seq.). Administratively within the DHHR the Bureau for Public Health through its Commissioner carries out the public health function of the Division of Health.

2.5. Cross Cutter Authorities. -- Federal laws and authorities that apply by their own terms to projects or activities receiving federal assistance.

2.6. Disadvantaged Community. -- The service area of a public water system that meets the affordability criteria established in the annual intended use plan after public review and comment by the division and as approved by the U. S. Environmental Protection Agency.

2.7. Division of Health. -- The division of health of the department of health and human resources.²

2.8. Drinking Water Treatment Revolving Fund. --The fund established by W. Va. Code § 16-13C-3(a) to be used for financial assistance to the public water systems for eligible project costs.

2.9. Intended Use Plan. -- A document prepared by the division each year which identifies the intended uses of the funds in the drinking water treatment revolving fund.

2.10. Public Water System. -- Any water system or supply which regularly supplies or offers to supply, piped water to the public for human consumption, if serving at least an average of twenty-five (25) individuals per day for at least sixty (60) days per year, or which has at least fifteen (15) service connections and includes:

(1) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system, and

(2) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

A public water system does not include a system which meets all of the following conditions:

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by a public water system which otherwise meets the definition;

(3) which does not sell water to any person; and

(4) which is not a carrier conveying passengers in interstate commerce.

2.11. Project Priority List. -- The list of projects that are to be funded which is published in the intended use plan.

2.12. Safe Drinking Water Act. -- The federal statute commonly known as the "Safe Drinking Water Act", 42 U.S.C. 300f et seq., as enacted, amended, and as may be subsequently amended.

² See footnote 1.

2.13. Set-Aside. -- Moneys from the capitalization grant to be used for non-project activities specific to the Safe Drinking Water Act.

2.14. Small System. – A drinking water system serving ten thousand (10,000) or fewer persons.

2.15. Water development authority. -- The water development authority provided for in W. Va. Code § 22C-1-4.

§64-49-3. Procedure.

3.1. The division will receive capitalization grants from the U. S. Environmental Protection Agency for the purpose of establishing a drinking water treatment revolving fund construction fund to assist public water systems to finance the cost of infrastructure needed to comply with the Safe Drinking Water Act and to fund non-project activities defined in Section 4 of this rule.

3.2. The division shall develop an annual intended use plan for each year that the drinking water treatment revolving fund program is in place.

3.2.a. The intended use plan shall contain the proposed set-aside amounts for non-project activities that the division intends to use. The set-aside accounts are described in Section 4 of this rule.

3.2.b. The intended use plan shall contain a priority list of eligible projects per Section 5 of this rule that the State intends to fund during the fiscal year covered. The priority ranking procedure is described in Section 6 of this rule. This list shall contain at a minimum, the public water system, population served, water supply, project description, project type, estimated project cost, project priority and the expected financial terms. The financial administration is described in Section 7 of this rule.

3.2.c. The division shall also maintain a comprehensive priority list of anticipated future projects as described in Section 6 of this rule. This list shall contain the projects, the estimated priority and the expected funding schedule for each.

3.2.d. The intended use plan shall include a discussion of the financial status of the drinking water treatment revolving fund. This discussion shall include the total amount of moneys in the fund from all sources, the types of projects to be funded, the general types and terms of financial assistance to be provided, the amounts for non-project activities and the amounts used for disadvantaged communities. The procedure for disadvantaged communities is described in Section 8 of this rule and shall be included in the annual intended use plan.

3.3. The division shall submit a capitalization grant application to the U. S. Environmental Protection Agency annually during the years that capitalization grants are available for the federal drinking water treatment revolving fund program.

3.4. After the division receives U. S. Environmental Protection Agency approval of the capitalization grant application which includes the annual intended use plan, financial assistance may be made to public water systems by the water development authority as specified in Section 7

of this rule and W. Va. Code § 16-13C-1 et seq.

3.5. The applicant's procedures and requirements for drinking water treatment revolving fund assistance are described in Section 9 of this rule.

3.6. The division shall submit a biennial report to the U. S. Environmental Protection Agency regional administrator discussing the State's activities which receive funding from the federal capitalization grant.

§64-49-4. Fund Establishment.

4.1. Establishment of the Fund. -- The water development authority shall establish a permanent and perpetual fund to be known as the West Virginia drinking water treatment revolving fund. The fund shall be kept separate and apart from all other funds or programs of the water development authority and the division.

4.2. Establishment of Set Aside Accounts. -- There are four (4) allowable set-asides from the capitalization grant, as described in subdivisions 4.2.a through 4.2.d of this rule.

4.2.a. Program Oversight (Administration of the Fund). -- An amount up to four percent (4%) of the capitalization grant may be used for to finance the cost to the division or its agents of administering the program.

4.2.b. Technical Assistance. -- Two percent (2%) of the federal capitalization grants shall be utilized to provide technical assistance services for small systems to assist those systems in maintaining compliance with the federal safe drinking water act. The technical assistance services for small systems shall be contracted by the division to non-profit organizations that:

4.2.b.1. Have a membership that represents at least twenty-five percent (25%) of the small systems of this State; and

4.2.b.2. Have at least five (5) years of experience in providing on-site technical assistance to small systems.

4.2.c. Local Assistance. -- An amount up to fifteen percent (15%) of the capitalization grant may be used for local assistance such as, but not limited to: delineation and assessment of source water protection areas, loans for source water protection programs and well-head protection programs and capacity development assistance. Contractual services may be funded from this account for these services. No more than ten percent (10%) may be used for any one (1) activity.

4.2.d. State Activities. -- An amount up to ten percent (10%) of the capitalization grant may be used for State activities such as, but not limited to: the public water supply supervision program, source water protection, capacity development, and operator certification.

4.3. Sources of Money for the Drinking Water Treatment Revolving Fund.-- The drinking water treatment revolving fund is comprised of moneys appropriated by the legislature, moneys allocated to the State by the federal government for the purposes of establishing the drinking water treatment

revolving fund, all receipts from loans made from the drinking water treatment revolving fund, all income from investment of moneys held in the drinking water treatment revolving fund, and all other sums designated for deposits to the drinking water treatment revolving fund from any source, public or private.

4.4. Use of Moneys in the Drinking Water Treatment Revolving Fund. -- Moneys in the drinking water treatment revolving fund are to be used solely to make loans and to make other allowable financial assistance to eligible projects for public water systems, as described in the Safe Drinking Water Act and in W. Va. Code § 16-3C-1 et seq. Each loan shall be in an amount that covers those costs of a project for which funds are sought by the applicant from the water development authority.

4.5. Investment of Moneys in the Drinking Water Treatment Revolving Fund. -- The water development authority is permitted to invest the moneys in the drinking water treatment revolving fund that are not needed for immediate disbursement or use in obligations or securities that are lawful investments for public funds of the State.

4.6. Disbursement of Moneys from the Drinking Water Treatment Revolving Fund. -- Moneys are to be disbursed from the drinking water treatment revolving fund only upon written authorization from the director of the water development authority or his or her designee.

§64-49-5. Project and System Eligibility.

5.1. Both community and non-community non-transient public water systems are eligible for drinking water treatment revolving fund funding, with the following exceptions:

5.1.a. For-profit non-community non-transient water systems; and

5.1.b. Federally owned public water systems.

5.2. The eligible system shall not be significantly out of compliance with any national or State drinking water rules, regulations or variances unless the determines that the proposed project will enable it to come into compliance. The system shall provide assurances to the division that the proposed project will enable the system to attain compliance.

5.3. Subdivisions 5.3.a through 5.3.g list examples of some of the types of projects that may be funded by the drinking water treatment revolving fund. The examples listed are not to be construed as an exhaustive or limiting list of potentially eligible projects.

5.3.a. Examples of eligible public health and compliance projects are projects to:

5.3.a.1. Facilitate compliance;

5.3.a.2. Further health protection objectives;

5.3.a.3. Address exceedances of action levels and maximum contaminant levels (MCL's) specified in the Division of Health Legislative Rule, Public Water Systems, 64 CSR 3;

5.3.a.4. Prevent future violations; and

5.3.a.5. Maintain compliance.

5.3.b. Examples of eligible restructuring projects are projects to:

5.3.b.1. Upgrade or replace infrastructure to continue to provide the public with safe drinking water;

5.3.b.2. Replace aging infrastructure, including, but not limited projects to:

5.3.b.2.A. Rehabilitate or develop water sources to replace contaminated sources;

5.3.b.2.B. Install or upgrade treatment facilities, if the installation or upgrading will improve the quality of drinking water to comply with federal primary or secondary drinking water standards as adopted in the Division of Health Legislative Rule, Public Water Systems, 64 CSR 3;

5.3.b.2.C. Install or upgrade storage facilities to prevent microbiological contaminants from entering the water system; and

5.3.b.2.D. Install or replace transmission and distribution pipes to prevent contamination caused by leaks or breaks in the pipe, or improve water pressure to safe levels.

5.3.c. Projects to consolidate water supplies are eligible when:

5.3.c.1. Individual homes or public water systems have an inadequate quantity of water;

5.3.c.2. A water supply is contaminated; or

5.3.c.2.A. The system is unable to maintain compliance for financial or managerial reasons.

5.3.d. The purchase of a portion of another system's capacity is eligible for a loan, if the system to be purchased is a small system which is part of a consolidation plan to bring the system into compliance, and it is the most cost-effective solution for that small system, when considering the buy-in and user fees.

5.3.e. The costs of project planning, design and other related costs are eligible for drinking water treatment revolving fund funding. Funding of the design of a project does not guarantee funding of the project construction. The design loan assistance amounts shall be described in the annual intended use plan.

5.3.f. Costs of preparing environmental assessment reports (Section 11 of this rule) may be included as part of costs of planning the project and are eligible costs from the drinking water treatment revolving fund. The cost for the State to review the environmental assessments is not

eligible under the drinking water treatment revolving fund and is considered administrative costs.

5.3.g. Land is an eligible cost only if it is integral to a project that is needed to meet or maintain compliance and further public protection. In this instance, land that is integral to a project is only the land needed to locate eligible treatment or distribution projects.

5.4. The following projects and activities are not eligible for drinking water treatment revolving fund assistance:

5.4.a. Dams or rehabilitation of dams;

5.4.b. Water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy;

5.4.c. Reservoirs, except for finished water reservoirs that are part of the treatment process and are located on the property where the treatment facility is located;

5.4.d. Laboratory fees for monitoring;

5.4.e. Operation and maintenance expenses;

5.4.f. Projects needed mainly for fire protection;

5.4.g. Projects for systems in significant non-compliance, unless funding will ensure compliance; and

5.4.h. Projects primarily intended to serve future growth.

5.5. Projects which are designed solely for growth are not eligible for drinking water treatment revolving fund assistance, although reasonable growth may be part of an eligible project.

5.6. Current and future monitoring, operation and maintenance expenditures are not eligible for drinking water treatment revolving fund assistance.

§64-49-6. Priority Ranking Procedure.

6.1. The division shall develop an annual intended use plan indicating how the drinking water treatment revolving fund will be used. The division shall give the highest priority to projects that:

6.1.a. Address the most serious health risks;

6.1.b. Are necessary to achieve compliance; and

6.1.c. Assist those systems most in need on a per household basis.

6.2. The intended use plan shall include criteria for bypass procedures which identify the conditions which would allow a project to be bypassed and the way in which the division will

identify projects to receive the bypassed funds.

6.3. The intended use plan shall undergo public review and shall be submitted to the U. S. Environmental Protection Agency for approval.

§64-49-7. Financial Administration.

7.1. Evidence and Security for Loans. -- Each loan shall be evidenced by revenue bonds or notes or other debt instruments issued by the applicant and purchased by the water development authority, at par or at a discount to reflect the costs of the water development authority and the division incurred to the financing, in whole or in part, of the costs of a project, and shall be secured by a pledge of the fees, charges, and all other revenues of the project to be constructed, in whole or in part, with the proceeds of the loan and any other collateral as may be required by the water development authority. The water development authority may require a water customer survey or user agreements to ensure that the proposed new customers will connect to the system.

7.2. Applications for Loans. -- A public water system that has water development authority under applicable law to undertake a project and has been approved as an eligible recipient by the division may apply for a loan. An eligible recipient desiring a loan shall make a separate application to the water development authority, on the forms prescribed by the director of the water development authority, for each project for which a loan is desired. Following approval by the water development authority and the division and when moneys are available for loan the water development authority and the division shall provide the public water system with a commitment letter setting forth the terms of the loan.

7.3. Determination of Eligible Recipients. -- Public water systems projected to be able to qualify for drinking water treatment revolving fund financial assistance shall be identified in the annual intended use plan as described in Section 3 of this rule. Only those projects on the State project priority list for the current fiscal year shall be considered by the water development authority for financial assistance from the drinking water treatment revolving fund.

7.4. Loan Agreements. -- Prior to providing a loan to an eligible recipient, the water development authority shall execute and enter into a loan agreement with the applicant which shall be binding under the laws of the State and which shall contain such provisions as may be required by the water development authority and the division under the Safe Drinking Water Act including:

7.4.a. The cost of the project, the amount of the loan and the security therefor, which may include in addition to a pledge of fees, charges and other revenues from the project after a reasonable allowance for operation, maintenance, renewal and replacement expenses, and a reasonable reserve fund;

7.4.b. A deed of trust or other appropriate security instrument creating a lien on such project: Provided, That the annual repayment of principal and payment of interest begins not later than one (1) year after the project completion and that the final payment shall not exceed twenty (20) years from said completion date except as provided in Section 8 of this rule;

7.4.c. The specific purposes for which the proceeds of the loan shall be expended, the

procedures as to the disbursement of the loan proceeds including an estimated monthly draw schedule, and the duties and obligations imposed upon the applicant in regard to the acquisition or construction of the project;

7.4.d. If notes or other interim obligations are being issued by the applicant, the agreement of the applicant to issue the revenue bonds and take such other actions as are required of the applicant under the loan agreement;

7.4.e. The agreement of the applicant to accept the water development authority's remedies in the event of any default under the loan; and

7.4.f. The agreement of the applicant to comply with all applicable federal and State statutes, rules and regulations, the applicable requirements of all federal cross cutting authorities, and all applicable local ordinances pertinent to the financing, acquisition, construction, operation, maintenance, and use of the project.

7.5. Payment of Principal and Interest on Loans. -- Payments of the principal or any interest on a loan shall be made by the applicant in accordance with the provisions of the loan agreement.

7.6. Computation of Interest on Loans. -- Each loan shall bear interest from the date of the delivery of the bonds or notes of the applicant evidencing the loan to the applicant at a rate or rates per annum, either fixed or variable, as determined by the water development authority and the division provided that said rate or rates shall be made at or below market rate as stated in the Safe Drinking Water Act (1452(f)(1)(A) and further provided that, pursuant to the provisions of the loan agreement, the interest rate or rates shall reflect the costs of the water development authority incurred in issuing its obligations, if any, and other costs related to the making of the loan.

7.7. Fees and Charges. -- In addition to payments of principal and interest on a loan, each applicant shall agree in the loan agreement to pay fees and charges to the water development authority equal to the applicant's share of the administrative expenses of the water development authority relating to the loan program. Such fees shall be specifically identified in the loan agreement. These revenues shall be deposited and maintained in an account separate from the drinking water treatment revolving fund construction fund.

7.8. Loans Conditioned Upon Availability of Moneys in the Drinking Water Treatment Revolving Fund. -- The obligation of the water development authority to make any loan shall be conditioned upon the availability of the moneys in the drinking water treatment revolving fund in such amounts and on such terms and conditions as, in the sole judgement of the water development authority, shall enable it to make loans.

7.9. Disbursement of Loan Moneys.

7.9.a. The water development authority shall disburse to each recipient the amount certified to the water development authority as costs incurred for the project. The certification shall be made in the form prescribed by the water development authority and shall be accompanied by a written approval from the division. The director of the water development authority or his or her authorized representative shall then provide written authorization for the disbursement of the

approved dollar amount to the recipient.

7.9.b. Each recipient shall comply with all terms and conditions of both the loan agreement and the resolution or ordinance authorizing the issuances of revenue bonds or notes or other debt instruments evidencing the loan.

7.10. Audit Requirements.

7.10.a. The programmatic set-aside accounts shall be audited annually in accordance with federal and State requirements, and shall use generally accepted government accounting standards.

7.10.b. The drinking water treatment revolving fund construction funds shall be audited annually with separate opinion as required by the federal government generally and as required specifically by the Safe Drinking Water Act. The audit shall be in accordance with generally accepted government accounting standards. The annual audit of the drinking water treatment revolving fund shall include an audit of the fund's financial statements and an opinion on the financial statements and additional reports on internal controls and compliance with all federal laws and regulations.

§64-49-8. Disadvantaged Communities.

8.1. Thirty percent (30%) of the federal capitalization grant shall be dedicated to the funding of projects for disadvantaged communities.

8.2. The subsidy options for assistance to disadvantaged communities shall be described in the annual intended use plan. Options include the following:

8.2.a. Principal forgiveness or other incentive agreed upon between the borrower and the division within the U. S. Environmental Protection Agency guidelines; and

8.2.b. Extended loan terms. The normal loan from the drinking water treatment revolving fund is twenty (20) years, but in the case of a system defined as a disadvantaged community the State may provide extended loan terms, up to thirty (30) years. The loan terms may not exceed the expected design life of the project.

§64-49-9. Application Procedures and Requirements.

9.1. Pre-application Process.

9.1.a. The applicant shall complete and submit to the division a preliminary application package obtained from the division.

9.1.b. The application shall provide documentation that the project has been approved by the West Virginia infrastructure and jobs development council.

9.2. Pre-Bid Process.

9.2.a. The applicant shall obtain written permission from the division to bid the project. The project may be bypassed from the project priority list if the project is bid prior to receiving approval. The applicant shall meet the uniform bidding procedures of the West Virginia infrastructure and jobs development council.

9.2.b. The following documents, where applicable, shall be submitted to the division prior to bidding the project:

9.2.b.1. Updated project costs and financing plan;

9.2.b.2. A copy of the engineering agreement and the public service commission order which approved such agreement;

9.2.b.3. The public service commission's schedule for the certificate of convenience and necessity application;

9.2.b.4. Copies of applicable permits from the division;

9.2.b.5. Evidence of other applicable permits including, but not limited to: permits from the division of environmental protection; the division of highways; and the U. S. Corps of Engineers;

9.2.b.6. Bid documents and proposed bid advertisement;

9.2.b.7. Evidence that eighty percent (80%) of all necessary easements and rights-of-way have been obtained and a list of all titles that need to be acquired with an attorney's list of exceptions;

9.2.b.8. The project administration agreement; and

9.2.b.9.A. If the project will serve two (2) or more entities, an agreement between the entities; or

9.2.b.9.B. If the project will serve a municipality, evidence of adoption of a rate ordinance.

