Methods Federal Government Agencies Implement to Comply with the National Environmental Policy Act

by

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Executive Summary

The National Environmental Policy Act (NEPA) became the first major environmental law in the United States (US) in 1970. NEPA requires federal agencies to determine significant environmental impacts of their actions to the fullest extent possible. Each agency is given flexibility in their compliance (Congress, 1970). Oversight of agency compliance with NEPA was given to the Council on Environmental Quality (CEQ) in the Executive Office of the President (EOP) by Congress within the Act. CEQ issued regulations in 1978 to direct agencies on fundamental requirements for compliance with the Act.

Government employees understand that NEPA needs to be implemented within federal agencies to comply with the Act. However, levels of compliance with NEPA vary. Unlike most US environmental laws, there are no monetary fines associated with agencies’ non-compliance with the Act (Knudsen, n.d.). As such, the public’s oversight of federal actions, through public participation, Congressional complaints, and litigation, influence agency compliance with NEPA.

This study determines implementation methods employed by NEPA practitioners to integrate the Act and CEQ regulations into their agency, specifically within their decision-making and action planning processes. This study also identifies factors that impede integration of NEPA implementation methods into federal agency decision-making and action planning processes. Lastly, this study seeks to determine improvements in current implementation methods and processes that can be employed by federal agencies to better implement and comply with NEPA.

Twelve federal agencies were examined for this study, and 15 interviews were conducted with federal government employees working within the US Executive Branch. Eugene Bardach’s (2012) policy research “tree of knowledge” was used to inform this study, with “people leading to people, people leading to documents, documents leading to documents, and documents leading to people.” This study is based on Leo A. Goodman’s qualitative research procedure in Snowball Sampling. The snowball sampling approach allows for this study to determine and understand methods implemented by federal agencies for NEPA compliance through interviews with a versatile group of NEPA practitioners.

This study identified four methods used by agencies to implement the NEPA process into federal decision-making. NEPA training allows decision-makers to initiate the NEPA process when an action is proposed. Programmatic environmental documents review any cumulative environmental impacts from geographical locations, projects, and cumulative actions. Master plans integrate NEPA into agency budget and project planning processes. Information Technology (IT) systems allow for institutional knowledge and historic NEPA reviews to be archived in IT Decision Support Systems (DSS) to create more effective NEPA reviews. IT Geographic Information Systems (GIS) are prevalent in federal agency decision-making to efficiently locate environmental attributes near potential action sites. Information- and knowledge-sharing, informed decisions, and archived NEPA documents are realized benefits of using IT systems for NEPA.

Practices implemented by agencies should make the NEPA process more efficient and effective to minimize federal actions’ potential environmental impacts. As agencies introduce
Programmatic environmental assessments on a larger scale, data on environmental attributes in large geographical areas (e.g., centers, forests, installations) can improve GIS survey data. Federal agencies should move toward sharing environmental survey data so that current and relevant environmental attributes and constraints can be listed within one GIS platform. One centralized GIS platform would eliminate duplicative data collection efforts, thereby saving time and funding, and allow for valuable information-sharing.

NEPA guidance documents, regulations, memorandums, and data sets should also be located on a centralized website. This study recommends that CEQ transition to an EOP website to provide one centralized location for all NEPA guidance documents; a secure, comprehensive IT GIS platform; and a DSS for all EAs and EISs. A DSS should support EAs and EISs to be available for public information, with links to Regulations.gov for public comments to be submitted. NEPA documents not requiring public review and comment should be stored on individual agency DSS platforms.

Use of comprehensive IT systems for NEPA provides seamless environmental review processes and cohesive flow amongst agencies, between the federal government and the public, and over the years. With information electronically linked, decision-makers will be able to access a centralized CEQ GIS system to locate any environmental constraints near their proposed action site, thereby promoting efficient and effective environmental reviews. Agency DSSs should also be connected with the agency’s allocation of funding so that NEPA is incorporated into decision-making processes before funding is provided.

Programmatic reviews can be conducted using centralized GIS data, both in individual agencies and collaboratively with other federal agencies. Further, electronic master plans can be more useful when linked to a centralized IT GIS and agency DSS platforms. Completed NEPA reviews can be readily available in DSSs for action proponents to integrate environmental considerations into their actions, for senior management to view project statuses, and for NEPA programs to access proposed, current, and historic reviews. Once IT systems are in use for agencies to comply with NEPA to the fullest extent possible, NEPA practitioners can identify and focus on other areas, including policies and implementing procedures, for NEPA compliance improvement.

Lastly, CEQ should update their 1978 NEPA regulations. The CEQ NEPA regulations influenced a transition from environmental impact statements (EIS) to categorical exclusions (CATEX), with 95% to 98% of actions currently qualifying for categorical exclusions. Because this shift was not foreseen, the NEPA regulations do not speak to the use of categorical exclusions at length. While guidance documents and memorandums have been published in the past 38 years, no revisions to the original mandate have been issued. NEPA program managers interviewed for this study believe CEQ should update the regulations to provide further clarification for problems still found in the NEPA process, including use of EAs and solutions for improved compliance.
Acknowledgments

For my family, Barry, Lin, Allison, Chris, and Jonah, for their unwavering love and support always, and especially over the past two years while obtaining my masters degree.

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<thead>
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<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>CEQ</td>
<td>Council on Environmental Quality</td>
</tr>
<tr>
<td>CATEX</td>
<td>Categorical Exclusion</td>
</tr>
<tr>
<td>Cat Ex</td>
<td>Categorical Exclusion</td>
</tr>
<tr>
<td>CE</td>
<td>Categorical Exclusion</td>
</tr>
<tr>
<td>DSS</td>
<td>Decision Support System</td>
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<tr>
<td>EA</td>
<td>Environmental Assessment</td>
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<tr>
<td>EIS</td>
<td>Environmental Impact Statement</td>
</tr>
<tr>
<td>EMS</td>
<td>Environmental Management System</td>
</tr>
<tr>
<td>EOP</td>
<td>Executive Office of the President</td>
</tr>
<tr>
<td>EPA</td>
<td>Environmental Protection Agency</td>
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<tr>
<td>FEIS</td>
<td>Final Environmental Impact Statement</td>
</tr>
<tr>
<td>FONSI</td>
<td>Finding of No Significant Impact</td>
</tr>
<tr>
<td>FR</td>
<td>Federal Register</td>
</tr>
<tr>
<td>FY</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>GAO</td>
<td>Government Accountability Office</td>
</tr>
<tr>
<td>GIS</td>
<td>Geographic Information System</td>
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<tr>
<td>IT</td>
<td>Information Technology</td>
</tr>
<tr>
<td>NEPA</td>
<td>National Environmental Policy Act</td>
</tr>
<tr>
<td>NOI</td>
<td>Notice of Intent</td>
</tr>
<tr>
<td>PEIS</td>
<td>Programmatic Environmental Impact Statement</td>
</tr>
<tr>
<td>REC</td>
<td>Record of Environmental Consideration</td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
</tr>
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</table>
1 Introduction to the National Environmental Policy Act

Congress enacted the National Environmental Policy Act (NEPA or the Act) in December 1969, and President Richard Nixon signed the Act into law on January 1, 1970 (Appendix C). NEPA became the first major environmental law in the United States (US), establishing a national charter for protection of the environment (CEQ, 1970). Congress (1970) created NEPA to establish a national policy for the environment and to create the Council on Environmental Quality (CEQ).

Through NEPA, Congress established national environmental policies, with two major goals of better decision-making and involving citizens in federal government actions (CEQ, 2007). NEPA practitioners, interviewed for this study, specified these two goals to be essential for federal agency NEPA compliance success. NEPA requires every federal government agency in the executive branch to assess environmental impacts of their actions prior to making decisions (CEQ, 2007). CEQ (1978) directed federal agencies through its regulations:

\[
\text{to the fullest extent possible…use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.}
\]

NEPA does not require selection of environmentally preferable alternatives nor prohibit actions with adverse environmental impacts, especially in regards to mission critical considerations (e.g., economic, national security) that must be addressed (CEQ, 2007). However, NEPA does require federal government decision-makers to be informed of any environmental impacts of their actions (CEQ, 2007).

It is widely known amongst federal government employees that NEPA needs to be implemented within federal agencies for compliance with the Act. However, unlike most US environmental laws, there are no monetary fines associated with agencies’ non-compliance with NEPA (Knudsen, n.d.). Soon after the Act was signed into law, public interest groups and citizens found litigation as a successful means to “stop or modify federal projects that they felt were environmentally destructive,” with 654 cases filed in federal courts by 1975 (Clark, 1997). To resolve problems discovered in NEPA implementation and create a more defined NEPA review
process, President Jimmy Carter mandated CEQ to establish NEPA regulations in 1978 (Appendix B) (Clark, 1997). After NEPA’s 1973 procedural requirements were written as formal regulations, agencies lessened their use of environmental impact statements (EIS) and shifted to categorical exclusions (CATEX, Cat Ex, or CE), and environmental assessments (EA) (Clark, 1997). According to Clark (1997), this was an unintended consequence of the CEQ regulations, with all federal agency EISs declining from 11,000 EISs in 1978 to 500 EISs in 1997 and 467 EISs in 2015 (EPA, 2016). Interviewees noted that 95% to 98% of their agencies’ actions are categorically excluded. Chapter 4 describes the NEPA process, from streamlining the process with CATEXs, to interviewees’ opinions on unclear EAs, to completing EISs, including the important public participation process and integrating NEPA early into action planning timelines. The chapter includes discussion on federal agencies’ current implementation of the NEPA process and areas for improvement.

While agencies are not penalized for not complying with NEPA, the majority of federal employees feel compelled to implement the Act due to the realization that their agency could easily be sued, thus spending massive quantities of time and funds on NEPA cases (Clark, 1997). As discussed in Chapter 5, potential litigation from public oversight is the main reason federal agencies implement NEPA. Some agencies are not pressured from potential litigation or constituent complaints brought to Congress’s attention and are therefore less compelled to implement NEPA to the fullest extent possible; these agencies’ non-compliance regularly falls under the radar.

Some NEPA practitioners believe their agency’s actions do not have environmental impacts, as one interviewee indicated regarding their agency. This belief is not due to robust NEPA programs providing data to confirm this theory, but a broad assumption made in regards to the institutional knowledge that a NEPA program manager holds. The majority of NEPA program managers interviewed for this study do not hold such broad assumptions and implement NEPA to the fullest extent possible so that the NEPA process, from a CATEX Checklist to a complicated EIS, integrates environmental considerations into all federal actions.

This study determines methods federal agencies use to implement and comply with NEPA. This study also identifies factors that impede integration of NEPA implementation methods into federal agency decision-making and action planning processes. These methods and factors are
discussed in Chapters 6 through 11. Twelve federal agencies were examined for this study (Table 2), and 15 interviews were conducted with federal government employees working within the US Executive Branch. The study’s research justification, objectives, materials, and methods are discussed in Chapters 2 and 3. The case study was evaluated using the snowball sampling approach for qualitative research as introduced by Goodman (1961):

- Determine program group population;
- Choose a sample of individuals from a given program population;
- Ask individuals in the program to name other individuals in the program population;
- Ask individuals to participate in the study;
- Continue asking individuals in the program to name other individuals if necessary; and
- Widen the profile of individuals participating in the study to ensure diversity of experience.

This study seeks to determine improvements in current implementation methods and processes that can be employed by federal agencies to better implement and comply with NEPA. A discussion of these observations is provided in Chapters 12 through 14.

2 Research Justification and Objectives

Since the 1970s, federal agencies have been working to determine how best to integrate NEPA into their agencies to be in compliance with the Act and CEQ regulations. According to an effectiveness study by CEQ (1997) on NEPA’s 25th anniversary, results revealed that NEPA is a long and costly process, with decision-makers not adequately considering public opinion, and documents being lengthy and too technical in language for the common action proponent to understand. Additionally, the study found that training for agency employees, especially senior leadership officials, is inadequate (CEQ, 1997). After the study, CEQ (1997) committed to improve NEPA by integrating the environmental review process into all major actions and decision-making through cost and time cuts and improving public participation. However, comprehensive reviews on NEPA’s effectiveness, with identified recommendations for improved implementation, continued in President Bill Clinton’s administration and into President George W. Bush’s administration (GPO, 2015).
Based on information obtained in this study, the same results determined in the 25th anniversary effectiveness study are still occurring today. NEPA program managers remarked that their NEPA programs’ biggest challenge is the magnitude of needs without the ability to fulfill them with current shrinking budget and personnel sizes. As such, NEPA program managers are constantly determining methods to better implement and comply with NEPA. As one interviewee remarked, “NEPA programs do not want to reinvent the wheel, but this happens all the time.” With federal government actions occurring across the United States, budget cuts impacting NEPA program funding, and many of the original NEPA practitioners retiring, momentum is building amongst government employees to establish best practices for NEPA implementation and compliance.

It is important to establish methods to implement NEPA for three reasons. First, implementation methods can lessen the federal government’s impact on the environment. Second, implementation methods can create an effective NEPA review process to integrate environmental considerations into agency actions. Third, implementation methods can inspire efficient integration of NEPA reviews into agency decision-making processes.

Implementation methods can improve the Act’s intent to minimize or avoid adverse impacts on the environment. This study seeks to understand practices agencies currently use to integrate NEPA into their decision-making processes, without producing excess paperwork or burdensome procedures (CEQ, 1978). According to NEPA practitioners interviewed for this study, methods should be integrated into the lowest levels of agency actions, while headquarters level senior management should understand the importance of integrating NEPA into agency decision-making processes. Implementing a variety of methods across agency levels minimizes and avoids significant environmental impacts.

The NEPA review process assists decision-makers to realize and lessen environmental impacts from their actions. The NEPA process can be effective in this goal through sharing the best environmental knowledge and data available. Participants in a CEQ (1997) study on NEPA effectiveness defined five elements that are critical to effective and efficient NEPA implementation:

- Strategic planning;
• Public information and input;
• Interagency coordination;
• Interdisciplinary place-based approach to decision-making; and
• Science-based data and flexible management approaches during planning and implementation of projects.

Agencies work to efficiently integrate the goals of NEPA into agency decision-making processes at the beginning of project and action planning for the NEPA process to be effective. Further, agencies realize that public involvement in the NEPA and action planning processes create more successful results for the agency and communities. NEPA practitioners continue to collaborate and find ways to better implement NEPA so that the process is more effective in improving agency decisions. NEPA program managers realize that the best approach to decision-making is coordinating the best available interdisciplinary knowledge and science-based data to complete NEPA reviews, so that the NEPA process can be effective for action proponents (CEQ, 1997).

A NEPA Task Force (2003) report to CEQ found “effective and efficient NEPA implementation requires information-rich communication” among all parties involved in NEPA reviews and agency decision-making. Federal, state, and local government employees must collaborate and actively communicate with tribes, industry, citizens, and academics (NEPA Task Force, 2003). The NEPA process involves NEPA practitioners identifying potential significant environmental impacts through analyzing data, receiving public comments on the NEPA review, and sharing quality environmental assessments to decision-makers in an efficient manner. This study found four common implementation methods that are currently employed by 12 agencies to make the NEPA process more efficient and effective in their agency decision-making processes.

3 Materials and Methods

This study evaluates practices implemented by 12 federal agencies to comply with NEPA and factors that impede implementation of those practices, using multiple sources of evidence: supporting NEPA documentation, interviews, and federal agency Information Technology (IT) systems (Table 1).
### Table 1: Sources of Evidence

<table>
<thead>
<tr>
<th>Source of Data</th>
<th>Evidence</th>
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<tr>
<td>Supporting NEPA Documentation</td>
<td>Congressional acts; Executive regulations; Presidential Executive Orders; government records; NEPA documentation; Peer reviewed journal articles, books, and guidance documents from NEPA task forces, academia, and federal agency NEPA programs</td>
</tr>
<tr>
<td>Interviews</td>
<td>Qualitative, focused interviews of federal agency US Executive Branch employees implementing NEPA</td>
</tr>
<tr>
<td>Federal Agency IT Systems</td>
<td>Public methods used to implement NEPA</td>
</tr>
</tbody>
</table>

Practices implemented should make the NEPA process more efficient and effective to minimize federal actions’ potential environmental impacts. This study is based on Leo A. Goodman’s qualitative research procedure in Snowball Sampling. This study’s framework involves studying 12 federal agencies, representing a cross-section of the missions and actions of the federal government, and their implementation of NEPA to comply with the Act.

According to Bardach (2012), policy research involves discovering and synthesizing concepts and data already developed and implemented by practitioners through documents and people. The snowball sampling approach allows for this study to determine and understand methods implemented by federal agencies for NEPA compliance through interviews with a versatile group of NEPA practitioners. Further, NEPA practitioners led to interviews with more NEPA practitioners and to the discovery of supporting NEPA documentation and federal agency IT systems, thus integrating Bardach’s (2012) “tree of knowledge: people leading to people, people leading to documents, documents leading to documents, and documents leading to people.”

### 3.1 Selection Criteria for Agencies Studied

Agencies studied were selected based on five criteria: agency mission, employee size, agency funding allocation processes, presence across the country, and number of Final Environmental Impact Statements (FEIS) published between 2011 to present date.

Agency mission most often dictates action type. Infrastructure, land management, and most national security agency actions regularly occur outside, with frequent environmental impacts. Whereas, diplomatic affairs and some national security agency actions often occur within
buildings, with minimal environmental impacts. The quantity of environmental professionals, decision-makers, and action proponents at an agency can impact how efficiently and effectively NEPA is implemented into decision-making and action planning processes.

The processes of allocating funds that agencies use to implement their project actions also influence NEPA implementation. Some agencies integrate the NEPA process into their acquisition process to allocate funds to agency actions before they occur; other agencies separate funding allocation from NEPA processes.

Agency presence across the US indicates that actions occur in a variety of geographical areas with employees communicating across state boundaries. NEPA practitioners need to implement NEPA outside of their physical location to ensure the entire agency is in compliance with the Act and CEQ regulations.

Most often, when NEPA programs are consistently publishing FEISs, their NEPA programs are mature. Because FEISs require public involvement and high-level attention, these agencies’ actions are more likely to have significant impacts on the environment. Further, as CEQ does not require CATEX, REC, or EA reviews to be reported, the only data available for actions integrating NEPA are EISs. Lastly, agencies with FEISs employ NEPA practitioners that have learned how to implement and comply with the Act and CEQ regulations. When agencies do not consistently have actions with significant environmental impacts, NEPA practitioners do not have opportunities to implement and comply with NEPA.

The combination of these five selection criteria represents both breadth and depth of government actions across the federal government. Providing versatility in federal agencies presents findings that can be applied across the federal government and not limited to certain agency missions, sizes, funding forms, localities, or NEPA program maturity.

