

eliminates from the regulations formal Presidential participation; as noted, such participation has been eliminated already from the statute by Congress. A request for public comment would suggest that the Commission has some degree of discretion in this matter. Inasmuch as the agency has no choice but to implement the terms of the statute, such an invitation for comments would be misleading. These circumstances bring the agency squarely within the exception to general rulemaking requirements established in 5 U.S.C. 553(b)(B). This section provides that such rulemaking requirements do not apply when the agency for good cause finds that notice and public procedure thereon are unnecessary or contrary to the public interest. Rulemaking which serves to carry out a Congressional mandate has been described as a non-discretionary ministerial action constituting good cause within the meaning of 5 U.S.C. 553(b)(B). In one case, the appellate court held that resorting to the proposed rulemaking procedures in a situation substantially identical to this one was "unnecessary * * * and might even have been 'contrary to the public interest.'" *Metzenbaum v. Federal Energy Regulatory Commission*, 675 F.2d 1282, 1291 (D.C. Cir. 1982).

Significantly, the Commission must still comply with the procedures of section 1604 of the Panama Canal Act, 22 U.S.C. 3794, which requires publication in the Federal Register of notice of any proposed change in the rates of tolls or rules of measurement; the making available to the public an analysis showing the basis and justification for the change; the provision of an opportunity for interested parties to participate in the toll-setting or measurement-change process through the submission of written comments and appearance at a public hearing; and publication of the final rule not less than 30 days before the effective date of the change. In summary, the public will continue to have the same rights to participate in proposed toll-rate or measurement-rule changes as it has had in the past. The sole difference is that, after such participation, the Commission, rather than the President, will have the final approval authority.

The Commission has been exempted from Executive Order 12866 and, accordingly, the provisions of that directive do not apply to this final rule. Even if the Order were applicable, the change would not constitute a "rule" as that term is defined in the Regulatory Flexibility Act [5 U.S.C. 601(2)] because: (1) it concerns "rates" and "practices

relating" thereto; and (2) as noted above, is not a rule for which the agency must publish a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). Additionally, its implementation would not have a significant economic impact on a substantial number of small entities as defined under that Act.

Further, the agency has determined that implementation of the rule will have no adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because a notice of proposed rulemaking and opportunity for public comment are not required to be given for this final rule by the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601), no initial or final regulatory flexibility analysis has to be or will be prepared.

Finally, the Administrator of the Panama Canal Commission certifies that these changes in regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

List of Subjects in 35 CFR Part 70

Measurement, Navigation, Panama Canal, Vessels.

Accordingly, 35 CFR Part 70 is amended as follows:

PART 70—PROCEDURES FOR CHANGING RULES OF MEASUREMENT OR RATES OF TOLLS

1. The authority citation for part 70 is revised to read as follows:

Authority: Sections 1601–1604 and 1801, Pub. L. 96–70, 93 Stat. 489–492, 22 U.S.C. 3791–3794, 3811; sections 3527 and 3528, Pub. L. 104–106; EO 12215, 45 FR 36043, 3 CFR, 1981 Comp., p. 257.

§§ 70.14 and 70.15 [Removed]

2. Sections 70.14 and 70.15 are removed.

§ 70.16 [Redesignated as § 70.14]

3. Section 70.16 is redesignated as § 70.14 and amended by removing the word "President" and inserting, in its place, the word "Commission."

Dated: April 1, 1996.
Gilberto Guardia F.,
Administrator, Panama Canal Commission.
[FR Doc. 96–9462 Filed 4–16–96; 8:45 am]

BILLING CODE 3640–04–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

43 CFR Part 10010

Policy and Procedures for Implementing the National Environmental Policy Act

AGENCY: Utah Reclamation Mitigation and Conservation Commission.

ACTION: Final rule.

SUMMARY: The Central Utah Project Completion Act established the Utah Reclamation Mitigation and Conservation Commission (Commission) and directed that the Commission be considered a Federal agency for purposes of compliance with the National Environmental Policy Act of 1969, as amended (NEPA). In accordance with NEPA and Council on Environmental Quality (CEQ) regulations, Federal agencies must establish procedures to guide their actions in implementing NEPA. This rule establishes the Commission's policies and procedures regarding NEPA implementation. It defines the procedures that the Commission will follow in preparing environmental documents and in making decisions pursuant to NEPA. The rule also provides information to other agencies and the public regarding how they may participate in the Commission's NEPA activities. The intended effects of this rule are that the Commission will have at its disposal specific guidance on how to fulfill its NEPA responsibilities, and that the public will have a clear understanding of the Commission's NEPA procedures.

EFFECTIVE DATE: March 15, 1996.

FOR FURTHER INFORMATION CONTACT: Joan Degiorgio, Telephone: 801–524–3146.

SUPPLEMENTARY INFORMATION: The Draft NEPA Rule was published in the Federal Register on January 25, 1996, Vol. 61, No. 17. The Final NEPA Rule was adopted by the Commission in public session on March 15, 1996.

Background

The Commission was established by the Central Utah Project Completion Act (Public Law 102–575, October 30, 1992). The Commission's mission is to implement mitigation and conservation measures to offset the effects of Federal reclamation projects in Utah and to take other actions for the conservation of important fish, wildlife, and recreation resources. The Commission was established to focus the authority for reclamation mitigation and to coordinate interagency efforts toward meeting mitigation needs. This rule

provides the Commission, affected Federal agencies, the State of Utah, and the public with the necessary guidance to evaluate the environmental effects of Commission activities and to ensure that these will promote the protection and enhancement of environmental quality. It is adopted in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) and with Council on Environmental Quality (CEQ) regulations (40 CFR 1500–1508).

NEPA Rule Content

This rule provides direction on all aspects of the Commission's NEPA process. It establishes general policies, provides guidance on initiating the NEPA process, describes procedures relating to Environmental Assessments (EA) and Environmental Impact Statements (EIS), describes the relationship between NEPA and the Commission's decision making process, and provides guidance on managing the NEPA process.