9.3. Pre-Loan Closing Requirements. -- Before loan closing the applicant shall submit the following documents to the division:

9.3.a. A final order from the public service commission which approves the construction and financing of the project;

9.3.b. Evidence that all applicable permits have been obtained;

9.3.c. A set of project plans prepared by a registered professional engineer;

9.3.d. An affidavit of publication of advertisement for bids;

9.3.e. A set of bid documents if changed since the previous submittal;

9.3.f. Bid tabulation certified by a registered professional engineer, indication of which bid was selected, and if the lowest bidder was not selected, an statement prepared by an attorney describing why the lowest bidder was not selected;

9.3.g. A statement by a registered professional engineer that the chosen bidder received any and all addenda to the original bid documents;

9.3.h. A statement by a registered professional engineer that the bid documents reflect the project as approved by the division, that the chosen bid includes every construction item necessary to complete the project and that the uniform bidding procedures were followed;

9.3.i. A title opinion signed by an attorney, which identifies the project and contracts and which indicates that one hundred percent (100%) of the necessary titles, easements and rights-of-way have been obtained or that the governmental agency has received rights-of-entry for the same;

9.3.j. Copies of invoices to be paid at closing;

9.3.k. Payment instructions for funds to be received at closing and on a monthly draw basis thereafter;

9.3.l. All necessary ordinances or resolutions in a form and substance satisfactory to the water development authority and assurance that the applicant has taken or will take all measures required by law to enable it to enter into a loan agreement and to issue its revenue bonds or notes for purchase by the water development authority;

9.3.m. An acceptable schedule for project initiation and completion;

9.3.n. Agreement that the applicant will follow all applicable procurement procedures set forth by State laws and rules;

9.3.o. Documentation that the applicant has obtained approval of user charges necessary to finance the project;

9.3.p. Documentation that the applicant has the financial, managerial and technical capability to complete the project;

9.3.q. Documentation that an environmental review per section 11 of this rule has been completed; and

9.3.r. Documentation that all federal cross-cutters have been addressed in project planning and assurances that the applicant will comply with applicable cross-cutters during project construction.

9.4. Construction and Post Construction.

9.4.a. The system shall follow all applicable procurement procedures set forth by the West Virginia Code.

9.4.b. The recipient shall establish and maintain a financial management system to account for all the costs incurred related to the project. The financial management system shall assure that generally accepted accounting principles and practices are consistently applied in all financial matters related to the project. Financial management shall include the following:

9.4.b.1. The establishment of appropriate controls over project funds, property, and other assets;

9.4.b.2. The maintenance of ledgers containing accurate, current and complete records of all financial actions related to the project;

9.4.b.3. The maintenance of records that identify the source and amount of all moneys used for the project and document how such moneys were used;

9.4.b.4. The maintenance of records that allow a comparison of actual project costs with budgeted costs; and

9.4.b.5. The establishment of procedures that assure a timely resolution of audit findings and recommendations.

9.5. In maintaining the accounting system, the recipient shall:

9.5.a. Establish a separate account for the project;

9.5.b. Record all transactions in ledgers;

9.5.c. Record all transactions in a timely manner;

9.5.d. Designate one (1) person who is responsible for project operations to account for all project funds;

9.5.e. Prepare and submit to the division monthly reports of the financial status of the project; and

9.5.f. Prepare and submit to the division an annual budget for the project.

9.6. The recipient shall maintain records for each loan received that include:

9.6.a. Loan application and loan approval documents;

9.6.b. All contracts and sub-agreements related to the project;

9.6.c. All documents related to the financial management;

9.6.d. All documents requiring action by the State;

9.6.e. Documentation of compliance with applicable federal and State laws, rules, and regulations;

9.6.f. Documentation of moneys received and expended; and

9.6.g. A statement by a registered professional engineer that the as-built project is in accordance with the plans and specifications approved by the division and that the as-built project is in proper working condition.

9.7. All records maintained shall be made available for inspection by the director upon request.

9.8. Prior written approval from the division shall be obtained for any change orders to the construction contract.

9.9. Explanation of any project budget item overrun shall be submitted with that month's funds draw request.

§64-49-10. Capacity Development.

The division shall, by August, 2000, establish a capacity development strategy to define systems and assist systems in developing and maintaining technical, financial and management capability. The strategy shall be designed to ensure that all new community water systems and non-community non-transient water systems demonstrate technical, managerial and financial capability needed to comply with applicable federal and State laws, rules and regulations for drinking water.

§64-49-11. Environmental Review.

11.1. An environmental review shall be completed for each project that receives funds from the drinking water treatment revolving fund. Any adverse environmental impacts that may occur on a project, as determined by the director, shall be mitigated by the local entity.

11.2. The director hereby adopts and incorporates by reference the provisions contained in 40 CFR Part 6 subpart E and related subparts as applicable to drinking water systems.

11.3. The costs of preparing the environmental assessment reports may be included as part of costs of planning the project and are eligible for drinking water treatment revolving fund assistance. The cost for the State to review the environmental assessments are not eligible from the drinking water treatment revolving fund and are considered administrative costs. Environmental reviews required by other funding agencies participating in the funding of the project may fulfill the requirements for environmental review. The applicant shall obtain written approval from the division.

§64-49-12. Records. - The division shall maintain files for each drinking water treatment revolving fund project.

§64-49-13. Administrative Due Process

Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in W. Va. Division of Health Administrative Rules, Rules and Procedures for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

Environmental Protection Agency

of his fee provided that he notifies the appropriate registration office in writing no later than 10 days before commencement of the course for which he has registered.

§ 5.7 Waiver of fee.

Waivers of the full tuition fee may be granted on a limited basis. Each waiver requested must be justified and considered by cognitive EPA units on: (a) Severity of the pollution problem in the area in which the applicant employee is working; (b) bona-fide administrative or legal constraints of the applicant agency to pay the reduced fee; (c) service, resulting from the training that will be provided as a benefit to the Federal Government. No waivers will be granted for field courses. Waivers are provided as a transitional easement for exceptional cases and will not be granted after July 1, 1975.

§ 5.8 Appeal of waiver denial.

Waiver denials may be appealed to the Office of Education and Manpower Planning, Washington, DC 20460, to adjudicate and expedite agency review. Appeal submissions should include copies of original application and justification for waiver, EPA registration office denial correspondence, and other pertinent information supporting the request for waiver.

PART 6—PROCEDURES FOR IMPLEMENTING THE REQUIREMENTS OF THE COUNCIL ON ENVIRONMENTAL QUALITY ON THE NATIONAL ENVIRONMENTAL POLICY ACT

Subpart A—General

- 6.100 Purpose and policy.
- 6.101 Definitions.
- 6.102 Applicability.
- 6.103 Responsibilities.
- 6.104 Early involvement of private parties.
- 6.105 Synopsis of environmental review procedures.
- 6.106 Deviations.
- 6.107 Categorical exclusions.
- 6.108 Criteria for initiating an EIS.

Subpart B—Content of EISs

- 6.200 The environmental impact statement.
- 6.201 Format.

40 CFR Ch. I (7-1-96 Edition)

REGIONAL EPA OFFICES

- EPA, Regional Manpower Office, Region I, JFK Federal Building—Room 2303, Boston, MA 02203.
- EPA, Regional Manpower Office, Region II, 26 Federal Plaza, Room 845D, New York, NY 10007.
- EPA, Regional Manpower Office, Region III, Sixth and Walnut Streets, Philadelphia, PA 19106.
- EPA, Regional Manpower Office, Region IV, 1421 Peachtree Street, NE., 4th floor, Atlanta, GA 30308.
- EPA, Regional Manpower Office, Region V, 1 North Wacker Drive, Chicago, IL 60606.
- EPA, Regional Manpower Office, Region VI, 1600 Patterson, Suite 1100, Dallas, TX 75201.
- EPA, Regional Manpower Office, Region VII, Room 249, 1735 Baltimore Avenue, Kansas City, MO 64108.
- EPA, Regional Manpower Office, Region VIII, Suite 906, 1660 Lincoln Street, Denver, CO 80203.
- EPA, Regional Manpower Office, Region IX, 100 California Street, San Francisco, CA 94111.
- EPA, Regional Manpower Office, Region X, 1200 Sixth Avenue, Seattle, WA 98101.

§ 5.5 Procedure for payment.

Applications for direct training courses shall be completed and submitted in accordance with the instructions issued by the respective national program and/or regional offices. Fee payment in the amount indicated by the course announcement shall accompany completed applications (except in the case of waiver requests as described in § 5.7). All applications for field courses will be submitted in a timely manner by the sponsoring agency. Expenses will be noted and charges assessed the sponsoring agency after the course is conducted. The charge will be payable upon submission. All applicants shall make payment by check, payable to the U.S. Environmental Protection Agency, except applicants from Federal, State, and local agencies may send a purchase order of other acceptable financial commitment. Such financial commitment statements shall include information as to the agency and account number to be charged and other necessary information for billing purposes.

§ 5.6 Refunds.

An applicant may withdraw his application and receive full reimbursement

government employees are established at a maximum of \$25 per training day regardless of type of course July 1, 1974. After that date they will pay the full fee. Charges for field courses taught by EPA instructors are actual expenses on a per course basis. Complete tuition fee schedules are listed in § 5.4. Tuition fees will be subject to change either upward or downward, based on actual experience or the system.

Registration offices.

Direct training programs are offered through EPA national program offices and regional EPA offices. Listed in this section are the EPA national program offices and regional offices to which applications are to be sent. The proper registration office may be determined from the specific course announcement.

NATIONAL PROGRAM OFFICES

AIR PROGRAM

Direct Training Registration Office, Office Air Programs, Research Triangle Park, NC 27717.

WASTE WATER TREATMENT PROGRAM

Direct Training Registration Office, National Training Center, Robert A. Taft Sanitary Engineering Center, Environmental Protection Agency, 4676 Columbia Parkway, Cincinnati, OH 45226.

WATER SUPPLY TREATMENT PROGRAM

Direct Training Registration Office, Environmental Protection Agency, 4676 Columbia Parkway, Cincinnati, OH 45226.

SOLID WASTES MANAGEMENT PROGRAM

U.S. Environmental Protection Agency, Office of Solid Waste Management Programs, Washington, DC 20460.

RADIATION PROGRAM

U.S. Environmental Protection Agency, Office of Radiation Programs, Washington, DC 20460.

PESTICIDES PROGRAM

U.S. Environmental Protection Agency, Office of Pesticides Programs, Washington, DC 20460.

- 6.202 Executive summary.
- 6.203 Body of EISs.
- 6.204 Incorporation by reference.
- 6.205 List of preparers.

Subpart C—Coordination With Other Environmental Review and Consultation Requirements

- 6.300 General.
- 6.301 Landmarks, historical, and archeological sites.
- 6.302 Wetlands, floodplains, important farmlands, coastal zones, wild and scenic rivers, fish and wildlife, and endangered species.
- 6.303 Air quality.

Subpart D—Public and Other Federal Agency Involvement

- 6.400 Public involvement.
- 6.401 Official filing requirements.
- 6.402 Availability of documents.
- 6.403 The commenting process.
- 6.404 Supplements.

Subpart E—Environmental Review Procedures for Wastewater Treatment Construction Grants Program

- 6.500 Purpose.
- 6.501 Definitions.
- 6.502 Applicability and limitations.
- 6.503 Overview of the environmental review process.
- 6.504 Consultation during the facilities planning process.
- 6.505 Categorical exclusions.
- 6.506 Environmental review process.
- 6.507 Partitioning the environmental review process.
- 6.508 Findings of No Significant Impact (FNSI) determination.
- 6.509 Criteria for Initiating Environmental Impact Statements (EIS).
- 6.510 Environmental Impact Statement (EIS) preparation.
- 6.511 Record of Decision (ROD) for EISs and identification of mitigation measures.
- 6.512 Monitoring for compliance.
- 6.513 Public participation.
- 6.514 Delegation to States.

Subpart F—Environmental Review Procedures for the New Source NPDES Program

- 6.600 Purpose.
- 6.601 Definitions.
- 6.602 Applicability.
- 6.603 Limitations on actions during environmental review process.
- 6.604 Environmental review process.
- 6.605 Criteria for preparing EISs.
- 6.606 Record of decision.
- 6.607 Monitoring.

§ 6.100

Subpart G—Environmental Review Procedures for Office of Research and Development Projects

- 6.700 Purpose.
- 6.701 Definition.
- 6.702 Applicability.
- 6.703 General.
- 6.704 Categorical exclusions.
- 6.705 Environmental assessment and finding of no significant impact.
- 6.706 Environmental impact statement.

Subpart H—Environmental Review Procedures for Solid Waste Demonstration Projects

- 6.800 Purpose.
- 6.801 Applicability.
- 6.802 Criteria for preparing EISs.
- 6.803 Environmental review process.
- 6.804 Record of decision.

Subpart I—Environmental Review Procedures for EPA Facility Support Activities

- 6.900 Purpose.
- 6.901 Definitions.
- 6.902 Applicability.
- 6.903 Criteria for preparing EISs.
- 6.904 Environmental review process.
- 6.905 Record of decision.

Subpart J—Assessing the Environmental Effects Abroad of EPA Actions

- 6.1001 Purpose and policy.
- 6.1002 Applicability.
- 6.1003 Definitions.
- 6.1004 Environmental review and assessment requirements.
- 6.1005 Lead or cooperating agency.
- 6.1006 Exemptions and considerations.
- 6.1007 Implementation.

APPENDIX A TO PART 6—STATEMENT OF PROCEDURES ON FLOODPLAIN MANAGEMENT AND WETLANDS PROTECTION
AUTHORITY: 42 U.S.C. 4321 *et seq.*, 7401-7671q; 40 CFR part 1500.

SOURCE: 44 FR 64177, Nov. 6, 1979, unless otherwise noted.

Subpart A—General

§ 6.100 Purpose and policy.

(a) The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, as implemented by Executive Orders 11514 and 11991 and the Council on Environmental Quality (CEQ) Regulations of November 29, 1978 (43 FR 55978) requires that Federal agencies include in their decision-making processes ap-

40 CFR Ch. I (7-1-96 Edition)

propriate and careful consideration of all environmental effects of proposed actions, analyze potential environmental effects of proposed actions and their alternatives for public understanding and scrutiny, avoid or minimize adverse effects of proposed actions, and restore and enhance environmental quality as much as possible. The Environmental Protection Agency (EPA) shall integrate these NEPA factors as early in the Agency planning processes as possible. The environmental review process shall be the focal point to assure NEPA considerations are taken into account. To the extent applicable, EPA shall prepare environmental impact statements (EISs) on those major actions determined to have significant impact on the quality of the human environment. This part takes into account the EIS exemptions set forth under section 511(c)(1) of the Clean Water Act (Pub. L. 92-500) and section 7(c)(1) of the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319).

(b) This part establishes EPA policy and procedures for the identification and analysis of the environmental impacts of EPA-related activities and the preparation and processing of EISs.

§ 6.101 Definitions.

(a) *Terminology.* All terminology used in this part will be consistent with the terms as defined in 40 CFR part 1508 (the CEQ Regulations). Any qualifications will be provided in the definitions set forth in each subpart of this regulation.

(b) The term *CEQ Regulations* means the regulations issued by the Council on Environmental Quality on November 29, 1978 (see 43 FR 55978), which implement Executive Order 11991. The CEQ Regulations will often be referred to throughout this regulation by reference to 40 CFR part 1500 *et al.*

(c) The term *environmental review* means the process whereby an evaluation is undertaken by EPA to determine whether a proposed Agency action may have a significant impact on the environment and therefore require the preparation of the EIS.

(d) The term *environmental information document* means any written analysis prepared by an applicant, grantee or

Environmental Protection Agency

contractor describing the environmental impacts of a proposed action. This document will be of sufficient scope to enable the responsible official to prepare an environmental assessment as described in the remaining subparts of this regulation.

(e) The term *grant* as used in this part means an award of funds or other assistance by a written grant agreement or cooperative agreement under 40 CFR chapter I, subpart B.

§ 6.102 Applicability.

(a) *Administrative actions covered.* This part applies to the activities of EPA in accordance with the outline of the subparts set forth below. Each subpart describes the detailed environmental review procedures required for each action.

(1) Subpart A sets forth an overview of the regulation. Section 6.102(b) describes the requirements for EPA legislative proposals.

(2) Subpart B describes the requirements for the content of an EIS prepared pursuant to subparts E, F, G, H, and I.

(3) Subpart C describes the requirements for coordination of all environmental laws during the environmental review undertaken pursuant to subparts E, F, G, H, and I.

(4) Subpart D describes the public information requirements which must be undertaken in conjunction with the environmental review requirements under subparts E, F, G, H, and I.

(5) Subpart E describes the environmental review requirements for the wastewater treatment construction grants program under Title II of the Clean Water Act.

(6) Subpart F describes the environmental review requirements for new source National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the Clean Water Act.

(7) Subpart G describes the environmental review requirements for research and development programs undertaken by the Agency.

(8) Subpart H describes the environmental review requirements for solid waste demonstration projects undertaken by the Agency.

§ 6.103

(9) Subpart I describes the environmental review requirements for construction of special purpose facilities and facility renovations by the Agency.

(b) *Legislative proposals.* As required by the CEQ Regulations, legislative EISs are required for any legislative proposal developed by EPA which significantly affects the quality of the human environment. A preliminary draft EIS shall be prepared by the responsible EPA office concurrently with the development of the legislative proposal and contain information required under subpart B. The EIS shall be processed in accordance with the requirements set forth under 40 CFR 1506.8.

(c) *Application to ongoing activities—(1) General.* The effective date for these regulations is December 5, 1979. These regulations do not apply to an EIS or supplement to that EIS if the draft EIS was filed with the Office of External Affairs, (OEA) before July 30, 1979. No completed environmental documents need be redone by reason of these regulations.

(2) With regard to activities under subpart E, these regulations shall apply to all EPA environmental review procedures effective December 15, 1979. However, for facility plans begun before December 15, 1979, the responsible official shall impose no new requirements on the grantee. Such grantees shall comply with requirements applicable before the effective date of this regulation. Notwithstanding the above, this regulation shall apply to any facility plan submitted to EPA after September 30, 1980.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9829, Mar. 8, 1982]

§ 6.103 Responsibilities.

(a) *General responsibilities.* (1) The responsible official's duties include:

(1) Requiring applicants, contractors, and grantees to submit environmental information documents and related documents and assuring that environmental reviews are conducted on proposed EPA projects at the earliest possible point in EPA's decision-making process. In this regard, the responsible official shall assure the early involvement and availability of information for private applicants and other non-

Federal entities requiring EPA approvals.

