

Regulations, is amended by adding a new § 165.17 83-06 to read as follows:

§ 165.17 83-06 Security Zone: St. Johns River, Jacksonville, Florida.

(a) *Location.* The following area is a security zone: The area on and within 200 yards of Quarantine Island in the St. Johns River, Jacksonville, Florida from 6:00 p.m. on August 5, 1983 until 4:00 p.m. August 6, 1983.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements.

(50 U.S.C. 191; E. O. 10173; and 33 CFR 6.04-6.)

Dated: July 14, 1983.

M. Woods,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, FL.

[FR Doc. 83-30525 Filed 7-27-83; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[Third Coast Guard District Reg. CCGD3-83-30]

Safety Zone Regulations; New Jersey, New York Harbor, Newark Bay

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in New Jersey, New York Harbor, Newark Bay. This zone is needed to protect vessels from potential safety hazards associated with the demolition the CNJ Newark Bay Bridge. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation is effective at 12:00 PM e.d.s.t. 11 July 1983 and terminates upon completion of the current demolition work being done on the CNJ Newark Bay Bridge, with the Zone to be terminated no later than 01 November 1983.

FOR FURTHER INFORMATION CONTACT: Captain of the Port, New York (212)-668-7917.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after *Federal Register* publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is

needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade G. M. Jacobson, Project Officer for the Captain of the Port, and Lieutenant Commander J. J. D'Alessandro, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the potential hazards to navigation associated with the demolition operation on the CNJ Newark Bay Bridge.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water).

Security measures, Vessels, Waterways.

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding § 165-T-03-364 to read as follows:

§ 165-T-03-364 Safety Zone: New Jersey, New York Harbor, Newark Bay South Reach

(a) *Location.* The following area is a Safety Zone: The waters within a boundary extending from the Newark Bay Lighted Buoy "4B" in position 40°39'19" N., 74°08'45.7" W., thence east on a course of 090 degrees true a distance of approximately 145 yards to position 40°39'19" N., 74°08'40" W., thence southwest on a course of 200 degrees true a distance of approximately 230 yards to position 40°39'12.5" N., 74°08'43" W., thence northwest on a course of 304 degrees true a distance of approximately 110 yards to the Newark Bay Channel Buoy "4A" in position 40°39'14.7" N., 74°08'47.4" W., thence north on a course of 015 degrees true to the starting point.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: July 8, 1983.

J. L. McDonald,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 83-30509 Filed 7-27-83; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Hampton Roads, VA, Regulation 83-15]

Safety Zone Regulations; James River, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard has established a safety zone in the James River near Newport News, Virginia, on July 12, 1983. This zone was established to prevent further damage to the James River Bridge and its fender system which were severely damaged by a collision with a tug and tow on July 11, 1983. Entry of tugs with tows astern from the south into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 05:00 PM Eastern Daylight Savings Time on July 12, 1983. It terminates when repairs to the James River Bridge are effected on October 10, 1983, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. K. Six, Chief, Port Operations Department, Coast Guard Marine Safety Office, Hampton Roads, Norfolk, Virginia 23510, (804) 441-3296.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after *Federal Register* publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to minimize the potential for major structural damage to the James River Bridge.

Drafting Information

The drafters of this regulation are Lieutenant Commander W. K. Six, project officer for the Captain of the Port, and Commander D. J. Kantor, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulation

To minimize the potential for major structural damage to the James River Bridge, no tug with a tow astern will be permitted to enter, or transit this safety zone from the south unless specifically authorized by the Coast Guard Captain of the Port, Hampton Roads, Virginia. This action is necessary due to the damage sustained by the bridge fender system in a collision with a tug and tow. The sustained damage is of such a degree that the south west bridge

support structure is exposed and another collision may cause the failure of the entire bridge structure. All other structural supports are fully protected and tugs approaching from the north do not present a hazard to the bridge structure. This rule is in response to a request by the Virginia Department of Highways for Coast Guard assistance in precluding tugs with tows astern from transiting the area from the south.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new 165.1526 to read as follows:

§ 165.1526 Safety Zone: James River, Virginia.

(a) *Location*: The following area is a safety zone: The water within a one hundred yard radius of the James River Bridge lift bridge over the James River in position 37°00'10" N, 76°28'10" W

(b) Regulations.

In accordance with the general regulations in 165.23 of this part, tugs with tows astern may not enter or transit this zone from the south.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: 12 July 1983.

D. C. O'Donovan,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads, U.S. Coast Guard.

[FR Doc. 83-20518 Filed 7-27-83; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 262

Law Enforcement Support Activity, Correction

AGENCY: Forest Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This final rule corrects an error in 36 CFR Part 262 which was made when the rule relating to Law Enforcement Support Activity was recently amended (48 FR 26603; June 9, 1983).

EFFECTIVE DATE: July 28, 1983.

FOR FURTHER INFORMATION CONTACT: Wayne Wilson, Law Enforcement, Fiscal

and Accounting Management Staff, Forest Service, USDA, 703-235-8094.