Twelve federal government agencies were selected to represent a cross-section of the five defined selection criteria (Table 2). The majority of the 12 agencies requested anonymity for this study.
### Table 2: Federal Government Agency Snapshots

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<td>Projects</td>
<td>Multiple States</td>
<td>225</td>
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</table>

### 3.2 Selection Criteria for Interviewees

Interviewees for this case study were selected based on two selection criteria: work as a NEPA practitioner and work for or with an agency selected for this study. Interviewees were selected for this qualitative research based on the snowball sampling approach introduced by Goodman (1961). Initial interviews were scheduled through Duke University Nicholas School of the
Environment alumni and staff connections. Additional interviews were scheduled using the CEQ NEPA federal contacts list.

Qualitative interviews were conducted with 15 federal government employees who work within the executive branch of the US government. The majority of interviewees requested anonymity for this study. Interviewees currently work in administrative, finance, acquisition, and other management and business roles in headquarter and field office NEPA programs. Employees interviewed write NEPA policy and guidance documents; perform NEPA reviews; implement, oversee, and/or manage a government agency’s NEPA program; and/or influence the future of NEPA in the federal government.

Interviewees also have a wide range of NEPA experience, including leading and participating in CEQ NEPA pilot projects, creating and implementing NEPA assessment tools, and participating in the National Association for Environmental Professionals. Some interviewees have less than ten years of experience in implementing NEPA and many interviewees have over 35 years of experience.

Interviews were conducted as follows: ten telephone interviews, one in-person interview, and four interviews through word document and email responses. Only one interviewee was not able to conduct an interview, due to counsel from the department’s legal team; however, a website was provided that included information on their NEPA program and an online database of guidance documents and past NEPA reviews. Interviews lasted around one hour each and varied slightly, depending on conversational flow and the interviewee’s area(s) of expertise. Interviews were administered in person and over the telephone and consisted of pre-defined and open-ended questions (Appendix A) pertaining to:

- Reasons for integrating NEPA implementation practices and/or systems;
- NEPA implementation methods’ key elements to incorporate NEPA compliance into decision-making; and
- Internal and external factors to the government agency contributing to successes and challenges in implementing and incorporating NEPA into agency decision-making processes.
Because of the variety and level of experiences NEPA practitioners interviewed encompass, findings of this study provide a resourcefulness of recommendations for other federal program managers to consider for implementation in their agency NEPA programs.

4 The National Environmental Policy Act Process

The Council on Environmental Quality established regulations, 43 FR 55990, in 1978 (Appendix B) to provide binding requirements to all federal agencies for implementing the 1969 Act (Appendix C). These are the only regulations that have been established by CEQ and for the Act. CEQ’s (1978) regulations established the principle preserved in NEPA 46 years ago:

   It is not better documents but better decisions that count. NEPA’s purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. (40 C.F.R. § 1500.1(c))

CEQ’s (1978) regulations speak to federal agency regulations, policies, and procedures to be reviewed and written in alignment with NEPA “to the fullest extent possible.” To the fullest extent possible means that federal agencies must comply with the Act unless other laws make compliance impossible (CEQ, 1978). Federal agencies have written, or are currently revising, policies and implementing procedures to implement NEPA to the fullest extent possible.

Implementing procedures include practices employed to identify actions likely to significantly impact the environment, to publish documents and receive comments in formal rulemaking, and to consider mitigating measures for proposed actions (CEQ, 1978). Agencies’ implementing procedures must dictate a process to involve agency decision-makers and the public in NEPA review processes (CEQ, 1978). Agencies’ implementing procedures should also speak to reduction of excess paperwork and background data, integration with other planning and environmental requirements, and use of feasible methods to minimize their actions’ adverse environmental impacts (CEQ, 1978).
Figure 1: The NEPA Process from *CEQ’s 2007 A Citizen’s Guide to NEPA*
While federal agencies have implemented NEPA policies and procedures, interviewees noted that federal agencies have historically focused more on completing NEPA documents rather than integrating the NEPA process to the fullest extent possible into their agency mission, regulations, policies, and procedures (Figure 1). As CEQ’s regulation largely focuses on federal agencies’ execution of EISs, federal agencies’ emphasis on NEPA documents is not surprising. Categorical exclusions are only mentioned three times in the entire regulation, and environmental assessment is referenced 25 times. The phrase environmental impact statement, however, is stated 186 times.

4.1 Categorical Exclusions

Each federal agency defines categories of actions “which do not individually or cumulatively” have significant impacts on the environment (CEQ, 1978). These categories of actions are known as categorical exclusions and are defined in each agency’s NEPA implementing procedures. CATEXs allow agencies to integrate environmental considerations effectively and efficiently into decision-making processes for actions that do not have significant impacts on the environment. CATEX NEPA reviews are documented on a CATEX Checklist, created by each federal agency, which are usually one to two pages in length. NEPA practitioners interviewed for this study noted that they are working hard to create interactive checklists, available online, for ease of use by federal employees.

Interviewees stated that 95% to 98% of their agencies’ actions are categorically excluded; these actions usually occur, with associated NEPA reviews completed, at the base level of agencies. Most agencies do not maintain a list of CATEX NEPA reviews, as it is not required under the plain language of CEQ’s 1978 regulation. Thus, most headquarter NEPA program managers do not know the exact number and type of actions that are being categorically excluded. Some interviewees stated that maintaining a list of these reviews is not necessary if you properly educate and trust agency base level employees to complete NEPA reviews with support from NEPA program offices.

Other interviewees stated that incorporation of IT systems for NEPA allow a repository of CATEX Checklists to be easily accessible. Currently, according to one NEPA practitioner, agencies estimate the number and type of CATEX reviews completed for CEQ and department
data calls. IT systems give NEPA practitioners the ability to better understand how many agency actions are reviewed for NEPA compliance, and which CATEXs are used and how often. This assists with defining CATEXs in implementing procedures and provides statistics regarding past CATEX NEPA reviews for program managers’ knowledge and data call requirements.

Many agencies write a Record of Environmental Consideration (REC) that is not defined in the CEQ NEPA regulations but is one step further than a CATEX Checklist. RECs use the same categorical exclusions as CATEX Checklists. RECs are documented with a CATEX REC Checklist, which are usually two pages and created individually by each federal agency.

4.2 Environmental Assessments and Finding of No Significant Impact

The CEQ regulations (1978) instruct federal agencies to prepare an EA in accordance with their own implementing procedures. Environmental assessments are created when actions cannot be categorically excluded but do not require an EIS. Additional regulatory language on the proper use of an EA has not been published by CEQ. In fact, Eccleston (2008) explained that agency use of EAs varies extensively, with some EAs being no longer than 30 pages in length and written by one employee, to other EAs being between 50 to 200 pages in length and generated by a collaborative team of agency employees. EAs range of development is from two weeks to 18 months and from $5,000 to $200,000 (Eccleston, 2008).

One NEPA practitioner noted that there is not a lot of information on what should be in an EA. As a result, according to the interviewee, agencies default to EISs, as it is easiest to comply with defined requirements. Unintended consequences, such as extending review time to four years and several hundred thousand dollars, result from what should be an EA becoming an EIS. The interviewee stated that their agency has developed training to help action proponents understand when an EA should be used.

Another agency established a standardized EA template, allowing their agency NEPA practitioners to complete the review following each step-by-step. The interviewee said that by mandating the standardized EA, time spent on document editing is reduced, the quality of the reviews is improved, and cuts are made to overall costs. As the NEPA program manager said, if the agency does everything consistently, employees can learn from one another.
Another agency that uses EAs said their actions usually result in a finding of no significant impact (FONSI), which may be used when an action, not already excluded through a defined CATEX, will not impact the environment (CEQ, 1978).

4.3 Environmental Impact Statements

Environmental impact statements are the highest level of the NEPA process and review actions that may or will have a significant impact on the environment. Therefore, for most agencies, this level of review is reserved for few federal actions. EISs are directed to be “concise, clear, and to the point” (CEQ, 1978). EISs ensure in-depth environmental analyses are incorporated into decision-making and project planning processes (CEQ, 1978). EISs should not be broad documents containing lots of background material; rather, the documents were created to be useful for decision-makers (CEQ, 1978). To provide clarity to federal agencies, CEQ defined the length of an EIS as less than 150 pages and complex EISs as less than 300 pages (CEQ, 1978). According to Eccleston (2008), EISs alter between 200 and 2,000 pages in length, with costs from $250,000 to 2 million dollars.

Several interviewees discussed lengthy EISs produced by their own NEPA practitioners and contractors. EISs are generally completed over two to three years, with few needing five years for completion (Eccleston, 2008). NEPA program managers interviewed for this study were appalled with their own EISs being more than 7,000 pages. One interviewee noted that writing a 7,000 page EIS, that was the cumulation of seven years of work, is not useful, as it will not be read, and clearly contradicts the original intent of an EIS to be concise and to the point (CEQ, 1978). The interviewee said that the final action decision was influenced by politics, not the EIS.

NEPA program managers interviewed for this study were also greatly disturbed by some of their EISs costing over 20 million in taxpayer dollars. The interviewees stated that spending 20 million dollars on one document does not provide additional analyses needed for a project to minimize its environmental impact. Costs this high are due to unnecessary spending by contractors and duplicative requests by management afraid of being sued. Both interviewees noted that the years and millions of dollars spent on these EISs would have been better used in other areas of their NEPA programs.
4.4 Public Involvement

CEQ’s regulations (1978) direct agencies to publish a notice of intent (NOI) in the Federal Register (FR) soon after deciding an EIS should be prepared. Then, federal agencies conduct scoping to identify significant issues related to a proposed action (CEQ, 1978). Federal, state, and local governments; tribes; involved parties; and interested public citizens are also involved in the action planning process during scoping (CEQ, 1978). One NEPA program manager, with over 40 years of experience implementing NEPA, said that the public process that NEPA creates is really important because it gives the public a chance to influence federal actions and reshape projects to have better environmental outcomes that would not have happened otherwise.

According to another interviewee, NEPA is a principal vehicle that promotes the public decision-making process and gives an opportunity to different interest groups, local governments, state environmental and health agencies, and citizens to participate in the federal decision-making process. Once federal NEPA practitioners read and consider public comments, a FEIS is prepared and filed with the US Environmental Protection Agency (EPA), who publish a weekly FR notice and deliver copies of all filed EISs to CEQ (CEQ, 1978).

Most NEPA program managers interviewed believe there is more public awareness of NEPA than ever before. One interviewee said that citizens are very educated and aware of what is going on in the country and ask really tough questions of federal NEPA practitioners. Citizens and groups also realize they can challenge NEPA to stop projects. The program manager is now seeing a lot more public participation in the NEPA process than past participation levels.

Several interviewees noted that while the FR NOI is provided in local newspapers, the 2003 creation of Regulations.gov has greatly enhanced public involvement, from organized non-governmental organizations to ordinary citizens, in influencing EISs. As Webster (1997) said in the 1990s, “if the internet becomes a common component of NEPA,” public involvement will increase. Regulations.gov (2016) is the public’s source on the creation and amendment of federal regulations. Citizens can log onto the website from their local computer, find projects, read EISs, and provide comments on the EISs from their computers (Regulations.gov, 2016). The public comments are then received electronically by NEPA programs for consideration and inclusion in the FEIS. Several NEPA practitioners noted that the creation of Regulations.gov has
greatly improved their environmental analyses and NEPA processes, due to the ease of use and availability of the environmental review to the public.

Involving public opinions to make better, informed decisions gets back to the whole point of NEPA, acknowledged one interviewee. NEPA program managers want the public to know about agency actions, read EISs available on Regulations.gov, and have a voice that is heard by the government. Public involvement is the most important aspect of the NEPA process, one NEPA program manager noted, adding that it needs to be updated and current for every review.

4.5 NEPA Timelines and Federal Actions

NEPA should be integrated into early federal agency planning processes, including identifying any real environmental effects in planning stages for proposed policies, programs, plans, and projects (Sutley, 2012). Appropriate timelines for the review process include considerations of potential environmental damage, project size, scale of public impact, type of available data to assess the proposed action, and potential controversy surrounding the project (CEQ, 1978). Offringa (1997) suggests that CEQ should clarify NEPA into a simple, understandable process within the regulations to provide credibility and support for integration into action planning.

CEQ often recommends agencies begin the NEPA review process at the earliest possible time of project planning so the two processes run parallel (Sutley, 2012). The goal of having programs run parallel was mentioned by many interviewees. However, several interviewees noted that lengthy EISs can delay an action taken by a federal agency. According to Sutley (2012), early integration of NEPA into federal action processes lessens delay further down the process. One NEPA program manager acknowledged that NEPA gets blamed for delays in projects, but they believe the problem is that some federal actions are very difficult decisions from a public policy standpoint.

Oftentimes, the suggestions provided by CEQ cannot be realized within federal agencies. Integrating NEPA into early planning processes can be difficult, as several NEPA practitioners explained. An interviewee said that some environmental reviews can be labor intensive, where an agency always feels short-staffed when big projects come in for an environmental review. The interviewee said that the NEPA process was not designed for speed, especially when important environmental considerations need to be included in decision-making. However, they
always try to make the NEPA process more efficient while giving environmental attributes adequate consideration.

One agency has spent time resolving stated inefficiencies, including eliminating redundancy and sequential reviews. One resolution is moving their NEPA process online and using IT systems to focus the process on critical aspects of the NEPA assessment while completing more of the action planning at the same time. Another extremely effective resolution mentioned by many agencies is robust trainings with low, mid, and senior levels of management. Educating current federal decision-makers across agencies to be sufficiently skilled in executing the NEPA process should be a focus of the federal government (Offringa, 1997). NEPA program managers’ goals for these methods are for NEPA to be supported and valued across agency personnel for its influence in enhancing the action planning process to make final decisions (Offringa, 1997).

The Act’s intent is for NEPA to aid decision-makers to realize environmental attributes in their projects and programs (Offringa, 1997 and Sutley, 2012). However, case law has caused NEPA to become a “compliance issue rather than an aid to decision-makers” (Offringa, 1997). NEPA program managers noted that their agencies are often sued by non-government organizations and private companies. Litigation can delay NEPA reviews, making the process drag out and become very bureaucratic. Initiating agency actions often take longer when agencies are sued, and an interviewee noted that better decisions are not always made due to these mechanisms.

5 National Environmental Policy Act Oversight

There are many actors involved with implementation of NEPA within the US political system: elected Congressional representatives, Congressional staff, elected Executive Branch officials, Executive Branch staff, federal civil servants (i.e., NEPA practitioners, decision-makers, action proponents), appointed federal agency officials, lawmakers, and courts (Shapiro, 2005). Oversight of agency compliance with NEPA lies with Congress. Enforcement of NEPA lies with the President, the federal agencies, and the courts (Congress, 1970). CEQ, within the Executive Office of the President (EOP), supports the President’s environmental agenda with a small 25 full-time person staff and oversees the implementation of NEPA with one dedicated full-time employee and additional federal civil servants on detail. CEQ issues NEPA regulations
and guidance documents that govern federal agencies, and reviews and approves each agency’s NEPA implementing procedures (GAO, 2014).

The relationships and interactions between these actors to implement and comply with the Act can fall within the concept of agency theory. Agency theory dictates two roles: principal and agent (Eisenhardt, 1989). While the two roles can encompass all of the actors concurrently, generally Congress, with the President and CEQ in the Executive Branch, are the principal actors with oversight, and federal bureaucratic agencies are the agents that implement NEPA (Shapiro, 2005).

Agency theory surrounds the solution of two issues that evolve in principal-agent relationships: agency problem and the problem of risk sharing (Eisenhardt, 1989). Agency problem develops from conflict between the desires and goals the principals and agents hold in regards to compliance with NEPA, and the difficulty or costs surrounding principals’ oversight of agents’ implementation of NEPA (Eisenhardt, 1989). The problem of risk sharing derives from misconceptions between principal and agent actors holding distinct viewpoints on actions taken to comply with NEPA based on personal risk preference (Eisenhardt, 1989).

Agency theory conceptualizes the notion of Congress and the Executive Branch delegating their goals for NEPA compliance to agency civil servants for implementation (Shapiro, 2005). The principals’ NEPA compliance goals may be realized by agents due to existing, robust working relationships and organization structure and characteristics (Shapiro, 2005). However, principals overseeing and agents implementing NEPA may hold different preferences for compliance with the Act, especially when agents have more NEPA experience than principals (Eisenhardt, 1989; Miller, 2005).

Miller (2005) noted that principals’ oversight of agents’ work, to determine if agents have completed tasks according to their goals, is theoretically possible, but “gathering complete information is regarded as prohibitively expensive.” As such, the checks and balances method used by Congress for principal oversight has evolved over the past 100 years to include oversight committees, politicians, bureaucratic agencies, and public interest groups (Miller, 2005). Further, Congress and the Executive Branch use CEQ regulatory and implementing procedural requirements to foreshadow lawful NEPA compliance from agencies (Miller, 2005). One
approach principals use to determine if their goals for NEPA compliance are met is through submission of all draft EISs to the EPA. The EPA reviews and publicly comments on every draft EIS before filing the documents in the EPA EIS Database (GAO, 2014). EPA also files each agency’s FEIS in the EPA EIS Database and sends copies to CEQ on a weekly basis (CEQ, 1978; GAO, 2014). However, EPA does not have enforcement authority over other agencies’ implementation of and compliance with NEPA (GAO, 2014).

In addition to Congress and the Executive Branch measuring behavior, they can also transfer the risk of appropriate NEPA compliance to the federal agencies (Eisenhardt, 1989). Shapiro (2005) notes that multiple principals, federal agencies, and interest groups value different goals, political interests, preferences, funding needs, competing interests, and incentives, which influence the level and type of actions taken by agents to comply with NEPA. As such, agents receive conflicting messages from principals regarding priorities in complying with NEPA (Shapiro, 2005). Principals, who are typically risk neutral, commonly predict that agents, who are risk averse, will act irrationally, blame others, lie, and work in their own self-interests (Eisenhardt, 1989; Miller, 2005; Shapiro, 2005). Many agents, however, are also dedicated civil servants and team players and fulfill their agencies’ mission, including implementation of NEPA within those agency actions (Shapiro, 2005). As a result, agent and principal behaviors and levels of personal risk preference can impact the adequacy of NEPA program implementation at agencies.

5.1 Public Oversight of NEPA Implementation

According to McCubbins and Schwartz (1984), Congress has two options for oversight of executive branch implementation and violation of laws: police-patrol oversight and fire-alarm oversight. Through police-patrol oversight, Congress can review executive branch federal agency actions through reading documents, requesting studies, and holding hearings (McCubbins and Schwartz, 1984). Congress establishes fire-alarm oversight of the executive branch by enabling the public to review federal agency actions (McCubbins and Schwartz, 1984). If agencies violate the intent of a law, citizens and interest groups can sound alarms against the agencies to Congress or through the US court system (McCubbins and Schwartz, 1984).