- (ji) When required, assuring that adequate draft EISs are prepared and distributed at the earliest possible point in EPA's decision-making process, their internal and external review is coordinated, and final EISs are prepared and distributed.
- (iii) When an EIS is not prepared, assuring documentation of the decision to grant a categorical exclusion, or assuring that findings of no significant impact (FNSIs) and environmental assessments are prepared and distributed for those actions requiring them.
- (iv) Consulting with appropriate officials responsible for other environmental laws set forth in subpart C.
- (v) Consulting with the Office of External Affairs (OEA) on actions involving unresolved conflicts concerning this part or other Federal agencies.
- (vi) When required, assuring that public participation requirements are met.

(2) *Office of External Affairs duties include:* (1) Supporting the Administrator in providing EPA policy guidance and assuring that EPA offices establish and maintain adequate administrative procedures to comply with this part.

(ii) Monitoring the overall timeliness and quality of the EPA effort to comply with this part.

(iii) Providing assistance to responsible officials as required, i.e., preparing guidelines describing the scope of environmental information required by private applicants relating to their proposed actions.

(iv) Coordinating the training of personnel involved in the review and preparation of EISs and other associated documents.

(v) Acting as EPA liaison with the Council on Environmental Quality and other Federal and State entities on matters of EPA policy and administrative mechanisms to facilitate external review of EISs, to determine lead agency and to improve the uniformity of the NEPA procedures of Federal agencies.

(vi) Advising the Administrator and Deputy Administrator on projects which involve more than one EPA office, are highly controversial, are nationally significant, or pioneer EPA

policy, when these projects have had or should have an EIS prepared on them.

(vi) Carrying out administrative duties relating to maintaining status of EISs within EPA, i.e., publication of notices of intent in the FEDERAL REGISTER and making available to the public status reports on EISs and other elements of the environmental review process.

(3) *Office of an Assistant Administrator duties include:* (1) Providing specific policy guidance to their respective offices and assuring that those offices establish and maintain adequate administrative procedures to comply with this part.

(ii) Monitoring the overall timeliness and quality of their respective office's efforts to comply with this part.

(iii) Acting as liaison between their offices and the OEA and between their offices and other Assistant Administrators or Regional Administrators on matters of agencywide policy and procedures.

(iv) Advising the Administrator and Deputy Administrator through the OEA on projects or activities within their respective areas of responsibility which involve more than one EPA office, are highly controversial, are nationally significant, or pioneer EPA policy, when these projects will have or should have an EIS prepared on them.

(v) Pursuant to § 6.102(b) of this subpart, preparing legislative EISs as appropriate on EPA legislative initiatives.

(4) The Office of Policy, Planning, and Evaluation duties include: responsibilities for coordinating the preparation of EISs required on EPA legislative proposals in accordance with § 6.102(b).

(b) *Responsibilities for subpart E—(1) Responsible official.* The responsible official for EPA actions covered by this subpart is the Regional Administrator.

(2) *Assistant Administrator.* The responsibilities of the Assistant Administrator, as described in § 6.103(a)(3), shall be assumed by the Assistant Administrator for Water for EPA actions covered by this subpart.

(c) *Responsibilities for subpart F—(1) Responsible official.* The responsible official for activities covered by this subpart is the Regional Administrator.

(2) *Assistant Administrator.* The responsibilities of the Assistant Administrator, as described in § 6.103(a)(3), shall be assumed by the Assistant Administrator for Enforcement and Compliance Monitoring for EPA actions covered by this subpart.

(d) *Responsibilities for subpart G.* The Assistant Administrator for Research and Development will be the responsible official for activities covered by this subpart.

(e) *Responsibilities for subpart H.* The Assistant Administrator for Solid Waste and Emergency Response will be the responsible official for activities covered by this subpart.

(f) *Responsibilities for subpart I.* The responsible official for new construction and modification of special purpose facilities is as follows:

(1) The Chief, Facilities Engineering and Real Estate Branch, Facilities and Support Services Division, Office of the Assistant Administrator for Administration and Resource Management (OARM) shall be the responsible official on all new construction of special purpose facilities and on all new modification projects for which the Facilities Engineering and Real Estate Branch has received a funding allowance and for all other field components not covered elsewhere in paragraph (f) of this section.

(2) The Regional Administrator shall be the responsible official on all improvement and modification projects for which the regional office has received the funding allowance.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9629, Mar. 8, 1982; 50 FR 26315, June 26, 1985; 51 FR 32609, Sept. 12, 1986]

§ 6.104 Early involvement of private parties.

As required by 40 CFR 1501.2(d) and § 6.103(a)(3)(v) of this regulation, responsible officials must ensure early involvement of private applicants or other non-Federal entities in the environmental review process related to EPA grant and permit actions set forth under subparts E, F, G, and H. The responsible official in conjunction with OEA shall:

(a) Prepare where practicable, generic guidelines describing the scope and level of environmental information

required from applicants as a basis for evaluating their proposed actions, and make these guidelines available upon request.

(b) Provide such guidance on a project-by-project basis to any applicant seeking assistance.

(c) Upon receipt of an application for agency approval, or notification that an application will be filed, consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9629, Mar. 8, 1982]

§ 6.105 Synopsis of environmental review procedures.

(a) *Responsible official.* The responsible official shall utilize a systematic, interdisciplinary approach to integrate natural and social sciences as well as environmental design arts in planning programs and making decisions which are subject to environmental review. The respective staffs may be supplemented by professionals from other agencies (see 40 CFR 1501.6) or consultants whenever in-house capabilities are insufficiently interdisciplinary.

(b) *Environmental information documents (EID).* Environmental information documents (EIDs) must be prepared by applicants, grantees, or permittees and submitted to EPA as required in subparts E, F, G, H, and I. EIDs will be of sufficient scope to enable the responsible official to prepare an environmental assessment as described under § 6.105(d) of this part and subparts E through I. EIDs will not have to be prepared for actions where a categorical exclusion has been granted.

(c) *Environmental reviews.* Environmental reviews shall be conducted on the EPA activities outlined in § 6.102 of this part and set forth under subparts E, F, G, H and I. This process shall consist of a study of the action to identify and evaluate the related environmental impacts. The process shall include a review of any related environmental information document to determine whether any significant impacts are anticipated and whether any changes can be made in the proposed action to eliminate significant adverse impacts,

when an EIS is required, EPA has overall responsibility for this review, although grantees, applicants, permittees or contractors will contribute to the review through submission of environmental information documents.

(d) *Environmental assessments.* Environmental assessments (i.e., concise public documents for which EPA is responsible) are prepared to provide sufficient data and analysis to determine whether an EIS or finding of no significant impact is required. Where EPA determines that a categorical exclusion is appropriate or an EIS will be prepared, there is no need to prepare a formal environmental assessment.

(e) *Notice of intent and EISs.* When the environmental review indicates that a significant environmental impact may occur and significant adverse impacts can not be eliminated by making changes in the project, a notice of intent to prepare an EIS shall be published in the FEDERAL REGISTER. Scoping shall be undertaken in accordance with 40 CFR 1501.7, and a draft EIS shall be prepared and distributed. After external coordination and evaluation of the comments received, a final EIS shall be prepared and disseminated. The final EIS shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(f) *Finding of no significant impact (FNSI).* When the environmental review indicates no significant impacts are anticipated or when the project is altered to eliminate any significant adverse impacts, a FNSI shall be issued and made available to the public. The environmental assessment shall be included as a part of the FNSI. The FNSI shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(g) *Record of decision.* At the time of its decision on any action for which a final EIS has been prepared, the responsible official shall prepare a concise public record of the decision. The record of decision shall describe those mitigation measures to be undertaken which will make the selected alternative environmentally acceptable. Where the final EIS recommends the alternative which is ultimately chosen by the responsible official, the record

of decision may be extracted from the executive summary to the final EIS.

(h) *Monitoring.* The responsible official shall provide for monitoring to assure that decisions on any action where a final EIS has been prepared are properly implemented. Appropriate mitigation measures shall be included in actions undertaken by EPA.

[44 FR 64177, Nov. 6, 1979, as amended at 50 FR 26315, June 25, 1985; 51 FR 32610, Sept. 12, 1986]

§ 6.106 Deviations.

(a) *General.* The Assistant Administrator, OEA, is authorized to approve deviations from these regulations. Deviation approvals shall be made in writing by the Assistant Administrator, OEA.

(b) *Requirements.* (1) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the substantive provisions of these regulations or the CEQ Regulations, the responsible official shall notify the Assistant Administrator, OEA, before taking such action. The responsible official shall consider to the extent possible alternative arrangements; such arrangements will be limited to actions necessary to control the immediate impacts of the emergency; other actions remain subject to the environmental review process. The Assistant Administrator, OEA, after consulting CEQ, will inform the responsible official, as expeditiously as possible of the disposition of his request.

(2) Where circumstances make it necessary to take action without observing procedural provisions of these regulations, the responsible official shall notify the Assistant Administrator, OEA, before taking such action. If the Assistant Administrator, OEA, determines such a deviation would be in the best interest of the Government, he shall inform the responsible official, as soon as possible, of his approval.

(3) The Assistant Administrator, OEA, shall coordinate his action on a deviation under § 6.106(b)(1) or (2) of this part with the Director, Grants Administration Division, Office of Planning and Management, for any required grant-related deviation under 40 CFR

30.1000, as well as the appropriate Assistant Administrator.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9829, Mar. 8, 1982]

§ 6.107 Categorical exclusions.

(a) *General.* Categories of actions which do not individually, cumulatively over time, or in conjunction with other Federal, State, local, or private actions have a significant effect on the quality of the human environment and which have been identified as having no such effect based on the requirements in § 6.505, may be exempted from the substantive environmental review requirements of this part. Environmental information documents and environmental assessments or environmental impact statements will not be required for excluded actions.

(b) *Determination.* The responsible official shall determine whether an action is eligible for a categorical exclusion as established by general criteria in § 6.107 (d) and (e) and any applicable criteria in program specific subparts of part 6 of this title. A determination shall be made as early as possible following the receipt of an application. The responsible official shall document the decision to issue or deny an exclusion as soon as practicable following review in accordance with § 6.400(f). For qualified actions, the documentation shall include the application, a brief description of the proposed action, and a brief statement of how the action meets the criteria for a categorical exclusion without violating criteria for not granting an exclusion.

(c) *Revocation.* The responsible official shall revoke a categorical exclusion and shall require a full environmental review if, subsequent to the granting of an exclusion, the responsible official determines that: (1) The proposed action no longer meets the requirements for a categorical exclusion due to changes in the proposed action; or (2) determines from new evidence that serious local or environmental issues exist; or (3) that Federal, State, local, or tribal laws are being or may be violated.

(d) *General categories of actions eligible for exclusion.* Actions consistent with any of the following categories are eligible for a categorical exclusion:

(1) Actions which are solely directed toward minor rehabilitation of existing facilities, functional replacement of facilities, or towards the construction of new ancillary facilities adjacent or appurtenant to existing facilities;

(2) Other actions specifically allowed in program specific subparts of this regulation; or

(3) Other actions developed in accordance with paragraph (f) of this section.

(e) *General criteria for not granting a categorical exclusion.* (1) The full environmental review procedures of this part must be followed if undertaking an action consistent with allowable categories in paragraph (d) of this section may involve serious local or environmental issues, or meets any of the criteria listed below:

(i) The action is known or expected to have a significant effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other Federal, State, local, tribal or private actions;

(ii) The action is known or expected to directly or indirectly affect:

(A) Cultural resource areas such as archaeological and historic sites in accordance with § 6.301,

(B) Endangered or threatened species and their critical habitats in accordance with § 6.302 or State lists,

(C) Environmentally important natural resource areas such as floodplains, wetlands, important farmlands, aquifer recharge zones in accordance with § 6.302, or

(D) Other resource areas identified in supplemental guidance issued by the OEA;

(iii) The action is known or expected not to be cost-effective or to cause significant public controversy; or

(iv) Appropriate specialized program specific criteria for not granting an exclusion found in other subparts of this regulation are applicable to the action.

(2) Notwithstanding the provisions of paragraph (d) of this section, if any of the conditions cited in paragraph (e)(1) of this section exist, the responsible official shall ensure:

(1) That a categorical exclusion is not granted or, if previously granted, that it is revoked according to paragraph (c) of this section;

§ 6.108

(ii) That an adequate EID is prepared; and

(iii) That either an environmental assessment and FNSI or a notice of intent for an EIS and ROD is prepared and issued.

(f) *Developing new categories of excluded actions.* The responsible official, or other interested parties, may request that a new general or specialized program specific category of excluded actions be created, or that an existing category be amended or deleted. The request shall be in writing to the Assistant Administrator, OEA, and shall contain adequate information to support the request. Proposed new categories shall be developed by OEA and published in the FEDERAL REGISTER as a proposed rule, amending paragraph (d) of this section when the proposed new category applies to all eligible programs or, amending appropriate paragraphs in other subparts of this part when the proposed new category applies to one specific program. The publication shall include a thirty (30) day public comment period. In addition to criteria for specific programs listed in other subparts of this part, the following general criteria shall be considered in evaluating proposals for new categories:

(1) Any action taken seldom results in the effects identified in general or specialized program specific criteria identified through the application of criteria for not granting a categorical exclusion;

(2) Based upon previous environmental reviews, actions consistent with the proposed category have not required the preparation of an EIS; and

(3) Whether information adequate to determine if a potential action is consistent with the proposed category will normally be available when needed.

[50 FR 26315, June 25, 1985, as amended at 51 FR 32610, Sept. 12, 1986]

§ 6.108 Criteria for Initiating an EIS.

The responsible official shall assure that an EIS will be prepared and issued for actions under subparts E, G, H, and I when it is determined that any of the following conditions exist:

(a) The Federal action may significantly affect the pattern and type of land use (industrial, commercial, agri-

40 CFR Ch. I (7-1-96 Edition)

cultural, recreational, residential) or growth and distribution of population;

(b) The effects resulting from any structure or facility constructed or operated under the proposed action may conflict with local, regional or State land use plans or policies;

(c) The proposed action may have significant adverse effects on wetlands, including indirect and cumulative effects, or any major part of a structure or facility constructed or operated under the proposed action may be located in wetlands;

(d) The proposed action may significantly affect threatened and endangered species or their habitats identified in the Department of the Interior's list, in accordance with § 6.302, or a State's list, or a structure or a facility constructed or operated under the proposed action may be located in the habitat;

(e) Implementation of the proposed action or plan may directly cause or induce changes that significantly:

(1) Displace population;

(2) Alter the character of existing residential areas;

(3) Adversely affect a floodplain; or

(4) Adversely affect significant amounts of important farmlands as defined in requirements in § 6.302(c), or agricultural operations on this land.

(f) The proposed action may, directly, indirectly or cumulatively have significant adverse effect on parklands, preserves, other public lands or areas of recognized scenic, recreational, archaeological, or historic value; or

(g) The Federal action may directly or through induced development have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface water or groundwater quality or quantity, water supply, fish, shellfish, wildlife, and their natural habitats.

[50 FR 26315, June 25, 1985, as amended at 51 FR 32611, Sept. 12, 1986]

Subpart B—Content of EIS

§ 6.200 The environmental impact statement.

Preparers of EISs must conform with the requirements of 40 CFR part 1502 in writing EISs.

Environmental Protection Agency

§ 6.201 Format.

The format used for EISs shall encourage good analysis and clear presentation of alternatives, including the proposed action, and their environmental, economic and social impacts. The following standard format for EISs should be used unless the responsible official determines that there is a compelling reason to do otherwise:

- (a) Cover sheet;
- (b) Executive Summary;
- (c) Table of contents;
- (d) Purpose of and need for action;
- (e) Alternatives including proposed action;
- (f) Affected environment;
- (g) Environmental consequences of the alternatives;
- (h) Coordination (includes list of agencies, organizations, and persons to whom copies of the EIS are sent);
- (i) List of preparers;
- (j) Index (commensurate with complexity of EIS);
- (k) Appendices.

§ 6.202 Executive summary.

The executive summary shall describe in sufficient detail (10-15 pages) the critical facets of the EIS so that the reader can become familiar with the proposed project or action and its net effects. The executive summary shall focus on:

- (a) The existing problem;
- (b) A brief description (including the preferred and no action alternatives) along with a listing of the environmental impacts, possible mitigation and any areas of controversy (including issues raised by governmental agencies and the public); and
- (c) Any major conclusions.

A comprehensive summary may be prepared in instances where the EIS is unusually long in nature. In accordance with 40 CFR 1502.19, the comprehensive summary may be circulated in lieu of the EIS; however, both documents shall be distributed to any Federal, State and local agencies who have EIS review responsibilities and also shall be made available to other interested parties upon request.

§ 6.203 Body of EISs.

(a) *Purpose and need.* The EIS shall clearly specify the underlying purpose and need to which EPA is responding. If the action is a request for a permit or a grant, the EIS shall clearly specify the goals and objectives of the applicant.

(b) *Alternatives including the proposed action.* In addition to 40 CFR 1502.14, the EIS shall discuss:

(1) *Alternatives considered by the applicant.* This section shall include a balanced description of each alternative considered by the applicant. These discussions shall include size and location of facilities, land requirements, operation and maintenance requirements, auxiliary structures such as pipelines or transmission lines, and construction schedules. The alternative of no action shall be discussed and the applicant's preferred alternative(s) shall be identified. For alternatives which were eliminated from detailed study, a brief discussion of the reasons for their having been eliminated shall be included.

(2) *Alternatives available to EPA.* EPA alternatives to be discussed shall include: (i) Taking an action; or (ii) taking an action on a modified or alternative project, including an action not considered by the applicant; and (iii) denying the action.

(3) *Alternatives available to other permitting agencies.* When preparing a joint EIS, and if applicable, the alternatives available to other Federal and/or State agencies shall be discussed.

(4) *Identifying preferred alternative.* In the final EIS, the responsible official shall signify the preferred alternative.

(c) *Affected environment and environmental consequences of the alternatives.* The affected environment on which the evaluation of each alternative shall be based includes, for example, hydrology, geology, air quality, noise, biology, socioeconomics, energy, land use, and archeology and historic subjects. The discussion shall be structured so as to present the total impacts of each alternative for easy comparison among all alternatives by the reader. The effects of a "no action" alternative should be included to facilitate reader comparison of the beneficial and adverse impacts of other alternatives to the applicant doing nothing. A description of

the environmental setting shall be included in the "no action" alternative for the purpose of providing needed background information. The amount of detail in describing the affected environment shall be commensurate with the complexity of the situation and the importance of the anticipated impacts.

(d) *Coordination.* The EIS shall include:

(1) The objections and suggestions made by local, State, and Federal agencies before and during the EIS review process must be given full consideration, along with the issues of public concern expressed by individual citizens and interested environmental groups. The EIS must include discussions of any such comments concerning our actions, and the author of each comment should be identified. If a comment has resulted in a change in the project or the EIS, the impact statement should explain the reason.