Relationship to Department of Interior NEPA Procedures

The Commission's NEPA rule is modeled after the U.S. Department of the Interior's (Department) NEPA procedures (Departmental Manual, Part 516) and relevant portions of Appendix I to that Part, which establishes U.S. Fish and Wildlife Service (Service) NEPA procedures. Four factors led the Commission to conclude that it is appropriate to closely follow Department and Service procedures. First, Department and Service reclamation mitigation and resource conservation activities closely parallel those of the Commission and needs relating to NEPA are therefore similar. Second, the Department's Office of the Solicitor is responsible for providing the Commission with legal advice regarding the Commission's NEPA activities and is familiar with the Department's NEPA procedures. Third, the Commission will be involved in numerous interagency activities with the Department, the Service, and other bureaus within the Department, all of whom are familiar with, and bound by, Departmental NEPA procedures. Fourth, other agencies and organizations that will likely participate in Commission sponsored activities, including the Utah Division of Wildlife Resources and the Central Utah Water Conservancy District, have been involved in mitigation and conservation initiatives involving Departmental NEPA procedures and are therefore familiar with these procedures.

The Commission's NEPA rule generally adheres to the language contained in the Department's Manual. Exceptions are as follows. First, references to the Department, the Secretary, the Fish and Wildlife Service, and departmental bureaus have been substituted with "the Commission" or other appropriate language. Second, portions of the Departmental procedures that assign responsibilities for NEPA planning and approval processes have been modified to conform to the Commission's authorities and approval process. Third, references to regulatory and enforcement activities are omitted as the Commission is not a regulatory agency. Fourth, references to the activities of specific Department of the Interior bureaus are omitted. Fifth, references to activities and subjects that are outside of the Commission's jurisdiction or that are not applicable to the geographic area subject to Commission actions (for example, marine resources) are omitted. Sixth, a new section is added that references tiering of environmental documents.

Categorical exclusions listed in paragraph (a) of Section 10010.61 are from Part 516 of the Department's Manual. With one addition, categorical exclusions in paragraph (b) of that section are from the Fish and Wildlife Service's appendix to Part 516. The addition is (b)(6), derived from the Bureau of Reclamation's appendix to Part 516, and relates to the Commission's ability to transfer operations and maintenance of facilities.

The rule's format deviates significantly from that of the Departmental Manual in order to be consistent with the format of the Code of Federal Regulations. Minor editorial changes have also been made.

Public Participation

The Commission is committed to open and full public participation in its activities. The Commission has established a planning rule (43 CFR Part 10005) that describes opportunities for the public to become involved in the preparation and implementation of the Commission's mandated five-year plan. The public will also be given ample opportunity to become involved in the evaluation of individual projects that are components of that plan. The procedures for this are described in this NEPA rule.

Rule Preparation and Review

This rule was prepared in consultation with affected Federal and state agencies and other interested parties. The availability of the draft rule was published in the Federal Register

January 25, 1996. A forty-five day public comment period was established. No comments were received and the Rule was adopted on March 15, 1996.

Michael C. Weland,
Executive Director.

List of Subjects in 43 CFR Part 10010

Administrative practices and procedures, Environmental impact statements, Environmental protection, Intergovernmental relations, Natural resources, Reclamation, Water resources.

For the reasons set out in the preamble, 43 CFR Chapter III is amended by adding a new part 10010 to read as follows:

PART 10010—POLICIES AND PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

Subpart A—Protection and Enhancement of Environmental Quality

- 10010.1 Purpose.
- 10010.2 Policy.
- 10010.3 General responsibilities.
- 10010.4 Consideration of environmental values.
- 10010.5 Consultation, coordination, and cooperation with other agencies and organizations.
- 10010.6 Public involvement.
- 10010.7 Mandate.

Subpart B—Initiating the NEPA Process

- 10010.8 Purpose.
- 10010.9 Apply NEPA early.
- 10010.10 Whether to prepare an EIS.
- 10010.11 Lead agencies.
- 10010.12 Cooperating agencies.
- 10010.13 Scoping.
- 10010.14 Time limits.

Subpart C—Environmental Assessments

- 10010.15 Purpose.
- 10010.16 When to prepare.
- 10010.17 Public involvement.
- 10010.18 Content.
- 10010.19 Format.
- 10010.20 Adoption.

Subpart D—Environmental Impact Statements

- 10010.21 Purpose.
- 10010.22 Statutory requirements.
- 10010.23 Timing.
- 10010.24 Page limits.
- 10010.25 Supplemental environmental impact statements.
- 10010.26 Format.
- 10010.27 Cover sheet.
- 10010.28 Summary.
- 10010.29 Purpose and need.
- 10010.30 Alternatives including the proposed action.
- 10010.31 Appendix.
- 10010.32 Tiering.
- 10010.33 Incorporation by reference of material into NEPA documents.
- 10010.34 Incomplete or unavailable information.

- 10010.35 Methodology and scientific accuracy.
- 10010.36 Environmental review and consultation requirements.
- 10010.37 Inviting comments.
- 10010.38 Response to comments.
- 10010.39 Elimination of duplication with state and local procedures.
- 10010.40 Combining documents.
- 10010.41 Commission responsibility.
- 10010.42 Public involvement.
- 10010.43 Further guidance.
- 10010.44 Proposals for legislation.
- 10010.45 Time periods.

Subpart E. Relationship to Decision-Making

- 10010.46 Purpose.
- 10010.47 Pre-decision referrals to CEQ.
- 10010.48 Decision-making procedures.
- 10010.49 Record of decision.
- 10010.50 Implementing the decision.
- 10010.51 Limitations on actions.
- 10010.52 Timing of actions.
- 10010.53 Emergencies.