Citizens and interest groups sound alarms on NEPA implementation through public participation and litigation. According to McCubbins and Schwartz (1984), fire-alarm oversight allows the
public to bring complaints against federal agencies in relation to intentional harm done to a community or the environment in violation of legislation and congressional goals. Environmental non-profits, interest groups, and citizens have brought complaints against federal agency actions through use of litigation, many interviewees acknowledged.

5.1.1 Congressional Requests
NEPA practitioners noted that incorporating NEPA within agencies can be difficult due to a general lack of knowledge on the Act’s intent. Offringa (1997) found that NEPA is generally not correctly implemented, as the majority of federal decision-makers are unaware of or confused by NEPA, or find the Act’s and CEQ’s regulatory language unclear. However, public controversy or outcry can influence federal agency NEPA programs to incorporate NEPA into the decision-making process.

Public citizens frequently write their Congressional representative for information on a federal action and associated NEPA review. When members of Congress receive constituent complaints, they request information from agencies to appropriately respond to citizens. Interviewees noted that senior management in agencies react when they receive this pressure from Congress. One NEPA program manager said they spend a lot of time responding to thousands of congressional inquiries, which makes the NEPA process a little tougher, but their agency actions more transparent.

5.1.2 Litigation
The absence of Congressional and Executive Branch enforcement authority and improper implementation of NEPA by federal agencies can influence litigation brought against federal agencies (Offringa, 1997; GAO, 2014). NEPA program managers noted that costly litigation also influences NEPA implementation. Several interviewees said that environmental nonprofits and non-government organizations are constantly threatening litigation or suing their agencies over federal actions and associated NEPA reviews. Expensive litigation brings the importance of the NEPA process to the attention of high-level, senior management. Sometimes litigation can prompt high-level managers and NEPA practitioners to overreact and mandate drawn-out and costly NEPA reviews, noted one interviewee.
Past litigation can influence integration of the NEPA process into decision-making at all levels of the agency, several NEPA practitioners noted. One NEPA program manager said that NEPA knowledge exists at the highest levels of these agencies, with senior government officials holding conversations about NEPA. Most of the agency’s senior officials understand that NEPA is a very important requirement, due to one or two past NEPA documents that were in the public spotlight, and they try to understand as much as they can about the process. The interviewee noted that awareness of NEPA among federal employees is high in their agency due to litigation.

Decision-makers working in federal agencies not impacted by expensive litigation can perceive NEPA as a burden, and often respond with indifference, impatience, or opposition to NEPA implementation (Clark, 1997). While case law decisions have helped clarify NEPA, a negative stigma of NEPA being a limiting compliance issue, instead of an aid to action proponents, can be shaped (Offringa, 1997). Federal employees can then be resistant to implement the Act’s original intent: for NEPA to be a mechanism for environmental considerations to be integrated into decision-making processes for action proponents to make informed decisions “with respect to actions affecting the environment” (Bingham and Langstaff, 1997).

5.2 Agency Oversight of NEPA Implementation

CEQ (1978) mandated that each federal agency have appropriate personnel and other resources to comply with the Act and NEPA regulations. Federal agencies were instructed to designate a federal government employee to be responsible for all oversight and review of their agency’s compliance with NEPA (CEQ, 1978). Most agencies dictate this employee as the responsible official, with responsibility for agency NEPA program management and titles including NEPA Program Director, Manager, or Coordinator.

Agencies often dictate additional roles and responsibilities. Interviewees noted that most federal agencies maintain compliance with NEPA through designations of at least one environmental professional, some entitled NEPA managers, per government center, installation, and geographical region. In almost every agency reviewed for this study, the field level NEPA practitioners initiate the NEPA planning process by working with action proponents at their locations. By incorporating NEPA into the lowest levels of the agency, interviewees noted that environmental reviews can occur where actions are occurring. Place-based NEPA managers
work with each other and the designated headquarters NEPA program manager to maintain open communication, share knowledge, and form workgroups to generate best practices.

With every new leader and administration, however, different priorities and goals are set, said one NEPA program manager. When priorities shift from NEPA, even if to other environmental programs, such as energy or climate change, a lack of compliance with NEPA is seen in agency actions. One practitioner said their agency had more employees, funding, and guidance at every level, and environmental compliance was integrated into agency actions, with all NEPA reviews completed efficiently. Now, NEPA programs are competing with other priorities and have outdated guidance documents, lack evidence if employees are properly trained on NEPA, and do not intentionally track NEPA reviews.

Another NEPA program manager stated that new senior leadership changed the environmental roles and responsibilities within the agency, moving implementation and compliance assistance and oversight to the field level and maintaining policy, guidance, and funding at the headquarters level. The original 20-person environmental team downsized to three environmental points-of-contact for the entire agency, with no NEPA personnel additions designated at the field level. The new senior manager’s changes caused the environmental policy to become outdated and the agency to no longer be in compliance with NEPA.

5.2.1 Reporting Requirements

NEPA data collection efforts and reporting requirements vary amongst agencies, thereby resulting in a lack of comprehensive and centralized data, including quantity, type, and effectiveness of NEPA reviews (GAO, 2014). While CEQ and many federal departments conduct data calls for agencies to report on the number of EISs completed during a given fiscal year (FY), data is not collected for all NEPA reviews. Fifty-eight percent of interviewees stated that their department conducts annual data calls on the quantity and type of all NEPA reviews in progress and completed.

CEQ also does not require agencies to report on the actual environmental impacts resulting from federal actions after NEPA reviews (CEQ, 1997). NEPA practitioners believe agencies should monitor NEPA reviews’ effectiveness of mitigating actual environmental impacts to determine if NEPA reviews are effective or if further environmental mitigation is necessary (CEQ, 1997).
Because CEQ does not maintain a master spreadsheet of NEPA analyses, many data gaps on federal agency NEPA reviews and actual environmental impacts of agency actions exist (GAO, 2014; CEQ, 1997). Effective, required reporting of NEPA reviews completed and in progress can serve as a form of compliance oversight and can positively impact future NEPA reviews, stated several NEPA program managers.

One NEPA program manager explained their agency maintains very rigid reporting requirements, which serve as internal enforcement of agency compliance with NEPA. For each EA and EIS initiated, a NEPA notification letter is sent to the headquarters’ NEPA program manager. The agency’s NEPA program manager then personally tracks all EISs due to the projects’ high visibility and possibility of politics becoming involved with those actions. Further, every year, the agency’s base-level facilities report the number of NEPA reviews completed in the previous FY through data call reports to the headquarters-level NEPA program manager. Therefore, at this agency, the number of CATEXs, EAs, and EISs completed are reported from the base-level to the headquarters level. The interviewee said that in a few years, they will be using an IT system to automate the reporting of NEPA reviews, making data calls a lot easier.

Another NEPA program manager explained that their department uses an agency-wide database to track NEPA reviews. Each FY quarter, agency decision-makers ensure their NEPA reviews are up-to-date for department data calls. The headquarters NEPA program manager views the database to see the progress of NEPA actions during that quarter. The quarterly data calls include the number of CATEX reviews in progress and completed, what environmental reviews have been and need to be funded, and what mitigating actions determined through environmental reviews need to be funded.

5.2.2 NEPA Audits

Only one of the 12 agencies audit their NEPA program to better comprehend their level of NEPA compliance. NEPA is a topic in the agency’s Environmental Management System’s (EMS) Environmental Functional Reviews. The EMS audits have found gaps in information transmittal delay from government employees to the appointed NEPA manager, resulting in the NEPA
process being initiated too late to be successfully integrated into project planning or decision-making.

The interviewee, who is the agency’s NEPA program manager, noted that auditing is a little overkill, even though it can be a good method to catch issues concerning implementing NEPA into decision-making processes. One issue regarding audits is whether EMS auditors know how many NEPA reviews should have been done (e.g., 100 RECs should have been written, but only ten RECs are documented). Obtaining this information is not simple, as all agency actions would need to be reviewed for any environmental impacts and compared against any NEPA reviews conducted for those actions. Because this type of auditing is not done in an EMS Environmental Functional Review, the audit results’ accuracy and success can be negated. The NEPA practitioner interviewed stated that they would rather see the funds spent on audits go into NEPA training.

6 National Environmental Policy Act Implementation

Federal departments are directed to adopt implementing procedures to supplement the Act and CEQ NEPA regulations, and periodically review and revise them as needed (CEQ, 1978; Eccleston, 2008). Agencies within departments are not required but are urged to develop their own implementing procedures (CEQ, 1978). Departments are encouraged to work with each other to form their implementing procedures (CEQ, 1978). However, implementing procedures vary across the federal government, as they establish individual agency methods to implement the NEPA process.

Agencies are mandated to consult with CEQ when developing their NEPA implementing procedures, policies, and regulations (CEQ, 1978). Agencies define their categorical exclusions within their regulations. Agencies write their implementing procedures and compliance guidance documents at the headquarters level, and those documents are sent to the field for implementation into agency actions. One practitioner said their regulations are written at the headquarters level, and it is assumed installations are complying with them, unless public outcry draws their attention to the action. NEPA program managers stated that most agencies’ implementing procedures direct oversight of NEPA compliance to the responsible action proponent (i.e., the person in charge of implementing the action).
While CEQ wrote their NEPA regulations to guide agencies to better implement and comply with the Act, their mandates fell short of addressing all problems associated with NEPA and even created unnecessary work for agencies (Clark, 1997). One interviewee noted that when updating their agency NEPA regulations to triple their defined CATEXs, an excessive amount of research was required by CEQ to prove the use of these categorical exclusions. The 96-page regulatory preamble to include CATEXs in their regulations, as stated by the interviewee, did not help the agency mission nor assist in implementation of NEPA. Rather, CEQ turned the agency’s goal to make their NEPA program more commonsense into a burdensome task. The NEPA practitioner stated that CEQ must have sufficient personnel support to move away from business-as-usual, which for the past decade has been to “stand in line, take a ticket, there are 12 other agencies in front of you,” a phrase the interviewee was told by a former CEQ Associate Director for NEPA Oversight.

6.1 Guidance for Implementing NEPA

In the 46 years since NEPA was enacted, CEQ, federal agencies, NEPA practitioners, and academics have published hundreds of reports, analyses, and guidance documents on the implementation and compliance with the Act and CEQ NEPA regulations. The 1978 regulations direct CEQ to provide guidance and instructions on the Act and regulations as necessary, including the use of research, meetings, and effective federal agency NEPA implementing procedures (CEQ, 1978). CEQ (1978) also encourages agencies to write guidance documents to assist agency decision-makers understand NEPA.

Federal agencies have internal NEPA websites to maintain their NEPA program guidance and information for federal government employees. Most agencies also have external NEPA websites with available public information. One NEPA program manager oversees the public availability of EISs, creating an individual external website for each review. The websites are up-to-date and provide forums for public commenting, NEPA review timelines, information and supporting data, and points-of-contact.

CEQ does not have its own website; rather, information provided by CEQ is hosted by the Department of Energy (DOE) on their server. Most NEPA practitioners commented that CEQ needs to have their own website to provide a central NEPA website for reports, analyses, data,
and guidance documents. According to Webster (1997), the efforts behind the first NEPANET in the 1990s was to promote interaction and share information, including entire databases, with the goal of NEPA implementation online. One interviewee noted that the current location of CEQ’s website on the DOE server is unreliable, confusing, and inappropriate, as it gives the appearance of proprietary favoritism. CEQ can provide cohesion amongst NEPA programs with a centralized EOP website. Further, CEQ can provide a strong foundation for NEPA implementation by providing current information and relevant data on a centralized website for public participation and knowledge-sharing among NEPA practitioners.

6.2 NEPA and Federal Funding

Allocation of funding varies by agency and has a significant impact on the integration of NEPA into action planning processes. Through interviews with NEPA practitioners, three main methods of federal agency funding have been identified: project-specific allocated funding (e.g., master plans), grant and permit funding to other government entities, and generalized funding in an agency’s Office of Acquisitions.

When NEPA is integrated into the allocation of funding, environmental reviews are included in the decision-making process for agency projects and actions. Project-specific allocated funding is closely monitored at the headquarters level. Many practitioners noted this type of funding is encompassed in an agency master plan and includes the quantity of funding needed and environmental reviews required for each project. These master plans are usually specific to government-owned facilities. Similarly, grant- and permit-based funds, provided by the federal government to state and local entities, will not be provided to a project until a NEPA review has been completed. Grant programs work to ensure that federal requirements, including NEPA compliance, are met before projects are administered, noted one interviewee. These two scenarios incorporate NEPA into federal agency decision-making processes.

Other federal departments and agencies have a centralized Office of Acquisitions. Integration of NEPA into decision-making varies greatly among these agencies. Some acquisition personnel serve as NEPA practitioners, ensuring that projects are reviewed for compliance with NEPA before they allocate funding to the program office. One NEPA program manager said that acquisition officers fully integrate NEPA into their agency actions, even conducting cradle-to-
grave analyses from testing to field to ultimate disposal. Other agency acquisition offices are detached from the NEPA process, only handling procurement contracts and actions, including allocation of funding. This method requires environmental professionals to integrate NEPA into decision-making processes throughout their agency, most times, according to interviewees, after funding has been allocated to projects and action has already begun.

Interviewees did note the value of reviewing actions for NEPA compliance before receiving funding, as the NEPA process is fully integrated into the agency planning process through budget allocations. However, interviewees also noted that not all actions are procurement related, as on-going programs have smaller actions that have already been funded through the overarching project. Still, several NEPA practitioners commented that they are currently working to determine how they can discover all of the projects funded in their agencies. By working with agency acquisition offices and centralized facilities and installations, NEPA program managers can determine the source of agency funding and if a database or master plan exists. Then, they can work to integrate the NEPA process into their agency’s funding process.

6.3 Improving Sentiments on NEPA Among Federal Employees

While many agency NEPA programs are considered robust, the idea of making the environmental assessment process more effective and efficient, and not burdensome on projects, stays at the forefront of NEPA practitioners’ intentions. Study interviewees spoke about their priority to continue integrating the NEPA process into agency decision-making, at both the base levels and in headquarter leadership positions. Without the commitment of federal government employees to complete and integrate NEPA reviews into decision-making processes, it will not be implemented.

Challenges to NEPA’s effectiveness and efficiency arise from a lack of proper training due to funding deficits, defiance to comply with the Act, and cynicism among government employees. According to several interviewees, many agencies’ employees lack understanding of NEPA. Project managers assume NEPA is an environmental analysis packet, so when the NEPA document is done, they are done with the NEPA process. This practice invalidates the whole intent of the Act, according to one NEPA program manager, as NEPA does not include public
participation nor is integrated into agency decision-making. The interviewee admitted that their agency is struggling with NEPA training and compliance, due to staff and budget reductions.

A NEPA program manager interviewed for this study stated that many federal government employees do not care about integrating NEPA into their actions, projects, programs, or decision-making, oftentimes asking NEPA program managers what will happen if they do not integrate NEPA. Other federal employees view NEPA as another compliance burden on their work and mission, as discussed by several NEPA practitioners. One interviewee noted that NEPA becomes a “check the box” action, instead of realizing the intent of the Act, which is to integrate NEPA into decision-making. A 1997 NEPA effectiveness study found that when NEPA’s strengths are not fully realized by decision-makers, the resulting review will likely be less scientifically accurate, not include public opinion, and consider fewer mitigating action alternatives (CEQ, 1997).

NEPA practitioners work to make the NEPA process as easy as possible so they are not avoided and therefore receive project action information necessary to implement NEPA. One interviewee noted that changing the wording from “before you make a decision” to “during project formulation” improved the responses received from action proponents. Other interviewees commented that using phrasing such as “we need to know what you are doing to keep you in business” has helped change the tone of NEPA from a burden to a beneficial process.

Some NEPA program managers described how environmental stewardship and preservation are understood by their agencies’ federal employees. Most of these agencies depend on the environment (i.e., forests, land, water) to conduct their actions and fulfill their missions. Therefore, it is in the agencies’ best interests to preserve environmental resources. NEPA program managers and senior management have worked to integrate NEPA into their agency mission, economic, and action planning processes to make better decisions.

6.4 Methods Employed to Implement NEPA

In reviewing the 12 NEPA programs for this study and speaking with 15 NEPA practitioners, common themes were found regarding approaches implemented to integrate NEPA into agency decision-making processes. These practices employed by NEPA practitioners to integrate the
NEPA process amongst agency actions are shown in Figure 2. Most of the practices are implemented agency-wide, while some are only implemented at particular locations (i.e., center, installation, geographical region).

Sixty-seven percent of the federal agencies reviewed for this study typically conduct actions on federally-owned centers and installations throughout the US. These centers and installations are usually located on large parcels of land. Thirty-three percent of federal agencies reviewed for this study typically conduct actions on smaller, disconnected parcels of land. Based on responses from NEPA practitioners, the type of agency mission, action, and property significantly influence which methods are used to integrate NEPA into federal decision-making processes (Table 2).

The methods federal agencies implement to integrate NEPA into their decision-making and action planning processes, as identified by this study, are: online training (optional; 8%); in-person training (required; 67%); programmatic environmental documents (location and program specific; 58%); agency master plans (long-term, budget; 58%); IT geographic information systems (GIS; 67%) and IT decision support workflow systems (DSS; 75%). Of the 12 agencies reviewed for this study, only one agency employs all six identified methods to implement NEPA.

*Figure 2: Methods Federal Government Agencies Employ to Implement NEPA*
7 National Environmental Policy Act Training

NEPA practitioners train low (e.g., construction, maintenance), mid (e.g., project and program managers, engineers), and senior (e.g., headquarters agency leadership) level federal employees on how to implement and comply with NEPA at their agency. Seventy-five percent of agencies included in this study employ training as a method to implement and comply with the Act and CEQ regulations (Figure 2). Sixty-seven percent of these agencies conduct in-person NEPA trainings, with lengths ranging from several hours to a full week (Figure 2). Eight percent of these agencies have online NEPA trainings available, but these are not added to employee learning plans and are therefore not required (Figure 2).

Training federal employees on NEPA has been a method of NEPA implementation for decades, as NEPA practitioners are constantly reminded that agency decision-makers are unfamiliar with the NEPA process (Offringa, 1997). Over time, three areas of training have been defined as important by NEPA practitioners: (1) awareness training on the NEPA process for new employees and action proponents needing updates on new methods; (2) specific training on interacting with the public, including tribes and environmental justice communities; (3) adequate executive training for agency senior leadership decision-makers (Welles, 1997). CEQ should work with agencies to develop training and lead the executive-level training for senior leadership decision-makers (Offringa, 1997). As interviewees discussed, increasing the quantity of NEPA-trained employees in the federal government makes NEPA and agency decision-making processes more efficient and effective.

A NEPA Task Force (2003) report to CEQ found that training action proponents on the NEPA process ensures they can efficiently make informed decisions when completing NEPA reviews. Transportation and infrastructure agencies implement NEPA training programs to move agency projects along more quickly, according to one NEPA program manager. NEPA practitioners devote time to raise awareness on NEPA so that field staff understand when and how they need to consider their federal actions’ potential environmental impacts. Because of the training, these employees accept incorporation of NEPA into the decision-making process as standard practice. According to a NEPA practitioner, NEPA compliance is routine for transportation and
infrastructure actions, with full integration into the planning process. Further, noted the interviewee, employees are constantly determining methods to better implement NEPA.