(2) Public participation through public hearings or scoping meetings shall also be included. If a public hearing has been held prior to the publication of the EIS, a summary of the transcript should be included in this section. For the public hearing which shall be held after the publication of the draft EIS, the date, time, place, and purpose shall be included here.

(3) In the final EIS, a summary of the coordination process and EPA responses to comments on the draft EIS shall be included.

[44 FR 64177, Nov. 6, 1979, as amended at 50 FR 26316, June 25, 1985]

§ 6.204 Incorporation by reference.

In addition to 40 CFR 1502.21, material incorporated into an EIS by reference shall be organized to the extent possible into a Supplemental Information Document and be made available for review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the period allowed for comment.

§ 6.205 List of preparers.

When the EIS is prepared by contractor, either under direct contract to EPA or through an applicant's or grantee's contractor, the responsible

official must independently evaluate the EIS prior to its approval and take responsibility for its scope and contents. The EPA officials who undertake this evaluation shall also be described under the list of preparers.

Subpart C—Coordination With Other Environmental Review and Consultation Requirements

§ 6.300 General.

Various Federal laws and executive orders address specific environmental concerns. The responsible official shall integrate to the greatest practicable extent the applicable procedures in this subpart during the implementation of the environmental review process under Subparts E through I. This subpart presents the central requirements of these laws and executive orders. It refers to the pertinent authority and regulations or guidance that contain the procedures. These laws and executive orders establish review procedures independent of NEPA requirements. The responsible official shall be familiar with any other EPA or appropriate agency procedures implementing these laws and executive orders.

[44 FR 64177, Nov. 6, 1979, as amended at 50 FR 26316, June 25, 1985]

§ 6.301 Landmarks, historical, and archeological sites.

EPA is subject to the requirements of the Historic Sites Act of 1935, 16 U.S.C. 461 *et seq.*, the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*, the Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469 *et seq.*, and Executive Order 11593, entitled "Protection and Enhancement of the Cultural Environment." These statutes, regulations and executive orders establish review procedures independent of NEPA requirements.

(a) *National natural landmarks.* Under the Historic Sites Act of 1935, the Secretary of the Interior is authorized to designate areas as national natural landmarks for listing on the National Registry of Natural Landmarks. In conducting an environmental review of a proposed EPA action, the responsible

Environmental Protection Agency

official shall consider the existence and location of natural landmarks using information provided by the National Park Service pursuant to 36 CFR 62.6(d) to avoid undesirable impacts upon such landmarks.

(b) *Historic, architectural, archeological, and cultural sites.* Under section 106 of the National Historic Preservation Act and Executive Order 11593, if an EPA undertaking affects any property with historic, architectural, archeological or cultural value that is listed on or eligible for listing on the National Register of Historic Places, the responsible official shall comply with the procedures for consultation and comment promulgated by the Advisory Council on Historic Preservation in 36 CFR part 800. The responsible official must identify properties affected by the undertaking that are potentially eligible for listing on the National Register and shall request a determination of eligibility from the Keeper of the National Register, Department of the Interior, under the procedures in 36 CFR part 63.

(c) *Historic, prehistoric and archeological data.* Under the Archeological and Historic Preservation Act, if an EPA activity may cause irreparable loss or destruction of significant scientific, prehistoric, historic or archeological data, the responsible official or the Secretary of the Interior is authorized to undertake data recovery and preservation activities. Data recovery and preservation activities shall be conducted in accordance with implementing procedures promulgated by the Secretary of the Interior. The National Park Service has published technical standards and guidelines regarding archeological preservation activities and methods at 48 FR 44716 (September 29, 1983).

[44 FR 64177, Nov. 6, 1979, as amended at 50 FR 26316, June 25, 1985]

§ 6.302 Wetlands, floodplains, important wetlands, coastal zones, wild and scenic rivers, fish and wildlife, and endangered species.

The following procedures shall apply to EPA administrative actions in programs to which the pertinent statute or executive order applies.

(a) *Wetlands protection.* Executive Order 11990, Protection of Wetlands, re-

quires Federal agencies conducting certain activities to avoid, to the extent possible, the adverse impacts associated with the destruction or loss of wetlands and to avoid support of new construction in wetlands if a practicable alternative exists. EPA's Statement of Procedures on Floodplain Management and Wetlands Protection (dated January 5, 1979, incorporated as appendix A hereto) requires EPA programs to determine if proposed actions will be in or will affect wetlands. If so, the responsible official shall prepare a floodplains/wetlands assessment, which will be part of the environmental assessment or environmental impact statement. The responsible official shall either avoid adverse impacts or minimize them if no practicable alternative to the action exists.

(b) *Floodplain management.* Executive Order 11988, Floodplain Management, requires Federal agencies to evaluate the potential effects of actions they may take in a floodplain to avoid, to the extent possible, adverse effects associated with direct and indirect development of a floodplain. EPA's Statement of Procedures on Floodplain Management and Wetlands Protection (dated January 5, 1979, incorporated as appendix A hereto), requires EPA programs to determine whether an action will be located in or will affect a floodplain. If so, the responsible official shall prepare a floodplain/wetlands assessment. The assessment will become part of the environmental assessment or environmental impact statement. The responsible official shall either avoid adverse impacts or minimize them if no practicable alternative exists.

(c) *Important farmlands.* It is EPA's policy as stated in the EPA Policy To Protect Environmentally Significant Agricultural Lands, dated September 8, 1978, to consider the protection of the Nation's significant/important agricultural lands from irreversible conversion to uses which result in its loss as an environmental or essential food production resource. In addition the Farmland Protection Policy Act, (FPPA) 7 U.S.C. 4201 *et seq.*, requires Federal agencies to use criteria developed by the Soil Conservation Service, U.S. Department of Agriculture, to:

§ 6.302

(1) Identify and take into account the adverse effects of their programs on the preservation of farmlands from conversion to other uses;

(2) Consider alternative actions, as appropriate, that could lessen such adverse impacts; and

(3) Assure that their programs, to the extent possible, are compatible with State and local government and private programs and policies to protect farmlands. If an EPA action may adversely impact farmlands which are classified prime, unique or of State and local importance as defined in the Act, the responsible official shall in all cases apply the evaluative criteria promulgated by the U.S. Department of Agriculture at 7 CFR part 668. If categories of important farmlands, which include those defined in both the FPPA and the EPA policy, are identified in the project study area, both direct and indirect effects of the undertaking on the remaining farms and farm support services within the project area and immediate environs shall be evaluated. Adverse effects shall be avoided or mitigated to the extent possible.

(d) *Coastal zone management.* The Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.*, requires that all Federal activities in coastal areas be consistent with approved State Coastal Zone Management Programs, to the maximum extent possible. If an EPA action may affect a coastal zone area, the responsible official shall assess the impact of the action on the coastal zone. If the action significantly affects the coastal zone area and the State has an approved coastal zone management program, a consistency determination shall be sought in accordance with procedures promulgated by the Office of Coastal Zone Management in 15 CFR part 930.

(e) *Wild and scenic rivers.* (1) The Wild and Scenic Rivers Act, 16 U.S.C. 1274 *et seq.*, establishes requirements applicable to water resource projects affecting wild, scenic or recreational rivers within the National Wild and Scenic Rivers system as well as rivers designated on the National Rivers Inventory to be studied for inclusion in the national system. Under the Act, a federal agency may not assist, through grant, loan, license or otherwise, the construction

40 CFR Ch. I (7-1-96 Edition)

of a water resources project that would have a direct and adverse effect on the values for which a river in the National System or study river on the National Rivers Inventory was established, as determined by the Secretary of the Interior for rivers under the jurisdiction of the Department of the Interior and by the Secretary of Agriculture for rivers under the jurisdiction of the Department of Agriculture. Nothing contained in the foregoing sentence, however, shall:

(i) Preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on October 2, 1968; or

(ii) Preclude licensing of, or assistance to, developments below or above a study river or any stream tributary thereto which will not invade the area or diminish the scenic, recreational and fish and wildlife values present in the area on October 2, 1968.

(2) The responsible official shall:

(i) Determine whether there are any wild, scenic or study rivers on the National Rivers Inventory or in the planning area, and

(ii) Not recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the administering Secretary in request of any such project, whether heretofore or hereafter authorized, without advising the administering Secretary, in writing of this intention at least sixty days in advance, and without specifically reporting to the Congress in writing at the time the recommendation or request is made in what respect construction of such project would be in conflict with the purposes of the Wild and Scenic Rivers Act and would affect the component and the values to be protected by the Responsible Official under the Act.

(3) Applicable consultation requirements are found in section 7 of the Act. The Department of Agriculture has promulgated implementing procedures,

Environmental Protection Agency

under section 7 at 36 CFR part 297, which apply to water resource projects located within, above, below or outside a wild and scenic river or study river under the Department's jurisdiction.

(f) *Barrier islands.* The Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*, generally prohibits new federal expenditures or financial assistance for any purpose within the Coastal Barrier Resources System on or after October 18, 1982. Specified exceptions to this prohibition are allowed only after consultation with the Secretary of the Interior. The responsible official shall ensure that consultation is carried out with the Secretary of the Interior before making available new expenditures or financial assistance for activities within areas covered by the Coastal Barrier Resources Act in accordance with the U.S. Fish and Wildlife Service published guidelines defining new expenditures and financial assistance, and describing procedures for consultation at 48 FR 46664 (October 6, 1983).

(g) *Fish and wildlife protection.* The Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*, requires Federal agencies involved in actions that will result in the control or structural modification of any natural stream or body of water for any purpose, to take action to protect the fish and wildlife resources which may be affected by the action. The responsible official shall consult with the Fish and Wildlife Service and the appropriate State agency to ascertain the means and measures necessary to mitigate, prevent and compensate for project-related losses of wildlife resources and to enhance the resources. Reports and recommendations of wildlife agencies should be incorporated into the environmental assessment or environmental impact statement. Consultation procedures are detailed in 16 U.S.C. 662.

(h) *Endangered species protection.* Under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, Federal agencies are prohibited from jeopardizing threatened or endangered species or adversely modifying habitats essential to

their survival. The responsible official shall identify all designated endangered or threatened species or their habitat that may be affected by an EPA action. If listed species or their habitat may be affected, formal consultation must be undertaken with the Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate. If the consultation reveals that the EPA activity may jeopardize a listed species or habitat, mitigation measures should be considered. Applicable consultation procedures are found in 50 CFR part 402.

(44 FR 64177, Nov. 6, 1979, as amended at 50 FR 26316, June 25, 1985)

§ 6.303 Air quality.

(a) The Clean Air Act, as amended in 1990, 42 U.S.C. 7476(c), requires Federal actions to conform to any State implementation plan approved or promulgated under section 110 of the Act. For EPA actions, the applicable conformity requirements specified in 40 CFR part 51, subpart W, 40 CFR part 93, subpart B, and the applicable State implementation plan must be met.

(b) In addition, with regard to wastewater treatment works subject to review under Subpart E of this part, the responsible official shall consider the air pollution control requirements specified in section 316(b) of the Clean Air Act, 42 U.S.C. 7616, and Agency implementation procedures.

(c)-(g) [Reserved]

(58 FR 63247, Nov. 30, 1993)

Subpart D—Public and Other Federal Agency Involvement

§ 6.400 Public involvement.

(a) *General.* EPA shall make diligent efforts to involve the public in the environmental review process consistent with program regulations and EPA policies on public participation. The responsible official shall ensure that public notice is provided for in accordance with 40 CFR 1506.6(b) and shall ensure that public involvement is carried

§ 6.401

out in accordance with EPA Public Participation Regulations, 40 CFR part 25, and other applicable EPA public participation procedures.

(b) *Publication of notices of intent.* As soon as practicable after his decision to prepare an EIS and before the scoping process, the responsible official shall send the notice of intent to interested and affected members of the public and shall request the OEA to publish the notice of intent in the FEDERAL REGISTER. The responsible official shall send to OEA the signed original notice of intent for FEDERAL REGISTER publication purposes. The scoping process should be initiated as soon as practicable in accordance with the requirements of 40 CFR 1501.7. Participants in the scoping process shall be kept informed of substantial changes which evolve during the EIS drafting process.

(c) *Public meetings or hearings.* Public meetings or hearings shall be conducted consistent with Agency program requirements. There shall be a presumption that a scoping meeting will be conducted whenever a notice of intent has been published. The responsible official shall conduct a public hearing on a draft EIS. The responsible official shall ensure that the draft EIS is made available to the public at least 30 days in advance of the hearing.

(d) *Findings of no significant impact (FNSI).* The responsible official shall allow for sufficient public review of a FNSI before it becomes effective. The FNSI and attendant publication must state that interested persons disagree with the decision may submit comments to EPA. The responsible official shall not take administrative action on the project for at least thirty (30) calendar days after release of the FNSI and may allow more time for response. The responsible official shall consider, fully, comments submitted on the FNSI before taking administrative action. The FNSI shall be made available to the public in accordance with the requirements and all appropriate recommendations contained in §1506.6 of this title.

(e) *Record of Decision (ROD).* The responsible official shall disseminate the ROD to those parties which commented on the draft or final EIS.

40 CFR Ch. I (7-1-96 Edition)

(f) *Categorical exclusions.* (1) For categorical exclusion determinations under subpart E (Wastewater Treatment Construction Grants Program), an applicant who files for and receives a determination of categorical exclusion under §6.107(a), or has one rescinded under §6.107(c), shall publish a notice indicating the determination of eligibility or rescission in a local newspaper of community-wide circulation and indicate the availability of the supporting documentation for public inspection. The responsible official shall, concurrent with the publication of the notice, make the documentation as outlined in §6.107(b) available to the public and distribute the notice of the determination to all known interested parties.

(2) For categorical exclusion determinations under other subparts of this regulation, no public notice need be issued; however, information regarding these determinations may be obtained by contacting the U.S. Environmental Protection Agency's Office of Research Program Management for ORD actions, or the Office of Federal Activities for other program actions.

[44 FR 64177, Nov. 6, 1979, as amended at 51 FR 32611, Sept. 12, 1986; 56 FR 20543, May 6, 1991]

§ 6.401 Official filing requirements.

(a) *General.* OEA is responsible for the conduct of the official filing system for EISs. This system was established as a central repository for all EISs which serves not only as means of advising the public of the availability of each EIS but provides a uniform method for the computation of minimum time periods for the review of EISs. OEA publishes a weekly notice in the FEDERAL REGISTER listing all EISs received during a given week. The 45-day and 30-day review periods for draft and final EISs, respectively, are computed from the Friday following a given reporting week. Pursuant to 40 CFR 1506.9, responsible officials shall comply with the guidelines established by OEA on the conduct of the filing system.

(b) *Minimum time periods.* No decision on EPA actions shall be made until the later of the following dates:

Environmental Protection Agency

(1) Ninety (90) days after the date established in §6.401(a) of this part from which the draft EIS review time period is computed.

(2) Thirty (30) days after the date established in §6.401(a) of this part from which the final EIS review time period is computed.

(c) *Filing of EISs.* All EISs, including supplements, must be officially filed with OEA. Responsible officials shall transmit each EIS in five (5) copies to the Director, Office of Environmental Review, EIS Filing Section (A-104). OEA will provide CEQ with one copy of each EIS filed. No EIS will be officially filed by OER unless the EIS has been made available to the public. OEA will not accept unbound copies of EISs for filing.

(d) *Extensions or waivers.* The responsible official may independently extend review periods. In such cases, the responsible official shall notify OEA as soon as possible so that adequate notice may be published in the weekly FEDERAL REGISTER report. OEA upon a showing of compelling reasons of national policy may reduce the prescribed review periods. Also, OEA upon a showing by any other Federal agency of compelling reasons of national policy may extend prescribed review periods, but only after consultation with the responsible official. If the responsible official does not concur with the extension of time, OEA may not extend a prescribed review period more than 30 days beyond the minimum prescribed review period.

(e) *Rescission of filed EISs.* The responsible official shall file EISs with OEA at the same time they are transmitted to commenting agencies and made available to the public. The responsible official is required to reproduce an adequate supply of EISs to satisfy these distribution requirements prior to filing an EIS. If the EIS is not made available, OEA will consider retraction of the EIS or revision of the prescribed review periods based on the circumstances.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9829, Mar. 8, 1982]

§ 6.402 Availability of documents.

(a) *General.* The responsible official will ensure sufficient copies of the EIS

are distributed to interested and affected members of the public and are made available for further public distribution. EISs, comments received, and any underlying documents should be available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552(b)), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed actions. To the extent practicable, materials made available to the public shall be provided without charge; otherwise, a fee may be imposed which is not more than the actual cost of reproducing copies required to be sent to another Federal agency.

(b) *Public information.* Lists of all notices, determinations and other reports/documentation, related to these notices and determinations, involving CEAs, EAs, FNSIs, notices of intent, EISs, and RODs prepared by EPA shall be available for public inspection and maintained by the responsible official as a monthly status report. OEA shall maintain a comprehensive list of notices of intent and draft and final EISs provided by all responsible officials for public inspection including publication in the FEDERAL REGISTER. In addition, OEA will make copies of all EPA-prepared EISs available for public inspection; the responsible official shall do the same for any EIS he/she undertakes.

[44 FR 64177, Nov. 6, 1979, as amended at 51 FR 32611, Sept. 12, 1986]

§ 6.403 The commenting process.

(a) *Inviting comments.* After preparing a draft EIS and before preparing a final EIS, the responsible official shall obtain the comments of Federal agencies, other governmental entities and the public in accordance with 40 CFR 1503.1.

(b) *Response to comments.* The responsible official shall respond to comments in the final EIS in accordance with 40 CFR 1503.4.

§ 6.404 Supplements.

(a) *General.* The responsible official shall consider preparing supplements to draft and final EISs in accordance with 40 CFR 1502.9(c). A supplement

§ 6.500

shall be prepared, circulated and filed in the same fashion (exclusive of scoping) as draft and final EISs.

(b) *Alternative procedures.* In the case where the responsible official wants to deviate from existing procedures, OEA shall be consulted. OEA shall consult with CEQ on any alternative arrangements.

(44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9829, Mar. 8, 1982)

Subpart E—Environmental Review Procedures for Wastewater Treatment Construction Grants Program

SOURCE: 50 FR 26317, June 25, 1985, unless otherwise noted.

§ 6.500 Purpose.

This subpart amplifies the procedures described in subparts A through D with detailed environmental review procedures for the Municipal Wastewater Treatment Works Construction Grants Program under Title II of the Clean Water Act.

§ 6.501 Definitions.

(a) *Step 1 facilities planning* means preparation of a plan for facilities as described in 40 CFR part 35, subpart E or I.