SUPPLEMENTARY INFORMATION: On June 9, 1983, the Department of Agriculture published, at 48 FR 26603, a final rule which revised Subpart A—Rewards and Payments of 36 CFR Part 262. The rule incorporated existing Forest Service policy and procedure governing the purchase of information and evidence to further investigations of violations of laws and regulations related to administration of lands and programs by the Forest Service.

Section 262.3 of the final rule addresses the purchase of evidence. However, in paragraph (a)(5) of that section, reference was mistakenly made to purchase of "information." This rule corrects the text so that subparagraph (5) properly refers to the purchase of "evidence."

This rule makes a technical correction and, therefore, is not subject to regulatory review under E.O. 12291 or the Regulatory Flexibility Act. Public comment on the amendment would be impractical and unnecessary nor would any purpose be served by delaying the effective date of the correction.

Therefore, for the reasons set forth in the preamble, Part 262 of Chapter II of Title 36 of the Code of Federal Regulations is amended as follows:

PART 262—[AMENDED]

Subpart A—[Amended]

§ 262.3 [Amended]

1. By removing the phrase "purchase of information" in the first line of paragraph (a)(5) and inserting in lieu thereof the phrase "purchase of evidence."

Dated: July 21, 1983.

John B. Crowell, Jr.,

Assistant Secretary for Natural Resources & Environment.

[FR Doc. 83-20165 Filed 7-27-83; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A-9-FRL 2405-7]

Withdrawal of Delegation of New Source Performance Standards (NSPS); California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule-related notice.

SUMMARY: The EPA hereby places the public on notice that it has withdrawn

delegation of one NSPS category to the California Air Resources Board (CARB) on behalf of the San Diego County Air Pollution Control District (SDCAPCD). The action to withdraw delegation authority for Subpart CC, Glass Manufacturing Plants was requested by the CARB and the SDCAPCD. This action does not create any new regulatory requirements affecting the public. The effect of the withdrawal of delegation authority is to shift the primary program responsibility for the affected NSPS category from the State and local governments to EPA.

EFFECTIVE DATE: June 21, 1983.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region, 9 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8236, FTS 454-8236.

SUPPLEMENTARY INFORMATION: The CARB has requested withdrawal of delegation for one NSPS category on behalf of the SDCAPCD. The request to withdraw authority for Glass Manufacturing Plants was based on the following information provided by the SDCAPCD:

(1) The raw materials required for glass manufacturing are not indigenous to the San Diego area.

(2) The San Diego region has very limited transportation facilities of the type required to import the raw materials and export the finished products associated with glass manufacturing.

(3) The San Diego area has very high utility rates compared to the remainder of the country which would deter the very energy intensive glass manufacturing operation.

In response to the above, withdrawal of authority was granted by a letter dated June 21, 1983 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of May 13, 1983, we are granting your request for withdrawal of delegation of authority for one new source performance standard, on behalf of the San Diego County Air Pollution Control District.

We have reviewed the information provided and determined that authority to implement and enforce Subpart CC, Glass Manufacturing Plants can be withdrawn.

Sincerely,

John C. Wise,

Acting Regional Administrator.

cc: San Diego County Air Pollution Control District

With respect to San Diego County, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source category should be directed to the EPA, Region 9 Office at the address shown in the "FOR FURTHER INFORMATION CONTACT:" section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: July 12, 1983.

John Wise,

Acting Regional Administrator.

[FR Doc. 83-20222 Filed 7-27-83; 8:45 am]

BILLING CODE 6560-50-M

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Part 1500

Guidance Regarding NEPA Regulations

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information Only, Publication of Memorandum to Agencies Containing Guidance on Agency Implementation of NEPA Regulations.

SUMMARY: The Council on Environmental Quality, as part of its oversight of implementation of the National Environmental Policy Act, on August 14, 1981 requested comments from the public on how the various federal agencies are implementing the regulations promulgated by the Council in 1978 (40 CFR 1500 *et seq.*). The Council received 142 comments. Sixty-nine commenters represented business groups; forty represented state and local governments; fifteen represented environmental groups; thirteen represented federal agencies; and, five represented other interest groups or individuals. The Council staff summarized the comments received in a document which was subsequently made available to the public. On July 12, 1982 the Council published notice of the availability of this summary document in the *Federal Register*. The summary document identified a number of areas in which the comments indicate that agencies need to better manage the NEPA process.

On August 12, 1982 the Council held a public meeting to discuss the issue areas

identified in the summary document. At that time representatives of environmental groups, industry groups, other federal agencies and individuals testified. Subsequent to the meeting the Council received several additional comments addressing the problem areas identified in the summary document.

Based on the public comments received during this process, the Council is issuing the following guidance document to help officials manage the NEPA process in a more efficient fashion.

DATE: July 22, 1983.

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006. (202) 395-5754.

A. Alan Hill,
Chairman.

Executive Office of the President

Council on Environmental Quality

722 Jackson Place, N.W.

Washington, D.C. 20006

July 22, 1983.

