Dated: November 16, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 46

RIN 1090–AA95

Implementation of the National Environmental Policy Act (NEPA) of 1969

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of the Interior (Department) proposes to amend its regulations by adding a new part to codify its NEPA procedures currently in the Departmental Manual (DM). This proposed regulation contains Departmental policies and procedures for compliance with NEPA, Executive Order (E.O.) 11514, E.O. 13352 and the Council on Environmental Quality's (CEQ) regulations. By converting the Departmental NEPA procedures from the DM to new regulations that are consistent with NEPA and the CEQ regulations, the Department intends to promote greater transparency in the NEPA process for the public and enhance cooperative conservation.

DATES: Submit comments by March 3, 2008.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the regulation identification number (RIN) 1090–AA95 as an identifier in your message. See also ''Public availability of comments'' under Procedural Requirements below.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: doi_nepa@contentanalysisgroup.com* and use the RIN 1090–AA95 in the subject line.
- *Fax:* 801–397–2601. Identify with RIN 1090–AA95.
- Mail comments to the Department of the Interior, NEPA Proposed Rule, C/O Bear West, 1584 S 500 W Ste 201, Woods Cross, UT 84010. Please reference RIN 1090–AA95 in your comments and also include your name and return address.

FOR FURTHER INFORMATION CONTACT: Dr. Vijai N. Rai, Team Leader, Natural Resources Management; Office of Environmental Policy and Compliance; 1849 C Street, NW., Washington, DC 20240. Telephone: 202–208–6661. *E-mail: vijai_rai@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Rule

CEQ regulations at 40 Code of Federal Regulations (CFR) 1507.3 require Federal agencies to adopt procedures as necessary to supplement CEQ's regulations implementing NEPA and to consult with CEQ during their development and prior to publication in the **Federal Register**. The regulation further encourages agencies to publish agency explanatory guidance for CEQ's regulations and agency procedures.

The Department's procedures implementing NEPA as required by CEQ have been contained in chapter 516 of the DM. We revised these procedures and published the revisions in the **Federal Register** on March 8, 2004 (69 FR 10866) and June 6, 2005 (70 FR 32840). We have now decided to publish the procedures as rules to be codified in the CFR.

This proposed regulation supplements the CEQ regulations and must be used in conjunction with those regulations. The bureaus of the Department are required to use this regulation when meeting their responsibilities under NEPA.

This proposed regulation meets the intent of 40 CFR 1507.3 by placing agency-implementing procedures in a regulatory framework. We believe placing agency explanatory guidance (as distinguished from agency implementing procedures) into the DM, Environmental Statement Memoranda (ESM), which are Departmental guidance documents, and bureaus' NEPA handbooks, will facilitate quicker agency responses to new ideas and information, procedural interpretations, training needs, and editorial changes.

Reasons for an Improved Environmental Analysis Process

This proposed regulation is the culmination and natural progression of work begun in 2002 to improve our NEPA compliance process. Since the Department last updated its NEPA procedures, CEQ has issued guidance the Department wishes to incorporate in its regulations. The concepts described below are currently used, but there are no explicit provisions in the current procedures. This proposed regulation provides further guidance on NEPA by: (1) Integrating best practices elements described in the series of ESMs that were issued by the Department in 2003 and finalized in the DM in March 2004; and (2) addressing new NEPA-related policy issues. Specifically, they provide for, among others, greater public and stakeholders' participation in the NEPA process, collaborative NEPA planning, conflict avoidance, and use of adaptive management.

Finally, this proposal will allow for better integration of NEPA procedures and documentation into current Departmental decision-making processes, including collaborative and incremental decision-making.

In 2002, the Department undertook a review of its NEPA practices. This review was done at the practitioner level to obtain best practices in the field. In addition, the Department held four regional listening sessions open to the public, to assist in the identification of best NEPA practices that could be applied across the Department.

Following these public listening sessions, the Department promulgated best practices in two phases: first, through the issuance of five ESMs in 2003 (directives to bureaus on best practices); and second, through finalizing those NEPA best practices in the DM in March 2004. The five NEPA best practices that were first addressed in ESMs were:

ESM 03–3, Procedures for Implementing Tiered and Combined Analyses (http://oepc.doi.gov/ESM/ESM03%2D3%2Epdf)

Bureaus need to determine the sufficiency of existing environmental analyses. If an existing analyses is found to be sufficient, those documents should be cited in the Record of Decision (ROD) without doing additional and possibly duplicate analysis.

ESM 03–4, Procedures for Implementing Public Participation and Community-Based Training (http://oepc.doi.gov/ESM/ESM03%2D4%2Epdf)

Public participation is the involvement, as early as possible, in the NEPA process of persons and organizations having an interest in any Departmental activity, which must meet the requirements of NEPA. Public participation also includes the proactive efforts of Departmental personnel to locate and involve the public.

ESM 03–5, Procedures for Implementing Integrated Analyses in National Environmental Policy Act (NEPA) Process (http://oepc.doi.gov/ESM/ESM03%2D5%2Epdf)

The Department should integrate analyses using a single NEPA process to enable several agencies to satisfy multiple environmental requirements by

conducting concurrent rather than consecutive analyses.

ESM 03–6, Procedures for Implementing Adaptive Management Practices (http://oepc.doi.gov/ESM/ESM03%2D6%2Epdf)

Adaptive management is a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes, and, if not, facilitating management changes that will best ensure that outcomes are met or to re-evaluate the outcomes. Although not explicitly mentioned in the CEQ regulations, adaptive management can be considered as part of a proposed action. The CEQ determined that the adaptive management provisions in the DM, which are now included in this proposed regulation, are in conformity with NEPA and the CEQ regulations.