Subpart F—Managing the NEPA Process

- 10010.54 Purpose.
- 10010.55 Organization for environmental quality.
- 10010.56 Approval of EISs.
- 10010.57 List of specific compliance responsibilities.
- 10010.58 Information about the NEPA process.

Subpart G—Actions Requiring an EIS and Actions Subject to Categorical Exclusion

- 10010.59 Purpose.
 - 10010.60 Actions normally requiring an EIS.
 - 10010.61 Actions subject to categorical exclusion.
 - 10010.62 Exceptions to categorical exclusions.
- Authority: 43 U.S.C. 620k (note).

Subpart A—Protection and Enhancement of Environmental Quality

§ 10010.1 Purpose.

This Subpart establishes the Commission's policies for complying with Title 1 of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) (NEPA); Section 2 of Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991; and the regulations of the Council on Environmental Quality (CEQ) implementing the procedural provisions of NEPA (40 CFR parts 1500 through 1508).

§ 10010.2 Policy.

It is the policy of the Commission:

(a) To provide leadership in protecting and enhancing those aspects of the quality of the Nation's environment which relate to or may be affected by the Commission's policies, goals, programs, plans, or functions in

furtherance of national environmental policy;

(b) To use all practicable means to improve, coordinate, and direct its policies, plans, functions, programs, and resources in furtherance of national environmental goals;

(c) To interpret and administer, to the fullest extent possible, the policies, regulations, and public laws of the United States administered by the Commission in accordance with the policies of NEPA;

(d) To consider and give significant weight to environmental factors, along with other essential considerations, in developing proposals and making decisions in order to achieve a proper balance between the development and utilization of natural, cultural, and human resources and the protection and enhancement of environmental quality;

(e) To consult, coordinate, and cooperate with other Federal agencies and State, local, and Indian tribal governments in the development and implementation of the Commission's plans and programs affecting environmental quality and, in turn, to provide to the fullest extent practicable, these entities with information concerning the environmental impacts of their respective plans and programs;

(f) To provide, to the fullest extent practicable, timely information to the public to better assist in understanding the Commission's plans and programs affecting environmental quality and to facilitate their involvement in the development of such plans and programs; and

(g) To cooperate with and assist the CEQ.

§ 10010.3 General responsibilities.

The following responsibilities reflect the Commission's decision that the officials responsible for making program decisions are also responsible for taking the requirements of NEPA into account in those decisions and will be held accountable for that responsibility:

(a) Executive Director. (1) Is the Commission's focal point on NEPA matters and is responsible for overseeing the Commission's implementation of NEPA.

(2) Serves as the Commission's principle contact with the CEQ.

(3) Assigns to Commission staff the responsibilities outlined in this part.

(4) Must comply with the provisions of NEPA, E.O. 11514 as amended, the CEQ regulations, and this part.

(5) Will interpret and administer, to the fullest extent possible, the policies, regulations, and public laws of the United States administered under the

Commission's jurisdiction in accordance with the policies of NEPA.

(6) Will continue to review the Commission's statutory authorities, administrative regulations, policies, programs, and procedures, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the intent, purpose, and provisions of NEPA and, in consultation with the Department of the Interior Office of the Solicitor, shall take or recommend, as appropriate, corrective actions as may be necessary to bring these authorities and policies into conformance with the intent, purpose, and procedures of NEPA.

(7) Will monitor, evaluate, and control on a continuing basis the Commission's activities so as to protect and enhance the quality of the environment. Such activities will include those directed to conserving and enhancing the environment and designed to accomplish other program objectives which may affect the quality of the environment. The Executive Director will develop programs and measures to protect and enhance environmental quality and assess progress in meeting the specific objectives of such activities as they affect the quality of the environment.

(b) Members of the Commission. (1) Are responsible for compliance with NEPA, E.O. 11514, as amended, the CEQ regulations, and this part.

(2) Will insure that, to the fullest extent possible, the policies, regulations, and public laws of the United States administered under the Commission's jurisdiction are interpreted and administered in accordance with the policies of NEPA.

(c) Department of the Interior Office of the Solicitor. Is responsible for providing legal advice to the Commission regarding compliance with NEPA.

§ 10010.4 Consideration of environmental values.

(a) In Commission management. (1) In the management of the natural, cultural, and human resources under its jurisdiction, the Commission must consider and balance a wide range of economic, environmental, and social objectives at the local, regional, and national levels, not all of which are quantifiable in comparable terms. In considering and balancing these objectives, Commission plans, proposals, and decisions often require recognition of complements and resolution of conflicts among interrelated uses of these natural, cultural, and human resources within

technological, budgetary, and legal constraints.

(2) Commission project reports, program proposals, issue papers, and other decision documents must carefully analyze the various objectives, resources, and constraints, and comprehensively and objectively evaluate the advantages and disadvantages of the proposed actions and their reasonable alternatives. Where appropriate, these documents will utilize and reference supporting and underlying economic, environmental, and other analyses.

(3) The underlying environmental analyses will factually, objectively, and comprehensively analyze the environmental effects of proposed actions and their reasonable alternatives. They will systematically analyze the environmental impacts of alternatives, and particularly those alternatives and measures which would reduce, mitigate, or prevent adverse environmental impacts or which would enhance environmental quality.

(b) In internally initiated proposals. Officials responsible for development or conduct of planning and decision making systems within the Commission shall incorporate to the maximum extent necessary environmental planning as an integral part of these systems in order to insure that environmental values and impacts are fully considered and in order to facilitate any necessary documentation of those considerations.

(c) In externally initiated proposals. Officials responsible for development or conduct of grant, contract, or other externally initiated activities shall require applicants, to the extent necessary and practicable, to provide environmental information, analyses, and reports as an integral part of their applications. This will serve to encourage applicants to incorporate environmental considerations into their planning processes as well as provide the Commission with necessary information to meet its own environmental responsibilities.

§ 10010.5 Consultation, coordination, and cooperation with other agencies and organizations.