Memorandum

For: Heads of Federal Agencies
From: A. Alan Hill, Chairman
Re: Guidance Regarding NEPA Regulations

The Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) were issued on November 29, 1978. These regulations became effective for, and binding upon, most federal agencies on July 30, 1979, and for all remaining federal agencies on November 30, 1979.

As part of the Council's NEPA oversight responsibilities it solicited through an August 14, 1981, notice in the *Federal Register* public and agency comments regarding a series of questions that were developed to provide information on the manner in which federal agencies were implementing the CEQ regulations. On July 12, 1982, the Council announced the availability of a document summarizing the comments received from the public and other agencies and also identifying issue areas which the Council intended to review. On August 12, 1982, the Council held a public meeting to address those issues and hear any other comments which the public or other interested agencies might have about the NEPA process. The issues addressed in this guidance were identified during this process.

There are many ways in which agencies can meet their responsibilities

under NEPA and the 1978 regulations. The purpose of this document is to provide the Council's guidance on various ways to carry out activities under the regulations.

Scoping

The Council on Environmental Quality (CEQ) regulations direct federal agencies which have made a decision to prepare an environmental impact statement to engage in a public scoping process. Public hearings or meetings, although often held, are not required; instead the manner in which public input will be sought is left to the discretion of the agency.

The purpose of this process is to determine the scope of the EIS so that preparation of the document can be effectively managed. Scoping is intended to ensure that problems are identified early and properly studied, that issues of little significance do not consume time and effort, that the draft EIS is thorough and balanced, and that delays occasioned by an inadequate draft EIS are avoided. The scoping process should identify the public and agency concerns; clearly define the environmental issues and alternatives to be examined in the EIS including the elimination of nonsignificant issues; identify related issues which originate from separate legislation, regulation, or Executive Order (e.g. historic preservation or endangered species concerns); and identify state and local agency requirements which must be addressed. An effective scoping process can help reduce unnecessary paperwork and time delays in preparing and processing the EIS by clearly identifying all relevant procedural requirements.

In April 1981, the Council issued a "Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping" on the subject of Scoping Guidance. The purpose of this guidance was to give agencies suggestions as to how to more effectively carry out the CEQ scoping requirement. The availability of this document was announced in the *Federal Register* at 46 FR 25461. It is still available upon request from the CEQ General Counsel's office.

The concept of lead agency (§ 1508.16) and cooperating agency (§ 1508.5) can be used effectively to help manage the scoping process and prepare the environmental impact statement. The lead agency should identify the potential cooperating agencies. It is incumbent upon the lead agency to identify any agency which may ultimately be involved in the proposed action, including any subsequent permitting

actions. Once cooperating agencies have been identified they have specific responsibility under the NEPA regulations (40 CFR 1501.6). Among other things cooperating agencies have responsibilities to participate in the scoping process and to help identify issues which are germane to any subsequent action it must take on the proposed action. The ultimate goal of this combined agency effort is to produce an EIS which in addition to fulfilling the basic intent of NEPA, also encompasses to the maximum extent possible all the environmental and public involvement requirements of state and federal laws, Executive Orders, and administrative policies of the involved agencies. Examples of these requirements include the Fish and Wildlife Coordination Act, the Clean Air Act, the Endangered Species Act, the National Historic Preservation Act, the Wild and Scenic Rivers Act, the Farmland Protection Policy Act, Executive Order 11990 (Protection of Wetlands), and Executive Order 11998 (Floodplain Management).

It is emphasized that cooperating agencies have the responsibility and obligation under the CEQ regulations to participate in the scoping process. Early involvement leads to early identification of significant issues, better decisionmaking, and avoidance of possible legal challenges. Agencies with "jurisdiction by law" must accept designation as a cooperating agency if requested (40 CFR 1501.8).

One of the functions of scoping is to identify the public involvement/public hearing procedures of all appropriate state and federal agencies that will ultimately act upon the proposed action. To the maximum extent possible, such procedures should be integrated into the EIS process so that joint public meetings and hearings can be conducted. Conducting joint meetings and hearings eliminates duplication and should significantly reduce the time and cost of processing an EIS and any subsequent approvals. The end result will be a more informed public cognizant of all facets of the proposed action.

It is important that the lead agency establish a process to properly manage scoping. In appropriate situations the lead agency should consider designating a project coordinator and forming an interagency project review team. The project coordinator would be the key person in monitoring time schedules and responding to any problems which may arise in both scoping and preparing the EIS. The project review team would be established early in scoping and maintained throughout the process of

preparing the EIS. This review team would include state and local agency representatives. The review team would meet periodically to ensure that the EIS is complete, concise, and prepared in a timely manner.