(b) *Step 2* means a project to prepare design drawings and specifications as described in 40 CFR part 35, subpart E or I.

(c) *Step 3* means a project to build a publicly owned treatment works as described in 40 CFR part 35, subpart E or I.

(d) *Step 2+3* means a project which combines preparation of design drawings and specifications as described in § 6.501(b) and building as described in § 6.501(c).

(e) *Applicant* means any individual, agency, or entity which has filed an application for grant assistance under 40 CFR part 35, subpart E or I.

(f) *Grantee* means any individual, agency, or entity which has been awarded wastewater treatment construction grant assistance under 40 CFR part 35, subpart E or I.

(g) *Responsible Official* means a Federal or State official authorized to ful-

40 CFR Ch. I (7-1-96 Edition)

fill the requirements of this subpart. The responsible Federal official is the EPA Regional Administrator and the responsible State official is as defined in a delegation agreement under 205(g) of the Clean Water Act. The responsibilities of the State official are subject to the limitations in § 6.514 of this subpart.

(h) *Approval of the facilities plan* means approval of the facilities plan for a proposed wastewater treatment works pursuant to 40 CFR part 35, subpart E or I.

§ 6.502 Applicability and limitations.

(a) *Applicability.* This subpart applies to the following actions:

(1) Approval of a facilities plan or an amendment to the plan;

(2) Award of grant assistance for a project where significant change has occurred in the project or its impact since prior compliance with this part; and

(3) Approval of preliminary Step 3 work prior to the award of grant assistance pursuant to 40 CFR part 35, subpart E or I.

(b) *Limitations.* (1) Except as provided in § 6.504(c), all recipients of Step 1 grant assistance must comply with the requirements, steps, and procedures described in this subpart.

(2) As specified in 40 CFR 35.2113, projects that have not received Step 1 grant assistance must comply with the requirements of this subpart prior to submission of an application for Step 3 or Step 2+3 grant assistance.

(3) Except as otherwise provided in § 6.507, no Step 3 or 2+3 grant assistance may be awarded for the construction of any component/portion of a proposed wastewater treatment system(s) until the responsible official has:

(1) Completed the environmental review for all complete wastewater treatment system alternatives under consideration for the facilities planning area, or any larger study area identified for the purposes of conducting an adequate environmental review as required under this subpart; and

(2) Recorded the selection of the preferred alternative(s) in the appropriate decision document (ROD for EISs, FNSI for environmental assessments,

Environmental Protection Agency

or written determination for categorical exclusions).

(4) In accord with § 6.302(f), on or after October 18, 1982, no new expenditures or financial assistance involving the construction grants program can be made within the Coastal Barrier Resource System, or for projects outside the system which would have the effect of encouraging development in the system, other than specified exceptions made by the EPA after consultation with the Secretary of the Interior.

[50 FR 26317, June 25, 1985, as amended at 51 FR 32611, Sept. 12, 1986]

§ 6.503 Overview of the environmental review process.

The process for conducting an environmental review of wastewater treatment construction grant projects includes the following steps:

(a) *Consultation.* The Step 1 grantee or the potential Step 3 or Step 2+3 applicant is encouraged to consult with the State and EPA early in project formulation or the facilities planning stage to determine whether a project is eligible for a categorical exclusion from the remaining substantive environmental review requirements of this part (§ 6.505), to determine alternatives to the proposed project for evaluation, to identify potential environmental issues and opportunities for public recreation and open space, and to determine the potential need for partitioning the environmental review process and/or the need for an Environmental Impact Statement (EIS).

(b) *Determining categorical exclusion eligibility.* At the request of a potential Step 3 or Step 2+3 grant applicant, or a Step 1 facilities planning grantee, the responsible official will determine if a project is eligible for a categorical exclusion in accordance with § 6.505. A Step 1 facilities planning grantee awarded a Step 1 grant on or before December 29, 1981 may request a categorical exclusion at any time during Step 1 facilities planning. A potential Step 3 or Step 2+3 grant applicant may request a categorical exclusion at any time before the submission of a Step 3 or Step 2+3 grant application.

(c) *Documenting environmental information.* If the project is determined to be ineligible for a categorical exclu-

sion, or if no request for a categorical exclusion is made, the potential Step 3 or Step 2+3 applicant or the Step 1 grantee subsequently prepares an Environmental Information Document (EID) (§ 6.506) for the project.

(d) *Preparing environmental assessments.* Except as provided in § 6.506(c)(4) and following a review of the EID by EPA or by a State with delegated authority, EPA prepares an environmental assessment (§ 6.506), or a State with delegated authority (§ 6.514) prepares a preliminary environmental assessment. EPA reviews and finalizes any preliminary assessments. EPA subsequently:

(1) Prepares and issues a Finding of No Significant Impact (FNSI) (§ 6.509); or

(2) Prepares and issues a Notice of Intent to prepare an original or supplemental EIS (§ 6.510) and Record of Decision (ROD) (§ 6.511).

(e) *Monitoring.* The construction and post-construction operation and maintenance of the facilities are monitored (§ 6.512) to ensure implementation of mitigation measures (§ 6.511) identified in the FNSI or ROD.

[50 FR 26317, June 25, 1985, as amended at 51 FR 32611, Sept. 12, 1986]

§ 6.504 Consultation during the facilities planning process.

(a) *General.* Consistent with 40 CFR 1501.2 and 35.2030(c), the responsible official shall initiate the environmental review process early to identify environmental effects, avoid delays, and resolve conflicts. The environmental review process should be integrated throughout the facilities planning process. Two processes for consultation are described in this section to meet this objective. The first addresses projects awarded Step 1 grant assistance on or before December 29, 1981. The second applies to projects not receiving grant assistance for facilities planning on or before December 29, 1981 and, therefore, subject to the regulations implementing the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (40 CFR part 35, subpart I).

(b) *Projects receiving Step 1 grant assistance on or before December 29, 1981.*

(1) During facilities planning, the

grantee shall evaluate project alternatives and the existence of environmentally important resource areas including those identified in § 6.108 and § 6.509 of this subpart, and potential for open space and recreation opportunities in the facilities planning area. This evaluation is intended to be brief and concise and should draw on existing information from EPA, State agencies, regional planning agencies, areawide water quality management agencies, and the Step 1 grantee. The Step 1 grantee should submit this information to EPA or a delegated State at the earliest possible time during facilities planning to allow EPA to determine if the action is eligible for a categorical exclusion. The evaluation and any additional analysis deemed necessary by the responsible official may be used by EPA to determine whether the action is eligible for a categorical exclusion from the substantive environmental review requirements of this part. If a categorical exclusion is granted, the grantee will not be required to prepare a formal EID nor will the responsible official be required to prepare an environmental assessment under NEPA. If an action is not granted a categorical exclusion, this evaluation may be used to determine the scope of the EID required of the grantee. This information can also be used to make an early determination of the need for partitioning the environmental review or for an EIS. Whenever possible, the Step 1 grantee should discuss this initial evaluation with both the delegated State and EPA.

(2) A review of environmental information developed by the grantee should be conducted by the responsible official whenever meetings are held to assess the progress of facilities plan development. These meetings should be held after completion of the majority of the EID document and before a preferred alternative is selected. Since any required EIS must be completed before the approval of a facilities plan, a decision whether to prepare an EIS is encouraged early during the facilities planning process. These meetings may assist in this early determination. EPA should inform interested parties of the following:

(i) The preliminary nature of the Agency's position on preparing an EIS;
 (ii) The relationship between the facilities planning and environmental review processes;
 (iii) The desirability of public input; and
 (iv) A contact person for further information.

(c) *Projects not receiving grant assistance for Step 1 facilities planning on or before December 29, 1981.* Potential Step 3 or Step 2+3 grant applicants should, in accordance with § 35.2030(c), consult with EPA and the State early in the facilities planning process to determine the appropriateness of a categorical exclusion, the scope of an EID, or the appropriateness of the early preparation of an environmental assessment or an EIS. The consultation would be most useful during the evaluation of project alternatives prior to the selection of a preferred alternative to assist in resolving any identified environmental problems.

§ 6.505 Categorical exclusions.

(a) *General.* At the request of an existing Step 1 facilities planning grantee or of a potential Step 3 or Step 2+3 grant applicant, the responsible official, as provided for in § 6.107(b), 6.400(f) and 6.504(a), shall determine from existing information and document whether an action is consistent with the categories eligible for exclusion from NEPA review identified in § 6.107(d) or § 6.505(b) and not inconsistent with the criteria in § 6.107(e) or § 6.505(c).

(b) *Specialized categories of actions eligible for exclusion.* For this subpart, eligible actions consist of any of the categories in § 6.107(d), or:

(1) Actions for which the facilities planning is consistent with the category listed in § 6.107(d)(1) which do not affect the degree of treatment or capacity of the existing facility including, but not limited to, infiltration and inflow corrections, grant-eligible replacement of existing mechanical equipment or structures, and the construction of small structures on existing sites;

(2) Actions in sewerage communities of less than 10,000 persons which are for minor upgrading and minor expansion

of existing treatment works. This category does not include actions that directly or indirectly involve the extension of new collection systems funded with federal or other sources of funds;
 (3) Actions in sewerage communities of less than 10,000 persons where on-site technologies are proposed; or
 (4) Other actions are developed in accordance with § 6.107(f).

(c) *Specialized Criteria for not granting a categorical exclusion.* (1) The full environmental review procedures of this part must be followed if undertaking an action consistent with the categories described in paragraph (b) of this section meets any of the criteria listed in § 6.107(e) or when:

(i) The facilities to be provided will (A) create a new, or (B) relocate an existing, discharge to surface or ground waters;

(ii) The facilities will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters; or

(iii) The facilities would provide capacity to serve a population 30% greater than the existing population.

(d) *Proceeding with grant awards.* (1) After a categorical exclusion on a proposed treatment works has been granted, and notices published in accordance with § 6.400(f), grant awards may proceed without being subject to any further environmental review requirements under this part, unless the responsible official later determines that the project, or the conditions at the time the categorical determination was made, have changed significantly since the independent EPA review of information submitted by the grantee in support of the exclusion.

(2) For all categorical exclusion determinations:

(i) That are five or more years old on projects awaiting Step 2+3 or Step 3 grant funding, the responsible official shall re-evaluate the project, environmental conditions and public views and, prior to grant award, either:

(A) *Reaffirm*—issue a public notice reaffirming EPA's decision to proceed with the project without need for any further environmental review;

(B) *Supplement*—update the information in the decision document on the

categorically excluded project and prepare, issue, and distribute a revised notice in accordance with § 6.107(f); or
 (C) *Reassess*—revoke the categorical exclusion in accordance with § 6.107(c) and require a complete environmental review to determine the need for an EIS in accordance with § 6.506, followed by preparation, issuance and distribution of an EA/FNSI or EIS/ROD.

(ii) That are made on projects that have been awarded a Step 2+3 grant, the responsible official shall, at the time of plans and specifications review under § 35.2202(b) of this title, assess whether the environmental conditions or the project's anticipated impact on the environment have changed and, prior to plans and specifications approval, advise the Regional Administrator if additional environmental review is necessary.

[50 FR 26317, June 25, 1985, as amended at 51 FR 32811, Sept. 12, 1986]

§ 6.506 Environmental review process.

(a) *Review of completed facilities plans.* The responsible official shall ensure a review of the completed facilities plan with particular attention to the EID and its utilization in the development of alternatives and the selection of a preferred alternative. An adequate EID shall be an integral part of any facilities plan submitted to EPA or to a State. The EID shall be of sufficient scope to enable the responsible official to make determinations on requests for partitioning the environmental review process in accordance with § 6.507 and for preparing environmental assessments in accordance with § 6.506(b).

(b) *Environmental assessment.* The environmental assessment process shall cover all potentially significant environmental impacts. The responsible official shall prepare a preliminary environmental assessment to finalize and issue a recommendation to finalize and issue the environmental assessment/FNSI. For those States delegated environmental review responsibilities under § 6.514, the State responsible official shall prepare the preliminary environmental assessment in sufficient detail to serve as an adequate basis for EPA's independent NEPA review and decision to finalize and issue an environmental assessment/FNSI or to prepare and

Issue a notice of intent for an EIS/ROD. The EPA also may require submission of supplementary information before the facilities plan is approved if needed for its independent review of the State's preliminary assessment for compliance with environmental review requirements. Substantial requests for supplementary information by EPA, including the review of the facilities plan, shall be made in writing. Each of the following subjects outlined below, and requirements of subpart C of this part, shall be reviewed by the responsible official to identify potentially significant environmental concerns and their associated potential impacts, and the responsible official shall furthermore address these concerns and impacts in the environmental assessment:

- (1) *Description of the existing environment.* For the delineated facilities planning area, the existing environmental conditions relevant to the analysis of alternatives, or to determining the environmental impacts of the proposed action, shall be considered.
- (2) *Description of the future environment without the project.* The relevant future environmental conditions shall be described. The no action alternative should be discussed.
- (3) *Purpose and need.* This should include a summary discussion and demonstration of the need, or absence of need, for wastewater treatment in the facilities planning area, with particular emphasis on existing public health or water quality problems and their severity and extent.
- (4) *Documentation.* Citations to information used to describe the existing environment and to assess future environmental impacts should be clearly referenced and documented. These sources should include, as appropriate but not limited to, local, tribal, regional, State, and federal agencies as well as public and private organizations and institutions with responsibility or interest in the types of conditions listed in § 6.509 and in subpart C of this part.
- (5) *Analysis of alternatives.* This discussion shall include a comparative analysis of feasible alternatives, including the no action alternative, throughout the study area. The alter-

natives shall be screened with respect to capital and operating costs; direct, indirect, and cumulative environmental effects; physical, legal, or institutional constraints; and compliance with regulatory requirements. Special attention should be given to: the environmental consequences of long-term, irreversible, and induced impacts; and for projects initiated after September 30, 1978, that grant applicants have satisfactorily demonstrated analysis of potential recreation and open-space opportunities in the planning of the proposed treatment works. The reasons for rejecting any alternatives shall be presented in addition to any significant environmental benefits precluded by rejection of an alternative. The analysis should consider when relevant to the project:

- (i) Flow and waste reduction measures, including infiltration/inflow reduction and pretreatment requirements;
 - (ii) Appropriate water conservation measures;
 - (iii) Alternative locations, capacities, and construction phasing of facilities;
 - (iv) Alternative waste management techniques, including pretreatment, treatment and discharge, wastewater reuse, land application, and individual systems;
 - (v) Alternative methods for management of sludge, other residual materials, including utilization options such as land application, composting, and conversion of sludge for marketing as a soil conditioner or fertilizer;
 - (vi) Improving effluent quality through more efficient operation and maintenance;
 - (vii) Appropriate energy reduction measures; and
 - (viii) Multiple use including recreation, other open space, and environmental education.
- (6) *Evaluating environmental consequences of proposed action.* A full range of relevant impacts of the proposed action shall be discussed, including measures to mitigate adverse impacts, any irreversible or irretrievable commitments of resources to the project and the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity.

Any specific requirements, including grant conditions and areawide wastewater management plan requirements, should be identified and referenced. In addition to these items, the responsible official may require that other analyses and data in accordance with subpart C which are needed to satisfy environmental review requirements be included with the facilities plan. Such requirements should be discussed whenever meetings are held with Step 1 grantees or potential Step 3 or Step 2 + 3 applicants.

(7) *Minimizing adverse effects of the proposed action.* (i) Structural and non-structural measures, directly or indirectly related to the facilities plan, to mitigate or eliminate adverse effects on the human and natural environments, shall be identified during the environmental review. Among other measures, structural provisions include changes in facility design, size, and location; non-structural provisions include staging facilities, monitoring and enforcement of environmental regulations, and local commitments to develop and enforce land use regulations. (ii) The EPA shall not accept a facilities plan, nor award grant assistance for its implementation, if the applicant/grantee has not made, or agreed to make, changes in the project, in accordance with determinations made in a FNSI based on its supporting environmental assessment or the ROD for a EIS. The EPA shall condition a grant, or seek other ways, to ensure that the grantee will comply with such environmental review determinations.

- (c) *FNSI/EIS determination.* The responsible official shall apply the criteria under § 6.509 to the following:
 - (1) A complete facilities plan;
 - (2) The EIS;
 - (3) The preliminary environmental assessment; and
 - (4) Other documentation, deemed necessary by the responsible official adequate to make an EIS determination by EPA. Where EPA determines that an EIS is to be prepared, there is no need to prepare a formal environmental assessment. If EPA or the State identifies deficiencies in the EIS, preliminary environmental assessment, or other supporting documentation, necessary corrections shall be made to

this documentation before the conditions of the Step 1 grant are considered satisfied or before the Step 3 or Step 2+3 application is considered complete. The responsible official's determination to issue a FNSI or to prepare an EIS shall constitute final Agency action, and shall not be subject to administrative review under 40 CFR part 30, subpart L.

50 FR 26317, June 25, 1985, as amended at 51 FR 32612, Sept. 12, 1986

§ 6.507 Partitioning the environmental review process.

(a) *Purpose.* Under certain circumstances the building of a component/portion of a wastewater treatment system may be justified in advance of completing all NEPA requirements for the remainder of the system(s). When there are overriding considerations of cost or impaired program effectiveness, the responsible official may award a construction grant, or approve procurement by other than EPA funds, for a discrete component of a complete wastewater treatment system(s). The process of partitioning the environmental review for the discrete component shall comply with the criteria and procedures described in paragraph (b) of this section. In addition, all reasonable alternatives for the overall wastewater treatment works system(s) of which the component is a part shall have been previously identified, and each part of the environmental review for the remainder of the overall facilities system(s) in the planning area in accordance with § 6.502(b)(3) shall comply with all requirements under § 6.506.

- (b) *Criteria for partitioning.* (1) Projects may be partitioned under the following circumstances:
 - (i) To overcome impaired program effectiveness, the project component, in addition to meeting the criteria listed in paragraph (b)(2) of this section, must immediately remedy a severe public health, water quality or other environmental problem; or
 - (ii) To significantly reduce direct costs on EPA projects, or other related public works projects, the project component (such as major pieces of equipment, portions of conveyances or small structures) in addition to meeting the criteria listed in paragraph (b)(2) of

his section, must achieve a cost savings to the federal government and/or to the grantee's or potential grantee's overall costs incurred in procuring the wastewater treatment component(s) and/or the installation of other related public works projects funded in coordination with other federal, State, tribal or local agencies.

(2) The project component also must:
 (i) Not foreclose any reasonable alternatives identified for the overall wastewater treatment works system(s);
 (ii) Not cause significant adverse direct or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire wastewater treatment system of which the component is a part; and
 (iii) Not be highly controversial.