ESM 03–7, Procedures for Implementing Consensus-Based Management in Agency Planning and Operations (http://oepc.doi.gov/ESM/ESM03%2D7%2Epdf)

Under this proposed rule, when feasible and practicable, the community alternative should be designated as the bureau's preferred alternative in the NEPA process, so long as a consensus exists within the community for support of that alternative. This designation is also subject to statutory, regulatory, and policy constraints. As a practical consideration, ''consensus'' is ultimately determined by the Responsible Official.

Following the issuance of these ESMs, the Department undertook the process of incorporating these concepts into its DM. This process included a notice and comment period for the public. Following that public comment period, the Department finalized those procedures (516 DM—Proposed Revised Procedures, September 4, 2003, 68 FR 52595; Final, March 8, 2004, 69 FR 10866)

In 2005, the Department, through another public notice and comment process (516 DM 2.5—Proposed, March 18, 2005, 70 FR 13203; Final, June 6, 2005, 70 FR 32840) implemented a policy requiring that eligible Federal, State, Tribal, and local entities be invited to be cooperating agencies to assist in the preparation of any Environmental Impact Statement (EIS). Also in 2005, the Department began a Management Planning and NEPA Modernization Blueprint. This blueprint recommended Departmental functional requirements to be implemented in an automated Interior Land Management Planning System. Throughout this time frame, the Department has continually looked for ways to improve its NEPA compliance. For example, we've worked with the Department of Agriculture, U.S. Forest Service to make our procedures more consistent whenever possible.

At the 2005 White House Conference on Cooperative Conservation (http://cooperativeconservation.gov/conference805home.html), the Department heard many success stories that involved various levels of government working with the public and private sectors to protect and enhance the environment. Many of these examples addressed issues we had dealt with in our previous DM changes. During the Listening Sessions (http://cooperativeconservation.gov/sessions/index.html), held as a follow up to the Conference, we heard many of the same concerns regarding NEPA compliance as we had under our own review and reviews with the Forest Service.

Almost 30 years ago CEQ stated in its preamble to the final NEPA implementing regulations (43 FR 55978, November 29, 1978) that the EIS has ''tended to become an end in itself, rather than a means to making better decisions.'' CEQ noted further: ''One serious problem with the administration of NEPA has been the separation between an agency's NEPA process and its decision-making process. In too many cases bulky EISs have been prepared and transmitted but not used by the decision-maker.'' The innovation at that time was a new requirement for a ROD to show ''how the EIS was used in arriving at the decision.'' At that time, CEQ broadened the focus from emphasis on a single document EIS to ''emphasize the entire NEPA process, from early planning through assessment and EIS preparation through decisions and provisions for follow-up.'' Today, after receiving comments on a draft EIS, agencies prepare a final EIS and document their decision in a ROD, tying the analysis from the EIS to the final agency decision.

Almost 20 years later a CEQ report, ''The National Environmental Policy Act—A Study of Its Effectiveness After Twenty-five Years'' (January 1997; *http://ceq.eh.doe.gov/nepa/nepa25fn.pdf*) stated that ''frequently NEPA takes too long and costs too much, agencies make decisions before hearing from the public, documents are too long and technical for many people to use'' and according to Federal agency NEPA liaisons, ''the EIS process is still frequently viewed as merely a compliance requirement rather than as a tool to effect better decision-making. Because of this, millions of dollars, years of time, and tons of paper have been spent on documents that have little effect on decision-making.'' The report points out that ''some citizens' groups and concerned individuals view the NEPA process as largely a one-way communications track that does not use their input effectively'' and ''when they are invited to a formal scoping meeting to discuss a well-developed project about which they have heard little, they may feel they have been invited too late in the process.'' Finally, the report states ''some citizens complain that their time and effort spent providing good ideas is not reflected in changes to proposals.''

As a part of its continuing efforts to streamline NEPA, CEQ established a NEPA Task Force in 2002 to review current NEPA implementation practices and procedures to determine opportunities to improve and modernize the NEPA process. The Task Force prepared a report in 2003 entitled ''Modernizing NEPA Implementation,'' (*http://ceq.eh.doe.gov/ntf/report/index.html*) where a number of recommendations were made to improve and modernize the NEPA process. CEQ continues to issue guidance based on the Modernizing NEPA Implementation Report. The Department continues to be an active participant in this effort.

A 2005 National Environmental Conflict Resolution Advisory Committee (NECRAC) Report chartered by the U.S. Institute for Environmental Conflict Resolution (*http://www.ecr.gov/necrac/reports.htm*) of the Morris K. Udall Foundation reflected further on the state of the NEPA process 27 years after CEQ published its regulations and recommended furthering the evolution of making procedural requirements under section 102 of NEPA less an end in themselves and more a means to fulfill the policies set out in section 101. The report calls for improvements in the ''traditional model for NEPA implementation'' where ''agencies announce their plans, share their analyses of potential impacts of a range of options, solicit public comment, make decisions, deal with the fallout, if any, and move on to the next project.'' This model results in agency decisions ''based on a collection of views and interests'' but ''generally not a collective decision.'' The report goes on to state that while not a failure, the traditional model for NEPA ''does not take full advantage of the many strengths of section 101.''