A project review team has been used effectively on many projects. Some of the more important functions this review team can serve include: (1) A source of information, (2) a coordination mechanism, and (3) a professional review group. As an information source, the review team can identify all federal, state, and local environmental requirements, agency public meeting and hearing procedures, concerned citizen groups, data needs and sources of existing information, and the significant issues and reasonable alternatives for detailed analysis, excluding the non-significant issues. As a coordination mechanism, the team can ensure the rapid distribution of appropriate information or environmental studies, and can reduce the time required for formal consultation on a number of issues (e.g., endangered species or historic preservation). As a professional review group the team can assist in establishing and monitoring a tight time schedule for preparing the EIS by identifying critical points in the process, discussing and recommending solutions to the lead agency as problems arise, advising whether a requested analysis or information item is relevant to the issues under consideration, and providing timely and substantive review comments on any preliminary reports or analyses that may be prepared during the process. The presence of professionals from all scientific disciplines which have a significant role in the proposed action could greatly enhance the value of the team.

The Council recognizes that there may be some problems with the review team concept such as limited agency travel funds and the amount of work necessary to coordinate and prepare for the periodic team meetings. However, the potential benefits of the team concept are significant and the Council encourages agencies to consider utilizing interdisciplinary project review teams to aid in EIS preparation. A regularly scheduled meeting time and location should reduce coordination problems. In some instances, meetings can be arranged so that many projects are discussed at each session. The benefits of the concept are obvious: timely and effective preparation of the EIS, early identification and resolution of any problems which may arise, and elimination, or at least reduction of, the need for additional environmental

studies subsequent to the approval of the EIS.

Since the key purpose of scoping is to identify the issues and alternatives for consideration, the scoping process should "end" once the issues and alternatives to be addressed in the EIS have been clearly identified. Normally this would occur during the final stages of preparing the draft EIS and before it is officially circulated for public and agency review.

The Council encourages the lead agency to notify the public of the results of the scoping process to ensure that all issues have been identified. The lead agency should document the results of the scoping process in its administrative record.

The NEPA regulations place a new and significant responsibility on agencies and the public alike during the scoping process to identify all significant issues and reasonable alternatives to be addressed in the EIS. Most significantly, the Council has found that scoping is an extremely valuable aid to better decisionmaking. Thorough scoping may also have the effect of reducing the frequency with which proposed actions are challenged in court on the basis of an inadequate EIS. Through the techniques identified in this guidance, the lead agency will be able to document that an open public involvement process was conducted, that all reasonable alternatives were identified, that significant issues were identified and non-significant issues eliminated, and that the environmental public involvement requirements of all agencies were met, to the extent possible, in a single "one-stop" process.

Categorical Exclusions

Section 1507 of the CEQ regulations directs federal agencies when establishing implementing procedures to identify those actions which experience has indicated will not have a significant environmental effect and to categorically exclude them from NEPA review. In our August 1981 request for public comments, we asked the question "Have categorical exclusions been adequately identified and defined?"

The responses the Council received indicated that there was considerable belief that categorical exclusions were not adequately identified and defined. A number of commentators indicated that agencies had not identified all categories of actions that meet the categorical exclusion definition (§ 1508.4) or that agencies were overly restrictive in their interpretations of categorical exclusions. Concerns were expressed that agencies were requiring

too much documentation for projects that were not major federal actions with significant effects and also that agency procedures to add categories of actions to their existing lists of categorical exclusions were too cumbersome.

The National Environmental Policy Act and the CEQ regulations are concerned primarily with those "major federal actions significantly affecting the quality of the human environment" (42 U.S.C. 4332). Accordingly, agency procedures, resources, and efforts should focus on determining whether the proposed federal action is a major federal action significantly affecting the quality of the human environment. If the answer to this question is yes, an environmental impact statement must be prepared. If there is insufficient information to answer the question, an environmental assessment is needed to assist the agency in determining if the environmental impacts are significant and require an EIS. If the assessment shows that the impacts are not significant, the agency must prepare a finding of no significant impact. Further stages of this federal action may be excluded from requirements to prepare NEPA documents.

The CEQ regulations were issued in 1978 and most agency implementing regulations and procedures were issued shortly thereafter. In recognition of the experience with the NEPA process that agencies have had since the CEQ regulations were issued, the Council believes that it is appropriate for agencies to examine their procedures to insure that the NEPA process utilizes this additional knowledge and experience. Accordingly, the Council strongly encourages agencies to re-examine their environmental procedures and specifically those portions of the procedures where "categorical exclusions" are discussed to determine if revisions are appropriate. The specific issues which the Council is concerned about are (1) the use of detailed lists of specific activities for categorical exclusions, (2) the excessive use of environmental assessments/findings of no significant impact and (3) excessive documentation.

The Council has noted some agencies have developed lists of specific activities which qualify as categorical exclusions. The Council believes that if this approach is applied narrowly it will not provide the agency with sufficient flexibility to make decisions on a project-by-project basis with full consideration to the issues and impacts that are unique to a specific project. The Council encourages the agencies to consider broadly defined criteria which

characterize types of actions that, based on the agency's experience, do not cause significant environmental effects. If this technique is adopted, it would be helpful for the agency to offer several examples of activities frequently performed by that agency's personnel which would normally fall in these categories. Agencies also need to consider whether the cumulative effects of several small actions would cause sufficient environmental impact to take the actions out of the categorically excluded class.