(c) *Requests for partitioning.* The applicant's or State's request for partitioning must contain the following:

(1) A description of the discrete component proposed for construction before completing the environmental review of the entire facilities plan;
 (2) How the component meets the above criteria;

(3) The environmental information required by § 6.506 of this subpart for the component; and

(4) Any preliminary information that may be important to EPA in an EIS determination for the entire facilities plan (§ 6.509).

(d) *Approval of requests for partitioning.* The responsible official shall:

(1) Review the request for partitioning against all requirements of this subpart;

(2) If approvable, prepare and issue a FNSI in accordance with § 6.508;

(3) Include a grant condition prohibiting the building of additional or different components of the entire facilities system(s) in the planning area as described in § 6.502(b)(3)(i).

[50 FR 26317, June 25, 1985, as amended at 51 FR 32612, Sept. 12, 1986]

§ 6.508 Finding of No Significant Impact (FNSI) determination.

(a) *Criteria for producing and distributing FNSIs.* If, after completion of the environmental review, EPA determines that an EIS will not be required, the responsible official shall issue a FNSI

in accordance with §§ 6.105(f) and 6.400(d). The FNSI will be based on EPA's independent review of the preliminary environmental assessment and any other environmental information deemed necessary by the responsible official consistent with the requirements of § 6.506(c). Following the Agency's independent review, the environmental assessment will be finalized and either be incorporated into, or attached to, the FNSI. The FNSI shall list all mitigation measures as defined in § 1508.20 of this title, and specifically identify those mitigation measures necessary to make the recommended alternative environmentally acceptable.

(b) *Proceeding with grant awards.* (1) Once an environmental assessment has been prepared and the issued FNSI becomes effective for the treatment works within the study area, grant awards may proceed without preparation of additional FNSIs, unless the responsible official later determines that the project or environmental conditions have changed significantly from that which underwent environmental review.

(2) For all environmental assessment/FNSI determinations:

(i) That are five or more years old on projects awaiting Step 2+3 or Step 3 grant funding, the responsible official shall re-evaluate the project, environmental conditions and public views and, prior to grant award, either:

(A) *Reaffirm*—issue a public notice reaffirming EPA's decision to proceed with the project without revising the environmental assessment;

(B) *Supplement*—update information and prepare, issue and distribute a revised EA/FNSI in accordance with §§ 6.105(f) and 6.400(d); or

(C) *Reassess*—withdraw the FNSI and publish a notice of intent to produce an EIS followed by the preparation, issuance and distribution of the EIS/ROD.

(ii) That are made on projects that have been awarded a Step 2+3 grant, the responsible official shall, at the time of plans and specifications review under § 36.2202(b) of this title, assess whether the environmental conditions or the project's anticipated impact on the environment have changed and,

prior to plans and specifications approval, advise the Regional Administrator if additional environmental review is necessary.

[51 FR 32612, Sept. 12, 1986]

§ 6.509 Criteria for Initiating Environmental Impact Statements (EIS).

(a) *Conditions requiring EISs.* (1) The responsible official shall assure that an EIS will be prepared and issued when it is determined that the treatment works or collector system will cause any of the conditions under § 6.108 to exist, or when

(2) The treated effluent is being discharged into a body of water where the present classification is too lenient or is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality or quantity to meet the requirements of these uses.

(b) *Other conditions.* The responsible official shall also consider preparing an EIS if: The project is highly controversial; the project in conjunction with related Federal, State, local or tribal resource projects produces significant cumulative impacts; or if it is determined that the treatment works may violate Federal, State, local or tribal laws or requirements imposed for the protection of the environment.

§ 6.510 Environmental Impact Statement (EIS) preparation.

(a) *Steps in preparing EISs.* In addition to the requirements specified in subparts A, B, C, and D of this part, the responsible official will conduct the following activities:

(1) *Notice of intent.* If a determination is made that an EIS will be required, the responsible official shall prepare and distribute a notice of intent as required in § 6.105(e) of this part.

(2) *Scoping.* As soon as possible, after the publication of the notice of intent, the responsible official will convene a meeting of affected Federal, State and local agencies, or affected Indian tribes, the grantee and other interested parties to determine the scope of the EIS. A notice of this scoping meeting must be made in accordance with § 6.400(a) and 40 CFR 1508.6(b). As part of the scoping meeting EPA, in co-

operation with any delegated State, will as a minimum:

(1) Determine the significance of issues for and the scope of those significant issues to be analyzed in depth, in the EIS;

(ii) Identify the preliminary range of alternatives to be considered;

(iii) Identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(iv) Discuss the method for EIS preparation and the public participation strategy;

(v) Identify consultation requirements of other environmental laws, in accordance with subpart C; and

(vi) Determine the relationship between the EIS and the completion of the facilities plan and any necessary coordination arrangements between the preparers of both documents.

(3) *Identifying and evaluating alternatives.* Immediately following the scoping process, the responsible official shall commence the identification and evaluation of all potentially viable alternatives to adequately address the range of issues identified in the scoping process. Additional issues may be addressed, or others eliminated, during this process and the reasons documented as part of the EIS.

(b) *Methods for preparing EISs.* After EPA determines the need for an EIS, it shall select one of the following methods for its preparation:

(1) Directly by EPA's own staff;

(2) By EPA contracting directly with a qualified consulting firm;

(3) By utilizing a third party method, whereby the responsible official enters into "third party agreements" for the applicant to engage and pay for the services of a third party contractor to prepare the EIS. Such agreement shall not be initiated unless both the applicant and the responsible official agree to its creation. A third party agreement will be established prior to the applicant's EIS and eliminate the need for that document. In proceeding under the third party agreement, the responsible official shall carry out the following practices:

(i) In consultation with the applicant, choose the third party contractor and manage that contract;

(ii) Select the consultant based on ability and an absence of conflict of interest. Third party contractors will be required to execute a disclosure statement prepared by the responsible official signifying they have no financial or other conflicting interest in the outcome of the project; and

(iii) Specify the information to be developed and supervise the gathering, analysis and presentation of the information. The responsible official shall have sole authority for approval and modification of the statements, analyses, and conclusions included in the third party EIS; or

(4) By utilizing a joint EPA/State process on projects within States which have requirements and procedures comparable to NEPA, whereby the EPA and the State agree to prepare a single EIS document to fulfill both federal and State requirements. Both EPA and the State shall sign a Memorandum of Agreement which includes the responsibilities and procedures to be used by both parties for the preparation of the EIS as provided for in 40 CFR 1506.2(c).

§ 6.511 Record of Decision (ROD) for EISs and identification of mitigation measures.

(a) *Record of Decision.* After a final EIS has been issued, the responsible official shall prepare and issue a ROD in accordance with 40 CFR 1505.2 prior to, or in conjunction with, the approval of the facilities plan. The ROD shall include identification of mitigation measures derived from the EIS process including grant conditions which are necessary to minimize the adverse impacts of the selected alternative.

(b) *Specific mitigation measures.* Prior to the approval of a facilities plan, the responsible official must ensure that effective mitigation measures identified in the ROD will be implemented by the grantee. This should be done by revising the facilities plan, initiating other steps to mitigate adverse effects, or including conditions in grants requiring actions to minimize effects. Care should be exercised if a condition is to be imposed in a grant document

to assure that the applicant possesses the authority to fulfill the conditions.

(c) *Proceeding with grant awards.* (1) Once the ROD has been prepared on the selected, or preferred, alternative(s) the treatment works described within the EIS, grant awards may proceed without the preparation of supplemental EISs unless the responsible official later determines that the project or the environmental conditions described within the current EIS have changed significantly from the previous environmental review in accordance with § 1502.9(c) of this title.

(2) For all EIS/ROD determinations:

(i) That are five or more years old on projects awaiting Step 2+3 or Step 3 grant funding, the responsible official shall re-evaluate the project, environmental conditions and public views and, prior to grant award, either:

(A) *Reaffirm*—issue a public notice reaffirming EPA's decision to proceed with the project, and documenting that no additional significant impacts were identified during the re-evaluation which would require supplementing the EIS; or

(B) *Supplement*—conduct additional studies and prepare, issue and distribute a supplemental EIS in accordance with § 6.404 and document the original, or any revised, decision in an addendum to the ROD.

(ii) That are made on projects that have been awarded a Step 2+3 grant, the responsible official shall, at the time of plans and specifications review under § 35.2202(b) of this title, assess whether the environmental conditions or the project's anticipated impact on the environment have changed, and prior to plans and specifications approval, advise the Regional Administrator if additional environmental review is necessary.

[50 FR 26317, June 25, 1985, as amended at 51 FR 32613, Sept. 12, 1986]

§ 6.512 Monitoring for compliance.

(a) *General.* The responsible official shall ensure adequate monitoring of mitigation measures and other grant conditions identified in the FNSI, or ROD.

(b) *Enforcement.* If the grantee fails to comply with grant conditions, the responsible official may consider applying any of the sanctions specified in 40 CFR 30.900.

§ 6.513 Public participation.

(a) *General.* Consistent with public participation regulations in part 25 of this title, and subpart D of this part, it is EPA policy that certain public participation steps be achieved before the State and EPA complete the environmental review process. As a minimum, all potential applicants that do not qualify for a categorical exclusion shall conduct the following steps in accordance with procedures specified in part 25 of this title:

(1) One public meeting when alternatives have been developed, but before an alternative has been selected, to discuss all alternatives under consideration and the reasons for rejection of others; and

(2) One public hearing prior to formal adoption of a facilities plan and any needed mitigation measures.

(b) *Coordination.* Public participation activities undertaken in connection with the environmental review process should be coordinated with any other applicable public participation program wherever possible.

(c) *Scope.* The requirements of 40 CFR 6.400 shall be fulfilled, and consistent with 40 CFR 1506.6, the responsible official may institute such additional NEPA-related public participation procedures as are deemed necessary during the environmental review process.

[50 FR 26317, June 25, 1985, as amended at 51 FR 32613, Sept. 12, 1986]

§ 6.514 Delegation to States.

(a) *General.* Authority delegated to the State under section 205(g) of the Clean Water Act to review a facilities plan may include all EPA activities under this part except for the following:

(1) Determinations of whether or not a project qualifies for a categorical exclusion;

(2) Determinations to partition the environmental review process;

(3) Finalizing the scope of an EID when required to adequately conclude

an independent review of a preliminary environmental assessment;

(4) Finalizing the scope of an environmental assessment, and finalization, approval and issuance of a final environmental assessment;

(5) Determination to issue, and issuance of, a FNSI based on a completed environmental review; § 6.507(d)(2) environmental review;

(6) Determination to issue, and issuance of, a notice of intent for preparing an EIS;

(7) Preparation of EISs under § 6.510(b) (1) and (2), final decisions required for preparing an EIS under § 6.510(b)(3), finalizing the agreement to prepare an EIS under § 6.510(b)(4), finalizing the scope of an EIS, and issuance of draft, final and supplemental EISs;

(8) Preparation and issuance of the ROD based on an EIS;

(9) Final decisions under other applicable laws described in subpart C of this part;

(10) Determination following re-evaluation of projects awaiting grant funding in the case of Step 3 projects whose existing evaluations and/or decision documents are five or more years old, or determinations following re-evaluations on projects submitted for review and approval in the case of awarded Step 2+3 projects where the EPA Regional Administrator has been advised that additional environmental review is necessary, in accordance with § 6.505(d)(2), § 6.508(b)(2) or § 6.511(c)(2); and

(11) Maintenance of official EPA monthly status reports as required under § 6.402(b).

(b) *Elimination of duplication.* The responsible official shall assure that maximum efforts are undertaken to minimize duplication within the limits described under paragraph (a) of this section. In carrying out requirements under this subpart, maximum consideration shall be given to eliminating duplication in accordance with § 1506.2 of this title. Where there are State or local procedures comparable to NEPA, EPA should enter into memoranda of understanding with these States concerning workload distribution and responsibilities not specifically reserved to EPA in paragraph (a) of this section

§ 6.600

for implementing the environmental review and facilities planning process.

[50 FR 26317, June 25, 1985, as amended at 51 FR 32613, Sept. 12, 1986]

Subpart F—Environmental Review Procedures for the New Source NPDES Program

§ 6.600 Purpose.

(a) *General.* This subpart provides procedures for carrying out the environmental review process for the issuance of new source National Pollutant Discharge Elimination System (NPDES) discharge permits authorized under section 306, section 402, and section 511(c)(1) of the Clean Water Act.

(b) *Permit regulations.* All references in this subpart to the *permit regulations* shall mean parts 122 and 124 of title 40 of the CFR relating to the NPDES program.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9831, Mar. 8, 1982]

§ 6.601 Definitions.

(a) The term *administrative action* for the sake of this subpart means the issuance by EPA of an NPDES permit to discharge as a new source, pursuant to 40 CFR 124.15.

(b) The term *applicant* for the sake of this subpart means any person who applies to EPA for the issuance of an NPDES permit to discharge as a new source.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9831, Mar. 8, 1982]

§ 6.602 Applicability.

(a) *General.* The procedures set forth under subparts A, B, C and D, and this subpart shall apply to the issuance of new source NPDES permits, except for the issuance of a new source NPDES permit from any State which has an approved NPDES program in accordance with section 402(b) of the Clean Water Act.

(b) *New Source Determination.* An NPDES permittee must be determined a new source before these procedures apply. New source determinations will be undertaken pursuant to the provisions of the permit regulations under

40 CFR Ch. I (7-1-96 Edition)

§ 122.29(a) and (b) of this chapter and § 122.53(h).

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9831, Mar. 8, 1982; 51 FR 32613, Sept. 12, 1986]

§ 6.603 Limitations on actions during environmental review process.

The processing and review of an applicant's NPDES permit application shall proceed concurrently with the procedures within this subpart. Actions undertaken by the applicant or EPA shall be performed consistent with the requirements of § 122.29(c) of this chapter.

[47 FR 9831, Mar. 8, 1982, as amended at 51 FR 32613, Sept. 12, 1986]

§ 6.604 Environmental review process.

(a) *New source.* If EPA's initial determination under § 6.602(b) is that the facility is a new source, the responsible official shall evaluate any environmental information to determine if any significant impacts are anticipated and an EIS is necessary. If the permit applicant requests, the responsible official shall establish time limits for the completion of the environmental review process consistent with 40 CFR 1501.8.

(b) *Information needs.* Information necessary for a proper environmental review shall be provided by the permit applicant in an environmental information document. The responsible official shall consult with the applicant to determine the scope of an environmental information document. In doing this the responsible official shall consider the size of the new source and the extent to which the applicant is capable of providing the required information. The responsible official shall not require the applicant to gather data or perform analyses which unnecessarily duplicate either existing data or the results of existing analyses available to EPA. The responsible official shall keep requests for data to the minimum consistent with his responsibilities under NEPA.

(c) *Environmental assessment.* The responsible official shall prepare a written environmental assessment based on an environmental review of either the environmental information document

Environmental Protection Agency

and/or any other available environmental information.

(d) *EIS determination.* (1) When the environmental review indicates that a significant environmental impact may occur and that the significant adverse impacts cannot be eliminated by making changes in the proposed new source project, a notice of intent shall be issued, and a draft EIS prepared and distributed. When the environmental review indicates no significant impacts are anticipated or when the proposed project is changed to eliminate the significant adverse impacts, a FNSI shall be issued which lists any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(2) The FNSI together with the environmental assessment that supports the finding shall be distributed in accordance with § 6.400(d) of this regulation.

(e) *Lead agency.* (1) If the environmental review reveals that the preparation of an EIS is required, the responsible official shall determine if other Federal agencies are involved with the project. The responsible official shall contact all other involved agencies and together the agencies shall decide the lead agency based on the criteria set forth in 40 CFR 1501.5.

(2) If, after the meeting of involved agencies, EPA has been determined to be the lead agency, the responsible official may request that other involved agencies be cooperating agencies. Cooperating agencies shall be chosen and shall be involved in the EIS preparation process in the manner prescribed in the 40 CFR 1501.6(a). If EPA has been determined to be a cooperating agency, the responsible official shall be involved in assisting in the preparation of the EIS in the manner prescribed in 40 CFR 1501.6(b).

(f) *Notice of intent.* (1) If EPA is the lead agency for the preparation of an EIS, the responsible official shall arrange through OER for the publication of the notice of intent in the FEDERAL REGISTER, distribute the notice of intent and arrange and conduct a scoping meeting as outlined in 40 CFR 1501.7.

(2) If the responsible official and the permit applicant agree to a third party method of EIS preparation, pursuant to

§ 6.604(g)(3) of this part, the responsible official shall insure that a notice of intent is published and that a scoping meeting is held before the third party contractor begins work which may influence the scope of the EIS.

(g) *EIS method.* EPA shall prepare EISs by one of the following means:

(1) Directly by its own staff;

(2) By contracting directly with a qualified consulting firm; or

(3) By utilizing a third party method, whereby the responsible official enters into a *third party agreement* for the services of a third party contractor to prepare the EIS. Such an agreement shall not be initiated unless both the applicant and the responsible official agree to its creation. A third party agreement will be established prior to the applicant's environmental information document and eliminate the need for that document. In proceeding under the third party agreement, the responsible official shall carry out the following practices:

(i) In consultation with the applicant, choose the third party contractor and manage that contract.

(ii) Select the consultant based on his ability and an absence of conflict of interest. Third party contractors will be required to execute a disclosure statement prepared by the responsible official signifying they have no financial or other conflicting interest in the outcome of the project.

(iii) Specify the information to be developed and supervise the gathering, analysis and presentation of the information. The responsible official shall have sole authority for approval and modification of the statements, analyses, and conclusions included in the third party EIS.

(h) *Documents for the administrative record.* Pursuant to 40 CFR 124.9(b)(6) and 124.18(b)(6) any environmental assessment, FNSI EIS, or supplement to an EIS shall be made a part of the administrative record related to permit issuance.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9831, Mar. 8, 1982]

§ 6.605 Criteria for preparing EISs.

(a) *General guidelines.* (1) When determining the significance of a proposed

§ 6.606

new source's impact, the responsible official shall consider both its short term and long term effects as well as its direct and indirect effects and beneficial and adverse environmental impacts as defined in 40 CFR 1508.8.

(2) If EPA is proposing to issue a number of new source NPDES permits during a limited time span and in the same general geographic area, the responsible official shall examine the possibility of tiering EISs. If the permits are minor and environmentally insignificant when considered separately, the responsible official may determine that the cumulative impact of the issuance of all these permits may have a significant environmental effect and require an EIS for the area. Each separate decision to issue an NPDES permit shall then be based on the information in this area-wide EIS. Site specific EISs may be required in certain circumstances in addition to the area-wide EIS.