The NECRAC recognized that ''Americans expect to be able to work things out and make things better over time. It is not inevitable, and it is clearly

not desirable, that society's ability to constructively address and resolve conflicts should languish or fail to adapt to changing times. The current state of environmental and natural resource decision-making is dominated by the traditional model, which too often fails to capture the breadth and quality of the values and purposes of NEPA.'' The NECRAC called for Federal decision-making that ''enables interested parties'' to ''engage more effectively in the decision-making process'' where ''interested parties are no longer merely commenters on a Federal proposal, but act as partners in defining Federal plans, programs, and projects.''

The 2005 NECRAC Report notes many examples of the Federal government placing an increased emphasis on ''cooperating agencies'' (CEQ Memorandum for Heads of Federal Agencies: Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of NEPA, July 28, 1999, *http://ceq.eh.doe.gov/nepa/regs/ceqcoop.pdf;* and CEQ Memorandum for Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, January 30, 2002, *http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html*), ''cooperative conservation'' (E.O. 13352 on Facilitation of Cooperative Conservation, August 26, 2004), environmental conflict resolution (CEQ & OMB Memorandum on Environmental Conflict Resolution, November 28, 2005, *http://ceq.eh.doe.gov/nepa/regs/OMB_CEQ_Joint_Statement.pdf*), and ''collaboration'' (Background and Other Cooperative Conservation Activities, *http://www.doi.gov/initiatives/conservation2.html*) in agency planning, NEPA analysis, and decision-making.

As the Department integrates the NEPA process into its collaborative and cooperative decision-making process, the Department needs documentation that reflects the way interactive and incremental decision-making occurs. There is a need to ensure that NEPA documents are used in ''arriving at the decision.'' In order to do this, Department NEPA procedures need to reflect a more integrated process. As the NECRAC Report points out, there continues to be focus on preparing NEPA documents such as an EIS or Environmental Assessment (EA) for litigation rather than to facilitate an informed decision process. The proposed NEPA documentation requirements are intended to enable interested parties to engage more effectively in the decision-making process. The agency is proposing new NEPA procedures to allow content and circulation requirements for environmental documents to reflect how agency decisions actually occur, especially with more emphasis on cooperation and collaboration.

This proposed regulation will help the Department's bureaus better document environmental impacts of proposed actions and their alternatives, and facilitate development of an EIS that evolves as the decision evolves and therefore can be used throughout the entire NEPA process. Subsequent detailed statements could document changes to the proposal, its alternative(s), and the environmental effects to reflect the on-going evolution to a final Department decision while keeping the Responsible Official and interested parties informed. The EIS would then be used as a tool to foster collaborative and incremental decision-making processes. The record would reflect a history of how the detailed statement was used in collaboration and incremental decision-making, and the final draft and final EISs would address a more narrowly focused Department action for a final decision. While this proposed regulation does not require a decision to be made collaboratively, it does allow the Department to meet the procedural requirements of section 102 (2) of NEPA while fostering fulfillment of the Act's purpose in section 101.

The proposed NEPA procedures designed to allow for better alignment of an EIS with Department decision-making include: (1) Allowing proposals and alternative(s) to be explored and modified throughout the NEPA process (46.415(b)(2)); and (2) allowing the circulation of multiple preliminary detailed statement(s) without filing requirements (46.415(c)(2)).

The intent is to use environmental information effectively by multiple parties during the NEPA process rather than only at distinct comment periods for a draft and final impact statement. This is to allow interested parties to inform Department decision-making as they regularly exchange and discuss issues; differences; and necessary environmental, social, and economic effects analyses while alternatives are explored, evaluated, and modified throughout the NEPA process. The intent is to focus on a process and the appropriate disclosure outlined in section 102 of NEPA to promote the Act's purposes.

This proposed regulation is intended to implement fully the intent and spirit of the E.O. 13352 on Facilitation of Cooperative Conservation. This E.O. was issued specifically to ensure that Federal agencies implement laws relating to the environment and natural resources in a manner that promotes cooperation amongst interested parties, with emphasis on appropriate inclusion of local participation in Federal decision-making. As a result, the Federal government has placed increasing emphasis on ''cooperating agencies,'' ''cooperative conservation,'' environmental conflict resolution, and ''collaboration'' in agency planning, NEPA analysis, and decision-making.

The ongoing public involvement and collaborative processes encouraged and practiced in the Department and other agencies today can benefit from more expressed flexibility than the agency NEPA procedures currently encourage. Thus, these proposed changes to our NEPA procedures are intended to provide the Department, in cooperation with other Federal, State, and local agencies, Tribes, and other interested parties greater flexibility to meet the intent of NEPA through the procedural provisions of section 102(2) of NEPA. As an example, this proposed regulation allows incremental alternative development through scoping where the agency together with interested and affected members of the public are given the opportunity to develop alternatives.

As a part of the conversion of the Department's NEPA procedures from 516 DM to the CFR, a number of key changes will be made. This proposed regulation:

- Clarifies actions subject to NEPA section 102(2) by locating all relevant CEQ guidance in one place.
- Amends current direction so that immediate emergency responses do not require documentation under the CEQ regulations or NEPA section 102(2). The Responsible Official must assess and minimize potential environmental damage to the extent consistent with protecting life, property, and important resources.
- Incorporates CEQ guidance language that states that a past action must be ''relevant'' in illuminating or predicting direct and indirect effects of a proposed action when conducting cumulative effects analysis.
- Clarifies that alternatives, including the proposed action, may be modified through an incremental process if modifications are analyzed and documented.
- Clarifies that the agency has discretion to determine, on a case-by-case basis, how to involve the public in the preparation of EAs and whether an EA will be published in draft for public comment.
- Clarifies that adaptive management strategies may be incorporated into

alternatives, including the proposed action.

