



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
ALASKA OPERATIONS OFFICE  
Room 537, Federal Building  
222 West 7<sup>th</sup> Avenue, #19  
Anchorage, Alaska 99513-7588

FEB 22 2016

February 17, 2016

Terri Marceron, Forest Supervisor  
Chugach National Forest's Supervisor's Office  
Attn: Forest Plan Revision  
161 East 1st Street, Door 8  
Anchorage, AK 99501

Dear Ms. Marceron:

The U.S. Environmental Protection Agency Region 10 has reviewed the December 21, 2015 Federal Register Notice of Intent to prepare an Environmental Impact Statement for the Revision of the Land Management Plan for the Chugach National Forest in southcentral Alaska (EPA Project Number 15-0066-AFS).

We offer our comments for your consideration in accordance with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309 directs the EPA to review and comment in writing on the environmental impacts of major federal agency actions. Our review will include evaluation of the anticipated environmental impacts, as well as the adequacy of the EIS in meeting procedural and public disclosure requirements of NEPA. For more information concerning the EPA's authority under Section 309, please see the enclosed *EPA and Section 309 of the Clean Air Act* (Enclosure 2).

We believe that the Land Management Plan Revision EIS should provide full public disclosure of all foreseeable direct, indirect, and cumulative environmental impacts and mitigation, and ensure consistency with environmental and public involvement requirements of State and Federal laws, Executive Orders and policies. We also support this revision in light of the requirements of the 2012 Planning Rule for the National Forest System, with the goals of "addressing social and economic sustainability, ecosystem services, and multiple uses integrated with the plan components for ecological sustainability and species diversity", as well as responding to the findings in the recent Assessment of the Chugach National Forest.

The comments that follow are intended to provide insight into forest management issues that the EPA believes to be significant and warrant treatment through the EIS development process. We hope that our recommendations and scoping comments are helpful, and would appreciate receiving feedback, comments or questions regarding the information provided or issues discussed. If you have any questions, please feel free to contact me at 907-271-6324 or [curtis.jennifer@epa.gov](mailto:curtis.jennifer@epa.gov).

Thank you for considering our comments at this stage of the land management planning and NEPA processes.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer J. Curtis".

Jennifer J. Curtis  
Environmental Review & Sediments Management Unit

Enclosures:

1. EPA REGION 10 Scoping Comments On The Revision To The Chugach National Forest Land Management Plan Environmental Impact Statement
2. EPA's Section 309 Review: The Clean Air Act and NEPA

**ENCLOSURE 1**  
**EPA REGION 10 SCOPING COMMENTS ON THE REVISION TO THE CHUGACH**  
**NATIONAL FOREST LAND MANAGEMENT PLAN**  
**ENVIRONMENTAL IMPACT STATEMENT**

**Purpose and Need**

The EIS should include a clear and concise statement of the underlying purpose and need for the proposed project, consistent with the implementing regulations for NEPA.<sup>1</sup> We recommend that this statement be framed broadly to ensure a robust analysis of alternatives. In addition to compliance with the 2012 rule, we recognize that the assessment identifies additional needs and priorities of stakeholders that need to be considered in light of actual uses and concerns of Chugach stakeholders. We support the full incorporation of both the rule and the assessment in the development of the purpose and need.

**Range of Alternatives**

The draft EIS should include a range of alternatives that meets the stated purpose and need, goals and objectives, and respond to issues identified during the scoping process. The alternatives analysis should compare alternatives with respect to how well they respond to the stated purpose and need, goals and objectives, and scoping issues. The Council on Environmental Quality (CEQ) recommends that all reasonable alternatives be considered, even if some of them could be outside the capability of the applicant or the jurisdiction of the agency preparing the EIS.<sup>2</sup>

Consistent with the purpose of the NEPA,<sup>3</sup> the EPA encourages selection of alternatives that protect, restore and enhance the environment. We strongly support lead agencies' efforts to identify and select alternatives that maximize environmental benefits, and avoid, minimize, and/or otherwise mitigate environmental impacts. We recognize that the 2012 rule includes a revision that states, "to provide for ecological sustainability, management direction is needed that addresses ecosystem diversity (including key ecosystem characteristics and their integrity), in light of changes in climate, federal subsistence regulations, land ownership and recreational use patterns, and threats to ecosystem integrity from invasive species and pollution sources". Therefore, the preferred alternative should clearly support these goals.