(b) *Specific criteria.* An EIS will be prepared when:

(1) The new source will induce or accelerate significant changes in industrial, commercial, agricultural, or residential land use concentrations or distributions which have the potential for significant environmental effects. Factors that should be considered in determining if these changes are environmentally significant include but are not limited to: The nature and extent of the vacant land subject to increased development pressure as a result of the new source; the increases in population or population density which may be induced and the ramifications of such changes; the nature of land use regulations in the affected area and their potential effects on development and the availability of demand for energy and the resulting environmental consequences.

(2) The new source will directly, or through induced development, have significant adverse effect upon local ambient air quality, local ambient noise levels, floodplains, surface or groundwater quality or quantity, fish, wildlife, and their natural habitats.

(3) Any major part of the new source will have significant adverse effect on the habitat of threatened or endan-

40 CFR Ch. I (7-1-96 Edition)

gered species on the Department of the Interior's or a State's lists of threatened and endangered species.

(4) The environmental impact of the issuance of a new source NPDES permit will have significant direct and adverse effect on a property listed in or eligible for listing in the National Register of Historic Places.

(5) Any major part of the source will have significant adverse effects on parklands, wetlands, wild and scenic rivers, reservoirs or other important bodies of water, navigation projects, or agricultural lands.

§ 6.606 Record of decision.

(a) *General.* At the time of permit award, the responsible official shall prepare a record of decision in those cases where a final EIS was issued in accordance with 40 CFR 1505.2 and pursuant to the provisions of the permit regulations under 40 CFR 124.15 and 124.18(b)(5). The record of decision shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(b) *Mitigation measures.* The mitigation measures derived from the EIS process shall be incorporated as conditions of the permit; ancillary agreements shall not be used to require mitigation.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9631, Mar. 8, 1982]

§ 6.607 Monitoring.

In accordance with 40 CFR 1505.3 and pursuant to 40 CFR 122.66(c) and 122.10 the responsible official shall ensure that there is adequate monitoring of compliance with all NEPA related requirements contained in the permit.

[47 FR 881, Mar. 3, 1982]

Subpart G—Environmental Review Procedures for Office of Research and Development Projects

SOURCE: 56 FR 20643, May 6, 1991, unless otherwise noted.

§ 6.700 Purpose.

(a) This subpart amplifies the requirements described in subparts A

Environmental Protection Agency

through D by providing specific environmental review procedures for activities undertaken or funded by the Office of Research and Development (ORD).

(b) The ORD Program provides scientific support for setting environmental standards as well as the technology needed to prevent, monitor and control pollution. Intramural research is conducted at EPA laboratories and field stations throughout the United States. Extramural research is implemented through grants, cooperative agreements, and contracts. The majority of ORD's research is conducted within the confines of laboratories. Outdoor research includes monitoring, sampling, and environmental stress and ecological effects studies.

§ 6.701 Definition.

The term *appropriate program official* means the official at each decision level within ORD to whom the Assistant Administrator has delegated responsibility for carrying out the environmental review process.

§ 6.702 Applicability.

The requirements of this subpart apply to administrative actions undertaken to approve intramural and extramural projects under the purview of ORD.

§ 6.703 General.

(a) *Environmental information.* (1) For intramural research projects, information necessary to perform the environmental review shall be obtained by the appropriate program official.

(2) For extramural research projects, environmental information documents shall be submitted to EPA by applicants to facilitate the Agency's environmental review process. Guidance on environmental information documents shall be included in all assistance application kits and in contract proposal instructions. If there is a question concerning the preparation of an environmental information document, the applicant should consult with the project officer or contract officer for guidance.

(b) *Environmental review.* The diagram in figure 1 represents the various stages of the environmental review

process to be undertaken for ORD projects.

(1) For intramural research projects, an environmental review will be performed for each laboratory's projects at the start of the planning year. The review will be conducted before projects are incorporated into the ORD program planning system. Projects added at a later date and, therefore, not identified at the start of the planning year, or any redirection of a project that could have significant environmental effects, also will be subjected to an environmental review. This review will be performed in accordance with the process set forth in this subpart and depicted in figure 1.

(2) For extramural research projects, the environmental review shall be conducted before an initial or continuing award is made. The appropriate program official will perform the environmental review in accordance with the process set forth in this subpart and depicted in figure 1. EPA form 5300-23 will be used to document categorical exclusion determinations or, with appropriate supporting analysis, as the environmental assessment (EA). The completed form 5300-23 and any finding of no significant impact (FNSI) or environmental impact statement (EIS) will be submitted with the proposal package to the appropriate EPA assistance or contract office.

(c) *Agency coordination.* In order to avoid duplication of effort and ensure consistency throughout the Agency, environmental reviews of ORD projects will be coordinated, as appropriate and feasible, with reviews performed by other program offices. Technical support documents prepared for reviews in other EPA programs may be adopted for use in ORD's environmental reviews and supplemented, as appropriate.

§ 6.704 Categorical exclusions.

(a) At the beginning of the environmental review process (see Figure 1), the appropriate program official shall determine whether an ORD project can be categorically excluded from the substantive requirements of a NEPA review. This determination shall be based on general criteria in § 6.107(d) and specialized categories of ORD actions eligible for exclusion in § 6.704(b). If the

§ 6.705

appropriate program official determines that an ORD project is consistent with the general criteria and any of the specialized categories of eligible activities, and does not satisfy the criteria in § 6.107(e) for not granting a categorical exclusion, then this finding shall be documented and no further action shall be required. A categorical exclusion shall be revoked by the appropriate program official if it is determined that the project meets the criteria for revocation in § 6.107(c). Projects that fail to qualify for categorical exclusion or for which categorical exclusion has been revoked must undergo full environmental review in accordance with § 6.705 and § 6.706.

(b) The following specialized categories of ORD actions are eligible for categorical exclusion from a detailed NEPA review:

- (1) Library or literature searches and studies;
- (2) Computer studies and activities;
- (3) Monitoring and sample collection wherein no significant alteration of existing ambient conditions occurs;
- (4) Projects conducted completely within a contained facility, such as a laboratory or other enclosed building, where methods are employed for appropriate disposal of laboratory wastes and safeguards exist against hazardous, toxic, and radioactive materials entering the environment. Laboratory directors or other appropriate officials must certify and provide documentation that the laboratory follows good laboratory practices and adheres to applicable federal statutes, regulations and guidelines.

§ 6.705 Environmental assessment and finding of no significant impact.

(a) When a project does not meet any of the criteria for categorical exclusion, the appropriate program official shall undertake an environmental assessment in accordance with 40 CFR 1508.9 in order to determine whether an EIS is required or if a FNSI can be made. ORD projects which normally result in the preparation of an EA include the following:

- (1) Initial field demonstration of a new technology;

40 CFR Ch. I (7-1-96 Edition)

(2) Field trials of a new product or new uses of an existing technology;

(3) Alteration of a local habitat by physical or chemical means.

(b) If the environmental assessment reveals that the research is not anticipated to have a significant impact on the environment, the appropriate program official shall prepare a FNSI in accordance with § 6.105(f). Pursuant to § 6.400(d), no administrative action will be taken on a project until the prescribed 30-day comment period for a FNSI has elapsed and the Agency has fully considered all comments.

(c) On actions involving potentially significant impacts on the environment, a FNSI may be prepared if changes have been made in the proposed action to eliminate any significant impacts. These changes must be documented in the proposal and in the FNSI.

(d) If the environmental assessment reveals that the research may have a significant impact on the environment, an EIS must be prepared. The appropriate program official may make a determination that an EIS is necessary without preparing a formal environmental assessment. This determination may be made by applying the criteria for preparation of an EIS in § 6.706.

§ 6.706 Environmental impact statement.

(a) *Criteria for preparation.* In performing the environmental review, the appropriate program official shall assure that an EIS is prepared when any of the conditions under § 6.108 (a) through (g) exist or when:

(1) The proposed action may significantly affect the environment through the release of radioactive, hazardous or toxic substances;

(2) The proposed action, through the release of an organism or organisms, may involve environmental effects which are significant;

(3) The proposed action involves effects upon the environment which are likely to be highly controversial;

(4) The proposed action involves environmental effects which may accumulate over time or combine with effects of other actions to create impacts which are significant;

Environmental Protection Agency

(5) The proposed action involves unique environmental effects or highly unusual environmental risks which may be significant.

(b) *ORD actions which may require preparation of an EIS.* There are no ORD actions which normally require the preparation of an EIS. However, each ORD project will be evaluated using the EIS criteria as stated in § 6.706(a) to determine whether an EIS must be prepared.

(c) *Notice of Intent.* (1) If the environmental review reveals that a proposed action may have a significant effect on the environment and this effect cannot be eliminated by redirection of the research or other means, the appropriate program official shall issue a notice of intent to prepare an EIS pursuant to § 6.400(b).

§ 6.706

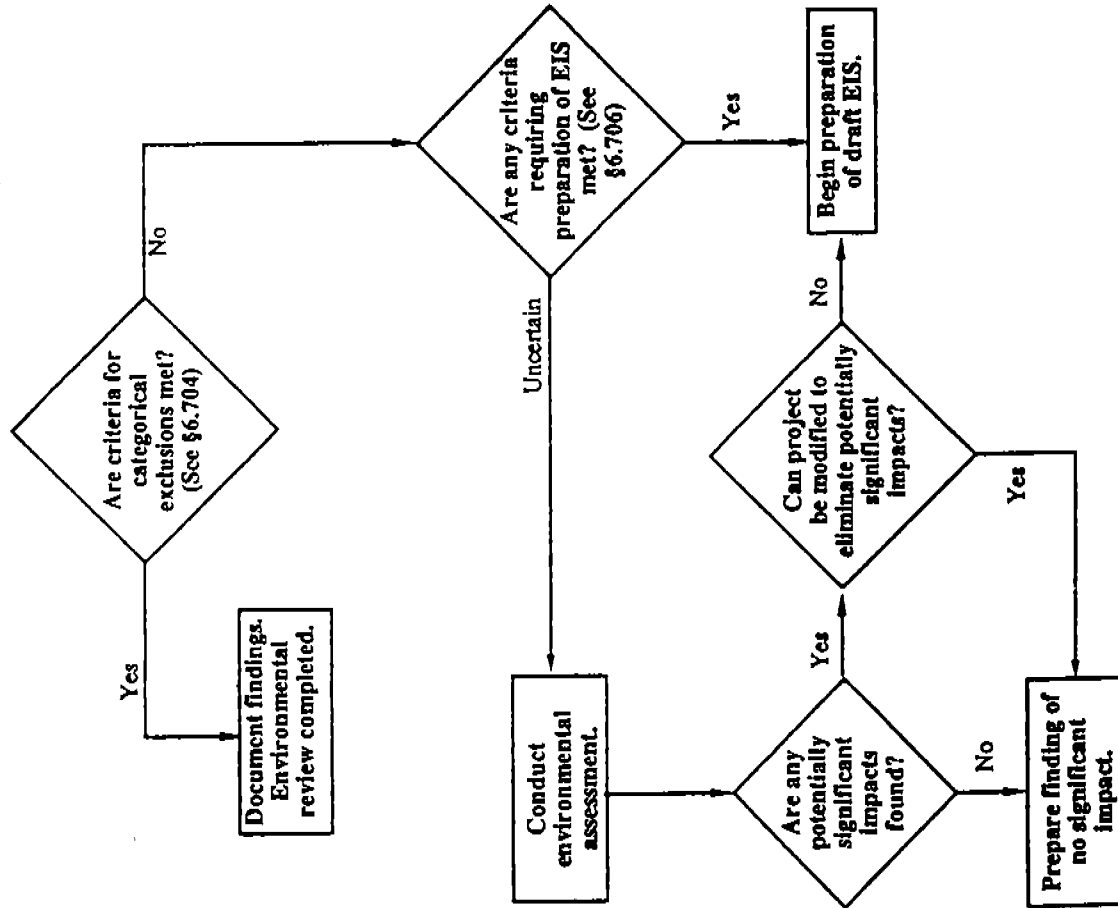
(2) As soon as possible after release of the notice of intent, the appropriate program official shall ensure that a draft EIS is prepared in accordance with subpart B and that the public is involved in accordance with subpart D.

(3) Draft and final EISs shall be sent to the Assistant Administrator for ORD for approval.

(4) Pursuant to § 6.401(b), a decision on whether to undertake or fund a project must be made in conformance with the time frames indicated.

(d) *Record of decision.* Before the project is undertaken or funded, the appropriate program official shall prepare, in accordance with § 6.105 (g) and (h), a record of decision in any case where a final EIS has been issued.

Figure 1. Environmental review process for ORD projects.



(FR Doc. 91-10200 Filed 5-3-91; 6:45 am)
ENVIRONMENTAL PROTECTION AGENCY

Environmental Protection Agency

Subpart H—Environmental Review Procedures for Solid Waste Demonstration Projects

§ 6.800 Purpose.

This subpart amplifies the procedures described in subparts A through D by providing more specific environmental review procedures for demonstration projects undertaken by the Office of Solid Waste and Emergency Response.

(44 FR 64177, Nov. 6, 1979, as amended at 61 FR 32613, Sept. 12, 1996)

§ 6.801 Applicability.

The requirements of this subpart apply to solid waste demonstration projects for resource recovery systems and improved solid waste disposal facilities undertaken pursuant to section 8006 of the Resource Conservation and Recovery Act of 1976.

§ 6.802 Criteria for preparing EISs.

The responsible official shall assure that an EIS will be prepared when it is determined that any of the conditions in § 6.108 exist.

(44 FR 64177, Nov. 6, 1979, as amended at 50 FR 26323, June 25, 1985)

§ 6.803 Environmental review process.

(a) *Environmental information.* (1) Environmental information documents shall be submitted to EPA by grant applicants or contractors. If there is a question concerning the need for a document, the potential contractor or grantee should consult with the appropriate project officer for the grant or contract.

(2) The environmental information document shall contain the same sections specified for EIS's in subpart B. Guidance alerting potential grantees and contractors of the environmental information documents shall be included in all grant application kits, attached to letters concerning the submission of unsolicited proposals, and included with all requests for proposal.

(b) *Environmental review.* An environmental review will be conducted before a grant or contract award is made. This review will include the preparation of an environmental assessment by the responsible official; the appropriate Regional Administrator's input

will include his recommendations on the need for an EIS.

(c) *Notice of intent and EIS.* Based on the environmental review if the responsible official will assure that a notice of intent and a draft EIS are prepared. The responsible official may request the appropriate Regional Administrator to assist him in the preparation and distribution of the environmental documents.

(d) *Finding of no significant impact.* If the environmental review indicated no significant environmental impacts, the responsible official will assure that a FNSI is prepared which lists any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(e) *Timing of action.* Pursuant to § 6.401(b), in no case shall a contract or grant be awarded until the prescribed 30-day review period for a final EIS has elapsed. Similarly, no action shall be taken until the 30-day comment period for a FNSI is completed.

§ 6.804 Record of decision.

The responsible official shall prepare a record of decision in any case where final EIS has been issued in accordance with 40 CFR 1505.2. It shall be prepared at the time of contract or grant award. The record of decision shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

Subpart I—Environmental Review Procedures for EPA Facility Support Activities

§ 6.900 Purpose.

This subpart amplifies the general requirements described in subparts A through D by providing environmental procedures for the preparation of EISs on construction and renovation of special purpose facilities.

§ 6.901 Definitions.

(a) The term *special purpose facility* means a building or space, including land incidental to its use, which is wholly or predominantly utilized for the special purpose of an agency and not generally suitable for other uses.

§ 6.902

as determined by the General Services Administration.

(b) The term *program of requirements* (booklet) describing program activities to be accomplished in the new special purpose facility or improvement. It includes architectural, mechanical, structural, and space requirements.

(c) The term *scope of work* means a document similar in content to the program of requirements but substantially abbreviated. It is usually prepared for small-scale projects.

§ 6.902 Applicability.

(a) *Actions covered.* These procedures apply to all new special purpose facility construction, activities related to this construction (e.g., site acquisition and clearing), and any improvements or modifications to facilities having potential environmental effects external to the facility, including new construction and improvements undertaken and funded by the Facilities Engineering and Real Estate Branch, Facilities and Support Services Division, Office of the Assistant Administrator for Administration and Resource Management; or by a regional office.

(b) *Actions excluded.* This subpart does not apply to those activities of the Facilities Engineering and Real Estate Branch, Facilities and Support Services Division, for which the branch does not have full fiscal responsibility for the entire project. This includes pilot plant construction, land acquisition, site clearing and access road construction where the Facilities Engineering and Real Estate Branch's activity is only supporting a project financed by a program office. Responsibility for considering the environmental impacts of such projects rests with the office managing and funding the entire project. Other subparts of this regulation apply depending on the nature of the project.

[44 FR 64177, Nov. 6, 1979, as amended at 51 FR 32613, Sept. 12, 1986]

§ 6.903 Criteria for preparing EISs.

(a) *Preliminary information.* The responsible official shall request an environmental information document from a construction contractor or consulting architect/engineer employed by

40 CFR Ch. I (7-1-96 Edition)

EPA if he is involved in the planning, construction or modification of special purpose facilities when his activities have potential environmental effects external to the facility. Such modifications include but are not limited to facility additions, changes in central heating systems or wastewater treatment systems, and land clearing for access roads and parking lots.

(b) *EIS preparation criteria.* The responsible official shall conduct an environmental review of all actions involving construction of special purpose facilities and improvements to these facilities. The responsible official shall assure that an EIS will be prepared when it is determined that any of the conditions in § 6.108 of this part exist.

[44 FR 64177, Nov. 6, 1979, as amended at 50 FR 26323, June 23, 1985]

§ 6.904 Environmental review process.

(a) *Environmental review.* (1) An environmental review shall be conducted when the program of requirements or scope of work has been completed for the construction, improvements, or modification of special purpose facilities. For special purpose facility construction, the Chief, Facilities Engineering and Real Estate Branch, shall request the assistance of the appropriate program office and Regional Administrator in the review. For modifications and improvement, the appropriate responsible official shall request assistance in making the review from other cognizant EPA offices.

(2) Any environmental information documents requested shall contain the same sections listed for EISs in subpart B. Contractors and consultants shall be notified in contractual documents when an environmental information document must be prepared.

(b) *Notice of intent, EIS, and FNSI.* The responsible official shall decide at the completion of the Environmental review whether there may be any significant environmental impacts. If there could be significant environmental impacts, a notice of intent and an EIS shall be prepared according to the procedures under subparts A, B, C and D. If there are not any significant environmental impacts, a FNSI shall be prepared according to the procedures in subparts A and D. The FNSI shall list

Environmental Protection Agency

any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(c) *Timing of action.* Pursuant to § 6.401(b), in no case shall a contract be awarded or construction activities begun until the prescribed 30-day wait period for a final EIS has elapsed. Similarly, under § 6.400(d), no action shall be taken until the 30-day comment period for FNSIs is completed.