Some federal agencies incorporate their Office of Acquisitions’ personnel into the NEPA implementation process with annual in-person trainings. One NEPA program manager noted that they train acquisition professionals on agency policies, implementing procedures, and the NEPA process. The acquisition officers are then able to conduct the NEPA reviews themselves. Further, because NEPA is integrated into the agency acquisition process, funding is not allocated to projects until a NEPA review has been completed. Agency NEPA program managers continue to serve as the expert points-of-contact when acquisition professionals need assistance, or when an action requires an EA or EIS.

Federal agencies whose actions typically occur at centers, installations, and in defined geographical regions have designated NEPA managers onsite. One agency’s regulation states that the location-specific employee managing a NEPA program has to be trained; however, the interviewee noted that this is probably not happening 100% of the time. One reason for the absence of training is a lack of funding available for NEPA program managers to travel and train field-level employees. Another agency has been impacted by turnover from environmental staff retiring or leaving, so they have begun offering centralized training again for new employees.

Two NEPA program managers noted that their agencies include NEPA courses as part of employee training schools. One interviewee noted their agency conducts a day-long NEPA overview course as part of a weeks-long employee training school for all employees. Another NEPA program manager described how training is an extremely important component of their agency, as they work hard to properly train their employees on the laws they need to implement. The agency has a very aggressive training program through one school outside the agency. The NEPA program manager works with the school’s instructors to tailor the environmental courses, including NEPA, the Endangered Species Act, the National Historic Preservation Act, and the Marine Mammal Protection Act. For employees who work with NEPA, they receive more intense NEPA training than others who receive a general NEPA overview. However, all mid-level managers receive comprehensive training on environmental protection, in part due to the mission of the agency. Outside training is also encouraged and paid for by the agency. Because
of the rigorous NEPA training program, NEPA is effectively integrated into action planning and decision-making processes.

Two NEPA program managers noted that resource center or contract staff travel to division offices to train employees, with frontline responsibilities, on NEPA. Another program manager said that, historically, contract support would travel to all of their agency’s federal facilities every three years to train employees, from senior-level managers to low-level maintenance workers, in a day-long NEPA class. This course provided a generic NEPA overview with facility-specific examples through skits, scenarios, and exercises. This method proved to be extremely successful, as all employees involved in agency actions were aware of their responsibilities to comply with NEPA.

Presently, with shrinking budgets, NEPA program managers said that agencies are barely able to have NEPA practitioners train their fellow employees on NEPA implementation and compliance processes. The purpose of current trainings has moved to reinforcement of a point-of-contact to conduct NEPA reviews, instead of increasing employees’ NEPA knowledge, according to most NEPA practitioners. Most agencies interviewed are transitioning to web-based trainings and are working to have NEPA managers train employees within their geographic localities. NEPA managers noted that web-based trainings are not always required, and it is their ultimate goal to make them a requirement for employees. The NEPA Task Force (2003) found that non-classroom, online trainings can have a positive influence on agencies’ implementation of NEPA.

The reduction of once robust training programs is influencing the lack of environmental planning knowledge amongst employees and is therefore impacting agencies’ compliance with NEPA, according to several interviewees. NEPA practitioners are currently promoting the importance of funding in-person trainings for successful NEPA compliance with their agencies’ senior leadership, as interviewees stated that online trainings are not as effective as in-person trainings. Interviewees emphasized the magnitude of this task, stating that senior leadership do not always agree that training is the best method to allocate reduced budget funds. However, interviewees agree that comprehensive training for NEPA must be appropriately funded in future budgets for agencies to continue to be in compliance with the Act. For, as NEPA practitioners stressed in their interviews, a few people within an agency cannot implement NEPA across all actions;
rather, all federal government employees must understand how NEPA should be integrated into agency actions and decision-making for it to be effective and efficient.

8 National Environmental Policy Act Programmatic Reviews

CEQ (1978) provided the option of preparing EISs for wide-ranging federal actions, including agency programs and projects, that may better influence planning and decision-making. These EISs are known as Programmatic EISs (PEISs). The regulations also allow federal agencies to review actions based on focus areas, geographic areas, impact types, implementation processes, research, and technology (CEQ, 1978). According to a NEPA Task Force (2003), programmatic NEPA reviews are “valuable decision-making tools.” Fifty-eight percent of agencies included in this study employ environmental programmatic reviews as a method to implement and comply with the Act and CEQ regulations (Figure 2).

A trend toward PEISs occurred closer to the 25th anniversary of NEPA (Solomon, Yonts-Shepard, Supulski, 1997). Using more PEISs allows for the increased use of tiered EAs, RECs, and CATEXs associated with the original Programmatic EIS (Solomon et al., 1997). One agency studied for this project is implementing Programmatic EISs, EAs, and RECs. Programmatic EAs and Programmatic RECs are prepared for broad federal actions that do not have a significant impact on the environment. Programmatic NEPA documents review actions cumulatively; each action does not need to be reviewed individually unless potential environmental impacts exist. If additional review is needed beyond a programmatic NEPA document, then a tiered CATEX Checklist, REC, or EA could be efficiently prepared and associated with the appropriate Programmatic REC, Programmatic EA, or Programmatic EIS.

According to several interviewees, instituting programmatic reviews, whether EISs, EAs, or RECs, allow agency actions to be more effective, as programs are in compliance with the Act, and the NEPA process does not slow project timelines. Programmatic reviews, however, may hinder public involvement during the development of tiered NEPA documents, as those review processes are updates to the original programmatic review, not an entire NEPA process itself (Solomon et al., 1997). It is recommended that agencies specify how tiered reviews are associated with programmatic documents and how public involvement will transpire (NEPA Task Force, 2003).
NEPA practitioners also noted that environmental review documents, whether programmatic NEPA documents or biological, cultural, environmental, or natural resource assessments, are prepared for agency centers, installations, and large geographic areas, including forests, landscapes, and bodies of water. These living programmatic environmental reviews effectively evaluate cumulative impacts and serve as resource documents to provide data to action proponents when conducting NEPA reviews (NEPA Task Force, 2003). Programmatic reviews also formulate effective, comprehensive mitigating actions for projects occurring within the boundaries of a particular geographical location (NEPA Task Force, 2003).

NEPA practitioners explained that available data includes ecosystem planning, environmental conditions, environmental permits, and specific environmental attributes, including quantities and types of natural resources (e.g., land, water) and endangered species (e.g., reptiles, birds). Many agencies have fully integrated other environmental reviews and consultations, including air permits, water regulations, and Endangered Species Act and National Historic Preservation Act requirements, into programmatic NEPA analyses. CEQ (1978) emphasized the need to work together in its regulations, with the hope that duplicative actions are eliminated by joint planning between agencies. As programmatic reviews continue to be used, agencies should continue to collaborate to prevent duplication and increase the availability of relevant data (NEPA Task Force, 2003).

Current information is necessary for NEPA reviews, so new surveys are conducted according to defined review timelines. The NEPA Task Force (2003) recommends agencies develop criteria to determine when programmatic reviews become outdated and should be updated or replaced, as well. Cataloging resources for a geographical area provides better NEPA reviews and documents, said one NEPA program manager. Another interviewee added that better baseline data for each geographical area allows for better decisions when projects and installation requirements occur.

Programmatic reviews, including consultations, solutions, and assessments, can also be beneficial when agencies have a shortage of experienced NEPA practitioners or are co-managing actions. One NEPA program manager explained that even though training is conducted, most of the agency’s employees do not have the experience needed to incorporate environmental
considerations into action planning processes. Programmatic reviews are also beneficial when actions are managed by multiple agencies or items are transferred between agencies, as previous programmatic NEPA reviews are adopted by acquiring agencies. Because of these benefits, interviewees said they use programmatic reviews whenever possible.

Data gleaned in these reviews can also serve as a repository for environmental constraints. Oftentimes, data is recorded in agency IT GISs. Employees can view all survey data in layers in their GISs to determine environmental constraints at specific geographic coordinates. One NEPA program manager said the best part of their GIS is to get to the point where there really are no environmental impacts from proposed actions, due to the ability to immediately select specific coordinates away from environmental attributes, thus allowing CATEXs to be used and projects to proceed.

9 National Environmental Policy Act and Agency Master Plans

Master plans are completed by program managers at all levels of a department and between state and federal agencies. Government employees forecast all actions for the subsequent five to ten years in the master plan, with many agencies including funding needs and anticipated NEPA requirements as part of their master plan. Using master plans as a mechanism to implement NEPA allows agencies to simultaneously complete their project planning alongside NEPA planning in “well-documented formal processes” (ACI-NA, 2013). Further, these documents allow senior leadership to budget for all agency proposed actions in the distant future. Master plans prompt agencies’ highest headquarters levels to acknowledge the NEPA process as part of the master plan, with full integration into budget and decision-making processes. One NEPA program manager said that putting in the effort upfront by making NEPA analyses part of the decision-making pie is much better than having things go wrong on the back end.

Master plans are also reviewed by NEPA program managers to signal what level of NEPA review may be required for proposed actions. When requesting funding for actions five and ten years ahead of time, departments can choose which projects to implement, and budgets for NEPA reviews immediately ensue. One interviewee noted that using master plans allows for a long enough timeline for a three- or-four year EIS to be completed without unnecessarily delaying the project commencement. NEPA practitioners can also maintain a list of agency
actions through the master plan, and therefore understand which actions may impact the environment. Three headquarter NEPA program managers said they use master plans to personally track EISs, whereas CATEXs, RECs, and EAs are filed at the field level.

Fifty-eight percent of agencies included in this study employ master plans as a method to implement and comply with the Act and CEQ regulations (Figure 2). Based on agencies’ supporting NEPA documents and interviews conducted for this study, transportation and national security mission oriented agencies incorporate environmental reviews into their department master plans. One transportation agency included in this study finalized 108 FEISs between January 2011 and March 2016 with only 3,000 employees through successful implementation of the NEPA process into their agency grant and master planning processes (Table 2). Because actions on master plans must be approved for funding before they can occur, and these plans include environmental planning requirements, NEPA is integrated into these agencies’ decision-making processes.

Federal agencies with transportation-oriented actions develop master plans for project-based permits and grants in coordination with state and local government officials. Most transportation actions receiving federal funding cannot proceed without finishing NEPA; federal agencies provide funds to the state and local agencies once the NEPA review is completed. One NEPA practitioner said there has been a lot of emphasis, from Congress and in federal departments, on agencies working together so that NEPA consultation is early enough in the project planning process. CEQ (1978) mandates elimination of potential duplicative environmental planning measures through federal, state, and local government coordination of planning, research, assessments, and capture of public comment, where necessary. For actions implemented by state and local governments and funded by the federal government, master plans include priority actions and associated NEPA reviews.

Funding for a project will not be provided until a NEPA decision has been reached, or a NEPA document produced, explained several interviewees. Decision-makers are therefore proactive to integrate NEPA efficiently into their overall project in order to receive approval and subsequent funding to proceed with their action. One NEPA program manager said they have effectively worked to integrate environmental and community considerations into the project development
process. Action proponents never question if NEPA needs to be implemented, and NEPA program managers can monitor permits, grants, and associated funding, thereby ensuring NEPA has been completed before actions receive federal funding.

Several interviewees noted the importance of facility-specific master plans. Installation- and center-level master planning allows for officials to cohesively and comprehensively organize environmental attributes, agency resources, and foreseen projects in defined geographical boundaries (Keysar, Steinemann, and Webster, 2002). NEPA program managers are currently working with agency senior leadership to incorporate programmatic environmental planning into facility-specific master plan processes. One NEPA practitioner stated that each of their government centers have 20-year projected master plans. Another NEPA program manager said master plans are huge at their agency, as they determine the long-term viability of a government facility, including the sustainability of continuous operations in regards to climate change and energy (Keysar et al., 2002).

NEPA fits directly into the decision-making process, noted several NEPA program managers, and they are working with agency leadership to integrate NEPA into master plans so that one programmatic NEPA review can be done. NEPA practitioners are also working to integrate NEPA plan preparations into master plans before a final master plan is released for regulatory review and comment. Some government centers, such as the Kennedy Space Center in Florida, are already incorporating programmatic NEPA reviews into site-specific master plans. In March 2016, the Notice of Availability for the draft PEIS for the Kennedy Space Center Master Plan update for center-wide operations was released in the Federal Register for the 45-day public comment period (NASA, 2016). Consolidating master plans and NEPA reviews allow for agency officials to collaboratively forecast programs, benefit from comprehensive programmatic environmental reviews, allocate funds for projects and associated environmental mitigating actions, and involve public considerations. Master planning can cohesively integrate all of these components into government decision-making.

10 Information Technology Systems for NEPA

Use of IT systems for NEPA compliance was a common theme brought up by NEPA practitioners interviewed for this study. Eighty-three percent of agencies included in this study
employ IT systems for NEPA as a method to implement and comply with the Act and CEQ regulations (Figure 3). NEPA practitioners, actions proponents, current scientific data, environmental programmatic assessments, funding, timelines, master planning, and effective decision-making processes are essential to effectively implement NEPA to its fullest extent (NEPA Task Force, 2003). Integrating this information into technologies, including geographic information systems and decision support systems, can help decision-makers effectively define options and efficiently analyze alternatives (Offringa, 1997).

CEQ (1997) declared IT systems to be effective tools for NEPA implementation and compliance in the 25th anniversary NEPA effectiveness study. Solutions for management and manipulation of knowledge and information are key reasons why IT systems have been implemented for NEPA compliance thus far (NEPA Task Force, 2003). CEQ (1997) supports government officials and academics creating IT tools in order to realize better decision-making. At the time of the 25th anniversary of NEPA, IT tools were being created, alongside the development of computers and the internet, to collect and analyze data to determine environmental impacts and effective mitigating actions (CEQ, 1997).

In the almost 20 years since IT tools, computers, and the internet were realized for effective NEPA implementation and compliance, federal employees have moved work to personal computers and communication to email and web-based systems (CEQ, 1997). Several interviewees pondered the best methods to capture institutional knowledge of NEPA, as reliance on individual knowledge and experience is felt throughout the federal government. Retiring NEPA practitioners have spent their careers becoming subject matter experts, which brings to question: what will become of the knowledge they hold. Many agencies are already using or developing IT systems for NEPA, which allows for institutional knowledge to be archived in IT decision support systems to create more effective NEPA reviews. Environmental resource data collection methods are evolving as IT geographic information systems become more prevalent in federal agency decision-making. Accurate data in IT GISs allow the NEPA process to be more effective in action planning processes.

Government NEPA program IT initiatives promote quality and effective information; reducing unnecessary paperwork; consistency in information management policies; efficiency in data
collection, relevancy, distribution, and assimilation; and strengthening relationships across government agencies (NEPA Task Force, 2003). IT systems can also build, grow, and empower trust between government agencies and public communities (NEPA Task Force, 2003).

IT systems can include GIS, where spatial display of quantitative data is used to locate environmental attributes near certain geographic coordinates or a physical address. CEQ (1997) believes that advances in technology allow NEPA practitioners to view and manipulate data to improve decisions and mitigating actions. Sixty-seven percent of agencies included in this study employ their own IT GIS as a method to implement and comply with the Act and CEQ regulations (Figure 2).

IT systems can also serve as decision support systems, where the system provides a consistent and automated workflow for productivity and processing environmental reviews. Further, DSSs promote efficient information- and knowledge-sharing among federal, state, and local NEPA practitioners; decision-makers; action proponents; and the public, including tribes, environmental justice communities, private industry, and academia (NEPA Task Force, 2003). A DSS eliminates paper files and emails, keeps decision-makers accountable, saves processing time, and archives reviews for information-sharing and management procedures. Seventy-five percent of agencies included in this study employ an IT DSS as a method to implement and comply with the Act and CEQ regulations (Figure 2).

Seventeen percent of agencies included in this study do not use IT systems for NEPA as an approach to implement and comply with the Act and CEQ regulations (Figure 3). Two NEPA practitioners noted that the only way NEPA program managers learn of actions needing to be reviewed for NEPA compliance is if project managers reach out to NEPA practitioners. The interviewees continued, stating that project managers would not know to reach out and inform a NEPA practitioner of their action unless they had been previously trained on NEPA compliance.

In these cases, integration of NEPA is done at the end of the decision-making process, where it is looked at as a document to be completed, not as a review to integrate environmental considerations into decision-making, said one NEPA program manager. According to the interviewee, this does not meet the intent of the Act. This approach is top-down management, said another interviewee, with senior level staff trying to build a NEPA program. Bottom-up
approaches are needed for compliance with NEPA, with low-level employees, whom actually implement the actions, receiving appropriate training on implementation of and compliance with NEPA.

When reviewing the 12 agency NEPA programs, six stages of IT data management system use for NEPA implementation were discovered. One third of federal agencies currently requires use of IT systems for environmental review processes. One third of federal agencies has IT systems that are either not required and/or are not currently available agency-wide. One sixth of federal agencies are currently developing IT systems for future use. One sixth of federal agencies are not planning to develop IT systems for NEPA and currently use email communication, in-person meetings, teleconferences, and internal storage sharing for environmental review processes.

![IT Data Management Systems for NEPA](image-url)

**Figure 3: Federal Government Practitioner Responses Regarding IT Systems for NEPA Compliance**

### 10.1 Current Information Technology Systems for NEPA

NEPA practitioners interviewed for this study commented on their agencies moving toward IT systems to improve NEPA efficiency and effectiveness. One NEPA practitioner stated that IT systems in the federal government usually lag behind the private sector. In fact, the Office of E-Government and Information Technology (E-Gov), headed by the federal Government's Chief
Information Officer (CIO), within EOP is working to close the gap between private sector IT systems and federal government IT systems (OMB, 2016).

NEPA practitioners described that comprehensive IT systems in use at federal agencies might exist due to available funding, forward-thinking leadership, or documentation requirements for certain types of projects (e.g., transportation, national security). Incorporation of IT systems for NEPA into decision-making processes allows current and duplicative data and knowledge to be stored in a web-based, user-friendly format while influencing efficient and effective planning processes.

Table 3 compares known IT systems that federal agencies are currently developing, implementing, or have recently decommissioned. Each system has been implemented to better incorporate NEPA into their agency action planning and decision-making processes.