• Incorporates language from the statute and CEQ guidance that states EAs need only analyze the proposed action if there are no unresolved conflicts concerning alternative uses of available resources.

This proposed regulation is organized under subparts A through E, covering the material in 516 DM Chapters 1 through 6. The Department did not include 516 DM Chapter 7 in this proposed regulation because it provides guidance on review of environmental documents and project proposals prepared by other Federal agencies. Bureau-specific NEPA implementing procedures in 516 DM Chapters 8–15 continue to be available for their respective use.

This proposed regulation does not include sections in the DM that generally provide guidance to bureaus. This guidance will be addressed separately in bureaus' NEPA handbooks or in other Departmental documents such as 516 DM and ESMs.

The following paragraphs contain a section-by-section analysis of key proposed changes under each subpart from those currently in the 516 DM procedures. The Department has highlighted key changes, including new sections, under each subpart so that commenters can focus on the specific changes proposed by the Department in this proposed regulation.

Section-by-Section Analysis of Proposed Changes

Subpart A: General Information

Section 46.30 Definitions. This section supplements the terms found in the CEQ regulations and adds several new definitions. The terms affected are the following: Adaptive management; Bureau; Community-based training; Controversial; Environmental Statement Memoranda; Environmentally preferable alternative; Preliminary EIS; Reasonably foreseeable future action; and Responsible Official.

Subpart B: Protection and Enhancement of Environmental Quality

We removed portions of 516 DM Chapter 1 that address purely Departmental processes. This information will be retained in the DM or will be issued as additional guidance by the Office of Environmental Policy and Compliance. This subpart includes the following sections:

Section 46.100 Federal action subject to the procedural requirements of NEPA. This section provides clarification on when a proposed action is subject to the procedural requirements of NEPA.

Section 46.105 Using a contractor to prepare environmental documents. This section explains how bureaus may use a contractor to prepare any environmental document in accordance with the standards of 40 CFR 1506.5.

Section 46.110 Using consensus-based management. This section incorporates consensus-based management as part of the NEPA planning process.

Section 46.113 Scope of the analysis. This section addresses the relationships between connected, cumulative, and similar actions and direct, indirect and cumulative impacts.

Section 46.115 Consideration of past actions in the cumulative effects analysis. This section incorporates CEQ guidance issued on June 24, 2005, that clarifies how past actions should be considered in a cumulative effects analysis.

Section 46.120 Using existing environmental analyses. This section explains how to incorporate existing environmental analysis into the analysis being prepared.

Section 46.125 Incomplete or unavailable information. This section clarifies that the overall costs of obtaining information referred to in 40 CFR 1502.22 are not limited to the estimated cost of obtaining information unavailable at the time of the EIS, but can include other costs such as social costs that are more difficult to monetize. Specifically the Department requests comments on whether to provide guidance on how to incorporate non-monetized social costs into its determination of whether the costs of incomplete or unavailable information are exorbitant. The Department also requests comments on what non-monetized social costs might be appropriate to include in this determination; e.g., social-economic and environmental (including biological) costs of delay in fire risk assessments for high risk fire-prone areas.

Section 46.130 Mitigation measures in analyses. This section clarifies how mitigation measures and environmental best management practices are to be incorporated into and analyzed as part of the proposed action and its alternatives.

Section 46.135 Using incorporation by reference. This section establishes regulations for incorporating by reference.

Section 46.140 Using tiered documents. This section clarifies the use of tiering. The Department is considering developing more specific provisions as to the use of tiering, and invites public comment on this issue. For instance, an EA prepared in support of an individual action can be tiered to a programmatic or other broader EIS. The Department is considering under what conditions a FONSI may be reached for the individual action on the basis of such a tiered EA, if significant effects noted in that EA have already been disclosed and analyzed in the EIS to which the EA is tiered. The FONSI, in such circumstances would be, in effect, a finding of no significant impact other than those already disclosed and analyzed in the EIS to which the EA is tiered.

Section 46.145 Using adaptive management. This section incorporates adaptive management as part of the NEPA planning process.

Section 46.150 Emergency responses. This section clarifies that Responsible Officials can take immediate actions in response to the immediate effects of emergencies necessary to mitigate harm to life, property, or important resources without complying with the procedural requirements of NEPA, the CEQ regulations, or this proposed regulation. Furthermore, Responsible Officials can take urgent actions to respond to the immediate effects of an emergency when there is not sufficient time to comply with the procedural requirements of NEPA, the CEQ regulations, or this proposed regulation by consulting with the Department (and CEQ in cases where the response action is expected to have significant environmental impacts) about alternative arrangements.

Section 46.155 Consultation, coordination, and cooperation with other agencies and organizations. This section describes the use of procedures to consult, coordinate, and cooperate with relevant State, local, and tribal governments, other bureaus, and Federal agencies concerning the environmental effects of Department plans, programs, and activities.

Section 46.160 Limitations on actions during the NEPA analysis process. This section incorporates guidance to aid in fulfilling the requirements of 40 CFR 1506.1.

Section 46.165 Ensuring public involvement. This section incorporates public information and involvement requirements for Departmental proposed actions that have potential environmental impacts.