**Water Quality**

One of our primary concerns is the effect of management actions on water quality. We recommend that the EIS identify water bodies likely to be impacted by the project, the nature of the potential impacts, and the specific discharges and pollutants likely to impact those waters. The EIS should disclose information regarding relevant Total Maximum Daily Load allocations, the water bodies to which they apply, water quality standards and pollutants of concern.

Clean Water Act Section 303(d) listed waters should not be further degraded. If additional pollutant loading is predicted to occur to a 303(d) listed stream as a result of a project, the EIS should include measures to control existing sources of pollution to offset pollutant additions.

Finally, we recommend that the Forest Service consider implementing watershed or aquatic habitat restoration activities to compensate for past impacts to water resources, particularly in watersheds with

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<sup>1</sup> 40 CFR 1502.13

<sup>2</sup> <http://ceq.hss.doe.gov/NEPA/regs/40/1-10.HTM#2>

<sup>3</sup> 40 CFR 1500.1

303(d) listed waters where past development or activities may have contributed to impairments through channelization, riverine or floodplain encroachments, or sediment delivery during construction. Other activities may have affected channel stability, water quality, aquatic habitat, or designated waterbody uses. Provisions for antidegradation of water quality apply to water bodies where water quality standards are presently being met. The EIS should describe how antidegradation provisions would be met.

### **Source Water**

Activities such as timber harvesting, road building, pest control, grazing, and recreation, may adversely affect waters that serve as sources of drinking water for communities. If any communities or households have water systems that derive water supplies directly from forest lands, the 1996 amendments to the Safe Drinking Water Act (SDWA) require the Forest Service to protect these source water areas.

The EPA recognizes that providing high quality drinking water to protect human health is a high priority for land management agencies. Implementing protective actions and land use decisions can be very effective in providing clean source water to public intakes and wells. This will preserve the use of public funds that would otherwise be spent to upgrade treatment facilities to remove contaminants downstream. Therefore, we recommend that the draft EIS:

- Identify all federally-regulated source water protection areas and state- regulated source water protection areas, if the state agency maintains that list, within or downstream of the project area;
- Identify all activities that could potentially affect source water areas;
- Identify all potential contaminants that may result from plan implementation; and
- Identify all measures that would be taken to protect the source water protection areas in the draft EIS.

Also, if the project has the potential to affect a source water protection area, we recommend that the draft EIS address the recommendations outlined in *Steps to Take to Incorporate Source Water Protection into Your Plans and Projects* which can be accessed at [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5400767.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5400767.pdf) as well as the draft document, *EPA Region 10 Source Water Protection Best Management Practices for USFS, BLM* ([http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5400766.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5400766.pdf)). The latter document is a compendium of BMPs that were collected from a host of sources directed at protecting drinking water. It is intended to provide a broad list from which to select appropriate BMPs that can be applied to a specific plan or project. Additional BMPs may be appropriate to ensure adequate protection of source water areas.

### **Access Management**

Roads and trails modify the aquatic and terrestrial resources in the forest and continue to impact fish, wildlife, water quality and stream/watershed processes. Road related and access management impacts to forest resources are a result of the construction, maintenance, closure, decommissioning and use of roads, trails, staging and riding areas. The EPA's primary areas of concern for impacts from access management include:

- changes to hydrology from road drainage,
- road stream crossings,
- road surface erosion,
- culvert sizing and potential for washout,
- fish passage and stream channel integrity,

- seasonal and spawning habitats,
- large woody debris recruitment,
- fire risk from recreation,
- noxious weed proliferation, and,
- road encroachment on and fragmentation of stream, riparian, wetland and terrestrial habitats.

We believe the Travel Analysis chapter of the Forest Service Handbook (FSH) – FSH 7709.55, Chapter 20 provides useful guidance on the process to identify and designate a minimum system. We strongly support travel management decisions that are informed by and incorporate documentation similar to that described in section 21.6 of FSH 7709.55 (e.g., “Document travel analysis in a report including: 1. A map and prioritized list of the risks and benefits associated with changing the part of the forest transportation system under analysis, and a map and prioritized list of opportunities for addressing those risks;...”).