(a) Commission plans and programs. (1) Officials responsible for planning or implementing Commission plans and programs will develop and utilize procedures to consult, coordinate, and cooperate with relevant State, local, and Indian tribal governments; other Federal agencies; and public and private organizations and individuals concerning the environmental effects of

these plans and programs on their jurisdictions and/or interests.

(2) The Commission will utilize, to the maximum extent possible, existing notification, coordination, and review mechanisms established by the Office of Management and Budget, the Water Resource Council, and CEQ. However, use of these mechanisms must not be a substitute for early and positive consultation, coordination, and cooperation with others, especially State, local, and Indian tribal governments.

(b) Other Commission activities. (1) Technical assistance, advice, data, and information useful in restoring, maintaining, and enhancing the quality of the environment will be made available to other Federal agencies, State, local, and Indian tribal governments, institutions, and individuals as appropriate.

(2) Information regarding existing or potential environmental problems and control methods developed as a part of research, development, demonstration, test, or evaluation activities will be made available to other Federal agencies, State, local, and Indian tribal governments, institutions and other entities as appropriate.

(c) Plans and programs of other agencies and organizations. (1) Officials responsible for protecting, conserving, developing, or managing resources under the Commission's jurisdiction shall coordinate and cooperate with State, local and Indian tribal governments, other Federal agencies, and public and private organizations and individuals, and provide them with timely information concerning the environmental effects of these entities' plans and programs.

(2) The Commission will participate early in applicable planning processes of other agencies and organizations in order to ensure full cooperation with and understanding of the Commission's programs and interests in natural, cultural, and human resources.

(3) The Commission will utilize to the fullest extent possible, existing review mechanisms to avoid unnecessary duplication of effort and to avoid confusion by other organizations.

§ 10010.6 Public involvement.

The Commission will develop and utilize procedures to ensure the fullest practicable provision of timely public information and understanding of its plans and programs including information on the environmental impacts of alternative courses of action. These procedures will include, wherever appropriate, provision for public meetings or hearings in order to

obtain the views of interested parties. The Commission will also encourage State and local agencies and Indian tribal governments to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

§ 10010.7 Mandate.

(a) This part provides instructions for complying with NEPA and Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991.

(b) The Commission hereby adopts the regulations of the CEQ, implementing the procedural provisions of NEPA (sec. 102(2)(C)) except where compliance would be inconsistent with other statutory requirements. In the case of any apparent discrepancies between these procedures and the mandatory provisions of the CEQ regulations the regulations shall govern.

(c) Instructions supplementing the CEQ regulations are provided in subparts B through G of this part. Citations in brackets refer to the CEQ regulations. In addition, the Commission may prepare a handbook or other technical guidance, or adopt an appropriate handbook or guidance prepared by another agency, for its personnel on how to apply this part to principal programs.

Subpart B—Initiating the NEPA Process

§ 10010.8 Purpose.

This subpart provides supplemental instructions for implementing those portions of the CEQ regulations pertaining to initiating the NEPA process (40 CFR Parts 1501 through 1506).

§ 10010.9 Apply NEPA early.

(a) The Commission will initiate early consultation and coordination with other Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved, and with appropriate Federal, State, local and Indian tribal agencies authorized to develop and enforce environmental standards.

(b) The Commission will also consult early with interested private parties and organizations, including when the Commission's own involvement is reasonably foreseeable in a private or non-Federal application.

(c) The Commission will insure that applicants are informed of any environmental information required, to be included in their applications and of any consultation with other Federal agencies, and State, local or Indian

tribal governments required prior to making the application.

§ 10010.10 Whether to prepare an EIS.

(a) Categorical exclusions (CX) (40 CFR 1508.4).

(1) The following criteria will be used to determine categories of actions to be excluded from preparation of an EA or EIS:

(i) Analysis or experience shows that the action or group of actions would have no significant effect on the quality of the human environment; and

(ii) The action or group of actions would not involve unresolved conflicts concerning alternative uses of available resources.

(2) Based on the criteria in paragraph (a)(1) of this section, the categories of actions listed in subpart G of this part are excluded from the preparation of an EA or EIS.

(3) The exceptions listed in subpart G of this part apply to individual actions subject to CX. Appropriate environmental documents must be prepared for any actions involving these exceptions.

(4) Notwithstanding the criteria, exclusions, and exceptions in paragraphs (a)(1) through (3), extraordinary circumstances may dictate or a responsible Commission official may decide to prepare an environmental document to assist with decision-making.

(b) Environmental Assessment (EA) (40 CFR 1508.9). Procedures regarding preparation of an EA are addressed in subpart C of this part.

(c) Finding of No Significant Impact (FONSI) (40 CFR 1508.13). A FONSI will be prepared as a separate document based upon analysis of an EA and a determination that the proposed action will have no significant environmental impact.

(d) Notice of Intent (NOI) (40 CFR 1508.22). A NOI will be prepared as soon as practicable after a decision to prepare an environmental impact statement and shall be published in the Federal Register and made available to the affected public in accordance with 40 CFR 1506.6. Publication of a NOI may be delayed if there is proposed to be more than three (3) months between the decision to prepare an environmental impact statement and the time preparation is actually initiated. The Commission will periodically publish a consolidated list of these notices in the Federal Register.

(e) Environmental Impact Statement (EIS) (40 CFR 1508.11). Decisions/actions which would normally require the preparation of an EIS are identified in subpart G of this part. Procedures

regarding preparation of an EIS are addressed in subpart D of this part.

§ 10010.11 Lead agencies.

(a) The Commission will serve as lead, or, as appropriate, joint-lead agency for any NEPA procedure that is sponsored by or otherwise significantly involves the Commission.

(b) The Commission will inform the Office of the Solicitor of any agreements to assume lead or joint-lead agency status.

(c) A non-Federal agency may be designated as a joint lead agency if it has a duty to comply with a local or State environmental review requirement. Any non-Federal agency may be a cooperating agency by agreement. The Commission will consult with the Office of the Solicitor in cases where such non-Federal agencies are also applicants before the Commission to determine joint-lead agency responsibilities.