Table 3: Current Information Technology Systems for NEPA

<table>
<thead>
<tr>
<th>IT System Name</th>
<th>Federal Agency</th>
<th>Accessibility</th>
<th>Capabilities</th>
<th>System Stage</th>
</tr>
</thead>
<tbody>
<tr>
<td>ECOS-IPaC (Environmental Online</td>
<td>US Fish and Wildlife Service</td>
<td>Open to Public</td>
<td>GIS</td>
<td>In Use</td>
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<tr>
<td>Conservation System Information</td>
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<tr>
<td>for Planning and Conservation)</td>
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</tr>
<tr>
<td>EJSCREEN Tool</td>
<td>Environmental Protection Agency</td>
<td>Open to Public</td>
<td>GIS</td>
<td>In Use</td>
</tr>
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<td></td>
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</tr>
<tr>
<td>eMNEPA</td>
<td>US Forest Service</td>
<td>Internal and External</td>
<td>GIS and DSS</td>
<td>In Use</td>
</tr>
<tr>
<td>eNEPA Portal</td>
<td>Federal Highway Administration</td>
<td>Internal: FHWA and state transportation agencies; Open to Public</td>
<td>GIS and DSS</td>
<td>In Use</td>
</tr>
<tr>
<td>ePlanning</td>
<td>Bureau of Land Management</td>
<td>Open to Public</td>
<td>GIS and DSS</td>
<td>In Development; In use by all states by end of 2017</td>
</tr>
<tr>
<td>System Name</td>
<td>Department/Agency</td>
<td>Information Type</td>
<td>Integration/Status</td>
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<td>----------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Federal Infrastructure Permitting Dashboard</td>
<td>Transportation Agencies subject to the FAST Act</td>
<td>Internal: Designated Agencies, and Open to Public</td>
<td>GIS and DSS In Development</td>
<td></td>
</tr>
<tr>
<td>GEOFidelis</td>
<td>US Marine Corps</td>
<td>Internal</td>
<td>GIS, links to NEPA PAMS In Use</td>
<td></td>
</tr>
<tr>
<td>HQAES (Army Environmental System)</td>
<td>Department of the Army</td>
<td>Internal</td>
<td>GIS and DSS In Development</td>
<td></td>
</tr>
<tr>
<td>HUD Environmental Review Online System (HEROS) Portal</td>
<td>Department of Housing and Urban Development</td>
<td>Internal</td>
<td>GIS and DSS In Development</td>
<td></td>
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<td>NEPA Assist</td>
<td>Environmental Protection Agency</td>
<td>Open to Public</td>
<td>GIS In Use</td>
<td></td>
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<tr>
<td>NEPA Node</td>
<td>Department of Energy</td>
<td>Open to Public</td>
<td>GIS and DSS Decommissioned due to funding in February 2016</td>
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<tr>
<td>NEPA Process Automation Management Support (PAMS)</td>
<td>US Marine Corps</td>
<td>Internal</td>
<td>DSS, links to GEOFidelis In Use Regionally; In Development for Department-Wide Use</td>
<td></td>
</tr>
<tr>
<td>NETS (NASA Environmental Tracking System) NEPA Module</td>
<td>National Aeronautics and Space Administration</td>
<td>Internal; Final EAs and EISs Open to the Public</td>
<td>DSS; Repository of Reviews In Use</td>
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<tr>
<td>PEPC (Planning, Environment &amp; Public Comment)</td>
<td>US Park Service</td>
<td>Internal and External</td>
<td>DSS; Repository of Reviews In Use</td>
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</tr>
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</table>
10.2 IT Geographic Information Systems (GIS)

It is the responsibility of action proponents and NEPA program managers to use “systemic, interdisciplinary approaches” to incorporate natural, social, and environmental science planning into decision-making when an impact to the environment is possible (CEQ, 1978). Agencies gather scientific data on natural, social, and biological environmental attributes that exist where their actions are occurring and within their government-owned facilities’ geographical boundaries. While some agencies have written this information into large, all-encompassing environmental review documents for site-specific locations, most agencies are moving toward hosting this information on their own IT GIS databases.

NEPA in its original intent is more than the creation and finalization of an environmental review document. However, the NEPA process can be viewed by some NEPA practitioners, action stakeholders, and public citizens, unfamiliar with the Act’s intent, as a document forming process. When this occurs, NEPA reviews can be delayed because of the amount of people involved in writing, approving, and commenting on a NEPA document. A NEPA practitioner observed that when officials analyze a NEPA document, especially long EISs, reliance is given to all stakeholders reaching the same conclusion. However, officials read what they want to see in a document, and reaching consensus among multiple parties can be very time consuming.

GIS inventories assist in binding the gap between policy-oriented and decision-making-oriented intentions. While one interviewee questioned the purpose and point of IT GIS systems, another noted that NEPA practitioners and action stakeholders can sit in a meeting; look at the proposed action in a GIS database; determine its footprint based upon current, reliable data in the system; discuss action alternatives; evaluate those from data-centric perspectives; and reach a consensus among the parties involved. In this scenario, the IT GIS tool has made the NEPA process much more effective and efficient than paper pushing NEPA documents.

10.2.1 GIS Data

Within biological opinions and cultural resource assessments, requirements exist to understand what environmental attributes occur at agency-owned facilities. Further, environmental constraints must be identified and considered in NEPA implementation (CEQ, 1978). One NEPA program manager noted that their agency conducts expensive, on-the-ground surveys for
cultural resources, endangered species, historic sites, and natural resources at their installations. The agency then puts the resource information into their enterprise-wide GIS database. Areas are re-surveyed at periodic times based on agreements in-place, keeping the GIS data current. The resource data is accessible to all users of the GIS database and available for environmental planning and NEPA review processes at their agency.

The Deepwater Horizon Gulf oil spill cleanup is one example of mitigating actions improving GIS data. The BP petroleum company funded the cleanup of the oil spill in the Gulf of Mexico through federal agencies. BP executives realized that it was more practical to pay the US Fish and Wildlife Service (USFWS) to collect species data from the region and import the data into the USFWS IT GIS system, Environmental Online Conservation System Information for Planning and Conservation (ECOS-IPaC). The other option would have been for BP to conduct their own cleanup planning around species impact. A NEPA program manager noted that, in this scenario, funding was provided by a private entity with cash-flow capabilities to constantly conduct data analyses. Funding of this magnitude is not available in federal agency NEPA programs.

10.2.2 GIS Platforms

The US Fish and Wildlife Service’s ECOS-IPaC is an example of an essential IT GIS platform that is not only used for NEPA reviews, but for Endangered Species Act compliance. Over the years, ECOS-IPaC has transferred data from field documents to an easy-to-use tool with modern technology. While ECOS-IPaC does not have all endangered species data uploaded, according to one interviewee, it is a comprehensive tool used by many professionals. In the CEQ (1978) regulations, federal agencies are encouraged to incorporate other agency resources, including data on environmental features (e.g., air quality, environmental justice, historic places, wetlands) to comply with NEPA. However, collecting data and hosting IT platforms are expensive. Because federal agencies benefit from using ECOS-IPaC, the idea of those agencies providing funds to support further and faster collection of species data for the IT tool has been presented.

10.3 IT Decision Support Systems (DSS)

Federal agencies are designing decision support systems to be effective tools for implementing and managing the NEPA review process agency-wide. DSSs allow NEPA practitioners and
action proponents to: propose an action, determine the action site, determine the level of NEPA analysis needed, regulate NEPA review timelines, review NEPA documents, involve the public, budget costs (e.g., permits, mitigating actions), and communicate efficiently with NEPA team members (NEPA Task Force, 2003). DSSs also allow the NEPA review process to run parallel to a process they are already fulfilling, such as budget and action planning processes. According to several NEPA program managers, these processes need to run parallel so that environmental compliance is not one extra task, but is feasible for federal employees.

DSSs have often been conceived due to NEPA program need. One NEPA practitioner explained their motivation to determine a better method to receive and process information, and track NEPA documents. The NEPA practitioner worked with an agency reviewing 16 billion dollars in NEPA actions, which translated into approximately 40,000 NEPA documents ranging from CATEXs to EISs. While a CATEX Checklist template was used, eventually the NEPA practitioner created an IT tool due to the quantity of NEPA reviews conducted each year. Their DSS allowed the NEPA program to effectively and efficiently implement NEPA for their agency to be in compliance with the Act and CEQ regulations.

While the majority of NEPA program managers noted that IT systems for NEPA are growing, as a result of a huge interest in project delivery, many federal agencies still do not use DSSs. One NEPA program manager defined older methods used to complete NEPA reviews that some agencies still use. NEPA documents were completed as hard copies and then emailed or printed, to be put in a paper folder with a routing sheet to be walked around to reviewers. According to the interviewees, the experience was that NEPA documents could be tracked through spreadsheets or tables. They noted that neither of these processes are practical and logistically they are very inefficient, with NEPA reviews taking longer than necessary and being lost in the shuffle of paper documents or on individual hard drives. Further, one NEPA program manager, whose agency uses this method, said their NEPA program has no firm understanding on whether NEPA reviews are being accomplished since they are completed as word documents at the base-level.

DSSs allow NEPA reviews’ effectiveness to be monitored. While the majority of agencies do not observe agency actions after decisions are made, NEPA program managers can use DSSs to
monitor any realized environmental impacts of agency actions to determine if mitigation measures are effective, if further environmental mitigation is necessary, and to influence future projects (CEQ, 1997). Further, DSSs allow NEPA practitioners to understand and improve upon their NEPA review processes. One NEPA program manager explained that readily available data allows NEPA programs to determine if reviews are falling below, meeting, or exceeding their own status quo.

10.3.1 DSS Platforms
DSSs automate workflow for processing NEPA reviews, eliminate paper files and emails, keep decision-makers accountable and productive, and archive document edits and comments for easy reference. DSSs also allow headquarters level NEPA program managers to pull agency action information needed at any time for upper management review. According to NEPA practitioners, using DSSs have made the NEPA process much more effective and efficient for agency action and decision-making processes.

Several NEPA program managers explained their agencies’ DSSs, which are similar in style and approach. The action proponent enters the project information with assistance from interactive features that generate automatically. Then, the NEPA practitioner reviews submitted information and makes a determination on the appropriate level of NEPA analysis required. At this point, either the NEPA review is complete or further information is needed.

When potential environmental impacts (e.g., air, land, water) are selected within the DSS, the system automatically notifies the air, land, or water permit points-of-contact. Subject matter experts (e.g., air, counsel’s office, endangered species, historic preservation, water) review, comment, and add conditions (e.g., biological opinion, permits) for the action in the IT system. Potential impacts and mitigating measures, including funding needed for any required permits, are listed for the action proponent to implement in their project planning process. The action proponent then reviews and digitally signs the final NEPA review in the IT system to integrate into their decision-making process. DSSs provide status updates, including receipt of information and digital signatures received for the review, prompting quick turnarounds by decision-makers.
Programmatic reviews, CATEXs, RECs, EAs, and EISs are all archived and linked within the system. Agency administrative records are automatically established through workflow and NEPA review information maintained on the DSS platform. IT DSS administrative records and NEPA reviews can be maintained and accessed by anyone, with a need-to-know, at any time. Several interviewees noted that DSSs are beneficial, due to the ease of access to quantities and types of reviews completed, in satisfying CEQ and department reporting requirements. NEPA practitioners can also reference the administrative record to read previous reviews, understand issues, and complete current and future environmental assessments. Information and data loss from employee turnover, retirement, program shutdown, and documents stored on hard drives are therefore eliminated, acknowledged most NEPA program managers.

10.3.2 Repository

DSSs can also serve as repositories for all completed department NEPA reviews. Many agencies reviewed for this study currently have older web-based DSS repositories, with additional interactive feature upgrades in development. One interviewee noted that NEPA practitioners are usually already aware of the level of NEPA review (i.e., CATEX, REC, EA, EIS) an action requires. So, a DSS in its fundamental state as a decision support system to help NEPA practitioners might not be beneficial. Still, several NEPA practitioners commented that the availability and organization of all reviews can save time and money as a new NEPA review can reference completed documents. One agency’s DSS also indexes CATEX NEPA reviews by categorical exclusion. NEPA reviews are also linked with associated reviews, including programmatic NEPA documents. Repositories offer a comprehensive, accessible library for NEPA documents to be accessed by action proponents across the US.

10.3.3 Sensitive Information

DSSs must have internal, permission-based sites for NEPA documents. Most agencies have sensitive information included in NEPA reviews that can only be read by certain federal government employees with a need-to-know. One NEPA program manager said security issues are a large component of IT systems, as their agency has to be cautious when storing department information in one place. Most CATEX documents do not need to be made publicly available, but they should be archived in an agency’s internal DSS when reviews need to be updated or referenced by NEPA practitioners.
10.3.4 Public Participation

Some agency DSSs function with internal and external interfaces. EAs should and EISs must be released to the public for comment. Therefore, when a document is listed as an EA or EIS, the DSS automatically makes the document available for public viewing and commenting. All other documents and internal information remain secure on the same DSS, with availability only for internal viewing and editing. Several NEPA practitioners noted this benefit as efficient and effective, as this allows more of the public to be involved in their agencies’ actions while using the same IT system for internal and external processes. One NEPA program manager feels DSSs help agencies significantly in transparency, interacting with the public, and responding to citizen comments.

10.3.5 Collaboration

Two agencies’ DSSs incorporate the federal funding process with the NEPA review process, so that projects receive funding in sync with NEPA compliance. An interviewee explained that once a determination is made regarding whether a project is eligible for funding, the acquisition IT system automatically notifies the separate NEPA IT system that an environmental review is needed. The NEPA practitioners then complete the review for the action that just received federal funding. Another NEPA practitioner said that their DSS is more of a financial management tool that also keeps track of NEPA reviews.

One DSS was built specifically for real-time collaboration amongst different organizations, including local, state, and federal employees, involved in project NEPA processes. The agency’s DSS is excellent for projects that require multiple permits, as decision-makers are able to do multiple aspects of the review at once, explained the interviewee. This allows NEPA practitioners to focus on the critical aspects of the NEPA review, and provides an easier way to track progress and accelerate communication. The NEPA program manager said that they are hoping to promote this tool more broadly, as there is interest to make the NEPA process more useful and efficient. Currently, there is no agency mandate requiring the DSS’s use.

10.4 Mandated and Voluntary IT Systems for NEPA

Of IT DSSs and GISs reviewed for this study and currently in use, 75% of IT systems are required and 25% of IT systems are not required. NEPA program managers noted that for their
voluntary IT systems, agency officials do not want to require employees to use something that is not mandated in a regulation. Instead, NEPA program managers save staff requirements for stated regulatory compliance language only. One interviewee said that there is much interest in not overburdening the field staff with requirements that are not obligations but are instead useful methods. Agency officials persuade field staff that an IT system is a useful tool to make their job more efficient and effective. In these cases, employees often continue practices they have always used and might transition to the IT tool over time.

Other interviewees with DSSs and GISs in development noted that when their IT systems are available for use, they will be mandated through a policy or regulation. One practitioner explained that their impending policy will be released by the headquarters level and will state that the system shall be used by employees. One NEPA program manager added that they believe this is fantastic, as it will make the NEPA process more effective in decision-making across the agency.

10.5 Integrated GIS and DSS Platforms

Some agency DSS platforms are linked to their GIS platforms, creating an overall IT system for NEPA. Webster (1997) acknowledged that integrated GIS and DSS IT databases is a desirable method to implement NEPA. Project proponents and NEPA practitioners can enter action information into the DSS and then immediately look at a map viewer that includes agency-obtained survey data in their GIS. Proponents may then look at specific geographic coordinates or physical addresses to determine any environmental constraints near the proposed action site. The proponent can alter the action site if its proximity to environmental attributes is too close, therefore requiring a permit or other legal mandates (e.g., endangered species, historic preservation, wetland mitigation). Or, the proponent can proceed, as their proposed action site is not within range of environmental constraints. The proposed action site determined in the GIS platform can dictate the type of review completed in the DSS platform, thereby integrating a comprehensive NEPA review process into action planning processes.
11 Sentiments on IT Systems for NEPA

Agencies are implementing IT systems to integrate the NEPA process into decision-making and action planning processes to be in compliance with the Act and CEQ regulations. When asked about the effectiveness of IT systems for NEPA, 63% of interviewees believe IT systems improve agency compliance with NEPA, and six percent of interviewees believe IT systems do not improve agency compliance with NEPA (Figure 4).

![Figure 4: NEPA Practitioner Responses Regarding IT Systems and NEPA Compliance](image)

While the majority of NEPA practitioners interviewed for this study believe IT systems make the NEPA process more effective and efficient for federal agency actions, both current use and development of IT systems for integration of NEPA into agency decision-making processes are not understood by some NEPA practitioners. Some NEPA practitioners do not think data or technology-centric systems can assist them to better implement NEPA. One interviewee noted that most NEPA practitioners have historically viewed NEPA implementation as policy-oriented and through abidance with the regulatory language only.

Several interviewees mentioned that a difference of opinions in using IT for NEPA exists between older retiring NEPA practitioners, and upcoming young professionals in the environmental field. According to one interviewee, the older generation feels that IT systems take their jobs away, as they rely more on data and information-sharing through systems rather
than writing extensive documents themselves. Younger generations, according to several interviewees, see ways IT systems can enable NEPA practitioners to do their jobs even better and implement NEPA to meet the Act’s original intents.

Older generations of NEPA practitioners might not be receptive to technology due to their level of comfort in using it, noted several interviewees. One interviewee’s opinion is that while IT systems can be used for information- and knowledge-sharing, at the end of the day, NEPA practitioners still need to be human beings to integrate information and put it down on paper within context for the environmental analysis. Another interviewee explained how several NEPA practitioners, who feel that IT systems take away jobs, responded by creating and publishing more guidance documents, instead of using the developed IT tools, to improve implementation of NEPA. However, NEPA review timelines are often too compressed for NEPA practitioners to conduct peer-reviews of guidance and literature (NEPA Task Force, 2003). One interviewee stated that experienced NEPA practitioners should trust IT systems to enable them to better implement NEPA rather than continue with the limiting methods they have always implemented.

12 The Future of IT for NEPA Implementation

The federal government has shown increased interest in innovation, technology, and design over the past several years (Digital Service, 2016). However, many of the federal government’s current IT platforms “do not work well, are delivered late, and are over budget” (Digital Service, 2016). As Mikey Dickerson, Administrator of the US Digital Service (2016), explained, federal government IT systems should have an “impact with scale and an impact with meaning.”

The full value of IT systems for NEPA implementation is not being realized. IT systems need to be leveraged more for NEPA practitioners to do their jobs better. This includes integration of NEPA into decision-making, communication with the public, and efficient and effective completion of NEPA reviews, acknowledged several NEPA program managers. An effective IT system for NEPA is a centralized location of GIS survey data, historic NEPA review documents, and a streamlined DSS workflow process that can be used by decision-makers across agencies, offices, and state boundaries. Most federal agencies reviewed for this study are moving from older planning methods to modern IT platforms to consolidate survey data, programmatic
reviews, and acquisition and budget processes to save time when integrating environmental considerations into action planning and decision-making processes.

Information combined, stored, and linked in an IT system creates more efficient and effective planning, implementation, and assessment processes. One NEPA practitioner, who has worked with IT systems for NEPA, thinks NEPA documents can maintain conciseness by only listing key points of the action and decision made, with additional review information linked to other guidance documents and data on the IT platform.