Section 46.170 Environmental effects abroad of major Federal actions. This section describes procedures the bureaus must follow in implementing E.O. 12114, which addresses the United States government's exclusive and

complete determination of the procedural and other proposed actions to be taken by Federal agencies to further the purpose of NEPA, with respect to the environment outside the United States, its territories, and possessions.

Subpart C: Initiating the NEPA Process

In the conversion from 516 DM 2 to 43 CFR Part 46, Subpart C, we have restructured the Department's requirements for initiating the NEPA process. We have put into regulation the essential parts of the NEPA process that are unique to the Department and which require further clarification of the CEQ regulations. This proposed regulation clarifies the requirements for applying NEPA early, using categorical exclusions (CXs), designating lead agencies, determining eligible cooperating agencies, implementing the Department's scoping process, and adhering to time limits for the NEPA process.

Section 46.200 Applying NEPA early. This section emphasizes early consultation and coordination with Federal, State, local, and Tribal entities and with interested private parties whenever practical and feasible.

Section 46.205 Actions categorically excluded from further NEPA review. This section provides Department-specific guidance on the use of CXs.

Section 46.210 Listing of Departmental CXs. This section includes a listing of the Department's CXs (currently 516 DM Chapter 2, Appendix B–1). This section includes the same number of CXs as were in the DM and the wording in the CXs is essentially unchanged. These CXs were each published for public comment prior to inclusion in the DM. There is one change in § 46.210(i), which replaces 516 DM Chapter 2, Appendix B–1, Number 1.10, correcting a typographical error. The phase '' * * * technical or procedural nature; or * * *'' from 516 DM as it existed in 1984 was inadvertently changed in 2004 in 516 DM to read '' * * * technical or procedural nature; and * * *''. We have corrected this error because there are certain circumstances where NEPA does not apply. For example, guidance to applicants for transferring funds electronically to the Federal Government is an action not subject to NEPA. The CXs are in paragraphs (a) through (l).

Section 46.215 CXs: Extraordinary circumstances. This section contains a listing of the Department's CXs: Extraordinary Circumstances (currently 516 DM Chapter 2, Appendix B–2). This section includes the same number of CXs: Extraordinary Circumstances as were in the DM and the wording in the CXs: Extraordinary Circumstances is essentially unchanged. Similarly to the listing of CXs, each of the Extraordinary Circumstances was published for public comment prior to inclusion in the DM. The CXs: Extraordinary Circumstances are in paragraphs (a) through (l).

Section 46.220 How to designate lead agencies. This section provides specific detail regarding the selection of lead agencies.

Section 46.225 How to select cooperating agencies. This section establishes procedures for selecting cooperating agencies and determining the roles of non-Federal agencies, such as tribal governments, and the further identification of eligible governmental entities for cooperating agency relationships. Criteria for identifying, and procedures for defining, the roles of cooperating agencies and the specific requirements to be carried out by cooperators in the NEPA process are set forth in this section.

Section 46.230 Role of cooperating agencies in the NEPA process. This section provides specific detail regarding the responsibilities of cooperating agencies.

Section 46.235 NEPA scoping process. This section discusses the use of NEPA's scoping requirements to engage the public in collaboration and consultation for the purpose of identifying concerns, potential impacts, possible alternatives, and interdisciplinary considerations. The regulatory language encourages the use of communication methods for a more efficient and proactive approach to scoping.

Section 46.240 Establishing time limits for the NEPA process. The section requires bureaus to establish time limits to make the NEPA process more efficient.

Subpart D: Environmental Assessments

In the conversion from 516 DM Chapter 3 to 43 Part 46 Subpart D, we have written this proposed regulation to incorporate procedural changes, expand upon existing procedures, give greater discretion and responsibilities to bureaus, and provide clarity in the EA process.

Section 46.300 Purpose of an EA and when it must be prepared. This section clarifies that the action being analyzed is a ''proposed'' action. It expands upon the purpose and clarifies when to prepare an EA.

Section 46.305 Public involvement in the EA process. This section incorporates procedural changes and differentiates the requirements for public involvement in the EA and EIS processes. This section requires bureaus to provide notice when they are proposing to undertake an action but gives bureaus discretion to determine the format for providing opportunities for public involvement. It has been expanded to give bureaus the discretion to provide cooperating agency status for EAs. It specifies that the publication of a draft EA for public comment is not always required.

Section 46.310 Contents of an EA. This section establishes new language outlining what information must be included in an EA. It describes the requirements for alternatives, if any, and provides for incorporating adaptive management strategies in alternatives. Sections on tiered analysis, from 516 DM Chapter 3, are found in subpart B of this proposed regulation since this information pertains to both EISs and EAs.

Section 46.315 How to format an EA. This section provides clarification on the EA format.

Section 46.320 Adopting EAs prepared by another agency, entity, or person. In this section, the term ''and other program requirements'' has been added to the compliance stipulations. It also expands the requirements of the Responsible Official in adopting an EA.

Section 46.325 Conclusion of the EA process. This section has been added to outline the possible conclusions of the EA process and to clarify the responsibilities of bureaus in the documentation of such conclusions.

Subpart E: Environmental Impact Statements

The language from 516 DM Chapter 4 that simply reiterates the CEQ regulations is not included in subpart E of this proposed regulation. These DM sections are: statutory requirements, cover sheet, summary, purpose and need, appendix, methodology and scientific accuracy, proposals for legislation, and time periods. Sections on tiering, incorporation by reference, incomplete or unavailable information, adaptive management, and contractor prepared environmental documents, from 516 DM Chapter 4 are found in subpart B of this proposed regulation since this information pertains to EISs and EAs. The term ''environmentally preferred alternative'' is found in the definitions, subpart A. This phrase expands on the definition as currently exists in 516 DM 4.10(A)(5). This proposed regulation incorporates procedural changes, clarifies the extent of discretion and responsibility that may be exercised by bureaus and provides clarity in the EIS process.