§ 10010.12 Cooperating agencies.

(a) The Commission will adhere to CEQ directives both in the designation of cooperating agencies for Commission sponsored NEPA procedures and in seeking designation as a cooperating agency for procedures sponsored by others. Any non-Federal agency may be a cooperating agency in Commission NEPA proceedings by agreement. The Commission will consult with the Office of the Solicitor in cases where such non-Federal agencies are also applicants before the Commission to determine cooperating agency responsibilities.

(b) The Commission will inform the Office of the Solicitor of any agreements to assume cooperating agency status or any declinations pursuant to 40 CFR 1501.6 (c).

§ 10010.13 Scoping.

(a) The invitation requirement in 40 CFR 1501.7(a)(1) may be satisfied by including such an invitation in the NOI.

(b) If a scoping meeting is held, consensus is desirable; however, the lead agency is ultimately responsible for the scope of an EIS. In the case of procedures involving joint-lead agencies, all joint-lead agencies share this responsibility.

§ 10010.14 Time limits.

When time limits are established to prepare an environmental document they should reflect the availability of personnel and funds.

Subpart C—Environmental Assessments

§ 10010.15 Purpose.

This subpart provides supplemental instructions for implementing those portions of the CEQ regulations pertaining to environmental assessments (EA).

§ 10010.16 When to prepare.

(a) An EA will be prepared for all actions, except those categories of action excluded from documentation or addressed adequately by a previous environmental document, or for those actions for which a decision has already been made to prepare an EIS. The purpose of such an EA is to allow the responsible official to determine whether to prepare an EIS.

(b) In addition, an EA may be prepared on any action at any time in order to assist in planning and decision making.

§ 10010.17 Public involvement.

(a) The public may be involved in the EA process when appropriate. Public notification will be made of the availability of an EA document (40 CFR 1506.6).

(b) The scoping process may be applied to an EA (40 CFR 1501.7).

§ 10010.18 Content.

(a) At a minimum, an EA will include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E) of NEPA, of the environmental impacts of the proposed action and such alternatives, and a listing of agencies and persons consulted (40 CFR 1508.9(b)).

(b) In addition, an EA may be expanded to more fully describe the proposal and a broader range of alternatives if this facilitates planning and decision making.

(c) The level of detail and depth of impact analysis should normally be limited to that needed to determine whether there are significant environmental effects.

(d) An EA will contain objective and credible analyses which support its environmental impact conclusions. It will not, in and of itself, conclude whether or not an EIS will be prepared. This conclusion will be made upon review of the EA by the responsible official and documented in either a NOI or FONSI.

§ 10010.19 Format.

(a) An EA may be prepared in any format useful to facilitate planning and decision making.

(b) An EA may be combined with any other planning or decision making

document; however, that portion which analyzes the environmental impacts of the proposal and alternatives will be clearly and separately identified and not spread throughout or interwoven into other sections of the document.

§ 10010.20 Adoption.

(a) An EA prepared for a proposal before the Commission by another agency, entity or person, including an applicant, may be adopted if, upon independent evaluation by the responsible Commission official, it is found to comply with this part and relevant provisions of the CEQ regulations.

(b) When appropriate and efficient, a responsible Commission official may augment such an EA when it is essentially, but not entirely, in compliance in order to make it so.

(c) If an EA or augmented EA is adopted, the responsible Commission official must prepare his/her own NOI or FONSI which also acknowledges the origin of the EA and takes full responsibility for its scope and content.

Subpart D—Environmental Impact Statements

§ 10010.21 Purpose.

This subpart provides supplemental instructions for implementing those portions of the CEQ regulations pertaining to environmental impact statements (EIS).

§ 10010.22 Statutory requirements.

NEPA requires that an EIS be prepared by the responsible Federal official. This official is normally the lowest-level official who has overall responsibility for formulating, reviewing, or proposing an action or, alternatively, has been delegated the authority or responsibility to develop, approve, or adopt a proposal or action. Preparation at this level will ensure that the NEPA process will be incorporated into the planning process and that the EIS will accompany the proposal through existing review processes.

§ 10010.23 Timing.

(a) The feasibility analysis (go/no-go) stage, at which time an EIS is to be completed, is to be interpreted as the stage prior to the first point of major commitment to the proposal.

(b) An EIS need not be commenced until an application is essentially complete; e.g., any required environmental information is submitted, any consultation required with other agencies has been conducted, and any required advance funding is paid by the applicant or other appropriate party.

§ 10010.24 Page limits.

An EIS should be as brief as possible and still convey the required information. Normally this should be accomplished in less than 150 pages, though documents of up to 300 pages are acceptable for more comprehensive issues. Where the text of an EIS for a complex proposal or group of proposals appears to require more than the normally prescribed limit of 300 pages, the Commission will ensure that the length of such statements is no greater than necessary to comply with NEPA, the CEQ regulations, and this part.

§ 10010.25 Supplemental environmental impact statements.

(a) Supplement Environmental Impact Statements (SEIS) are only required if such changes in the proposed action or alternatives, new circumstances, or resultant significant effects are not adequately analyzed in the previously prepared EIS.

(b) The Commission will consult with the Office of the Solicitor prior to proposing to CEQ to prepare a final supplement without preparing an intervening draft.

(c) If, after a Record of Decision has been executed based on a final EIS, a described proposal is further refined or modified and if there are only minor changes in effects or they are still within the scope of the earlier EIS, an EA and FONSI may be prepared for subsequent decisions rather than a SEIS. As identified in Sec. 10010.61(b)(1)(i), changes having no potential for significant environmental impact are categorically excluded from environmental documentation requirements.

§ 10010.26 Format.

(a) Proposed departures from the standard format described in the CEQ regulations and this part must be approved by the Executive Director.