Many interviewees commented on capturing institutional knowledge of NEPA from retiring practitioners, who relied on their own knowledge and experience throughout their careers, to incorporate into IT systems. The older generation has the knowledge, and it needs to be captured for current and upcoming professionals, acknowledged many NEPA practitioners. A NEPA program manager said it is scary when agencies lose senior NEPA practitioners, either to new jobs or retirement. With that, a NEPA program loses a lot of knowledge, and building and keeping the expertise within agencies is hard, the interviewee added. When agencies are able to incorporate institutional knowledge into their IT systems, as some are currently implementing, technology can then penetrate NEPA.

An interviewee also noted that in order for technology to fully function and be a beneficial solution, people need to use the IT system. According to most interviewees, IT systems enable people to do their jobs more effectively and efficiently. If it is not used, the IT system can do nothing, as it is an extension of NEPA practitioners. In these cases, IT tools are seen as useless and are decommissioned. As the interviewee noted, technology requires a learning caveat, whether very small or very large, of its users. NEPA practitioners must want to alter the methods they are currently using and try a proven tool, such as learning an IT system, that has advanced NEPA implementation and compliance within their own and at other agencies.

IT systems should be “thoughtfully designed, continuously tested, and built using modern tools and practices” (Digital Service, 2016). According to interviewees, young professionals joining the ranks of federal government employees grew up with technology and have different IT knowledge-bases than older employees. Most NEPA practitioners noted that younger employees take time to understand what root problem needs to be solved with a program or project, and if
technology can be used to solve the problem. Once issues are determined, further considerations are given to where technology could be applied so that government workers can reap the benefits in solving the actual root cause. If an IT system can best solve the problem, then those root causes and intended benefits can be used to build the system internally or through carefully overseen contract-built IT tools, noted several interviewees.

12.1 IT System Costs

The high costs of developing and maintaining IT systems for NEPA were discussed by most interviewees. One interviewee did not see the purpose of using IT systems, as they are very expensive and employees are forced to use them. Another NEPA program manager noted that software engineers, with required security credentials, who build IT systems are often paid relatively high salaries, which increases the cost of IT systems. However, other interviewees noted that most agencies work together to support one another in the development of IT platforms for NEPA.

Some agencies make their IT systems available to other agencies for their use. A NEPA program manager discussed how one agency center developed their own IT system and offered the system to other intra-agency centers for $10,000. Even though the centers were offered to procure the same system for their own facilities, no facility accepted the offer. Several interviewees noted that tailoring other agency IT systems does not save much time, as most agencies have their own secure information procedures and internal firewalls to incorporate into an IT system.

NEPA program managers also noted that their agencies’ senior management rigorously question IT system purposes before funding is allocated. Senior management have requested agency-wide systemic reviews to determine which IT systems are vital to the agency’s mission, so that funds are better used for long-term improvement, noted several interviewees. Current million-dollar enterprise IT systems that are ineffective at solving the problems they were created to resolve may be one source of this probing. One department currently has a moratorium on spending funds on IT systems, unless the system has been evaluated by senior officials. A NEPA program manager said they would not currently be allowed to procure any IT systems for NEPA. Another agency’s IT system is stalled in development due to shortfalls in FY budgets.
However, the agency is working to have an appropriate IT budget each fiscal year for future development and upgrades.

For some agencies with IT systems for NEPA, practitioners are not required to use the system. NEPA program managers save obligations for the regulatory requirements that need to be fulfilled. However, most agencies mandate use of developed IT systems. Because millions of federal dollars are spent over several years to develop the tools, agencies publish policy mandates stating that federal employees shall use the IT systems for NEPA implementation and compliance.

Other agencies have realized that IT systems can provide cost benefits for compliance with NEPA. According to CEQ (2011), the Department of Homeland Security Environmental Planning and Historic Preservation DSS was analyzed for economic benefits and predicts a cost savings of more than 3 million dollars due to a reduction of administrative time spent on CATEX NEPA reviews. Further, IT system development by federal employees using free and open source software can provide cost savings for agencies to implement IT systems for NEPA (DOE, 2016).

12.2 Old Enterprise IT Systems

The federal government’s use of IT is going through a major transformation, according to two interviewees. Historically and presently, federal government employees identify an issue and hire contractors to build an IT system to resolve the problem. Federal IT platform inefficiencies are most often directly related to the government’s complicated procurement process, according to several interviewees. Creating websites through procurement does not allow selection of the best web design team; instead, it selects the consulting firm that best knows how to navigate the government’s procurement process. Therefore, the selected consulting firm is the design team that builds the government’s IT tools, according to several interviewees.

Two NEPA program managers noted their agency NEPA IT systems are currently in development by contractors at large firms. One NEPA practitioner explained that contractors are usually not involved in the federal program, nor use the IT system; therefore, they cannot create the system from the users’ perspectives. They went on to clarify that consulting firms design IT systems with little communication with federal practitioners, beyond presentations and
screenshots of what the tool looks like in testing and upgrade phases. One NEPA program manager noted that they reviewed components of their agency DSS platform and participated in a test, to see if parts of the tool function, at a user acceptance training. Another NEPA program manager has seen snapshots and tested basic components of their agency tool, stating that once the IT system is up and running, and it is used for a while, then the agency can determine what other functionality components and changes they want in the IT platform. A NEPA practitioner rationalized that when IT systems are built using these practices, the tools do not often accomplish their original intents to solve the pre-defined problems.

Top down mandates are written into contracts to include what topic the IT system should cover, not accomplish, according to the interviewee. Because little communication between government workers and IT contractors exist, processes to update IT systems are not very effective. One NEPA practitioner noted that federal employees do not take time to be smart on technology and the purpose IT systems can facilitate. When federal government employees do not understand technology, they are taken advantage of by contractors regarding costs and delayed timelines, according to several interviewees. Contractors are given millions of dollars to build enterprise systems over long periods of time using proprietary software. As one interviewee considered, if changes are needed to an IT system and updates are not available for one to two years, as is the case of many IT systems for NEPA, what is the evolution of technology in that time. Most federal employees are not familiar enough with their IT systems to know that updates should not take as long nor cost near as much as they do, according to the interviewee. This creates a cycle of government IT systems continuing to be invested in, becoming bigger, and ineffectiveness looming large.

As a result, millions of dollars are invested in antiquated IT systems that federal government employees find unsuccessful or useless. In addition, the interviewee stated that when IT systems are proprietary and the systems are built on integrated technology, managers are put in precarious situations regarding liability of failed IT systems. These IT systems are rarely viewed as successful, as they are not initially developed to be effective or efficient systems. These insights may be the root cause of negative attitudes toward IT systems, instead of a negative association with the basic concept of using IT for NEPA implementation.
12.3 US Digital Service

The federal government is a bit slower to transition to practices implemented in the private sector, as one interviewee noted. After HealthCare.gov had highly public IT issues, the EOP brought in private industry IT experts to change the way the federal government creates and uses technology (Digital Service, 2016). After upgrading the HealthCare.gov site to a new operating model, the newly formed US Digital Service (2016) revealed that better IT systems can have a positive impact for the public’s interaction with agencies across the federal government. One NEPA practitioner stated that those within the federal government realized that assistance was needed on IT platforms throughout the entire federal government, as there was no shortage of issues.

The US Digital Service (2016) does not provide technical IT system updates or redesigns, but instead focuses on improving IT platforms that have large public interfaces, such as improving the process for citizens to file their taxes with the IRS. The US Digital Service (2016) created a Digital Services Playbook, based on effective private sector practices, to envision 13 key steps that employees can use when building technology for the government. The US Digital Service (n.d.) is also currently drafting a Tech Federal Acquisition Regulation (FAR) guide to promote modern and effective IT procurement by federal acquisition professionals (Rockwell, 2014). While NEPA practitioners said these tools will take time to translate into actual procurement practices, they believe the playbook and TechFAR guide can assist agencies to better acquire and develop IT systems for NEPA, and improve those currently in use and under development.

One example of designing digital best practices, provided by a NEPA practitioner, is to assign one federal employee as the leader to regulate development of an IT system, not just managing the contract, and to hold that person accountable for federal spending and completion timelines. In this scenario, the leader is owning the IT system with decision-making and ensuring modern IT platforms for NEPA are being effectively and efficiently developed with federal funds.

Another example of digital best practices is to move from proprietary technology systems to open source solutions that will be more adaptable over time, noted an interviewee. Currently, when procurement processes change contractors, developed and paid-for IT systems are removed by prior contracting firms. Open source IT systems allow platforms to continue, and not be
replaced, thus saving millions of federal dollars and allowing continuity of agency program NEPA implementation with IT systems.

12.4 Effective Baselines for IT Systems for NEPA

Even though only 33% of the 12 agencies reviewed for this study currently require use of IT systems for NEPA implementation agency-wide, NEPA practitioners have discussed the development and use of IT systems for NEPA for years. In the early 2010s, CEQ hosted a NEPA IT working group comprised of federal NEPA program managers. An interviewee said that this working group is not active at the moment, but that does not represent the overall support for IT systems for NEPA, only the lack of time and CEQ staff resources dedicated to other priorities. Even without an active NEPA IT working group, IT systems for NEPA continue to improve. Several interviewees noted two effective baselines for IT systems for NEPA: implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act) and the Fixing America’s Surface Transportation (FAST) Act.

12.4.1 Recovery Act Implementation

The Recovery Act is a successful example of effective IT system use for NEPA compliance. Investments in US infrastructure, energy efficiency, and science were directed by Congress (2009) in FY 2009 – FY 2011. Congress (2009) directed agencies to use the NEPA process to account for federal spending and directed the President, through CEQ, to report NEPA review status updates to two Congressional Committees every three months until the end of FY 2011.

The Recovery Act funding provided a baseline for agencies to demonstrate that the NEPA process can be effectively integrated into budget processes and project decision-making (Sutley, 2011). CEQ created a spreadsheet reporting template and issued guidance to receive NEPA status updates from agency decision-makers (Sutley, 2009). Federal agencies were directed to submit reports to CEQ via email (Sutley, 2009). According to one interviewee, these CEQ-generated reports created the best data set on NEPA reviews that exists.

One federal agency created an IT system, Recovery Act Data System (RADS), to track Recovery Act funded projects, compile data received, and generate reports used to meet Recovery Act reporting requirements (GAO, 2011). To ensure data quality, monthly reporting was required
and data quality verification steps were conducted. Due to the use of RADS, the number of reporting errors decreased (GAO, 2011). While RADS was only used for Recovery Act funding, government officials preferred using the IT system for NEPA compliance due to its efficiency, internal analyses potential, and level of detailed data reported on projects (GAO, 2011). Thus, RADS provides an example of effective IT system use for successful NEPA implementation.

12.4.2 FAST Act Implementation

The FAST Act was signed into law in December 2015 and is the first law in over ten years to provide long-term surface transportation (e.g., highways, transit lines) funding (DOT, 2016). Previously developed under Executive Order 13604 and a subsequent 2013 Presidential Memorandum to highlight priority projects, the Federal Infrastructure Permitting Dashboard (2016) was established in statute with the December 2015 passage of the FAST Act.

The dashboard is an interagency effort to develop and track timelines for complex federal infrastructure projects (e.g., renewable energy, transmission water pipelines) through a web-based IT platform. Starting in 2016, government employees, project developers, and the public can track complex infrastructure projects’ federal permitting and environmental review processes through defined project timelines on the dashboard (Government, 2016). The dashboard provides interagency collaboration in automating project workflows, streamlining public participation in the review process, and keeping decision-makers publicly accountable. One NEPA practitioner said that the collaborative effort of the dashboard embraces the concept of NEPA as the umbrella for all the different decisions that agencies need to be making for their actions.

The dashboard is being developed by, and will receive 2 million dollars from, the Department of Transportation. An additional 4 million dollars will be allocated in a separate EOP Office of Management and Budget appropriation for cross-agency priority goals. The intent of the Federal Infrastructure Permitting Dashboard is to ensure federal agencies are not redundant in their processes, collaboration among agencies is successful, and government-owned sites are protected by existing laws, said one NEPA practitioner. Another interviewee added, the IT tool will enhance the early coordination of NEPA into project planning for public tracking.
The Federal Infrastructure Dashboard is an example of the federal government beginning to make progress in development and usage of an interagency IT tool. One NEPA program manager sees it as a useful addition to the government-wide effort to involve the public in federal agency decision-making and influence federal actions to reduce potential environmental impacts.

13 Conclusion

When Congress (1970) and CEQ (1978) directed federal agencies to implement NEPA within their agencies, they both mandated this should be done “to the fullest extent possible.” Through use of litigation, the courts have also upheld federal agency responsibility with NEPA. The case of *Calvert Cliffs Coordinating Committee vs. Atomic Energy Commission* was one of the first court cases to clarify “to the fullest extent possible” and establish important precedents for every agency to:

- Make NEPA part of their mandate and mission;
- Balance environmental issues with other actions;
- Consider alternatives to prevent environmental damage, regardless of potential action delay; and
- Use a careful and informed decision-making process (Eccleston, 2008).

Forty-six years after the Act was signed into law, most agency NEPA programs are still working hard to implement NEPA into their federal decision-making. One of the ultimate goals of NEPA is to encourage federal government employees to minimize the environmental impacts of the projects they propose while improving planning and decision-making for future projects (CEQ, 2011). While CEQ (1978) mandated all federal government agencies to comply with the NEPA regulations, their intent is to provide agencies flexibility in complying with the Act.

The sentiment among NEPA practitioners interviewed for this study is that if NEPA is implemented and complied with correctly, it should be a process of discovery, not a straight line. If NEPA programs are using methods available to them to integrate NEPA into decision-making, project planning, and agency actions, then these agencies are complying with NEPA to the fullest extent possible. Agencies being proactive in the NEPA process have shown that decision-makers improved project performance and reached better conclusions while saving taxpayer
dollars, protecting natural resources, and advancing relationships in the communities and between regulatory agencies (CEQ, 2011).

Based on this study of federal agencies and interviews with NEPA practitioners, it is clear that a combination of training, programmatic environmental reviews, master plans, and IT platforms are needed for comprehensive effective and efficient implementation and compliance with NEPA. A caveat for NEPA to be realized to the fullest extent possible is if only one or two of the practices are not fully implemented; they are most effective when used collectively to integrate NEPA into all agency decision-making. From conducting interviews and reviewing NEPA documentation and federal agency IT systems, approximately 58% of agencies studied are implementing and complying with NEPA to the fullest extent possible.

As NEPA practitioners explained in this study, training of all federal employees, from maintenance men, to action proponents, to senior level headquarter officials, is essential to proper and robust compliance with NEPA. Training must continue to be implemented, through proper budgeting, as employees transition to other jobs and retirement, and new employees begin. Without proper training, employees are not aware of NEPA, and they will not know if they are required to comply with the Act and NEPA regulations. NEPA awareness updates also need to be provided to employees who do not often implement NEPA. From information captured in this study, training is implemented in nine of the 12 agencies through federal facility on-site trainings, school classes, and online courses. While budgets are decreasing, and NEPA practitioners are working hard to maintain and increase their NEPA program budgets, it is clear that robust, comprehensive training is necessary for NEPA to be implemented and complied with to the fullest extent possible.

Programmatic environmental reviews – including environmental assessments for large geographic regions and programmatic NEPA reviews for programs, projects, and federal locations – are beneficial tools to implement NEPA in federal decision-making and action-planning processes. As most interviewees stated, it is important for agencies to discover environmental attributes within their facilities’ geographical boundaries, and maintain accurate data through additional studies, to appropriately and efficiently determine the impacts of their actions. Because of this, environmental survey data is necessary for action proponents to
consider mitigating action alternatives in decision-making processes. Further, facility-wide environmental assessments provide one comprehensive source of data for actions to be reviewed alongside environmental considerations, thereby implementing NEPA to the fullest extent possible. Programmatic NEPA reviews also allow NEPA practitioners to review broad federal actions and programs to incorporate environmental considerations into decision-making processes. If implemented correctly, programmatic reviews will integrate NEPA into more agency facilities, programs, and decisions. Agencies should continue incorporating programmatic NEPA reviews into their agencies to assist in complying with NEPA to the fullest extent possible. As more NEPA programs implement programmatic reviews, more agencies will integrate this method to increase compliance with NEPA. From information captured in this study, programmatic environmental reviews are implemented in seven of the 12 agencies.

Master plans are an efficient and effective method to implement NEPA into agency decision-making and action-planning processes. Agency actions and programs require funding; therefore, when integrating NEPA reviews into master budget planning processes, NEPA program managers can better integrate environmental considerations into the majority of agency decisions being made. Further, most transportation and infrastructure agencies require NEPA reviews to be completed before funding is allocated, thereby fully integrating environmental considerations in decision-making and action planning processes. For those actions that are overlooked by agency master plans, programmatic reviews and employee awareness of NEPA due to training will assist NEPA programs to integrate NEPA into their agencies to the fullest extent possible. Agencies already integrating the NEPA process into their master plan process should continue to find ways to make the processes more efficient and effective. As this method is seen as a successful approach to implement NEPA, other agencies can integrate this practice to comply with NEPA. From information captured in this study, master plans are implemented in seven of the 12 agencies.

The majority of NEPA programs and the federal government are working to adapt to the current technology functionality of the private sector. IT systems allow federal agencies to maintain a database and repository of current environmental survey data and current and historic NEPA reviews. According to several NEPA program managers, using IT systems for NEPA provides
efficient CATEX and REC reviews for actions with minimal environmental impacts, and effective platforms to complete beneficial EAs and EISs.

Further, IT systems allow agencies to maintain accessible administrative records of all NEPA reviews completed. In order for IT systems to be useful, they need to be funded and used. Using best practices provided by the US Digital Service allows NEPA program managers to create IT platforms with clear ideas and goals and to oversee the timeline of creation so that development is not overly long or costly. Appropriate training on NEPA provides awareness to federal employees that the agency is required to comply with NEPA and an IT platform is available for them to do so. Cultivating an atmosphere of knowledge-sharing, learning, and collaboration promotes the use of IT systems for NEPA within agency decision-making processes. From information captured in this study, IT systems are implemented or in development in ten of the 12 agencies, with full implementation of IT systems in four of the 12 agencies. As IT systems mature and are used more broadly across the federal government, more NEPA program managers will realize the benefit of using IT systems for NEPA compliance and either decide to use or will be mandated to use the IT platforms to implement NEPA to the fullest extent possible.