Consistent with 36 CFR § 212.5 (b) (1) and 36 CFR § 212.55 (a) the EPA recommends that the road and trail system evaluated through the revised plan reflect realistic, long-term funding expectations. The NEPA analysis for this planning process should discuss resources available to build and maintain the road and trail system. Please indicate the likelihood for adequate maintenance funding for each of the action alternatives.

### **Monitoring and Adaptive Management**

Monitoring and adaptive management are important elements in restoring and maintaining the health of watershed, riparian, and aquatic resources. Feedback of monitoring results to forest managers is critical to the success of a forest management plan. It is only through monitoring that the forest will be able to determine whether 1) goals and objectives are being met; 2) assumptions/indicators used in developing and implementing the plan are valid; 3) effects are as predicted (i.e. addressing uncertainties); and 4) if mitigation is effective.

We recommend that a broad monitoring and adaptive management program be developed through this plan revision process. Effectiveness monitoring is of key importance within the context of protecting and restoring water quality. The achievement of water quality standards for waters impacted by nonpoint source pollution activities can often be accomplished through the implementation of best management practices. The effectiveness of these BMPs, therefore, should be monitored. If found ineffective or not attaining identified goals, the BMPs should be revised, and impacts mitigated.

The design of monitoring programs should:

1. Ensure State WQSs for support of beneficial uses are met;
2. Provide a mechanism to initiate additional measures if needed to meet State WQS;
3. Evaluate the effectiveness of BMPs, and/or the need for additional or revised BMPs;
4. Evaluate the accuracy of estimates made in the analysis, including cumulative effects of the revised plan and other activities on the health of the ecosystems being managed, and risk of potential damage to ecosystems; and
5. Provide a feedback mechanism for future planning.

### **Management Challenges**

We recognize the need to manage the forest for multiple uses such as alternative energy project development, mining, recreation, residential development, subsistence activities, electrical transmission

and transportation projects. We encourage the Forest Service to consider and evaluate plans for these uses along with the potential for project right-of-way and siting needs, as land use determinations are established or revised. Based on this analysis, it may also be appropriate to expand upon the standards and guidelines related to land ownership to include additional standards and guidelines related to these types of activities. We recommend that the Forest Service work closely with the U.S. Fish and Wildlife Service and the Alaska Department of Fish and Game, as well as other potentially affected stakeholders, on these changes.

### **Climate Change**

We believe the Council on Environmental Quality's December 2014 Revised Draft Guidance on the Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews<sup>4</sup> outlines a reasonable approach, and we recommend that agencies use that draft guidance to help outline the framework for its analysis of these issues. Accordingly, we recommend the draft EIS include an estimate of the GHG emissions associated with the possible management activities; qualitatively describe relevant climate change impacts; and analyze reasonable alternatives and/or practicable mitigation measures to reduce project-related GHG emissions. More specifics on those elements are provided below.

In addition, we recommend that the NEPA analysis address the appropriateness of considering changes to management activities to incorporate GHG reduction measures and resilience to foreseeable climate change. The draft and final EIS should make clear whether commitments have been made to ensure implementation of design or other measures to reduce GHG emissions or to adapt to climate change impacts.

More specifically, we suggest the following approach:

#### "Affected Environment" Section

- Include in the "Affected Environment" section of the draft EIS a summary discussion of climate change and ongoing and reasonably foreseeable climate change impacts relevant to the proposed management activities, based on U.S. Global Change Research Program assessments, to assist with identification of potential impacts that may be exacerbated by climate change and to inform consideration of measures to adapt to climate change impacts. Among other things, this will assist in identifying resilience-related changes to the activities that should be considered.

#### "Environmental Consequences" Section

- Estimate the GHG emissions associated with the proposed activities and alternatives. Example tools for estimating and quantifying GHG emissions can be found on CEQ's NEPA.gov website.<sup>5</sup> For actions which are likely to have less than 25,000 metric tons of CO<sub>2</sub>-e emissions/year, provide a qualitative estimate unless quantification is easily accomplished.
- The estimated GHG emissions can serve as a reasonable proxy for climate change impacts when comparing the proposal and alternatives. In disclosing the potential impacts of the proposal and reasonable alternatives, consideration should be given to whether and to what extent the impacts

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<sup>4</sup> <https://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance>

<sup>5</sup> [https://ceq.doe.gov/current\\_developments/GHG\\_accounting\\_methods\\_7Jan2015.html](https://ceq.doe.gov/current_developments/GHG_accounting_methods_7Jan2015.html)

may be exacerbated by expected climate change in the action area, as discussed in the “affected environment” section.