The Council also encourages agencies to examine the manner in which they use the environmental assessment process in relation to their process for identifying projects that meet the categorical exclusion definition. A report⁽¹⁾ to the Council indicated that some agencies have a very high ratio of findings of no significant impact to environmental assessments each year while producing only a handful of EIS's. Agencies should examine their decisionmaking process to ascertain if some of these actions do not, in fact, fall within the categorical exclusion definition, or, conversely, if they deserve full EIS treatment.

As previously noted, the Council received a number of comments that agencies require an excessive amount of environmental documentation for projects that meet the categorical exclusion definition. The Council believes that sufficient information will usually be available during the course of normal project development to determine the need for an EIS and further that the agency's administrative record will clearly document the basis for its decision. Accordingly, the Council strongly discourages procedures that would require the preparation of additional paperwork to document that an activity has been categorically excluded.

Categorical exclusions promulgated by an agency should be reviewed by the Council at the draft stage. After reviewing comments received during the review period and prior to publication in final form, the Council will determine whether the categorical exclusions are consistent with the NEPA regulations.

Adoption Procedures

During the recent effort undertaken by the Council to review the current NEPA regulations, several participants indicated federal agencies were not utilizing the adoption procedures as authorized by the CEQ regulations. The concept of adoption was incorporated into the Council's NEPA Regulations (40 CFR 1506.3) to reduce duplicative EISs prepared by Federal agencies. The

experiences gained during the 1970's revealed situations in which two or more agencies had an action relating to the same project; however, the timing of the actions was different. In the early years of NEPA implementation, agencies independently approached their activities and decisions. This procedure lent itself to two or even three EISs on the same project. In response to this situation the CEQ regulations authorized agencies, in certain instances, to adopt environmental impact statements prepared by other agencies.

In general terms, the regulations recognize three possible situations in which adoption is appropriate. One is where the federal agency participated in the process as a cooperating agency. (40 CFR 1506.3(c)). In this case, the cooperating agency may adopt a final EIS and simply issue its record of decision.⁽²⁾ However, the cooperating agency must independently review the EIS and determine that its own NEPA procedures have been satisfied.

A second case concerns the federal agency which was not a cooperating agency, but is, nevertheless, undertaking an activity which was the subject of an EIS. (40 CFR 1506.3(b)). This situation would arise because an agency did not anticipate that it would be involved in a project which was the subject of another agency's EIS. In this instance where the proposed action is substantially the same as that action described in the EIS, the agency may adopt the EIS and recirculate (file with EPA and distribute to agencies and the public) it as a final EIS. However, the agency must independently review the EIS to determine that it is current and that its own NEPA procedures have been satisfied. When recirculating the final EIS the agency should provide information which identifies what federal action is involved.

The third situation is one in which the proposed action is not substantially the same as that covered by the EIS. In this case, any agency may adopt an EIS or a portion thereof by circulating the EIS as a draft or as a portion of the agency's draft and preparing a final EIS. (40 CFR 1506.3(a)). Repetitious analysis and time consuming data collection can be easily eliminated utilizing this procedure.

The CEQ regulations specifically address the question of adoption only in terms of preparing EIS's. However, the objectives that underlie this portion of the regulations—i.e., reducing delays and eliminating duplication—apply with equal force to the issue of adopting other environmental documents. Consequently, the Council encourages agencies to put in place a mechanism for

adopting environmental assessments prepared by other agencies. Under such procedures the agency could adopt the environmental assessment and prepare a Finding of No Significant Impact based on that assessment. In doing so, the agency should be guided by several principles:

- First, when an agency adopts such an analysis it must independently evaluate the information contained therein and take full responsibility for its scope and content.
- Second, if the proposed action meets the criteria set out in 40 CFR 1501.4(e)(2), a Finding of No Significant Impact would be published for 30 days of public review before a final determination is made by the agency on whether to prepare an environmental impact statement.

Contracting Provisions

Section 1506.5(c) of the NEPA regulations contains the basic rules for agencies which choose to have an environmental impact statement prepared by a contractor. That section requires the lead or cooperating agency to select the contractor, to furnish guidance and to participate in the preparation of the environmental impact statement. The regulation requires contractors who are employed to prepare an environmental impact statement to sign a disclosure statement stating that they have no financial or other interest in the outcome of the project. The responsible federal official must independently evaluate the statement prior to its approval and take responsibility for its scope and contents.

During the recent evaluation of comments regarding agency implementation of the NEPA process, the Council became aware of confusion and criticism about the provisions of Section 1506.5(c). It appears that a great deal of misunderstanding exists regarding the interpretation of the conflict of interest provision. There is also some feeling that the conflict of interest provision should be completely eliminated.(3)

Applicability of § 1506.5(c)

This provision is only applicable when a federal lead agency determines that it needs contractor assistance in preparing an EIS. Under such circumstances, the lead agency or a cooperating agency should select the contractor to prepare the EIS.(4)

This provision does not apply when the lead agency is preparing the EIS based on information provided by a private applicant. In this situation, the private applicant can obtain its information from any source. Such

sources could include a contractor hired by the private applicant to do environmental, engineering, or other studies necessary to provide sufficient information to the lead agency to prepare an EIS. The agency must independently evaluate the information and is responsible for its accuracy.