Section 46.400 Timing of EIS development. This section provides specific detail regarding when an EIS must be prepared. The Department is considering developing more specific provisions as to the timing of EIS preparation, and invites public comment on this issue. For example, courts have stated that NEPA requires an agency to complete its evaluation of the environmental effects before making its decision, which is prior to the point of commitment to any action which results in an irreversible and irretrievable commitment of resources. Specifically, we are seeking comments with respect to whether guidance should be developed to assist the Responsible Official toward identifying the point prior to the decision. We are also soliciting comments on whether it would be helpful to include in paragraph (a) examples of a major Federal action significantly affecting the quality of the human environment.

Section 46.405 Remaining within page limits. This section encourages bureaus to keep EISs within the page limits described in the CEQ regulations using incorporation by reference and tiering.

Section 46.415 EIS format. This section establishes an alternative EIS format. This section also provides direction for the development of alternatives, establishes language on the documentation of environmental effects with a focus on NEPA statutory requirements, and provides direction for circulating and filing the draft and final EIS.

Section 46.420 Terms used in an EIS. This section describes terms that are commonly used to describe concepts or activities in an EIS, including: (a) Statement of purpose and need, (b) Reasonable alternatives, (c) Range of alternatives, (d) Proposed action, (e) Preferred alternative, and (f) No action alternative.

Section 46.425 Identification of the preferred alternative in an EIS. This section clarifies when the preferred alternative must be identified.

Section 46.430 Environmental review and consultation requirements. This section establishes procedures for an EIS that also addresses other environmental review requirements and approvals. It should be noted that this section allows for the completion of the NEPA analysis prior to obtaining all permits. However, if the terms of the permit are outside of the scope analyzed, additional NEPA analysis will be required.

Section 46.435 Inviting comments. This section requires bureaus to request comments from Federal, State, and local agencies, or tribal governments, and the public at large. This section also clarifies that bureaus do not have to delay a final EIS because they have not received comments.

Section 46.440 Eliminating duplication with State and local procedures. This section allows a State agency to jointly prepare an EIS, if applicable.

Section 46.445 Preparing a legislative EIS. This section ensures that a legislative EIS is included as a part of the formal transmittal of a legislative proposal to the Congress.

Section 46.450 Identifying the environmentally preferable alternative. This section provides for identifying the environmentally preferable alternative in the ROD.

Procedural Requirements

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule:

(1) Is not an economically significant action because it will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments.

(2) Will not interfere with an action taken or planned by another agency.

(3) Will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

(4) Is a significant rulemaking action subject to OMB review because of the extensive interest in Department planning and decision making relating to NEPA.

In accordance with the Office of Management and Budget (OMB) Circular A–4, ''Regulatory Analysis,'' the Department has conducted a cost/benefit analysis. The analysis compared the costs and benefits associated with the current condition of having Departmental implementing procedures combined with Departmental explanatory guidance in the DM and the proposed condition of having implementing direction in regulation and explanatory guidance in the DM.

Many benefits and costs associated with the proposed rule are not quantifiable. Some of the benefits of this rule include collaborative and participatory public involvement to more fully address public concerns, timely and focused environmental analysis, flexibility in preparation of environmental documents, and improved legal standing. These will be positive effects of the new rule.

Moving NEPA procedures from the DM to the CFR is expected to provide a variety of potential beneficial effects. This rule would meet the requirements of 40 CFR 1507.3 by placing Department's implementing procedures in their proper regulatory position. Maintaining Departmental explanatory guidance in directives would facilitate timely agency responses to new ideas and information, procedural interpretations, training needs, and editorial changes to addresses and internet links to assist bureaus when implementing the NEPA process. Finally, the proposed changes to the Department NEPA procedures are intended to provide the Department specific options to meet the intent of NEPA through collaboration, the establishment of incremental alternative development, and the use of adaptive management principles.

Thus, while no single effect of this proposed rule creates a significant quantifiable improvement, the benefits outlined above taken together create the potential for visible improvements in the Department's NEPA program. Further discussion of the cost-benefits associated with the proposed regulation is contained in the economic analysis which is incorporated in the administrative record for this proposed rulemaking and may be accessed on the Department's Office of Environmental Policy and Compliance Web site located at: *http://www.doi.gov/oepc.*

Regulatory Flexibility Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document provides the Department with policy and procedures under NEPA and does not compel any other party to conduct any action.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more. As explained above, this rule will not have an annual effect on the economy of $100 million or more and is expected to have no significant economic impacts.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions. Compliance with NEPA and supplementing the CEQ regulations will not affect costs or prices.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Compliance with NEPA and supplementing CEQ regulations in this rule should have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises.

Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Takings (E.O. 12630)

This proposed rule has been analyzed in accordance with the principles and criteria contained in E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the proposed rule does not pose the risk of a taking of Constitutionally protected private property.

Federalism (E.O. 13132)

The Department has considered this proposed rule under the requirements of E.O. 13132, Federalism. The Department has concluded that the proposed rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system;

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity, and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

In accordance with E.O. 13175 of November 6, 2000, and 512 DM 2, we have assessed this document's impact on Tribal trust resources and have determined that it does not directly affect Tribal resources since it describes the Department's procedures for its compliance with NEPA.

Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

The CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. III. 1999), *aff'd* 230 F.3d 947. 954–55 (7th Cir. 2000).

Data Quality Act

In developing this rule we did not conduct or use a study requiring peer review under the Data Quality Act (Pub. L. 106–554).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Proposed Regulation

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

—Be logically organized;
—Use the active voice to address readers directly;
—Use clear language rather than jargon;
—Be divided into short sections and sentences; and
—Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments as instructed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 43 CFR Part 46

Environmental protection, EISs.

James E. Cason,

Associate Deputy Secretary.

For the reasons given in the preamble, the Office of the Secretary proposes to add a new part 46 to Subtitle A of title 43 of the Code of Federal Regulations to read as follows:

PART 46—IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Sec.

Subpart A—General Information

Subpart B—Protection and Enhancement of Environmental Quality

Authority: 42 U.S.C. 4321, *et seq.* (The National Environmental Policy Act of 1969, as amended); Executive Order 11514, (Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977)); 40 CFR parts 1500–1508 (43 FR 55978) (National Environmental Policy Act, Implementation of Procedural Provisions).

Subpart A—General Information

§ 46.10 Purpose of this part.

This part establishes procedures for the Department, and its constituent bureaus, to use for compliance with:

(a) The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*); and

(b) The Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508).

§ 46.20 How to use this part.

(a) This part supplements, and is to be used in conjunction with, the CEQ regulations except where it is inconsistent with other statutory requirements. The following table shows the corresponding CEQ regulations for the sections in subparts A–E of this part. Some sections in those subparts do not have a corresponding CEQ regulation.

	40 CFR
Subpart A:	
46.10	Parts 1500–1508.
46.20	No corresponding CEQ regulation.
46.30	No corresponding CEQ regulation.
Subpart B:	
46.100	1508.14, 1508.18, 1508.23
46.105	1506.5
46.110	No corresponding CEQ regulation.
46.113	1508.25
46.115	1508.7
46.120	1502.9, 1502.20, 1502.21, 1506.3
46.125	1502.22
46.130	1502.14
46.135	1502.21
46.140	1502.20
46.145	No corresponding CEQ regulation.
46.150	1506.11
46.155	1502.25, 1506.2
46.160	1506.1
46.165	1506.6
46.170	No corresponding CEQ regulation.
Subpart C:	
46.200	1501.2
46.205	1508.4
46.210	1508.4
46.215	1508.4
46.220	1501.5
46.225	1501.6
46.230	1501.6
46.235	1501.7
46.240	1501.8
Subpart D:	
46.300	1501.3
46.305	1501.7, 1506.6
46.310	1508.9
46.315	No corresponding CEQ regulation.
46.320	1506.3
46.325	1505.1
Subpart E:	
46.400	1502.5
46.405	1502.7
46.415	1502.10
46.420	1502.14
46.425	1502.14
46.430	1502.25
46.435	1503.1
46.440	1506.2
46.445	1506.8
46.450	1505.2

(b) The Responsible Official shall coordinate the appropriate NEPA review with the decisionmaking process for proposals subject to this part.

(c) During the decisionmaking process for each proposal subject to this part, the Responsible Official shall consider the relevant NEPA documents, public and agency comments (if any) on those documents, and responses to those comments, as part of consideration of the proposal and with the exception of § 46.210(a) through (j), shall include such documents, including supplements, comments, and responses as part of the administrative record.

(d) The Responsible Official's decision on a proposed action shall be within the range of alternatives discussed in the relevant environmental document.

(e) For situations involving an applicant, the Responsible Official should initiate the NEPA process upon acceptance of an application for a proposed Federal action. The Responsible Official shall make policies or staff available to advise potential applicants of studies or other information foreseeably required for later Federal action.

§ 46.30 Definitions.

For purposes of this part, the following definitions supplement terms defined at 40 CFR parts 1500–1508.

Adaptive management is a system of management practices based on clearly identified outcomes and monitoring to determine if management actions are meeting desired outcomes; and, if not, facilitating management changes that will best ensure that outcomes are met or re-evaluated. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain.

Bureau means bureau, office, service, or survey.

Community-based training in the NEPA context is the training of local participants together with Federal participants in the intricacies of the environmental planning effort as it relates to the local community(ies).

Controversial refers to cases where a substantial dispute exists as to the size, nature, or effect of the proposed action rather than to the existence of opposition to a proposed action, the effect of which is relatively undisputed.

Environmental Statement Memoranda (ESM) are a series of instructions to provide information and guidance in the preparation, completion, and circulation of NEPA documents.

Environmentally preferable alternative is the alternative required by 40 CFR 1505.2(b) to be identified in a ROD, that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and

natural resources. The Responsible Official must consider and weigh long-term environmental impacts against short-term impacts in evaluating what is the best protection of these resources. In some situations, there may be more than one environmentally preferable alternative.

Preliminary environmental impact statement is an interim environmental document that a Responsible Official may use to initiate discussion, solicit comments, and inform interested parties and agency personnel while proposals, alternatives, and environmental effects are explored and considered prior to filing a draft or final EIS. A preliminary EIS is an option available for Responsible Official to use and is not required.

Reasonably foreseeable future actions include those activities not yet undertaken, for which there are existing decisions, funding, or proposals identified by the agency.

Responsible Official is the bureau employee who exercises the authority to make and implement a decision on a proposed action.