- Recognizing that climate impacts are not attributable to any single action, but are exacerbated by a series of smaller decisions, we do not recommend comparing GHG emissions from a proposed action or management activities to global emissions. As noted by the CEQ revised draft guidance, “[t]his approach does not reveal anything beyond the nature of the climate change challenge itself: [t]he fact that diverse individual sources of emissions each make relatively small additions to global atmospheric GHG concentrations that collectively have huge impact.” We also recommend that you do not compare GHG emissions to total U.S. emissions, as this approach does not provide meaningful information for a project level analysis. Consider providing a frame of reference, such as an applicable Federal, state, tribal or local goal for GHG emission reductions, and discuss whether the emissions levels are consistent with such goals.

In addition, the draft EIS alternatives analysis should, as appropriate, consider practicable changes to the proposed management activities to make the Chugach more resilient to anticipated climate change. For example, anticipated changes in storm strength and snow conditions due to climate change should be considered when developing management alternatives. We further recommend that the Record of Decision commit to implementation of reasonable mitigation measures that would reduce or eliminate management activity-related GHG emissions.

### **Habitat**

Proposed Forest activities will have impacts on fish and wildlife habitat, and habitat connectivity. The EIS should describe the current quality and potential capacity of habitat, its use by fish and wildlife throughout the forest, and identify known fish and wildlife corridors, migration routes, and areas of seasonal fish and wildlife congregation. The EIS should evaluate effects on fish and wildlife from various management strategies as well as any proposed habitat alteration, aquatic and terrestrial habitat fragmentation caused by roads, land use, and management activities, and human activity. The EIS should also evaluate the impacts the plan direction may have on plant species and their habitats.

### **Invasive Species**

We recommend that the EIS contain management measures that are consistent with Executive Order 13112 on Invasive Species as well as any Forest Service guidelines for noxious weed management. Discussion of invasive species should include a description of current conditions and best management practices that will be utilized to reduce the likelihood of introduction and spread of invasive species with the proposed management activities.

### **Cumulative Impacts**

EPA has issued guidance on how we are to provide comments on the assessment of cumulative impacts, *Consideration of Cumulative Impacts in EPA Review of NEPA Documents*, which can be found on EPA’s Office of Federal Activities home page at: <http://www.epa.gov/compliance/resources/nepa.html>. The guidance states that in order to assess the adequacy of the cumulative impacts assessment, five key areas should be considered. EPA will assess whether the cumulative effects analysis:

1. Identifies resources if any, that are being cumulatively impacted;
2. Determines the appropriate geographic (within natural ecological boundaries) area and time period over which the effects have occurred and will occur;

3. Looks at all past, present, and reasonably foreseeable future actions that have affected, are affecting, or would affect resources of concern;
4. Describes a benchmark or baseline; and
5. Includes scientifically defensible threshold levels.

In addition, because Forest Service lands are intertwined with Alaska Native Claims Settlement Act corporation and other private lands, we recommend that the EIS assess cumulative impacts across the landscape and identify what assumptions will be used with respect to adjacent non-Forest Service lands, as well as the mechanisms for cooperating with other land owners on Forest development and implementation.

### **Consultation with Federally-Recognized Tribes**

Management decisions and projects proposed under the revised plan may affect tribal natural and cultural resources, including historical or traditional cultural places of importance to the Chugach's tribal communities. We recommend that the EIS be developed in consultation with all affected tribal governments, consistent with Executive Order (EO) 13175 *Consultation and Coordination with Indian Tribal Governments*. Documentation of the process used to consult with tribes and outcomes of the consultations should be included in the EIS. Also, consistent with the July 28, 1999, memorandum from the CEQ to Heads of Federal Agencies, we recommend that the Forest Service invite affected tribal governments to participate in the EIS development process as cooperating agencies. This would provide for the establishment of a mechanism for addressing intergovernmental issues throughout the EIS development process.



## EPA's Section 309 Review: The Clean Air Act and NEPA

Office of Federal Activities (2251A)

Quick Reference Brochure

### ENVIRONMENTAL REVIEW AND THE CLEAN AIR ACT

The Clean Air Act, a law to prevent pollution of a single environmental medium, contains an unusual provision. This provision is Section 309, which authorizes the Environmental Protection Agency (EPA) to review certain proposed actions of other federal agencies in accordance with the National Environmental Policy Act (NEPA) and to make those reviews public. If the proposing agency (the "lead" agency) does not make sufficient revisions and the project remains environmentally unsatisfactory, EPA may refer the matter to the President's Council on Environmental Quality for mediation. (See **Highlight A**).