Conflict of Interest Provisions

The purpose of the disclosure statement requirement is to avoid situations in which the contractor preparing the environmental impact statement has an interest in the outcome of the proposal. Avoidance of this situation should, in the Council's opinion, ensure a better and more defensible statement for the federal agencies. This requirement also serves to assure the public that the analysis in the environmental impact statement has been prepared free of subjective, self-serving research and analysis.

Some persons believe these restrictions are motivated by undue and unwarranted suspicion about the bias of contractors. The Council is aware that many contractors would conduct their studies in a professional and unbiased manner. However, the Council has the responsibility of overseeing the administration of the National Environmental Policy Act in a manner most consistent with the statute's directives and the public's expectations of sound government. The legal responsibilities for carrying out NEPA's objectives rest solely with federal agencies. Thus, if any delegation of work is to occur, it should be arranged to be performed in as objective a manner as possible.

Preparation of environmental impact statements by parties who would suffer financial losses if, for example, a "no action" alternative were selected, could easily lead to a public perception of bias. It is important to maintain the public's faith in the integrity of the EIS process, and avoidance of conflicts in the preparation of environmental impact statements is an important means of achieving this goal.

The Council has discovered that some agencies have been interpreting the conflicts provision in an overly burdensome manner. In some instances, multidisciplinary firms are being excluded from environmental impact statement preparation contracts because of links to a parent company which has design and/or construction capabilities. Some qualified contractors are not bidding on environmental impact statement contracts because of fears that their firm may be excluded from future design or construction contracts. Agencies have also applied the selection

and disclosure provisions to project proponents who wish to have their own contractor for providing environmental information. The result of these misunderstandings has been reduced competition in bidding for EIS preparation contracts, unnecessary delays in selecting a contractor and preparing the EIS, and confusion and resentment about the requirement. The Council believes that a better understanding of the scope of § 1506.5(c) by agencies, contractors and project proponents will eliminate these problems.

Section 1506.5(c) prohibits a person or entity entering into a contract with a federal agency to prepare an EIS when that party has at that time and during the life of the contract pecuniary or other interests in the outcomes of the proposal. Thus, a firm which has an agreement to prepare an EIS for a construction project cannot, at the same time, have an agreement to perform the construction, nor could it be the owner of the construction site. However, if there are no such separate interests or arrangements, and if the contract for EIS preparation does not contain any incentive clauses or guarantees of any future work on the project, it is doubtful that an inherent conflict of interest will exist. Further, § 1506.5(c) does not prevent an applicant from submitting information to an agency. The lead federal agency should evaluate potential conflicts of interest prior to entering into any contract for the preparation of environmental documents.

Selection of Alternatives in Licensing and Permitting Situations

Numerous comments have been received questioning an agency's obligation, under the National Environmental Policy Act, to evaluate alternatives to a proposed action developed by an applicant for a federal permit or license. This concern arises from a belief that projects conceived and developed by private parties should not be questioned or second-guessed by the government. There has been discussion of developing two standards to determine the range of alternatives to be evaluated: The "traditional" standard for projects which are initiated and developed by a Federal agency, and a second standard of evaluating only those alternatives presented by an applicant for a permit or license.

Neither NEPA nor the CEQ regulations make a distinction between actions initiated by a Federal agency and by applicants. Early NEPA case law, while emphasizing the need for a rigorous examination of alternatives, did

not specifically address this issue. In 1981, the Council addressed the question in its document, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations".⁽⁵⁾ The answer indicated that the emphasis in determining the scope of alternatives should be on what is "reasonable". The Council said that, "Reasonable alternatives include those that are *practical or feasible* from the technical and economic standpoint and using common sense rather than simply *desirable* from the standpoint of the applicant."

Since issuance of that guidance, the Council has continued to receive requests for further clarification of this question. Additional interest has been generated by a recent appellate court decision. *Roosevelt Campobello International Park Commission v. E.P.A.*⁽⁶⁾ dealt with EPA's decision of whether to grant a permit under the National Pollutant Discharge Elimination System to a company proposing a refinery and deep-water terminal in Maine. The court discussed both the criteria used by EPA in its selecting of alternative sites to evaluate, and the substantive standard used to evaluate the sites. The court determined that EPA's choice of alternative sites was "focused by the primary objectives of the permit applicant . . ." and that EPA had limited its consideration of sites to only those sites which were considered feasible, given the applicant's stated goals. The court found that EPA's criteria for selection of alternative sites was sufficient to meet its NEPA responsibilities.

This decision is in keeping with the concept that an agency's responsibilities to examine alternative sites has always been "bounded by some notion of feasibility" to avoid NEPA from becoming "an exercise in frivolous boilerplate".⁽⁷⁾ NEPA has never been interpreted to require examination of purely conjectural possibilities whose implementation is deemed remote and speculative. Rather, the agency's duty is to consider "alternatives as they exist and are likely to exist."⁽⁸⁾ In the *Roosevelt Campobello* case, for example, EPA examined three alternative sites and two alternative modifications of the project at the preferred alternative site. Other factors to be developed during the scoping process—comments received from the public, other government agencies and institutions, and development of the agency's own environmental data—should certainly be incorporated into the decision of which alternatives to seriously evaluate in the EIS. There is,

however, no need to disregard the applicant's purposes and needs and the common sense realities of a given situation in the development of alternatives.

