

(d) The Responsible Official must ensure that an applicant that has committed to mitigation possesses the authority and ability to fulfill the commitment.

(e) The Responsible Official must make a ROD available to the public.

(f) Upon issuance of the ROD, the Responsible Official may proceed with the action subject to any mitigation measures described in the ROD. The Responsible Official must ensure adequate monitoring of mitigation measures identified in the ROD.

(g) If the mitigation identified in the ROD will be included as a condition in the permit or grant, the Responsible Official must ensure that EPA has the authority to impose the conditions. The Responsible Official should ensure that compliance with assistance agreement or permit conditions will be monitored and enforced under EPA's assistance agreement and permit authorities.

(h) The Responsible Official may revise a ROD at any time provided the revision is supported by an EIS. A revised ROD is subject to all provisions of paragraph (d) of this section.

**§ 6.209 Filing requirements for EPA EISs.**

(a) The Responsible Official must file an EIS with the NEPA Official no earlier than the date the document is transmitted to commenting agencies and made available to the public. The Responsible Official must comply with any guidelines established by the NEPA Official for the filing system process and comply with 40 CFR 1506.9 and 1506.10. The review periods are computed through the filing system process and published in the FEDERAL REGISTER in the Notice of Availability.

(b) The Responsible Official may request that the NEPA Official extend the review periods for an EIS. The NEPA Official will publish notice of an extension of the review period in the FEDERAL REGISTER and notify the CEQ.

**§ 6.210 Emergency circumstances.**

If emergency circumstances make it necessary to take an action that has a significant environmental impact without observing the provisions of subparts A through C of this part that are

required by the CEQ Regulations, the Responsible Official must consult with the NEPA Official at the earliest possible time. Consistent with 40 CFR 1506.11, the Responsible Official and the NEPA Official should consult with CEQ about alternative arrangements at the earliest opportunity. Actions taken without observing the provisions of subparts A through C of this part will be limited to actions necessary to control the immediate impacts of the emergency; other actions remain subject to the environmental review process.

**Subpart C—Requirements for Environmental Information Documents and Third-Party Agreements for EPA Actions Subject to NEPA**

**§ 6.300 Applicability.**

(a) This section applies to actions that involve applications to EPA for permits or assistance agreements, or request other EPA approval.

(b) The Responsible Official is responsible for the environmental review process on EPA's action (that is, issuing the permit or awarding the assistance agreement) with the applicant contributing through submission of an EID or a draft EA and supporting documents.

(c) An applicant is not required to prepare an EID when:

(1) The action has been categorically excluded or requires the preparation of an EIS; or

(2) The applicant will prepare and submit a draft EA and supporting documents.

(d) The Responsible Official must notify the applicant if EPA will not require submission of an EID.

[72 FR 53662, Sept. 19, 2007, as amended at 74 FR 5994, Feb. 4, 2009]

**§ 6.301 Applicant requirements.**

(a) The applicant must prepare an EID in consultation with the Responsible Official, unless the Responsible Official has notified the applicant that an EID is not required. The EID must be of sufficient scope and content to enable the Responsible Official to prepare an EA and FONSI or, if necessary,

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an EIS and ROD. The applicant must submit the EID to the Responsible Official.

(b) The applicant must consult with the Responsible Official as early as possible in the planning process to obtain guidance with respect to the appropriate level and scope of environmental information required for the EID.

(c) As part of the EID process, the applicant may consult with appropriate federal agencies, state and local governments, federally-recognized Indian tribes, and other potentially affected parties to identify their interests in the project and the environmental issues associated with the project.

(d) The applicant must notify the Responsible Official as early as possible of other federal agency, state or local government, or federally-recognized Indian tribe requirements related to the project. The applicant also must notify the Responsible Official of any private entities and organizations affected by the proposed project. (See 40 CFR 1501.2(d)(2).)

(e) The applicant must notify the Responsible Official if, during EPA's environmental review process, the applicant:

(1) Changes its plans for the project as originally submitted to EPA; and/or

(2) Changes its schedule for the project from that originally submitted to EPA.

(f) In accordance with § 6.204, where appropriate, the applicant may request a categorical exclusion determination by the Responsible Official. If requested by the Responsible Official, the applicant must submit information to the Responsible Official regarding the application of a categorical exclusion to EPA's pending action and the applicant's project.

