

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

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

§ 6.905 Record of decision.

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

Subpart J—Assessing the Environmental Effects Abroad of EPA Actions

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

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

§ 6.1001 Purpose and policy.

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

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

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

§ 6.1002 Applicability.

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

(1) Major research or demonstration projects which affect the global commons or a foreign nation.

(2) Ocean dumping activities carried out under section 102 of the MPRSA which affect the related environment.

(3) Major permitting or licensing by EPA of facilities which affect the global commons or the environment of a foreign nation. This may include such actions as the issuance by EPA of hazardous waste treatment, storage, or disposal facility permits pursuant to section 3005 of the Resource Conservation and Recovery Act (42 U.S.C. 6925), NPDES permits pursuant to section 402 of the Clean Water Act (33 U.S.C. 1342), and prevention of significant deterioration approvals pursuant to Part C of the Clean Air Act (42 U.S.C. 7470 *et seq.*).

(4) Wastewater Treatment Construction Grants Program under section 201 of the Clean Water Act when activities

addressed in the facility plan would have environmental effects abroad.

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

§ 6.1003 Definitions.

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

§ 6.1004 Environmental review and assessment requirements.

(a) *Research and demonstration projects.* The appropriate Assistant Administrator is responsible for performing the necessary degree of environmental review on research and demonstration projects undertaken by EPA. If the research or demonstration project affects the environment of the global commons, the applicant shall prepare an environmental analysis. This will assist the responsible official in determining whether an EIS is necessary. If it is determined that the action significantly affects the environment of the global commons, then an EIS shall be prepared. If the undertaking significantly affects a foreign nation EPA shall prepare a unilateral, bilateral or multilateral environmental study. EPA shall afford the affected foreign nation or international body or organization an opportunity to participate in this study. This environmental study shall discuss the need for the action, analyze the environmental impact of the various alternatives considered and list the agencies and other parties consulted.

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

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

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

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

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

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

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

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

§ 6.1005 Lead or cooperating agency.

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

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

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

§ 6.1006 Exemptions and considerations.

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

§ 6.1007 Implementation.

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

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

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

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

APPENDIX A TO PART 6—STATEMENT OF PROCEDURES ON FLOODPLAIN MANAGEMENT AND WETLANDS PROTECTION

Contents:

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

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

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

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

Section 2 Purpose

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

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

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

Section 3 Policy

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

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

(1) Reduce the hazard and risk of flood loss and wherever it is possible to avoid direct or indirect adverse impact on floodplains;

(2) Where there is no practical alternative to locating in a floodplain, minimize the impact of floods on human safety, health, and welfare, as well as the natural environment;

(3) Restore and preserve natural and beneficial values served by floodplains;

(4) Require the construction of EPA structures and facilities to be in accordance with the standards and criteria, of the regulations promulgated pursuant to the National Flood Insurance Program;

(5) Identify floodplains which require restoration and preservation and recommend management programs necessary to protect these floodplains and to include such considerations as part of on-going planning programs; and

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

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