Tiering

Tiering of environmental impact statements refers to the process of addressing a broad, general program, policy or proposal in an initial environmental impact statement (EIS), and analyzing a narrower site-specific proposal, related to the initial program, plan or policy in a subsequent EIS. The concept of tiering was promulgated in the 1978 CEQ regulations; the preceding CEQ guidelines had not addressed the concept. The Council's intent in formalizing the tiering concept was to encourage agencies, "to eliminate repetitive discussions and to focus on the actual issues ripe for decisions at each level of environmental review."⁽⁹⁾

Despite these intentions, the Council perceives that the concept of tiering has caused a certain amount of confusion and uncertainty among individuals involved in the NEPA process. This confusion is by no means universal; indeed, approximately half of those commenting in response to our question about tiering⁽¹⁰⁾ indicated that tiering is effective and should be used more frequently. Approximately one-third of the commentators responded that they had no experience with tiering upon which to base their comments. The remaining commentators were critical of tiering. Some commentators believed that tiering added an additional layer of paperwork to the process and encouraged, rather than discouraged, duplication. Some commentators thought that the inclusion of tiering in the CEQ regulations added an extra legal requirement to the NEPA process. Other commentators said that an initial EIS could be prepared when issues were too broad to analyze properly for any meaningful consideration. Some commentators believed that the concept was simply not applicable to the types of projects with which they worked; others were concerned about the need to supplement a tiered EIS. Finally, some who responded to our inquiry questioned the courts' acceptance of tiered EISs.

The Council believes that misunderstanding of tiering and its place in the NEPA process is the cause of much of this criticism. Tiering, of course, is by no means the best way to handle all proposals which are subject to NEPA analysis and documentation. The regulations do not require tiering; rather, they authorize its use when an agency determines it is appropriate. It is an

option for an agency to use when the nature of the proposal lends itself to tiered EIS(s).

Tiering does not add an additional legal requirement to the NEPA process. An environmental impact statement is required for proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. In the context of NEPA, "major Federal actions" include adoption of official policy, formal plans, and programs as well as approval of specific projects, such as construction activities in a particular location or approval of permits to an outside applicant. Thus, where a Federal agency adopts a formal plan which will be executed throughout a particular region, and later proposes a specific activity to implement that plan in the same region, both actions need to be analyzed under NEPA to determine whether they are major actions which will significantly affect the environment. If the answer is yes in both cases, both actions will be subject to the EIS requirement, whether tiering is used or not. The agency then has one of two alternatives: Either preparation of two environmental impact statements, with the second repeating much of the analysis and information found in the first environmental impact statement, or tiering the two documents. If tiering is utilized, the site-specific EIS contains a summary of the issues discussed in the first statement and the agency will incorporate by reference discussions from the first statement. Thus, the second, or site-specific statement, would focus primarily on the issues relevant to the specific proposal, and would not duplicate material found in the first EIS. It is difficult to understand, given this scenario, how tiering can be criticized for adding an unnecessary layer to the NEPA process; rather, it is intended to streamline the existing process.

The Council agrees with commentators who stated that there are stages in the development of a proposal for a program, plan or policy when the issues are too broad to lend themselves to meaningful analysis in the framework of an EIS. The CEQ regulations specifically define a "proposal" as existing at, "that stage in the development of an action when an agency subject to [NEPA] has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing the goal and the effects can be meaningfully evaluated."⁽¹¹⁾ Tiering is not intended to force an agency to prepare an EIS before this stage is reached; rather, it is a technique to be used once meaningful analysis can

be performed. An EIS is not required before that stage in the development of a proposal, whether tiering is used or not.

The Council also realizes that tiering is not well suited to all agency programs. Again, this is why tiering has been established as an *option* for the agency to use, as opposed to a requirement.

A supplemental EIS is required when an agency makes substantial changes in the proposed action relevant to environmental concerns, or when there are significant new circumstances or information relevant to environmental concerns bearing on the proposed action, and is optional when an agency otherwise determines to supplement an EIS. (12) The standard for supplementing an EIS is not changed by the use of tiering; there will no doubt be occasions when a supplement is needed, but the use of tiering should reduce the number of those occasions.