#### HIGHLIGHT A: Section 309 of the Clean Air Act

(a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this Act or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which Section 102(2)(C) of Public Law 91-190 [\*] applies, and (3) proposed regulations published by any department or agency of the Federal government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he/she shall publish his/her determination and the matter shall be referred to the Council on Environmental Quality.

(\*) NEPA (42 USC (2)(C) et. seq.

Section 309 originated in 1970, the year in which landmark national legislation created new agencies and new requirements for restoring and protecting the environment. In addition to NEPA and its creation of CEQ, the National Oceanic and Atmospheric Administration (NOAA) and EPA were established, and, at the end of 1970, the Clean Air Act was passed. At that time, many issues of environmental consequence were brewing (see **Highlight B**); one of which - the proposed supersonic transport aircraft (SST) - became a crucial test of NEPA. (See The National Environmental Policy Act section, below).

The lead agency for the SST project, the Department of Transportation (DOT), chose not to disclose EPA's comments on the NEPA-required environmental impact statement (EIS) before having issued its final decision, construing NEPA to contain no explicit public disclosure requirements. Although later CEQ regulations under the Act would clarify this ambiguity, the Congress had a vehicle at hand in which to make its point: the draft Clean Air Act. Senator Edmund Muskie, sponsor of Section 309, said to the Senate when submitting the conference report, that as soon as EPA has completed its review of a proposed action, it must make its written comments public, and "not when the environmental impact agency decides the public should be informed." (116 *Cong. Rec.* S-20602, Dec. 18, 1970).

#### HIGHLIGHT B: When NEPA Was New: 1970-1971 Issues

- o Trans-Alaska oil pipeline and the North Slope-Valdez route
- o Supersonic transport aircraft
- o Cross-Florida Barge Canal
- o Clearcutting "areas of scenic beauty" in national forests
- o Tennessee-Tombigbee Waterway
- o Dredging and filling in wetlands
- o Calvert Cliffs (MD) nuclear power plant

To correct another ambiguity of NEPA, Section 309 places the requirement to review EISs upon EPA because NEPA "does not assure that Federal environmental agencies will effectively participate in the decision-making process. It is essential that mission-oriented Federal agencies have access to environmental expertise in order to give adequate consideration to environmental factors." (*Sen. Rept.* No. 91-1196, 91st Cong., 2d Sess. 43, 1970). Consequently, EPA has reviewed most of the approximately 25,000 draft and final EISs produced since the passage of NEPA.

Section 309 confers upon the EPA broad review responsibilities for proposed federal actions. (See **Highlight C**). The EPA Administrator has delegated responsibility of the national program manager to the Office of Federal Activities (OFA), and to the ten EPA Regional Administrators for review of regional specific actions. OFA has developed a set of criteria for rating draft EISs. The rating system provides a basis upon which EPA makes recommendations to the lead agency for improving the draft. If improvements are not made in the final EIS, EPA may refer the final EIS to CEQ. (See sections on The National Environmental Policy Act and Referrals below.)

#### HIGHLIGHT C: Materials Which EPA Reviews Under Section 309 Authority

- o Proposed legislation
- o Proposed regulation
- o Environmental assessment (EA)
- o Environmental impact statement (EIS), draft and final
- o A proposal that the lead agency maintains does not require an EIS, but that EPA believes constitutes a major federal action significantly affecting the environment so as to require an EIS.

Figure 1: EPA's Criteria for Sec. 309 Review of Impact Statements

Rating Environmental Impacts:

LO--Lack of Objections

EC--Environmental Concerns--Impacts identified which should be avoided. Mitigation measures may be required.

EO--Environmental Objections--Significant impacts identified. Corrective measures may require substantial changes to the proposed action or consideration of another alternative, including any which were either previously unaddressed or eliminated from the study, or the no-action alternative). Reasons can include:

- violation of a federal environmental standard;
- violation of the federal agency's own environmental standard;
- violation of an EPA policy declaration;
- potential for significant environmental degradation; or,
- precedent-setting for future actions that collectively could result in significant environmental impacts.