(b) The section listing the preparers of the EIS will also include other sources of information, including a bibliography or list of cited references, when appropriate.

(c) The section listing the distribution of the EIS will also briefly describe the consultation and public involvement processes utilized in planning the proposal and in preparing the EIS, if this information is not discussed elsewhere in the document.

(d) If CEQ's standard format is not used or if the EIS is combined with another planning or decision making document, the section which analyzes the environmental consequences of the proposal and its alternatives will be clearly and separately identified and not

interwoven into other portions of or spread throughout the document.

§ 10010.27 Cover sheet.

The cover sheet will indicate whether the EIS intended to serve any other environmental review or consultation requirements pursuant to 40 CFR 1502.25.

§ 10010.28 Summary.

The emphasis in the summary should be on those considerations, controversies, and issues which significantly affect the quality of the human environment.

§ 10010.29 Purpose and need.

The purpose and need section may introduce a number of factors, including economic and technical considerations and Commission statutory missions, which may be outside the scope of the EIS. Care should be taken to insure an objective presentation and not a justification.

§ 10010.30 Alternatives including the proposed action.

(a) As a general rule, the following guidance will apply:

(1) For internally initiated proposals; i.e., for those cases where the Commission conducts or controls the planning process, both the draft and final EIS shall identify the Commission's proposed action, or preferred alternative.

(2) For externally initiated proposals; i.e., for those cases where the Commission is reacting to an application or similar request, the draft and final EIS shall identify the applicant's proposed action and the Commission's preferred alternative unless another law prohibits such an expression.

(3) Proposed departures from this guidance must be approved by the Executive Director and the Office of the Solicitor.

(b) Mitigation measures to offset adverse effects of the proposed action or its alternatives are not necessarily independent of these actions and should be incorporated into and analyzed as a part of the proposal and appropriate alternatives. Where appropriate, major mitigation measures may be identified and analyzed as separate alternatives in and of themselves where the environmental consequences are distinct and significant enough to warrant separate evaluation.

§ 10010.31 Appendix.

If an EIS is intended to serve other environmental review or consultation requirements pursuant to 40 CFR 1502.25, any more detailed information

needed to comply with these requirements may be included as an appendix.

§ 10010.32 Tiering.

An environmental document prepared by or for the Commission may incorporate by reference, either in part or in its entirety, an earlier environmental impact statement or environmental assessment when the subject matter of the earlier document is directly applicable. The Commission may also choose to prepare, or cause to have prepared, a broad environmental document to cover an entire program or, alternatively, a series of projects within a distinct geographic area, with the intent of later undertaking project-specific documentation and "tiering" to the more general statement or assessment.

§ 10010.33 Incorporation by reference of material into NEPA documents.

Citations of specific topics will include the pertinent page numbers. All literature references will be listed in the bibliography.

§ 10010.34 Incomplete or unavailable information.

The references to overall costs in 40 CFR 1502.22 of the CEQ regulations are not limited to market costs, but may also include other costs such as social costs due to delay.

§ 10010.35 Methodology and scientific accuracy.

Conclusions about environmental effects will be preceded by an analysis that supports that conclusion unless explicit reference by footnote is made to other supporting documentation that is readily available to the public.

§ 10010.36 Environmental review and consultation requirements.

(a) The Commission will maintain a list of applicable environmental review and consultation requirements pursuant to other federal or state laws and regulations and will make this available to interested parties.

(b) If the EIS is intended to serve as the vehicle to fully or partially comply with the requirements of other federal or state laws and regulations, the associated analyses, studies, or surveys will be identified as such and discussed in the text of the EIS and the cover sheet will so indicate. Any supporting analyses or reports to the NEPA documents will be incorporated by reference or included as an appendix and shall be sent to reviewing agencies as appropriate in accordance with applicable regulations or procedures.

§ 10010.37 Inviting comments.

(a) Comments from State agencies will be requested through procedures established by the Governor pursuant to Executive Order 12372, and may be requested from local agencies through these procedures to the extent that they include the affected local jurisdictions.

(b) When the proposed action may affect the environment of an Indian reservation, comments will be requested from the Indian tribe through the tribal governing body, unless the tribal governing body has designated an alternate review process.

§ 10010.38 Response to comments.

(a) Preparation of a final EIS need not be delayed in those cases where a Federal agency, from which comments are required to be obtained (40 CFR 1503.1(a)(1)), does not comment within the prescribed time period. Informal attempts will be made to determine the status of any such comments and every reasonable attempt should be made to include the comments and a response in the final EIS.

(b) When other commentors are late, their comments should be included in the final EIS to the extent practicable.

§ 10010.39 Elimination of duplication with state and local procedures.

The Commission will incorporate in its appropriate program regulations provisions for the preparation of an EIS by a State agency to the extent authorized in section 102(2)(D) of NEPA.

§ 10010.40 Combining documents.

Incorporating documentation requirements of other environmental regulations into an EIS is both acceptable and desirable. If the EIS is combined with another planning or decision making document, the section which analyzes the environmental consequences of the proposal and its alternatives will be clearly and separately identified and not interwoven into other portions of or spread throughout the document.

§ 10010.41 Commission responsibility.

A Commission sponsored environmental document may be prepared by the Commission, a joint-lead agency, a contractor selected or approved by the Commission, or, when appropriate, a cooperating agency. Regardless, the Commission has the responsibility to independently evaluate and draw appropriate conclusions. Following the Commission's preparation or independent evaluation of and assumption of responsibility for an environmental document, an

applicant may print it provided the applicant is bearing the cost of the document pursuant to other laws.

§ 10010.42 Public involvement.

The Commission will adhere to CEQ requirements regarding the use of public notices, public meetings, public review of NEPA documents, and other techniques to ensure that the public has ample opportunity to provide input into the proceedings and to ensure that the Commission will give due consideration to this input.

§ 10010.43 Further guidance.