NEPA cannot be realized to the fullest extent possible without including one of the original intents of the Act: public participation. One NEPA program manager said some of their agency’s decision-makers will go into an action already assuming what the environmental impacts will be; however, if they are complying with NEPA’s intent, then they are listening to the public online and in meetings to influence their final action. Federal, state, and local governments; tribes; involved parties; and interested public citizens are involved in the decision-making process through Regulations.gov, litigation, and agency IT systems to influence environmental considerations for agency actions to the fullest extent possible. As several interviewees mentioned, citizens are more interested in environmental concerns than ever before. As such, the quantity of public comments, Congressional constituent complaints, and litigation cases may increase over time and bring attention to the actions of those agencies whose non-compliance with NEPA is currently existing under the radar. With the increase in pressure, agencies may work to comply with NEPA to the fullest extent possible.
When asked how well an agency is integrating NEPA into project planning and decision-making processes, few interviewees said their agencies are doing an excellent job with NEPA implementation, and all interviewees explained that there is always room for improvement. As NEPA practitioners interviewed for this study commented multiple times:

- NEPA programs are not allocated the same budget levels as other agency offices.
- NEPA program budgets have been shrinking in the past decade, as they are influenced by economic recessions.
- NEPA programs’ biggest challenge is the magnitude of needs without being able to fulfill them with current budget and personnel sizes. One NEPA program manager commented that their agency already has so much going on with the little money they do receive.
- NEPA practitioners must continue to be creative and committed to integrate NEPA into their agency decision-making processes.

Collaboration allows agencies to continue effectively implementing NEPA when funding and staff sizes fall short. Promoting communication and cooperation with information- and knowledge-sharing, in addition to consensus building, allows agencies to effectively and efficiently integrate NEPA into their planning processes. Lack of communication and collaboration between federal agencies, with the public, and among decision-makers is 95% of what is wrong with NEPA implementation, said one NEPA practitioner. CEQ supports collaboration through hosting federal NEPA contacts meetings with a network of NEPA program managers. These NEPA practitioners work cohesively to solve problems and promote solutions. In the end, the goal of NEPA is informed decision-making and public involvement in the federal government decision-making process.

Effective use of training, programmatic environmental reviews, master plans, and IT GISs and DSSs can integrate NEPA into federal agency decision-making. Through improved implementation and compliance practices, federal agencies are in positions to better coordinate with one another to realize NEPA to the fullest extent possible.
14 Recommendations

In four short years, NEPA will reach its 50\textsuperscript{th} anniversary. The “old boys club” of NEPA practitioners are retiring, as one interviewee commented, and a new era of senior management with new ideas is growing in the federal workforce. More prevalence for environmental considerations are high on the public’s radar. With a new CEQ Associate Director for NEPA Oversight, who began in January 2016, a time of transition for federal agency implementation and compliance of NEPA is arriving.

Unprecedented passion amongst federal employees, leadership across the government, and opportunities for development exist for federal agencies to improve and expand interaction with the citizens they serve (Digital Service, 2016). While people resistant to change have been a hindrance on agencies’ implementation and compliance with NEPA for decades, commented several interviewees, forthcoming IT systems advance the effectiveness and efficiency of agencies’ implementation of the Act’s original intents: decision-making and public participation.

14.1 CEQ’s NEPA Regulations

The CEQ regulations were mandated in 1978 under President Carter to resolve problems discovered in the NEPA process after the Act’s enactment (Clark, 1997). An unintended consequence, however, was a shift from EISs to CATEXs, with less EISs published and more CATEXs used (Clark, 1997). Because CEQ did not foresee this modification to the NEPA process, the regulations do not provide much guidance or reporting requirements on CATEXs, RECs, or EAs. While a plethora of guidance documents and memorandums have been published in the past 38 years, no revisions to the original mandate have been issued.

NEPA program managers interviewed for this study believe CEQ should update the regulations to provide further clarification for problems still found in the NEPA process. Agencies currently use CATEXs for 95\% to 98\% of their actions; therefore, CEQ has minimal data to verify the majority of federal actions are reviewed for NEPA compliance before occurring. According to several NEPA practitioners, CEQ should update the regulations to account for the use of CATEXs in streamlining the NEPA process. Further, CEQ should give special attention to provide regulatory guidance on the proper use of an EA, thereby minimizing the over-excessive use of EISs in instances where they are not needed.
Compliance methods used by NEPA programs have advanced in the past 38 years as well, mostly realized through individual agency trial and error. As James L. Connaughton, former Chairman of the Council on Environmental Quality, said in a 2005 NEPA Lessons Learned and Next Steps oversight hearing before the US House of Representatives Committee on Resources, the implementation of NEPA regulations needs improving and modernizing (GPO, 2005). Connaughton noted that the NEPA regulations would be more effective if clarity was provided on timelines, coordination, public involvement, and efficiency for NEPA implementation (GPO, 2005). While solutions continue to be realized by NEPA program managers for improvements to the NEPA process, interviewees noted that updates to the CEQ regulations are overdue.

14.2 Improve Data and Information Sharing by Leveraging IT Platforms

NEPA programs need to leverage one another and share information to reduce time, save money, and have access to current data when completing NEPA reviews. One NEPA program manager believes that sharing information and data between agencies makes the NEPA process more transparent in its decisions, efficiency, and effectiveness.

As agencies introduce programmatic environmental assessments on a larger scale, data on environmental attributes in large geographical areas (e.g., centers, forests, installations) can improve GIS survey data. Currently, agencies have their own GIS systems, with potential overlap of data and federal employees using many individual websites to access information to complete NEPA and other environmental reviews. Federal agencies should move toward sharing environmental survey data obtained so that current and relevant environmental attributes and constraints can be listed within one GIS platform.

The NEPA Task Force (2003) promoted the idea of creating a comprehensive, unified spatial data set to better manage the federal government’s information; the one web-based location would be available to federal, state, and local government employees, and the public. One centralized GIS platform would eliminate duplicative data collection efforts, thereby saving time and funding, and allow for valuable information-sharing. Further, for those agencies that do not have GIS systems, using a centralized GIS tool to complete NEPA reviews would promote better planning for all federal government actions. The centralized GIS system should be located on a newly created EOP CEQ NEPA website to encourage effective and efficient information-sharing.
for environmental considerations to be integrated into government decision-making and action planning processes.

NEPA guidance documents, regulations, memorandums, and data sets should also be located on a centralized EOP CEQ NEPA website. With the vast quantity of information and resources available, NEPA practitioners can easily become overwhelmed. Because NEPA can already delay action schedules, most NEPA practitioners do not have the time to peer-review lessons learned, best practices, and recommendations located in guidance documents on many different government websites.

It is recommended that CEQ transition to an EOP website to provide one centralized location for all NEPA guidance documents; a secure, comprehensive IT GIS platform; and a DSS for all federal EAs and EISs. A DSS should support EAs and EISs to be available for public information, with links to Regulations.gov for public comments to be submitted. NEPA documents not requiring public review and comment should be stored on individual agency DSS platforms.

This centralized information will be available for all action proponents and NEPA practitioners to use when integrating the NEPA process, including CATEX, REC, EA, and EIS reviews, into agency decision-making and action planning processes. The centralized information will also allow Congressional representatives to view the status of EAs and EISs for federal projects in their districts, providing them the ability to answer constituent requests in real-time. A cohesive collection of all relevant NEPA regulations, policies, guidance documents, and data repositories from a CEQ hosted website coordinates a strong front for the NEPA community and a commitment to reducing the federal government’s impact on the environment.

Because IT systems are expensive, and CEQ’s congressionally appropriated budget is around 3 million dollars, with a miniscule portion allocated to NEPA, federal funds will need to be combined. One NEPA practitioner mentioned the Office of Environmental Quality Management Fund in 42 USC § 4375, within Title II, Council on Environmental Quality, of the Act (Appendix C) as a possible financial resource. CEQ is granted authority to establish a management fund to receive funds from agencies to finance interagency environmental projects in which CEQ also collaborates (Congress, 1970). To do so, the CEQ director must promulgate
regulations to set forth policies and procedures for the management fund (Congress, 1970). With this type of fund, according to one interviewee, more money would be given upfront, with costs saved later due to readily available data for more efficient and effective NEPA reviews.

Use of comprehensive IT systems for NEPA provides seamless environmental review processes and cohesive flow amongst agencies, between the federal government and the public, and over the years. With information electronically linked, decision-makers will be able to access a centralized CEQ GIS system to locate any environmental constraints near their proposed action site. If there are no significant environmental attributes near or on the proposed site, the project may continue. If there are environmental attributes near the proposed action site, the action proponents can either alter their proposed action site and choose a new site in the GIS database, or the proponents can proceed with environmental consideration mitigating actions defined in a NEPA document. Agency DSSs can be connected to a centralized CEQ GIS platform for efficient and effective environmental reviews. Agency DSSs should also be connected with the agency’s allocation of funding so that NEPA is incorporated into decision-making processes before funding is provided.

Programmatic reviews can be conducted using centralized GIS data, both in individual agencies and collaboratively with other federal agencies. Further, electronic master plans can be more useful when linked to a centralized IT GIS and agency DSS platforms. Completed NEPA reviews can be readily available in DSSs for action proponents to integrate environmental considerations into their actions, for senior management to view project statuses, and for NEPA programs to access proposed, current, and historic reviews. When public participation is required, the agency’s DSS’s external component can provide opportunities for review, in addition to comments received on Regulations.gov.

Once IT systems are in use for agencies to comply with NEPA to the fullest extent possible, NEPA practitioners can identify areas for NEPA compliance improvement, including the Act, CEQ regulations, and department policies. One NEPA program manager said that they often struggle with how one knows if decisions coming from NEPA reviews are quality decisions. The interviewee said that their NEPA program wants to understand whether the decisions coming from their NEPA reviews are effective in reducing the federal government’s impact on
the environment. They added that it is obviously a challenge to make this determination, and more work needs to be done for agencies to realize NEPA’s true intent of integrating environmental considerations with public participation into agency decision-making.
References


Fixing America's Surface Transportation (FAST) Act, 11605 (2015).


Appendix A

Interview Questions

1. How many employees work at your government agency?

2. How many actions occurred per year for the previous five (5) years at your government agency?

3. Do you know how many NEPA reviews were conducted per year for the previous five (5) years? Do you know the quantity of CATEXs, RECs, EAs, EISs, and other appropriate environmental reviews?

4. What are the key elements of your government agency’s NEPA policy? By this, I mean leadership designations, other policy compliance, environmental reviews, CATEXs. Is there one overarching or multiple NEPA policies at your government agency?

5. Would your government agency’s policy and implementing procedures be available for me to read?

6. How does your government agency structure its program management, as in what is the relationship between the programs your government agency administers and the type of recordkeeping your government agency performs?

7. Is your government agency recordkeeping independent of NEPA obligations? Or, are they integrated?

8. Has NEPA compliance been incorporated into your government agency’s acquisition process?

9. If yes, how has NEPA compliance been incorporated (e.g., a NEPA compliance checkbox within your acquisition system before the action is approved for funding by the Office of Acquisitions)?

10. Does your government agency’s NEPA program have formal data collection / auditing procedures to ensure all actions are reviewed for NEPA compliance? This could be an online system, annual comprehensive audits of government entity actions’ NEPA compliance.

11. What prompted your government agency to put these formal data collection / auditing procedures in place?

12. Please describe the process undertaken to develop your government agency’s data collection strategy.

13. Does your government agency have informal data collection procedures to ensure all actions are reviewed for NEPA compliance? This could include information received through
emails, haphazard meetings, audits that review the NEPA program but not government entity actions.

14. What prompted your government agency to put these informal data collection procedures in place?

15. Please describe the process undertaken to develop your government agency NEPA program’s data collection strategy.

16. What are the key elements of your government agency’s data collection methods that ensure all actions are reviewed for NEPA compliance?

17. Does your government agency’s NEPA program have a definition of successful NEPA compliance?

18. If yes, what is your government agency’s definition of successful NEPA compliance?

19. Is compliance with NEPA measured, and if so, how?

20. Does your government agency report on your compliance with NEPA, and if yes, how (e.g., department data calls, progress reports)?

21. What are some important factors internal and external to your government agency that have contributed to success in implementing your data collection strategy and incorporating environmental planning into the proposed action process?

22. What are some important factors internal and external to your government agency that have created challenges in implementing your data collection strategy and incorporating environmental planning into the proposed action process?

23. Please rate how successful your government agency’s NEPA program has been thus far in implementing your data collection strategy at your government entity, on a scale of 1 to 5:

   1. Not at all successful, our strategy has not been implemented at all.
   2. Moderately successful, we have met with other program heads to implement our strategy, but it has not yet been implemented in all program offices.
   3. Successful, we have implemented our strategy, but it is not being used to its full extent.
   4. Moderately successful, we have implemented our strategy but are constantly working to improve it.
   5. Completely successful, our strategy has been fully implemented.

24. What, if any, positive environmental planning results have been achieved through implementation of your government agency’s NEPA data collection strategy? This could be mitigated or minimized impacts, open communication among program and project managers, knowledge of NEPA.

25. What, if any, negative environmental planning effects have resulted through implementation of your government agency’s NEPA data collection strategy? This could be increased
environmental impact, reduced communication among program and project managers, negative attitudes toward NEPA compliance.

26. Please rate how successful your NEPA program has been thus far in integrating environmental planning considerations into project development, on a scale of 1 to 5:

1. Not at all successful, environmental planning has not been integrated into proposed action development at all.
2. Moderately successful, environmental planning has been integrated into most program office proposed action development with consistent, proactive oversight by the NEPA Program Office.
3. Successful, environmental planning is integrated in all program office proposed action development on a continuous basis with consistent, proactive oversight by the NEPA Program Office.
4. Moderately successful, environmental planning is integrated in all program office proposed action development with moderate oversight by the NEPA Program Office.
5. Completely successful, environmental planning has been fully integrated into proposed action development with minimal oversight by the NEPA Program Office.

27. Is there any additional information you think is relevant to this study that you wish to provide at this time?

28. Are there any books, articles, policies that you recommend I read, including any of your government agency’s policies, implementing procedures, or compliance documents?

29. May I follow up with you via email if I have any additional questions?
Appendix B

Council on Environmental Quality
Executive Office of the President

REGULATIONS
For Implementing The Procedural Provisions Of The
NATIONAL
ENVIRONMENTAL
POLICY ACT

Reprint
40 CFR Parts 1500-1508
(2005)
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PART 1500—PURPOSE, POLICY, AND MANDATE

Sec.
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SOURCE: 43 FR 55990, Nov. 28, 1978, unless otherwise noted.

§1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains “action-forcing” provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA’s purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

§1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

§1500.3 Mandate.

Parts 1500 through 1508 of this title provide regulations applicable to and binding on all fed-
eral agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council’s intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council’s intention that any trivial violation of these regulations not give rise to any independent cause of action.

§1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (§1502.2(c)), by means such as setting appropriate page limits (§§1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (§1502.2(a)).

(c) Discussing only briefly issues other than significant ones (§1502.2(b)).

(d) Writing environmental impact statements in plain language (§1502.8).

(e) Following a clear format for environmental impact statements (§1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§1502.14 and 1502.15) and reducing emphasis on background material (§1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§1501.7).

(h) Summarizing the environmental impact statement (§1502.2) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§1502.4 and 1502.20).

(j) Incorporating by reference (§1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (§1502.25).

(l) Requiring comments to be as specific as possible (§1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§1503.4(c)).

(n) Eliminating duplication with state and local procedures, by providing for joint preparation (§1506.2), and with other federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§1506.3).

(o) Combining environmental documents with other documents (§1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (§1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§1508.13).

§1500.5 Reducing delay.

Agencies shall reduce delay by:
(a) Integrating the NEPA process into early planning (§1501.2).
(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (§1501.6).
(c) Insuring the swift and fair resolution of lead agency disputes (§1501.5).
(d) Using the scoping process for an early identification of what are and what are not the real issues (§1501.7).
(e) Establishing appropriate time limits for the environmental impact statement process (§1501.7(b)(2) and 1501.8).
(f) Preparing environmental impact statements early in the process (§1502.5).
(g) Integrating NEPA requirements with other environmental review and consultation requirements (§1502.25).
(h) Eliminating duplication with state and local procedures by providing for joint preparation (§1506.2), and with other federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (§1506.3).
(i) Combining environmental documents with other documents (§1506.4).
(j) Using accelerated procedures for proposals for legislation (§1506.8).
(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (§1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.
(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

§1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act’s national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase “to the fullest extent possible” in section 102 means that each agency of the federal government shall comply with that section unless existing law applicable to the agency’s operations expressly prohibits or makes compliance impossible.

PART 1501—NEPA AND AGENCY PLANNING

Sec.
1501.1 Purpose.
1501.2 Apply NEPA early in the process.
1501.3 When to prepare an environmental assessment.
1501.4 Whether to prepare an environmental impact statement.
1501.5 Lead agencies.
1501.6 Cooperating agencies.
1501.7 Scoping.
1501.8 Time limits.


SOURCE: 43 FR 55992, Nov. 29, 1978, unless otherwise noted.

§1501.1 Purpose.

The purposes of this part include:
(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA’s policies and to eliminate delay.
(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.
(c) Providing for the swift and fair resolution of lead agency disputes.
(d) Identifying at an early stage the significant environmental issues deserving of study.
and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

§1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to “utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man’s environment,” as specified by §1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-federal entities before federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later federal action.

(2) The federal agency consults early with appropriate state and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The federal agency commences its NEPA process at the earliest possible time.

§1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (§1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in §1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

§1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in §1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by §1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in §1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under §1507.3, the agency shall make the finding of
no significant impact available for public review (including state and areawide clearing-houses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to §1507.3, or

(ii) The nature of the proposed action is one without precedent.

§1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, state, or local agencies, including at least one federal agency, may act as joint lead agencies to prepare an environmental impact statement (§1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency’s involvement. (2) Project approval/disapproval authority. (3) Expertise concerning the action’s environmental effects.

(4) Duration of agency’s involvement. (5) Sequence of agency’s involvement.

(d) Any federal agency, or any state or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency. A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which federal agency shall be the lead agency and which other federal agencies shall be cooperating agencies.

[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

§1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter’s request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.
(2) Participate in the scoping process (described below in §1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency’s request to enhance the latter’s interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency’s request for assistance in preparing the environmental impact statement (described in paragraph (b) (3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

§1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§1508.22) in the Federal Register except as provided in §1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected federal, state, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under §1507.3(c). An agency may give notice in accordance with §1506.6.

(2) Determine the scope (§1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in §1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency’s tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§1502.7).

(2) Set time limits (§1501.8).

(3) Adopt procedures under §1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.
§1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by §1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: Provided, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:
   (i) Potential for environmental harm.
   (ii) Size of the proposed action.
   (iii) State of the art of analytic techniques.
   (iv) Degree of public need for the proposed action, including the consequences of delay.
   (v) Number of persons and agencies affected.
   (vi) Degree to which relevant information is known and if not known the time required for obtaining it.
   (vii) Degree to which the action is controversial.
   (viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process, which may include:

   (i) Decision on whether to prepare an environmental impact statement (if not already decided).
   (ii) Determination of the scope of the environmental impact statement.
   (iii) Preparation of the draft environmental impact statement.
   (iv) Review of any comments on the draft environmental impact statement from the public and agencies.
   (v) Preparation of the final environmental impact statement.
   (vi) Review of any comments on the final environmental impact statement.
   (vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency’s office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a federal agency to set time limits.