EU--Environmentally Unsatisfactory - Impacts identified are so severe that the action must not proceed as proposed. If these deficiencies are not corrected in the final EIS, EPA may refer the EIS to CEQ, in addition to impacts identified, which can include:

- substantial violation of a federal environmental standard;
- severity, duration, or geographical extent of impacts that warrants special attention; or
- national importance, due to threat to national environmental resources or policies.

Rating Adequacy of the Impact Statement:

1 (Adequate) - No further information is required for review.

2 (Insufficient Information) - Either more information is needed for review, or other alternatives should be evaluated. The identified additional information or analysis should be included in the final EIS.

3 (Inadequate) - Seriously lacking in information or analysis to address potentially significant environmental impacts. The draft EIS does not meet NEPA and/or Section 309 requirements. If not revised or supplemented and provided again as a draft EIS for public comment, EPA may refer the EIS to CEQ.

(See Selected Publications, below: EPA's *Policy and Procedures for the Review of Federal Actions Impacting the Environment*.)

Annually, OFA and its regional counterparts review about 500 EISs and some 2,000 other actions (see Figures 1 and 2). Among the variety of proposed actions that may be reviewed, besides that for which an agency provides an impact statement, are: legislation proposed by a federal agency; a proposed agency regulation; the renewal of an action originally approved before the enactment of NEPA; a proposal for which an agency has determined no impact statement is needed, whether or not the agency has published a Finding of No Significant Impact (FONSI); and an action which is actually a segment of either a program or a reasonably expected succession of actions that could result in a cumulative negative impact on human health or welfare or the environment.

In addition to conducting environmental reviews, OFA develops guidance materials and provides training courses on NEPA and Section 309 requirements for EPA regional staff and promotes coordination between EPA offices and other federal agencies.

## THE NATIONAL ENVIRONMENTAL POLICY ACT AND CEQ

The National Environmental Policy Act (NEPA, 42 *USC* 4321 et seq.) was enacted on January 1, 1970 in recognition of the widening influence on the human and natural environment, which individual federal agency actions can exert. With its stated purpose (see **Highlight D**) and with heightened public awareness of environmental quality questions, NEPA makes its goals and policies "supplemental to those set forth in existing authorities of Federal agencies" (NEPA, Section 105). In this way, the agencies' authorizing statutes were amended to include NEPA requirements.

Title I of NEPA requires the federal government to use all practicable means to preserve and maintain conditions under which human beings can coexist with the natural world in productive harmony. Section 102 directs federal agencies to lend appropriate support to initiatives and programs meant to anticipate and prevent degradation of world environmental quality. Further, this section requires federal agencies to incorporate environmental considerations in their decision-making, using a systematic, interdisciplinary approach.

### HIGHLIGHT D: The Purposes of NEPA

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources Important to the Nation; and to establish a Council on Environmental Quality.

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(PL 91-190, 42 *USC* 4321 et seq.)

Title II of NEPA establishes the Council on Environmental Quality (CEQ, or the Council). Two months after enactment of NEPA, the President issued Executive Order 11514 authorizing CEQ to guide the Sec. 102 process. Under this order, the Council immediately published guidelines, followed in 1978 by regulations (40 *CFR* Parts 1500-1508) requiring all Federal agencies to issue NEPA regulations consistent with CEQ's. Advisory to the President, CEQ conducts studies, prepares the annual Environmental Quality Report to Congress, and reviews EISs. Moreover, CEQ mediates interagency disputes concerning environmental analyses of matters of national importance. (See Referrals section below.)

As evidence of compliance with the NEPA Section 102 provisions for a proposed major action which could significantly affect the environment, CEQ requires the lead agency to prepare a detailed written statement addressing NEPA concerns, i.e., an EIS (40 *CFR* Part 1501). The lead agency may first prepare an environmental assessment (EA), which is a concise public document (40 *CFR* Part 1501.3) that determines whether an EIS or a FONSI (40 *CFR* Part 1501.4(e)) should be prepared. An EA is not necessary, however, if the agency has decided at the outset to prepare an EIS.