The Commission may provide further guidance concerning NEPA pursuant to its organizational responsibilities and through supplemental directives.

§ 10010.44 Proposals for legislation.

(a) When appropriate, the Commission shall identify in the annual submittal to the Office of Management and Budget of the Commission's proposed legislative program any requirements for and the status of any environmental documents.

(b) When required, the Commission shall ensure that a legislative EIS is included as a part of the formal transmittal of a legislative proposal to the Congress.

§ 10010.45 Time periods.

(a) The minimum review period for a draft EIS will be sixty (60) days from the date of transmittal to the Environmental Protection Agency.

(b) The Commission will be responsible for consulting with the Environmental Protection Agency and/or CEQ about any proposed reductions in time periods or any extensions of time periods proposed by those agencies.

Subpart E—Relationship to Decision-Making

§ 10010.46 Purpose.

This subpart provides supplementary instructions for implementing those portions of the CEQ regulations pertaining to decision-making.

§ 10010.47 Pre-decision referrals to CEQ.

(a) Upon receipt of advice that another Federal agency intends to refer a Commission matter to CEQ, the Commission will immediately meet with that Federal agency to attempt to resolve the issues raised.

(b) Upon any referral of a Commission matter to CEQ by another Federal agency, the Executive Director will be responsible for coordinating the Commission's position.

§ 10010.48 Decision-making procedures.

(a) Procedures by which the Commission makes decisions are specified in 43 CFR part 10000.

(b) The Commission will incorporate in its formal decision-making procedures provisions for consideration of environmental factors and relevant environmental documents. The major decision points for principal programs likely to have significant environmental effects will be clearly identified.

(c) Relevant environmental documents, including supplements, will be included as part of the record in formal rule making or adjudicatory proceedings.

(d) Relevant environmental documents, comments, and responses will accompany proposals through existing review processes so that Commission officials use them in making decisions.

(e) The decision-maker will consider the environmental impacts of the entire range of alternatives described in any relevant environmental document; the range of these alternatives must encompass the actual alternatives considered by the decision-maker.

§ 10010.49 Record of decision.

(a) Any decision documents prepared for proposals involving an EIS may incorporate all appropriate provisions of 40 CFR 1505.2 (b) and (c).

(b) If a decision document incorporating these provisions is made available to the public following a decision, it will serve the purpose of a record of decision.

§ 10010.50 Implementing the decision.

The terms "monitoring" and "conditions" in 40 CFR 1505.3 of the CEQ regulations will be interpreted as being relevant to factors affecting the quality of the human environment.

§ 10010.51 Limitations on actions.

The Executive Director will notify the Chairman of the Commission and the Office of the Solicitor of any situations where Commission or applicant action would, if taken prior to completion of a NEPA proceeding, potentially have an adverse environmental impact or limit the choice of reasonable alternatives.

§ 10010.52 Timing of actions.

The Commission will consult with the Office of the Solicitor before making any request for reducing the time period before a decision or action.

§ 10010.53 Emergencies.

In the event of an unanticipated emergency situation, the Commission will immediately take any necessary action to prevent or reduce risks to

public health or safety or serious resource losses and then expeditiously consult with the Office of the Solicitor about compliance with NEPA. The Commission will also be responsible for consulting with CEQ.

Subpart F—Managing the NEPA Process**§ 10010.54 Purpose.**

This subpart provides supplemental instruction for implementing those provisions for the CEQ regulations pertaining to procedures for implementing and managing the NEPA process.

§ 10010.55 Organization for environmental quality.

(a) Executive Director. The Executive Director is responsible for providing advice and assistance to the Commission on matters pertaining to environmental quality and for overseeing and coordinating the Commission's compliance with NEPA, Executive Order 11514 as amended by Executive Order 11991, the CEQ regulations, and this part.

(b) NEPA Coordinator. The Executive Director will designate organizational elements or individuals, as appropriate, to be responsible for overseeing matters pertaining to the environmental effects of the Commission's plans and programs. The individual(s) assigned these responsibilities should have management experience or potential, understand the Commission's planning and decision making processes, and be well trained in environmental matters, including the Commission's policies and procedures so that his/her/their advice has significance in the Commission's planning and decisions.

§ 10010.56 Approval of EISs.

The Chairman of the Commission (Chairman), acting on the part of the full Commission, is authorized to approve an EIS. The Chairman may further assign the authority to approve the EIS if he or she chooses. The Executive Director will make certain that there are adequate safeguards to assure that EISs and other environmental documents comply with NEPA, the CEQ regulations, this part, and other relevant Commission procedures.

§ 10010.57 List of specific compliance responsibilities.

(a) The Commission staff shall:
(1) As deemed necessary, prepare a NEPA handbook or adapt applicable materials prepared by other agencies, providing guidance on how to implement NEPA in principal program areas.

(2) Prepare program regulations or directives for applicants.
(3) Propose categorical exclusions.
(4) Prepare EAs.
(5) Recommend whether to prepare an EIS.

(6) Prepare NOIs and FONSI.

(7) Prepare EISs.

(b) The Executive Director shall:

(1) Approve agency handbooks and other NEPA guidance.

(2) Approve regulations or directives for applicants.

(3) Approve categorical exclusions.

(4) Approve EAs.

(5) Decide whether to prepare an EIS.

(6) Approve NOIs and FONSI.

(7) Make recommendations regarding the adequacy of EISs.

(c) The Chairman of the Commission, acting on behalf of the full Commission, shall:

(1) Concur with regulations or directives for applicants.

(2) Concur with EAs.

(3) Approve EISs.

§ 10010.58 Information about the NEPA process.

The Executive Director will identify staff contacts where information about the NEPA process and the status of EISs may be obtained.

Subpart G—Actions Requiring an EIS and Actions Subject to Categorical Exclusion**§ 10010.59 Purpose.**

This subpart provides supplemental instruction for determining major actions requiring an EIS and for determining actions that are categorically excluded from NEPA.