§ 6.905 Record of decision.

At the time of contract award, the responsible official shall prepare a record of decision in those cases where a final EIS has been issued in accordance with 40 CFR 1505.2. The record of decision shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

Subpart J—Assessing the Environmental Effects Abroad of EPA Actions

AUTHORITY: Executive Order 12114, 42 U.S.C. 4321, note.

SOURCE: 46 FR 3364, Jan. 14, 1981, unless otherwise noted.

§ 6.1001 Purpose and policy.

(a) *Purpose.* On January 4, 1979, the President signed Executive Order 12114 entitled "Environmental Effects Abroad of Major Federal Actions." The purpose of this Executive Order is to enable responsible Federal officials in carrying out or approving major Federal actions which affect foreign nations or the global commons to be informed of pertinent environmental considerations and to consider fully the environmental impacts of the actions undertaken. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and the Marine Protection Research and Sanctuaries Act (MPRSA) (33 U.S.C. 1401 *et seq.*). It should be noted, however, that in fulfilling its responsibilities under Executive Order 12114, EPA shall be guided by CEQ regulations only to the extent that they are made expressly applicable by this subpart. The procedures set

§ 6.1002

forth below reflect EPA's duties and responsibilities as required under the Executive Order and satisfy the requirement for issuance of procedures under section 2-1 of the Executive Order.

(b) *Policy.* It shall be the policy of this Agency to carry out the purpose and requirements of the Executive Order to the fullest extent possible. EPA, within the realm of its expertise, shall work with the Department of State and the Council on Environmental Quality to provide information to other Federal agencies and foreign nations to heighten awareness of and interest in the environment. EPA shall further cooperate to the extent possible with Federal agencies to lend special expertise and assistance in the preparation of required environmental documents under the Executive Order. EPA shall perform environmental reviews of activities significantly affecting the global commons and foreign nations as required under Executive Order 12114 and as set forth under these procedures.

§ 6.1002 Applicability.

(a) Administrative actions requiring environmental review. The environmental review requirements apply to the activities of EPA as set forth below:

(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

§ 6.1003

addressed in the facility plan would have environmental effects abroad.

(5) Other EPA activities as determined by OER and OIA (see § 6.1007(c)).

§ 6.1003 Definitions.

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

§ 6.1004 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 national or multilateral environmental study, EPA shall afford the affected foreign nation or international body or organization an opportunity to participate in this study. This environmental study shall discuss the need for the action, analyze the environmental impact of the various alternatives considered and list the agencies and other parties consulted.

(b) *Ocean dumping activities.* (1) The Assistant Administrator for Water and Waste Management shall ensure the

40 CFR Ch. I (7-1-96 Edition)

preparation of appropriate environmental documents relating to ocean dumping activities in the global commons under section 102 of the MPRSA. For ocean dumping site designations prescribed pursuant to section 102(c) of the MPRSA and 40 CFR part 228, EPA shall prepare an environmental impact statement consistent with the requirements of EPA's Procedures for the Voluntary Preparation of Environmental Impact Statements dated October 21, 1974 (see 39 FR 37419). Also EPA shall prepare an environmental impact statement for the establishment or revision of criteria under section 102(a) of MPRSA.

(2) For individual permits issued by EPA under section 102(b) an environmental assessment shall be made by EPA. Pursuant to 40 CFR part 221, the permit applicant shall submit with the application an environmental analysis which includes a discussion of the need for the action, an outline of alternatives, and an analysis of the environmental impact of the proposed action and alternatives consistent with the EPA criteria established under section 102(a) of MPRSA. The information submitted under 40 CFR part 221 shall be sufficient to satisfy the environmental assessment requirement.

(c) *EPA permitting and licensing activities.* The appropriate Regional Administrator is responsible for conducting concise environmental reviews with regard to permits issued under section 3005 of the Resource Conservation and Recovery Act (RCRA permits), section 402 of the Clean Water Act (NPDES permits), and section 165 of the Clean Air Act (PSD permits), for such actions undertaken by EPA which affect the global commons or foreign nations. The information submitted by applicants for such permits or approvals under the applicable consolidated permit regulations (40 CFR parts 122 and 124) and Prevention of Significant Deterioration (PSD) regulations (40 CFR part 52) shall satisfy the environmental document requirement under section 2-4(b) of Executive Order 12114. Compliance with applicable requirements in part 124 of the consolidated permit regulations (40 CFR part 124) shall be sufficient to satisfy the requirements to

Environmental Protection Agency

conduct a concise environmental review for permits subject to this paragraph.

(d) *Wastewater treatment facility planning.* 40 CFR 6.506 details the environmental review process for the facilities planning process under the wastewater treatment works construction grants program. For the purpose of these regulations, the facility plan shall also include a concise environmental review of those activities that would have environmental effects abroad. This shall apply only to the Step 1 grants awarded after January 14, 1981, but on or before December 29, 1981, and facilities plans developed after December 29, 1981. Where water quality impacts identified in a facility plan are the subject or water quality agreements with Canada or Mexico, nothing in these regulations shall impose on the facility planning process coordination and consultation requirements in addition to those required by such agreements.

(e) *Review by other Federal agencies and other appropriate officials.* The responsible officials shall consult with other Federal agencies with relevant expertise during the preparation of the environmental document. As soon as feasible after preparation of the environmental document, the responsible official shall make the document available to the Council on Environmental Quality, Department of State, and other appropriate officials. The responsible official with assistance from OIA shall work with the Department of State to establish procedures for communicating with and making documents available to foreign nations and international organizations.

(46 FR 3364, Jan. 14, 1981, as amended at 50 FR 26323, June 25, 1985)

§ 6.1005 Lead or cooperating agency.

(a) *Lead Agency.* Section 3-3 of Executive Order 12114 requires the creation of a lead agency whenever an action involves more than one federal agency. In implementing section 3-3, EPA shall to the fullest extent possible, follow the guidance for the selection of a lead agency contained in 40 CFR 1501.5 of the CEQ regulations.

(b) *Cooperating Agency.* Under section 2-4(d) of the Executive Order, Federal agencies with special expertise are en-

§ 6.1007

couraged to provide appropriate resources to the agency preparing environmental documents in order to avoid duplication of resources. In working with a lead agency, EPA shall to the fullest extent possible serve as a cooperating agency in accordance with 40 CFR 1501.6. When other program commitments preclude the degree of involvement requested by the lead agency, the responsible EPA official shall so inform the lead agency in writing.

§ 6.1006 Exemptions and considerations.

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

§ 6.1007 Implementation.

(a) *Oversight.* OER is responsible for overseeing the implementation of these procedures and shall consult with OIA wherever appropriate. OIA shall be utilized for making formal contacts with the Department of State. OER shall assist the responsible officials in carrying out their responsibilities under these procedures.

(b) *Information exchange.* OER with the aid of OIA, shall assist the Department of State and the Council on Environmental Quality in developing the international exchange on environmental review activities with foreign nations.

(c) *Unidentified activities.* The responsible official shall consult with OER

and OIA to establish the type of environmental review or document appropriate for any new EPA activities or requirements imposed upon EPA by statute, international agreement or other agreements.

APPENDIX A—STATEMENT OF PROCEDURES ON FLOODPLAIN MANAGEMENT AND WETLANDS PROTECTION

Contents:

- Section 1 General
- Section 2 Purpose
- Section 3 Policy
- Section 4 Definitions
- Section 5 Applicability
- Section 6 Requirements
- Section 7 Implementation

Section 1 General

a. Executive Order 11988 entitled "Floodplain Management" dated May 24, 1977, requires Federal agencies to evaluate the potential effects of actions it may take in a floodplain to avoid adversely impacting floodplains wherever possible, to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management, including the restoration and preservation of such land areas as natural undeveloped floodplains, and to prescribe procedures to implement the policies and procedures of this Executive Order. Guidance for implementation of the Executive Order has been provided by the U.S. Water Resources Council in its Floodplain Management Guidelines dated February 10, 1978 (see 40 FR 6030).

b. Executive Order 11990 entitled "Protection of Wetlands", dated May 24, 1977, requires Federal agencies to take action to avoid adversely impacting wetlands wherever possible, to minimize wetlands destruction and to preserve the values of wetlands, and to prescribe procedures to implement the policies and procedures of this Executive Order.

c. It is the intent of these Executive Orders that, wherever possible, Federal agencies implement the floodplains/wetlands requirements through existing procedures, such as those internal procedures established to implement the National Environmental Policy Act (NEPA) and OMB A-95 review procedures. In those instances where the environmental impacts of a proposed action are not significant enough to require an environmental impact statement (EIS) pursuant to section 102(2)(C) of NEPA, or where programs are not subject to the requirements of NEPA, alternative but equivalent floodplain/wetlands evaluation and notice procedures must be established.

Section 2 Purpose

a. The purpose of this Statement of Procedures is to set forth Agency policy and guidance for carrying out the provisions of Executive Orders 11988 and 11990.

b. EPA program offices shall amend existing regulations and procedures to incorporate the policies and procedures set forth in this Statement of Procedures.

c. To the extent possible, EPA shall accommodate the requirements of Executive Orders 11988 and 11990 through the Agency NEPA procedures contained in 40 CFR part 6.

Section 3 Policy

a. The Agency shall avoid wherever possible the long and short term impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of floodplain and wetlands development wherever there is a practicable alternative.

b. The Agency shall incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decisionmaking processes. It shall also promote the preservation and restoration of floodplains so that their natural and beneficial values can be realized. To the extent possible EPA shall:

- (1) Reduce the hazard and risk of flood loss and wherever it is possible to avoid direct or indirect adverse impact on floodplains;
- (2) Where there is no practical alternative to locating in a floodplain, minimize the impact of floods on human safety, health, and welfare, as well as the natural environment;
- (3) Restore and preserve natural and beneficial values served by floodplains;
- (4) Require the construction of EPA structures and facilities to be in accordance with the standards and criteria, of the regulations promulgated pursuant to the National Flood Insurance Program;
- (5) Identify floodplains which require restoration and preservation and recommend management programs necessary to protect these floodplains and to include such considerations as part of on-going planning programs; and

(6) Provide the public with early and continuing information concerning floodplain management and with opportunities for participating in decision making including the (evaluation of tradeoffs among competing alternatives.

c. The Agency shall incorporate wetlands protection considerations into its planning, regulatory, and decisionmaking processes. It shall minimize the destruction, loss, or degradation of wetlands and preserve and enhance the natural and beneficial values of wetlands. Agency activities shall continue to

Environmental Protection Agency

be carried out consistent with the Administrator's Decision Statement No. 4 dated February 21, 1973 entitled "EPA Policy to Protect the Nation's Wetlands."

Section 4 Definitions

a. Base Flood means that flood which has a one percent chance of occurrence in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

b. Base Floodplain means the land area covered by a 100-year flood (one percent chance floodplain). Also see definition of floodplain.

c. Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source, or flooding from any other source.

d. Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters and other floodprone areas such as offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

e. Floodproofing means modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out or to reduce effects of water entry.

f. Minimize means to reduce to the smallest possible amount or degree.

g. Practicable means capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors such as environment, community welfare, cost, or technology.

h. Preserve means to prevent modification to the natural floodplain environment or to maintain it as closely as possible to its natural state.

i. Restore means to re-establish a setting or environment in which the natural functions of the floodplain can again operate.

j. Wetlands means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

Section 5 Applicability

a. The Executive Orders apply to activities of Federal agencies pertaining to (1) acquiring, managing, and disposing of Federal lands and facilities, (2) providing Federal assistance, financing, or assisted construction and improvements, and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation, and licensing activities.

b. These procedures shall apply to EPA's programs as follows: (1) All Agency actions involving construction of facilities or management of lands or property. This will require amendment of the EPA Facilities Management Manual (October 1973 and revisions thereafter).

(2) All Agency actions where the NEPA process applies. This would include the programs under sections 308/402 of the Clean Water Act pertaining to new source permitting and section 201 of the Clean Water Act pertaining to wastewater treatment construction grants.

(3) All agency actions where there is sufficient independent statutory authority to carry out the floodplain/wetlands procedures.

(4) In program areas where there is no EIS requirement nor clear statutory authority for EPA to require procedural implementation, EPA shall continue to provide leadership and offer guidance so that the value of floodplain management and wetlands protection can be understood and carried out to the maximum extent practicable in these programs.

c. These procedures shall not apply to any permitting or source review programs of EPA once such authority has been transferred or delegated to a State. However, EPA shall, to the extent possible, require States to provide equivalent effort to assure support for the objectives of these procedures as part of the state assumption process.

Section 6 Requirements

a. Floodplain/Wetlands review of proposed Agency actions.

(1) Floodplain/Wetlands Determination—Before undertaking an Agency action, each program office must determine whether or not the action will be located in or affect a floodplain or wetlands. The Agency shall utilize maps prepared by the Federal Emergency Management Agency (Flood Insurance Rate Maps or Flood Hazard Boundary Maps), Fish and Wildlife Service (National Wetlands Inventory Maps), and other appropriate agencies to determine whether a proposed action is located in or will likely affect a floodplain or wetlands. If there is no floodplain/wetlands impact identified, the action may proceed without further consideration of the remaining procedures set forth below.

(2) *Early Public Notice*—When it is apparent that a proposed or potential agency action is likely to impact a floodplain or wetlands, the public should be informed through appropriate public notice procedures.

(3) *Floodplain/Wetlands Assessment*—If the Agency determines a proposed action is located in or affects a floodplain or wetlands, a floodplain/wetlands assessment shall be undertaken. For those actions where an environmental assessment (EA) or environmental impact statement (EIS) is prepared pursuant to 40 CFR part 6, the floodplain/wetlands assessment shall be prepared concurrently with these analyses and shall be included in the EA or EIS. In all other cases, a *floodplain/wetlands assessment* shall be prepared. Assessments shall consist of a description of the proposed action, a discussion of its effect on the floodplain/wetlands, and shall also describe the alternatives considered.

(4) *Public Review of Assessments*—For proposed actions impacting floodplain/wetlands where an EA or EIS is prepared, the opportunity for public review will be provided through the EIS provisions contained in 40 CFR parts 6, 25, or 35, where appropriate. In other cases, an equivalent public notice of the floodplain/wetlands assessment shall be made consistent with the public involvement requirements of the applicable program.

(5) *Minimize, Restore or Preserve*—If there is no practicable alternative to locating in or affecting the floodplain or wetlands, the Agency shall act to minimize potential harm to the floodplain or wetlands. The Agency shall also act to restore and preserve the natural and beneficial values of floodplains and wetlands as part of the analysis of all alternatives under consideration.

(6) *Agency Decision*—After consideration of alternative actions, as they have been modified in the preceding analysis, the Agency shall select the desired alternative. For all Agency actions proposed to be in or affecting a floodplain/wetlands, the Agency shall provide further public notice announcing this decision. This decision shall be accompanied by a Statement of Findings, not to exceed three pages. This Statement shall include: (i) The reasons why the proposed action must be located in or affect the floodplain or wetlands; (ii) a description of significant facts considered in making the decision to locate in or affect the floodplain or wetlands including alternative sites and actions; (iii) a statement indicating whether the proposed action conforms to applicable State or local floodplain protection standards; (iv) a description of the steps taken to design or modify the proposed action to minimize potential harm to or within the floodplain or wetlands; and (v) a statement indicating how the proposed action affects the natural or beneficial values of the floodplain or wetlands. If the provisions of 40 CFR part 6

(5) *Transfer of EPA Property*—When property in flood plains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, EPA shall reference in the conveyance those uses that are restricted under Federal, State and local floodplain regulations and attach other restrictions to uses of the property as may be deemed appropriate. Notwithstanding, EPA shall consider withholding such properties from conveyance.

Section 7 Implementation

a. Pursuant to section 2, the EPA program offices shall amend existing regulations, procedures, and guidance, as appropriate, to incorporate the policies and procedures set forth in this Statement of Procedures. Such amendments shall be made within six months of the date of these Procedures.

b. The Office of External Affairs (OEA) is responsible for the oversight of the implementation of this Statement of Procedures and shall be given advanced opportunity to review amendments to regulations, procedures, and guidance. OEA shall coordinate efforts with the program offices to develop necessary manuals and more specialized supplementary guidance to carry out this Statement of Procedures.

[44 FR 64177, Nov. 6, 1976, as amended at 50 FR 26323, June 25, 1985]

7.75 Transition plan.

Subpart D—Requirements for Applicants and Recipients

- 7.80 Applicants.
- 7.85 Recipients.
- 7.90 Grievance procedures.
- 7.95 Notice of nondiscrimination.
- 7.100 Intimidation and retaliation prohibited.

Subpart E—Agency Compliance Procedures

- 7.105 General policy.
 - 7.110 Preaward compliance.
 - 7.115 Postaward compliance.
 - 7.120 Complaint investigations.
 - 7.125 Coordination with other agencies.
 - 7.130 Actions available to EPA to obtain compliance.
 - 7.135 Procedure for regaining eligibility.
- APPENDIX A TO PART 7—EPA ASSISTANCE PROGRAMS AS LISTED IN THE "CATALOG OF FEDERAL DOMESTIC ASSISTANCE"
- AUTHORITY: 42 U.S.C. 2000d-4; 29 U.S.C. 794; 33 U.S.C. 1251 nt.
- SOURCE: 49 FR 1659, Jan. 12, 1984, unless otherwise noted.

Subpart A—General

§ 7.10 Purpose of this part.

This part implements Title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; and section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500 (collectively, the Acts).

§ 7.15 Applicability.

This part applies to all applicants for, and recipients of, EPA assistance in the operation of programs or activities receiving such assistance beginning February 13, 1984. New construction (§ 7.70) for which design was initiated prior to February 13, 1984, shall comply with the accessibility requirements in the Department of Health, Education and Welfare (now the Department of Health and Human Services) nondiscrimination regulation, 45 CFR 84.23, issued June 3, 1977, or with equivalent standards that ensure the facility is readily accessible to and usable by handicapped persons. Such assistance includes but is not limited to that which is listed in the *Catalogue of Federal Domestic Assistance* under the

PART 7—NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY

Subpart A—General

- 7.10 Purpose of this part.
- 7.15 Applicability.
- 7.20 Responsible agency officers.
- 7.25 Definitions.

Subpart B—Discrimination Prohibited on the Basis of Race, Color, National Origin or Sex

- 7.30 General prohibition.
- 7.35 Specific prohibitions.

Subpart C—Discrimination Prohibited on the Basis of Handicap

- 7.45 General prohibition.
- 7.50 Specific prohibitions against discrimination.
- 7.55 Separate or different programs.
- 7.60 Prohibitions and requirements relating to employment.
- 7.65 Accessibility.
- 7.70 New construction.