### **§ 6.302 Responsible Official requirements.**

(a) Consistent with 40 CFR 1501.2(d), the Responsible Official must ensure early involvement of applicants in the environmental review process to identify environmental effects, avoid delays, and resolve conflicts.

(b) The Responsible Official must notify the applicant if a determination has been made that the action has been

categorically excluded, or if EPA needs additional information to support the application of a categorical exclusion or if the submitted information does not support the application of a categorical exclusion and that an EA, or an EIS, will be required.

(c) When an EID is required for a project, the Responsible Official must consult with the applicant and provide the applicant with guidance describing the scope and level of environmental information required.

(1) The Responsible Official must provide guidance on a project-by-project basis to any applicant seeking such assistance. For major categories of actions involving a large number of applicants, the Responsible Official may prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide.

(2) The Responsible Official must consider the extent to which the applicant is capable of providing the required information. The Responsible Official may not require the applicant to gather data or perform analyses that unnecessarily duplicate either existing data or the results of existing analyses available to EPA. The Responsible Official must limit the request for environmental information to that necessary for the environmental review.

(d) If, prior to completion of the environmental review for a project, the Responsible Official receives notification, that the applicant is proposing to or taking an action that would result in significant impacts or would limit alternatives, the Responsible Official must notify the applicant promptly that EPA will take appropriate action to ensure that the objectives and procedures of NEPA are achieved (see 40 CFR 1506.1(b)). Such actions may include withholding grant funds or denial of permits.

(e) The Responsible Official must begin the NEPA review as soon as possible after receiving the applicant's EID or draft EA. The Responsible Official must independently evaluate the information submitted and be responsible for its accuracy (see 40 CFR 1506.5).

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(f) At the request of an applicant and at the discretion of the Responsible Official, an applicant may prepare an EA or EIS and supporting documents or enter into a third-party contract pursuant to § 6.303.

(g) The Responsible Official must review, and take responsibility for the completed NEPA documents, before rendering a final decision on the proposed action.

#### § 6.303 Third-party agreements.

(a) If an EA or EIS is to be prepared for an action subject to subparts A through C of this part, the Responsible Official and the applicant may enter into an agreement whereby the applicant engages and pays for the services of a third-party contractor to prepare an EA or EIS and any associated documents for consideration by EPA. In such cases, the Responsible Official must approve the qualifications of the third-party contractor. The third-party contractor must be selected on the basis of ability and absence of any conflict of interest. Consistent with 40 CFR 1506.5(c), in consultation with the applicant, the Responsible Official shall select the contractor. The Responsible Official must provide guidance to the applicant and contractor regarding the information to be developed, including the project's scope, and guide and participate in the collection, analysis, and presentation of the information. The Responsible Official has sole authority for final approval of and EA or EIS.

(1) The applicant must engage and pay for the services of a contractor to prepare the EA or EIS and any associated documents without using EPA financial assistance (including required match).

(2) The Responsible Official, in consultation with the applicant, must ensure that the contractor is qualified to prepare an EA or EIS, and that the substantive terms of the contract specify the information to be developed, and the procedures for gathering, analyzing and presenting the information.

(3) The Responsible Official must prepare a disclosure statement for the applicant to include in the contract specifying that the contractor has no financial or other interest in the out-

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come of the project (see 40 CFR 1506.5(c)).

(4) The Responsible Official will ensure that the EA or EIS and any associated documents contain analyses and conclusions that adequately assess the relevant environmental issues.

(b) In order to make a decision on the action, the Responsible Official must independently evaluate the information submitted in the EA or EIS and any associated documents, and issue an EA or draft and final EIS. After review of, and appropriate changes to, the EA or EIS submitted by the applicant, the Responsible Official may accept it as EPA's document. The Responsible Official is responsible for the scope, accuracy, and contents of the EA or EIS and any associated documents (see 40 CFR 1506.5).

(c) A third-party agreement may not be initiated unless both the applicant and the Responsible Official agree to its creation and terms.

(d) The terms of the contract between the applicant and the third-party contractor must ensure that the contractor does not have recourse to EPA for financial or other claims arising under the contract, and that the Responsible Official, or other EPA designee, may give technical advice to the contractor.

#### Subpart D—Assessing the Environmental Effects Abroad of EPA Actions

AUTHORITY: 42 U.S.C. 4321, note, E.O. 12114, 44 FR 1979, 3 CFR, 1979 Comp., p. 356.

#### § 6.400 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.