§ 10010.60 Actions normally requiring an EIS.

(a) The following proposals will normally require the preparation of an EIS:

(1) Establishment of major new refuges or wildlife management areas, fish hatcheries, and major additions to such installations.

(2) Master development and/or management plans for major new installations.

(3) Management plans for established installations where major new developments or substantial changes in management practices are proposed.

(b) If for any of these proposals it is initially decided not to prepare an EIS, an EA will be prepared in accordance with 40 CFR 1501.4(e)(2).

§ 10010.61 Actions subject to categorical exclusion.

(a) General categorical exclusions. The following actions are categorical

exclusions (CX). However, environmental documents will be prepared for individual actions subject to CX if the exceptions listed in Sec. 10010.62 apply.

(1) Personnel actions and investigations and personnel services contracts.

(2) Internal organizational charges and facility and office reductions and closings.

(3) Routine financial transactions, including such things as salaries and expenses, procurement contracts, guarantees, financial assistance, income transfers, audits, fees, bonds and royalties.

(4) Legal transactions, including such things as investigations, patents, claims, legal opinions, and judicial activities including their initiation, processing, settlement, appeal or compliance.

(5) Monitoring actions, including inspections, assessments, administrative hearings and decisions; when the regulations themselves or the instruments of regulations (leases, permits, licences, etc.) have previously been covered by the NEPA process or exempt from it.

(6) Non-destructive data collection, inventory (including field, aerial and satellite surveying and mapping), study, and research activities.

(7) Routine and continuing government business, including such things as supervision, administration, activities having limited context and intensity, for example, activities of limited size and magnitude of short-term effects.

(8) Management formulation, allocation, transfer and reprogramming of the Commission's budget at all levels. This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.

(9) Legislative proposals of an administrative or technical nature, including such things as changes in authorizations for appropriations, and minor boundary changes and land transactions; or having primarily economic, social, individual or institutional effects; and comments and reports on referrals of legislative proposals.

(10) Policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.

(11) Activities which are educational, informational, advisory or consultative

to other agencies, public and private entities, visitors, individuals or the general public.

(12) Cooperative agreements and interagency agreements.

(b) Specific categorical exclusions. The following actions are categorical exclusions (CX).

(1) General:

(i) Changes or amendments to an approved action when such changes have no potential for causing substantial environmental impact.

(ii) Personnel training, environmental interpretation, public safety efforts and other educational activities.

(iii) The issuance and modification of procedures, including manuals, orders and field rules, when the impacts are limited to administrative or technological effects.

(iv) The acquisition of land or water rights in accordance with the Commission's procedures, when the acquisition is from a willing seller, the acquisition planning process has been performed in coordination with the affected public and essentially the existing use will be continued.

(2) Resource management:

(i) Research, inventory and information collection activities directly related to the conservation of fish and wildlife resources which involve negligible animal mortality or habitat destruction, and no introduction of either exotic organisms or contaminants.

(ii) The operation, maintenance and management of existing facilities and improvements (i.e. structures, roads), including renovations and replacements which result in no or only minor changes in the capacity, use or purpose of the affected facilities.

(iii) The addition of small structures or improvements in the area of existing facilities, which result in no or only minor changes in the capacity, use or purpose of the affected area.

(iv) The reintroduction (stocking) of native or established species into suitable habitat within their historic or established range.

(v) Minor changes in the amounts or types of public use on Commission managed land or land acquired with Commission funds, in accordance with existing regulations, management plans and procedures.

(vi) Consultation and technical assistance activities directly related to the conservation of fish and wildlife resources.

(3) Use of Commission-managed or funded lands:

(i) The issuance of special approvals for public use of Commission-managed land or land acquired with Commission funds, which maintains essentially the

same level of use and does not continue a level of use that has resulted in adverse environmental effects.

(ii) Permitting a limited additional use of an existing right-of-way over Commission-managed land or land acquired with Commission funds, such as the addition of new power or telephone lines where no new structures or improvements are required, or the addition of buried lines.

(iii) The issuance or reissuance of rights-of-way and special use approvals for Commission-managed land or land acquired with Commission funds that result in no or negligible environmental effects.

(iv) The reissuance of grazing or agricultural use approvals for Commission-managed land or land acquired with Commission funds which do not increase the level of use nor continue a level of use that has resulted in adverse environmental effects.

(4) Funding for activities by others:

(i) Planning grants or other funding for planning activities and the administrative determination that plans were prepared in accordance with prescribed standards. However, when the plan is submitted to the Commission for implementation, the program proposed by the plan is subject to the NEPA process.

(ii) Grants or other funding for categorically excluded actions listed in paragraphs (b) (1) through (3) of this section.

(5) Inter-agency Initiatives: Actions where the Commission has concurrence or co-approval with another agency and the action is a categorical exclusion for that agency.

(6) Transfer of the operations and maintenance of Federal lands, water, or facilities to water districts, recreation agencies, fish and wildlife agencies, or other entities where the anticipated operation and maintenance activities are agreed to in a contract or a memorandum of agreement, follow approved Commission policy, and no major change in operation and maintenance is anticipated or a proposed major change in operation and maintenance has previously been the subject of an appropriate NEPA document.

§ 10010.62 Exceptions to categorical exclusions.

The following exceptions apply to individual actions within categorical exclusions (CX). Environmental documents must be prepared for actions which may:

(a) Have significant adverse effects on public health or safety.

(b) Have adverse effects on such unique geographic characteristics as historic or cultural resources, parks, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department of the Interior's National Register of Natural Landmarks.

(c) Have highly controversial environmental effects.

(d) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

(e) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

(f) Be directly related to other actions with individually insignificant but cumulatively significant environmental effects.

(g) Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.

(h) Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on

designated Critical Habitat for these species.

(i) Require compliance with Executive Order 12988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act. However, an action may be categorically excluded following applicable reviews if the action is found to be in conformance with the applicable law or executive order.

(j) Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

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