

of this intention at least sixty days in advance, and without specifically reporting to the Congress in writing at the time the recommendation or request is made in what respect construction of such project would be in conflict with the purposes of the Wild and Scenic Rivers Act and would affect the component and the values to be protected by the Responsible Official under the Act.

(3) Applicable consultation requirements are found in section 7 of the Act. The Department of Agriculture has promulgated implementing procedures, under section 7 at 36 CFR part 297, which apply to water resource projects located within, above, below or outside a wild and scenic river or study river under the Department's jurisdiction.

(f) *Barrier islands.* The Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*, generally prohibits new Federal expenditures or financial assistance for any purpose within the Coastal Barrier Resources System on or after October 18, 1982. Specified exceptions to this prohibition are allowed only after consultation with the Secretary of the Interior. The responsible official shall ensure that consultation is carried out with the Secretary of the Interior before making available new expenditures or financial assistance for activities within areas covered by the Coastal Barriers Resources Act in accord with the U.S. Fish and Wildlife Service published guidelines defining new expenditures and financial assistance, and describing procedures for consultation at 48 FR 45664 (October 6, 1983).

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

should be incorporated into the environmental assessment or environmental impact statement. Consultation procedures are detailed in 16 U.S.C. 662.

(h) *Endangered species protection.* Under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, Federal agencies are prohibited from jeopardizing threatened or endangered species or adversely modifying habitats essential to their survival. The responsible official shall identify all designated endangered or threatened species or their habitat that may be affected by an EPA action. If listed species or their habitat may be affected, formal consultation must be undertaken with the Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate. If the consultation reveals that the EPA activity may jeopardize a listed species or habitat, mitigation measures should be considered. Applicable consultation procedures are found in 50 CFR part 402.

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

§ 6.303 Air quality.

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

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

(c)-(g) [Reserved]

[58 FR 63247, Nov. 30, 1993]

Subpart D—Public and Other Federal Agency Involvement

§ 6.400 Public involvement.

(a) *General.* EPA shall make diligent efforts to involve the public in the environmental review process consistent

with program regulations and EPA policies on public participation. The responsible official shall ensure that public notice is provided for in accordance with 40 CFR 1506.6(b) and shall ensure that public involvement is carried out in accordance with EPA Public Participation Regulations, 40 CFR part 25, and other applicable EPA public participation procedures.

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

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

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

ommendations contained in §1506.6 of this title.

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

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

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

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

§ 6.401 Official filing requirements.

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

§ 6.402

40 CFR Ch. I (7–1–98 Edition)

by OEA on the conduct of the filing system.

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

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

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

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

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

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

review periods based on the circumstances.

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

§ 6.402 Availability of documents.

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

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

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

§ 6.403 The commenting process.

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

Environmental Protection Agency

§ 6.502

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

§ 6.404 Supplements.

(a) *General.* The responsible official shall consider preparing supplements to draft and final EISs in accordance with 40 CFR 1502.9(c). A supplement shall be prepared, circulated and filed in the same fashion (exclusive of scoping) as draft and final EISs.

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

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

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

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

§ 6.500 Purpose.

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

§ 6.501 Definitions.

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

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

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

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

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

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

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

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

§ 6.502 Applicability and limitations.

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

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

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

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

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

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

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