Finally, some commentators raised the question of courts' acceptability of tiering. This concern is understandable, given several cases which have reversed agency decisions in regard to a particular programmatic EIS. However, these decisions have never invalidated the concept of tiering, as stated in the CEQ regulations and discussed above. Indeed, the courts recognized the usefulness of the tiering approach in case law before the promulgation of the tiering regulation. Rather, the problems appear when an agency determines not to prepare a site-specific EIS based on the fact that a programmatic EIS was prepared. In this situation, the courts carefully examine the analysis contained in the programmatic EIS. A court may or may not find that the programmatic EIS contains appropriate analysis of impacts and alternatives to meet the adequacy test for the site-specific proposal. A recent decision by the Ninth Circuit Court of Appeals (13) invalidated an attempt by the Forest Service to make a determination regarding wilderness and non-wilderness designations on the basis of a programmatic EIS for this reason. However, it should be stressed that this and other decisions are not a repudiation of the tiering concept. In these instances, in fact, tiering has not been used; rather, the agencies have attempted to rely exclusively on programmatic or "first level" EISs which did not have site-specific information. No court has found that the tiering process as provided for in the CEQ regulations is an improper manner of implementing the NEPA process.

In summary, the Council believes that tiering can be a useful method of

reducing paperwork and duplication when used carefully for appropriate types of plans, programs and policies which will later be translated into site-specific projects. Tiering should not be viewed as an additional substantive requirement, but rather a means of accomplishing the NEPA requirements in an efficient manner as possible.

Footnotes

(1) Environmental Law Institute, *NEPA In Action: Environmental Offices in Nineteen Federal Agencies*, A Report To the Council on Environmental Quality, October 1981.

(2) Records of decision must be prepared by each agency responsible for making a decision, and cannot be adopted by another agency.

(3) The Council also received requests for guidance on effective management of the third-party environmental impact statement approach. However, the Council determined that further study regarding the policies behind this technique is warranted, and plans to undertake that task in the future.

(4) There is no bar against the agency considering candidates suggested by the applicant, although the Federal agency must retain its independence. If the applicant is seen as having a major role in the selection of the contractor, contractors may feel the need to please both the agency and the applicant. An applicant's suggestion, if any, to the agency regarding the choice of contractors should be one of many factors involved in the selection process.

(5) 46 FR 18026 (1981).

(6) 684 F.2d 1041 (1st Cir. 1982).

(7) *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551 (1978).

(8) *Monarch Chemical Works, Inc. v. Exon*, 466 F.Supp. 639, 650 (1979), quoting *Carolina Environmental Study Group v. U.S.*, 510 F.2d 796, 801 (1975).

(9) Preamble, FR, Vol. 43, No. 230, p. 55984, 11/29/78.

(10) "Is tiering being used to minimize repetition in an environmental assessment and in environmental impact statements?", 46 FR 41131, August 14, 1981.

(11) 40 CFR 1508.23 (emphasis added).

(12) 40 CFR 1502.9(c).

(13) *California v. Block*, 18 ERC 1149 (1982).

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6447

[WASH-03047, OR-22052 (WASH), OR-22058 (WASH), OR-22059 (WASH)]

Washington; Revocation of Secretarial Orders of December 22, 1905, September 18, 1916, and April 21, 1920, and Public Land Order No. 2342

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes three Secretarial orders and a public land order affecting 6,557.22 acres of land withdrawn for the Yakima Project. This action will open 3,416.62 acres of land to surface entry and mining. Of the balance, 1,657.94 acres have been conveyed from Federal ownership with a reservation of oil and gas; 163.46 acres are included in other existing land withdrawals; and 1,319.20 acres will be restored to State indemnity selection only, and will not be opened to surface entry or mining. To the extent that the minerals remain in Federal ownership, the lands have been and will remain open to mineral leasing, except for the 163.46 acres that remain withdrawn.

EFFECTIVE DATE: August 24, 1983.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretary's First Form Reclamation Withdrawal Order of December 22, 1905, which withdrew the following described land for the Yakima Project, is hereby revoked:

Willamette Meridian

Public Lands

T. 9 N., R. 27 E.,

Sec. 4, SW¼;

Sec. 10, S½;

Sec. 14;

Sec. 20, NE¼, E½NW¼, NE¼SW¼,

N½NW¼SW¼, SE¼NW¼SW¼,

NE¼NE¼SW¼SW¼, N½SE¼SW¼,

NE¼SW¼SE¼SW¼, SE¼SE¼SW¼,

and N½SE¼;

Sec. 22, N½;

Sec. 24.

T. 10 N., R. 27 E.,

Sec. 34, SW¼NW¼.

T. 8 N., R. 28 E.,

Sec. 2, lots 1 and 2, S½NE¼, and SE¼;

Sec. 12, N½, N½SW¼,

N½N½SW¼SW¼, S½SW¼SW¼,

SE¼SW¼, and SE¼.

T. 9 N., R. 28 E.,

Sec. 18, fractional NW¼SW¼.

T. 11 N., R. 28 E.,

Sec. 10, SE¼.

T. 8 N., R. 30 E.,

Sec. 36, lot 4.

T. 7 N., R. 31 E.,

Sec. 6, lot 3.

Non-Federal Lands

T. 9 N., R. 27 E.,

Sec. 20, NW¼SW¼SE¼SW¼ and

SE¼SW¼SE¼SW¼.

T. 8 N., R. 28 E.,

Sec. 12, S½N½SW¼SW¼.

T. 9 N., R. 28 E.,