For review, the lead agency provides the EIS to those federal agencies having statutory jurisdiction or special expertise, as well as to appropriate other federal, state, and local agencies; Indian tribes, when the proposed action might impact tribal lands; and, the interested or affected public (40 *CFR* Part 1503.1). Once the EIS is final, the lead agency must file it formally, simultaneously making it available to the public, together with the reviewers' comments and the lead agency's responses to those comments (40 *CFR* Part 1506.9). The CEQ regulations designate EPA the official recipient of all final EISs, which responsibility the EPA Administrator delegates to OFA.

## REFERRALS TO THE COUNCIL ON ENVIRONMENTAL QUALITY

The "pre-decision referrals" provision (40 C.F.R. Part 1504) enables any federal agency under NEPA to refer another agency's final EIS to CEQ during the 30-day waiting period before a lead agency can proceed with the action. On the other hand, Section 309 authorizes EPA to refer to CEQ a broader range of federal activities, not only actions for which EIS's are prepared. The CEQ regulations (40 C.F.R. 1504.1(b)) implement Section 309 of the Clean Air Act, acknowledging that EPA has been assigned more extensive review and referral authority than the other agencies (see **Highlight C**).

Within 25 days after the lead agency has made the final EIS available to the public, the referring agency must provide early notification to that agency about its intention, and make its referral in writing to CEQ. The lead agency, once it has received written notification from CEQ, is to respond in writing within 25 days. During the same period, other agencies and the public may submit written comments to CEQ. Then, CEQ may publish Findings and Recommendations; mediate between the disputing agencies; hold public meetings or hearings; refer irreconcilable disputes to the Executive Office of the President for action; or conclude either that the issue is not of national importance or that insufficient information has been submitted upon which to base a decision.

In the time since the referral process was formally established in 1973, agencies have referred a total of 24 proposed federal actions to CEQ. Of these, EPA was responsible for 15, of which one was referred jointly with the Department of the Interior (DOI). (See **Figure 2** for EPA regional environmental review offices.) So far, in no case has CEQ made a formal referral to the Office of the President. Most often, CEQ has issued Findings and Recommendations. In a few cases the lead agency has withdrawn the proposal, and in three cases CEQ determined that the issue was not a matter of national importance.

In 1989, CEQ upheld EPA's Section 309 referral authority. At issue was a DOI Bureau of Reclamation proposal to renew long-term water contracts for irrigation operations of the Friant Unit in the Central Valley Project of California. The reason for referral was that no EIS had been prepared on the contract renewals, which individually and in the aggregate, were likely to result in unsatisfactory environmental effects. In response, DOI questioned EPA's right to challenge the agency's decision that no EIS was needed. In rejecting this argument, CEQ established a precedent, which affirmed EPA may identify a major federal action significantly affecting the environment, even though the lead agency disagrees.

### **Figure 2: EPA'S REGIONAL SECTION 309 REVIEWERS**

REGION 1: (617) 918-1051  
Office of Environmental  
Review  
One Congress Street  
Boston, MA 02114

REGION 2: (212) 637-3504  
Envir. Planning & Protection  
290 Broadway, Floor 25  
New York, NY 10007

REGION 3: (215) 814-3367  
Envir. Programs Branch  
1650 Arch Street  
Philadelphia, PA 19106

REGION 4: (404) 562-9611  
Office of Envir. Assessment  
61 Forsyth Street SW  
Atlanta, GA 30303

REGION 5: (312) 353-1327  
Federal Activities program  
77 West Jackson Blvd.  
Chicago, IL 60604

REGION 6: (214) 665-7451  
Planning & Coordination Office  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202

REGION 7: (913) 551-7148  
Environmental Review  
901 North 5th Street  
Kansas City, KS 66101

REGION 8: (303) 312-6228  
Ecosystem Protection Program  
999 18th Street, Suite 500  
Denver, CO 80202

REGION 9: (415) 972-3854  
Office of Federal Activities  
75 Hawthorne Street  
San Francisco, CA 94105

REGION 10: (206) 553-6911  
1200 Sixth Avenue, ECO-088  
Seattle, WA 98101

## SELECTED PUBLICATIONS

Caldwell, Lynton K., Science and the National Environmental Policy Act; Redirecting Policy Through Procedural Reform. University of Alabama Press, c1982.

Congressional Record, vol. 166, p. S-20602 (Dec. 18, 1970).

Healy, Martin, "The Environmental Protection Agency's Duty to Oversee NEPA's Implementation: Section 309 of the Clean Air Act," Environmental Law Reporter, 3 ELR 50071 (1973).

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