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Sec.
1502.1 Purpose.
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1502.25 Environmental review and consultation requirements.


Source: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.
§1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the federal government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by federal officials in conjunction with other relevant material to plan actions and make decisions.

§1502.2 Implementation.

To achieve the purposes set forth in §1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (§1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

§1502.3 Statutory requirements for statements.

As required by sec. 102(2)(C) of NEPA environmental impact statements (§1508.11) are to be included in every recommendation or report.

On proposals (§1508.23).

For legislation and (§1508.17).

Other major federal actions (§1508.18).

Significantly (§1508.27).

Affecting (§§1508.3, 1508.8).

The quality of the human environment (§1508.14).

§1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad federal actions such as the adoption of new agency programs or regulations (§1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one
agencies may find it useful to evaluate the proposal(s) in one of the following ways:

1. Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

2. Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

3. By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (§1501.7), tiering (§1502.20), and other methods listed in §§1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

§1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (§1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (§§1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable state or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

§1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§1501.7).

§1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of §1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

§1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

§1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in §1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.
(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency’s response to the issues raised.

(c) Agencies:
(1) Shall prepare supplements to either draft or final environmental impact statements if:
   (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
   (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

§1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(1) Cover sheet.
(2) Summary.
(3) Table of contents.
(4) Purpose of and need for action.
(5) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).
(6) Affected environment.
(7) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).
(8) List of preparers.
(9) List of agencies, organizations, and persons to whom copies of the statement are sent.
(10) Index.
(11) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in §§1502.11 through 1502.18, in any appropriate format.

§1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the state(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA
under §1506.10). The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

§1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

§1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

§1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§1502.15) and the Environmental Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency’s preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

§1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The description shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues.Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under §1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in §1502.14. It shall include discussions of:

(a) Direct effects and their significance (§1508.8).

(b) Indirect effects and their significance (§1508.8).
(c) Possible conflicts between the proposed action and the objectives of federal, regional, state, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See §1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under §1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under §1502.14(f)).

§1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

§1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

§1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in §1502.18(d) and unchanged statements as provided in §1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate federal, state or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft. If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

§1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or
environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

§1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

§1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement: (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and (4) the agency’s evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, “reasonably foreseeable” includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the Federal Register on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

[51 FR 15625, Apr. 25, 1986]

§1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are
important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

§1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

§1502.25 Environmental review and consultation requirements.


(b) The draft environmental impact statement shall list all federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503—COMMENTING

Sec.
1503.1 Inviting comments.
1503.2 Duty to comment.
1503.3 Specificity of comments.
1503.4 Response to comments.


SOURCE: 43 FR 55997, Nov. 29, 1978, unless otherwise noted.

§1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate state and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed. Office of Management and Budget Circular A–95 (Revised), through its system of clearinghouses, provides a means of securing the views of state and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing state and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under §1506.10.

§1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmen-
eral standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in §1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

§1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

§1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§1502.19). The entire document with a new cover sheet shall be filed as the final statement (§1506.9).

PART 1504—PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec.
1504.1 Purpose.
1504.2 Criteria for referral.
1504.3 Procedure for referrals and response.


Source: 43FR 55998, Nov. 29, 1978 unless otherwise noted.

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§1504.1 Purpose.

(a) This part establishes procedures for referring to the Council federal interagency disagreements concerning proposed major federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is “unsatisfactory from the standpoint of public health or welfare or environmental quality,” section 309 directs that the matter be referred to the Council (hereafter “environmental referrals”).

(c) Under section 102(2)(C) of the Act other federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

[43 FR 55998, Nov. 29, 1978]

§1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

[43 FR 55998, Nov. 29, 1978]

§1504.3 Procedure for referrals and response.

(a) A federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency’s comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter’s environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,
(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency’s recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

1. Address fully the issues raised in the referral.
2. Be supported by evidence.
3. Give the lead agency’s response to the referring agency’s recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral shall be delivered not later than the referral. Views in support of the response shall be delivered not later than the response.

(f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

1. Conclude that the process of referral and response has successfully resolved the problem.
2. Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.
3. Hold public meetings or hearings to obtain additional views and information.
4. Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.
5. Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies’ disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council’s recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).


PART 1505—NEPA AND AGENCY DECISIONMAKING

§1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (§1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency’s principal programs likely to have a significant effect on the human environment
and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

§1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A–95 (Revised), part I, sections 6(c) and (d), and part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

§1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506—OTHER REQUIREMENTS OF NEPA

Sec.
1506.1 Limitations on actions during NEPA process.
1506.2 Elimination of duplication with state and local procedures.
1506.3 Adoption.
1506.4 Combining documents.
1506.5 Agency responsibility.
1506.6 Public involvement.
1506.7 Further guidance.
1506.8 Proposals for legislation.
1506.9 Filing requirements.
1506.10 Timing of agency action.
1506.11 Emergencies.
1506.12 Effective date.

§1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in §1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-federal entity, and is aware that the applicant is about to take an action within the agency’s jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program; 

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for federal, state or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g. long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

§1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with state agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes. 

(2) Joint environmental research and studies. 

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments. 

(c) Agencies shall cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more federal agencies and one or more state or local agencies shall be joint lead agencies. Where state laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, federal agencies shall cooperate in fulfilling these requirements as well as those of federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into state or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved state or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

§1506.3 Adoption.

(a) An agency may adopt a federal draft or final environmental impact statement or portion
§1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

§1506.5 Agency responsibility.

(a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (§1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) Environmental assessments. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) Environmental impact statements. Except as provided in §§1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under §1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

§1506.6 Public involvement.

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

1. In all cases the agency shall mail notice to those who have requested it on an individual action.

2. In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to
national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rule-making may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to state and areawide clearinghouses pursuant to OMB Circular A–95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected state’s public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other federal agencies, including the Council.

§1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council’s Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

§1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (§1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The
statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.
(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the “detailed statement” required by statute; Provided, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by §§1503.1 and 1506.10.

(i) A Congressional committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.
(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)).
(iii) Legislative approval is sought for federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.
(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

§1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (MC2252-A), 1200 Pennsylvanin Ave., NW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and §1506.10.

§1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under §1505.2 by a federal agency until the later of the following dates:
(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.
(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public’s right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this
section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see §1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

§1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

§1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under section 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council’s guidelines published in the Federal Register of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

PART 1507—AGENCY COMPLIANCE

Sec.
1507.1 Compliance.
1507.2 Agency capability to comply.
1507.3 Agency procedures.


SOURCE: 43 FR 56002, Nov. 29, 1978, unless otherwise noted.

§1507.1 Compliance.

All agencies of the federal government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by §1507.3 to the requirements of other applicable laws.

§1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying
with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

§1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the Federal Register, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the Federal Register for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

1. Those procedures required by §§1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

2. Specific criteria for and identification of those typical classes of action:
   (i) Which normally do require environmental impact statements.

   (ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (§1508.4)).

   (iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assess-
ments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies’ own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in §1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency’s decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by §1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508—TERMINOLOGY AND INDEX

Sec.
1508.1 Terminology.
1508.2 Act.
1508.3 Affecting.
1508.4 Categorical exclusion.
1508.5 Cooperating agency.
1508.6 Council.
1508.7 Cumulative impact.
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SOURCE: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

§1508.1 Terminology.

The terminology of this part shall be uniform throughout the federal government.

§1508.2 Act.

“Act” means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as “NEPA.”

§1508.3 Affecting.

“Affecting” means will or may have an effect on.

§1508.4 Categorical exclusion.

“Categorical exclusion” means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementation of these regulations (§1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in §1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

§1508.5 Cooperating agency.

“Cooperating agency” means any federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved
in a proposal (or a reasonable alternative) for legislation or other major federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in §1501.6. A state or local agency of similar qualifications or, when the effects are on a reservation, an Indian tribe, may by agreement with the lead agency become a cooperating agency.

§1508.6 Council.

“Council” means the Council on Environmental Quality established by title II of the Act.

§1508.7 Cumulative impact.

“Cumulative impact” is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

§1508.8 Effects.

“Effects” include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

§1508.9 Environmental assessment.

“Environmental assessment”:

(a) Means a concise public document for which a federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency’s compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

§1508.10 Environmental document.

“Environmental document” includes the documents specified in §1508.9 (environmental assessment), §1508.11 (environmental impact statement), §1508.13 (finding of no significant impact), and §1508.22 (notice of intent).

§1508.11 Environmental impact statement.

“Environmental impact statement” means a detailed written statement as required by section 102(2)(C) of the Act.

§1508.12 Federal agency.

“Federal agency” means all agencies of the federal government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations states and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.
§1508.13 Finding of no significant impact.

“Finding of no significant impact” means a document by a federal agency briefly presenting the reasons why an action, not otherwise excluded (§1508.4), will not have a significant effect on the human environment and for which an environmental impact statement there fore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

§1508.14 Human environment.

“Human environment” shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of “effects” (§1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

§1508.15 Jurisdiction by law.

“Jurisdiction by law” means agency authority to approve, veto, or finance all or part of the proposal.

§1508.16 Lead agency.

“Lead agency” means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

§1508.17 Legislation.

“Legislation” includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

§1508.18 Major federal action.

“Major federal action” includes actions with effects that may be major and which are potentially subject to federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency’s policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative...
uses of federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

§1508.19 Matter.

“Matter” includes for purposes of Part 1504:
(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).
(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

§1508.20 Mitigation.

“Mitigation” includes:
(a) Avoiding the impact altogether by not taking a certain action or parts of an action.
(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
(e) Compensating for the impact by replacing or providing substitute resources or environments.

§1508.21 NEPA process.

“NEPA process” means all measures necessary for compliance with the requirements of section 2 and title I of NEPA.

§1508.22 Notice of intent.

“Notice of intent” means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:
(a) Describe the proposed action and possible alternatives.
(b) Describe the agency’s proposed scoping process including whether, when, and where any scoping meeting will be held.
(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

§1508.23 Proposal.

“Proposal” exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (§1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

§1508.24 Referring agency.

“Referring agency” means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

§1508.25 Scope.

“Scope” consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:
(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:
   (i) Automatically trigger other actions which may require environmental impact statements.
   (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
   (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

(1) No action alternative.

(2) Other reasonable courses of actions.

(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) direct; (2) indirect; (3) cumulative.

§1508.26 Special expertise.

“Special expertise” means statutory responsibility, agency mission, or related program experience.

§1508.27 Significantly.

“Significantly” as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
(10) Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment. [43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

§1508.28 Tiering.

“Tiering” refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.
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*Editorial Note: This listing is provided for information purposes only. It is compiled and kept up-to-date by the Council on Environmental Quality.*

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Appendix C

THE NATIONAL ENVIRONMENTAL POLICY
ACT OF 1969, as amended (Pub. L. 91-190, 42
U.S.C. 4321-4347, January 1, 1970, as amended by

An Act to establish a national policy for the
environment, to provide for the establishment of a
Council on Environmental Quality, and for other
purposes.

Be it enacted by the Senate and House of
Representatives of the United States of America in
Congress assembled, That this Act may be cited as
the “National Environmental Policy Act of 1969.”

PURPOSE

Sec. 2 [42 USC § 4321].

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

TITLE I

Congressional Declaration of National
Environmental Policy

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact
of man’s activity on the interrelations of all
components of the natural environment, particularly
the profound influences of population growth, high-
density urbanization, industrial expansion, resource
exploitation, and new and expanding technological
advances and recognizing further the critical
importance of restoring and maintaining
environmental quality to the overall welfare and
development of man, declares that it is the
continuing policy of the federal government, in
cooperation with state and local governments, and
other concerned public and private organizations, to
use all practicable means and measures, including
financial

and technical assistance, in a manner calculated to
foster and promote the general welfare, to create
and maintain conditions under which man and nature
can exist in productive harmony, and fulfill the
social, economic, and other requirements of present
and future generations of Americans.

(b) In order to carry out the policy set forth in this
Act, it is the continuing responsibility of the federal
government to use all practicable means,
consistent with other essential considerations of
national policy, to improve and coordinate federal
plans, functions, programs, and resources to the end
that the Nation may —

1. fulfill the responsibilities of each generation as
trustee of the environment for succeeding generations;

2. assure for all Americans safe, healthful,
productive, and aesthetically and culturally pleasing
surroundings;

3. attain the widest range of beneficial uses of the
environment without degradation, risk to health or
safety, or other undesirable and unintended
consequences;

4. preserve important historic, cultural, and natural
aspects of our national heritage, and maintain,
wherever possible, an environment which supports
diversity, and variety of individual choice;

5. achieve a balance between population and
resource use which will permit high standards of
living and a wide sharing of life’s amenities; and

6. enhance the quality of renewable resources and
approach the maximum attainable recycling of
depletable resources.

(c) The Congress recognizes that each person
should enjoy a healthful environment and that each
person has a responsibility to contribute to the
preservation and enhancement of the environment.

Sec. 102 [42 USC § 4332].
The Congress authorizes and directs that, to the fullest
extent possible: (1) the policies, regulations, and public
laws of the United States shall be interpreted and
administered in accordance
with the policies set forth in this Act, and (2) all agencies of the federal government shall —

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man’s environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on —

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible federal official shall consult with and obtain the comments of any federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate federal, state, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a state agency or official, if:

(i) the state agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible federal official furnishes guidance and participates in such preparation,

(iii) the responsible federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible federal official provides early notification to, and solicits the views of, any other state or any federal land management entity of any action or any alternative thereto which may have significant impacts upon such state or affected federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by state agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of
action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind’s world environment;

(G) make available to states, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC § 4333].

All agencies of the federal government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC § 4334].

Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other federal or state agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other federal or state agency.

Sec. 105 [42 USC § 4335].

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201 [42 USC § 4341].

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the “report”) which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban an rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the federal government, the state and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC § 4342].

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the “Council”). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who,
as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the federal government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC § 4343].

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 USC § 4344].

It shall be the duty and function of the Council —

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;

2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

3. to review and appraise the various programs and activities of the federal government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

7. to report at least once each year to the President on the state and condition of the environment; and

8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205 [42 USC § 4345].

In exercising its powers, functions, and duties under this Act, the Council shall —

1. consult with the Citizens’ Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, state and local governments and other groups, as it deems advisable; and

2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication
of effort and expense may be avoided, thus assuring that the Council’s activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206 [42 USC § 4346].

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

Sec. 207 [42 USC § 4346a].

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the federal government, any state, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 USC § 4346b].

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC § 4347].

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.


42 USC § 4372.

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the “Office”). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions; under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the federal government affecting environmental quality by —

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91-190;

2. assisting the federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the federal government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;
3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

5. assisting in coordinating among the federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

6. assisting the federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the federal government;

7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC § 4373.

Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

42 USC § 4374.

There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91-190:

(a) $2,126,000 for the fiscal year ending September 30, 1979.

(b) $3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.

(c) $44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) $480,000 for each of the fiscal years ending September 30, 1985 and 1986.

42 USC § 4375.

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the “Fund”) to receive advance payments from other agencies or accounts that may be used solely to finance —

1. study contracts that are jointly sponsored by the Office and one or more other federal agencies; and

2. Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.
THE CLEAN AIR ACT § 309*

§ 7609. Policy review

(a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administration, contained in any (1) legislation proposed by any federal department or agency, (2) newly authorized federal projects for construction and any major federal agency action (other than a project for construction) to which section 4332(2)(C) of the title applies, and (3) proposed regulations published by any department or agency of the federal government. Such written comment shall be made public at the conclusion of any such review.

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


Executive Order 11514—Protection and enhancement of environmental quality


By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:

Section 1. Policy. The federal government shall provide leadership in protecting and enhancing the quality of the Nation’s environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

Sec. 2. Responsibilities of federal agencies. Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the “Act”, the heads of federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies’ activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Heads of agencies shall consult with appropriate federal, state and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage state and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to federal agencies, states, counties, municipalities, institutions, and other entities, as appropriate.

(d) Review their agencies’ statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants,
contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act.

(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

[Sec. 2 amended by Executive Order 11991 of May 24, 1977, 42 FR 26967, 3 CFR, 1977 Comp., p. 123]

Sec. 3. Responsibilities of Council on Environmental Quality. The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the federal government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for the enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue regulations to federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and Section 309 of the Clean Air Act, as amended, for the Council’s recommendation as to their prompt resolution.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the
Council’s responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act.

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

[Sec. 3 amended by Executive Order 11991 of May 24, 1977, 42 FR 26967, 3 CFR, 1977 Comp., p. 123]

Sec. 4. Amendments of E.O. 11472.

[Sec. 4 amends Executive Order 11472 of May 29, 1969, Chapter 40. The amendments have been incorporated into that order.]

NEPAnet:

http://ceq.eh.doe.gov/nepanet.htm

NEPAnet is the web site established to serve as a central repository for NEPA information. It provides access to NEPA, the regulations and procedures employed by federal agencies, CEQ guidance, and NEPA points of contact within the federal agencies, tribes and the states. The site also provides a mechanism for identifying potential participants (state, tribal, and local governments) and serves as a link to environmental resource information (statistical trends and tracking data). The NEPAnet site also interfaces with other federal agencies’ sites by providing links to their environmental planning information sites, guidance, and NEPA points of contact within the federal agencies, tribes and the states. The site also provides a mechanism for identifying potential participants (state, tribal, and local governments) and serves as a link to environmental resource information (statistical trends and tracking data). The NEPAnet site also interfaces with other federal agencies’ sites by providing links to their environmental planning information sites.

Access to environmental datasets is provided on the “environmental statistics” page of the NEPAnet web site which provides a compilation of environmental statistics and trends, complemented with hot-links – or passageways – to the data compiled by EPA, Interior, and other government agencies. In addition, the “environmental impact analysis data links” page of NEPAnet provides access to online environmental datasets and libraries compiled by the United States Geological Survey. For example, the USGS site provides access to data sets such as the National Wetlands Inventory maps and data, the USGS maps and data tables for water data stations in the US, as well as to libraries such as the largest known collection of on-line publications related to forestry research maintained by the Forest Service.
Sec. 1506.9 Filing requirements.

(a) Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Mail Code 2252-A, Room 7220, 1200 Pennsylvania Ave., NW., Washington, DC 20460. This address is for deliveries by US Postal Service (including USPS Express Mail).

(b) For deliveries in-person or by commercial express mail services, including Federal Express or UPS, the correct address is: US Environmental Protection Agency, Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Room 7220, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

(c) Statements shall be filed with the EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and Sec. 1506.10.

[70 FR 41148, July 18, 2005]