Subpart B—Protection and Enhancement of Environmental Quality

§ 46.100 Federal action subject to the procedural requirements of NEPA.

(a) The determination of whether a proposed action is subject to the procedural requirements of NEPA depends on the extent to which bureaus exercise control and responsibility over the proposed action and whether Federal funding or approval will be provided to implement it. If Federal funding is provided in the form of general revenue sharing funds with no Federal agency control as to the expenditure of such funds by the recipient, NEPA compliance is not necessary.

(b) A bureau proposal is a Federal action and subject to the procedural requirements of NEPA when it meets all of the following criteria:

(1) The bureau has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal;

(2) The proposed action is subject to bureau control and responsibility (40 CFR 1508.18);

(3) The proposed action would cause effects on the human environment (40 CFR 1508.14) that can be meaningfully evaluated (40 CFR 1508.23); and

(4) The proposed action is not statutorily exempt from the requirements of section 102(2) of NEPA.

§ 46.105 Using a contractor to prepare environmental documents.

A bureau may use a contractor to prepare any environmental document in accordance with the standards of 40 CFR 1506.5(b) and (c). If a bureau uses a contractor, the bureau remains responsible for:

(a) Preparation and adequacy of the environmental documents; and

(b) Independent evaluation of the environmental documents after their completion.

§ 46.110 Using consensus-based management.

(a) For the purposes of this Part, consensus-based management is the inclusion of interested parties with an assurance for the participants that the results of their work will be given consideration by the Responsible Official in selecting a course of action.

(b) In practicing consensus-based management, bureaus should give full consideration to any reasonable alternative(s) put forth by participating interested parties. While there can be no guarantee that a community's proposed alternative will be taken as the agency proposed action, bureaus must be able to show that a community's work is reflected in the evaluation of the proposed action and the final decision. To be considered, the community's alternative must be fully consistent with NEPA, the CEQ Regulations, and all applicable Departmental and bureau written policies and guidance.

§ 46.113 Scope of the analysis.

To determine the scope of the NEPA analysis and documentation for a proposed action, bureaus shall consider whether, to what extent, and how they will analyze connected, cumulative, and similar actions. The NEPA document should contain discussions of the effects of connected and cumulative actions, and may contain discussions of the effects of similar actions. For example, when the proposed Federal action determines the location or design of a non-Federal connected action, the effects of that connected action should be included in the discussion of the indirect impacts of the proposed Federal action. The effects of non-Federal and Federal cumulative actions and actions with cumulative effects on the same resource values affected by the proposed Federal action should be included in the discussion of the cumulative impacts of the proposed Federal action. A non-Federal connected action that impacts the same resource values affected by the proposed Federal action should be included in the discussion of the indirect and cumulative impacts of the proposed Federal action.

§ 46.115 Consideration of past actions in the cumulative effects analysis.

When considering the effects of past actions as part of a cumulative effects analysis, the Responsible Official must analyze the effects in accordance with guidance established by CEQ:

(a) The analysis of cumulative effects begins with consideration of the direct and indirect effects on the environment that are expected or likely to result from the alternative proposals for bureau action. Bureaus then look for present effects of past actions that are, in the judgment of the bureau, relevant and useful because they have a significant cause-and-effect relationship with the direct and indirect effects of the proposal for bureau action and its alternatives. CEQ regulations do not require the consideration of the individual effects of all past actions to determine the present effects of past actions. Once the bureau has identified those present effects of past actions that warrant consideration, the bureau assesses the extent that the effects of the proposal for bureau action or its alternatives will add to, modify, or mitigate those effects. The final analysis documents a bureau assessment of the cumulative effects of the actions considered (including past, present, and reasonably foreseeable future actions) on the affected environment.

(b) With respect to past actions, during the scoping process and subsequent preparation of the analysis, the bureau must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects. Cataloging past actions and specific information about the direct and indirect effects of their design and implementation could in some contexts be useful to predict the cumulative effects of the proposal. The CEQ regulations, however, do not require bureaus to catalogue or exhaustively list and analyze all individual past actions. Simply because information about past actions may be available or obtained with reasonable effort does not mean that it is relevant and necessary to inform decisionmaking.

§ 46.120 Using existing environmental analyses.

(a) The Responsible Official should use existing analyses for assessing the impacts of a proposed action and any alternatives as allowed by this section.

(b) If existing analyses include data and assumptions appropriate for the analysis at hand, the Responsible

Official should use the existing analyses where feasible.

(c) An existing environmental analysis may be used if the Responsible Official determines, with appropriate supporting documentation, that it adequately assesses the environmental effects of the proposed action and reasonable alternatives. The supporting record must include an evaluation of whether new circumstances, new information, changes in the action or its impacts not previously analyzed, warrant new analysis.

(d) Bureaus should make the best use of existing NEPA documents and avoid redundancy and unneeded paperwork through supplementing, incorporating by reference, or adopting previous environmental analyses.

§ 46.125 Incomplete or unavailable information.

In 40 CFR 1502.22, the over-all costs of obtaining information being exorbitant refers not only to monetary costs, but can include other non-monetized social costs when appropriate.

§ 46.130 Mitigation measures in analyses.

The analysis of the proposed action and any alternatives must include an analysis of the effects of the proposed action or alternative without additional mitigation as well as analysis of the effects of any other appropriate mitigation measures or best management practices that are considered for addition to the proposed action or alternatives. The additional mitigation measures can be analyzed either as elements of alternatives or in a separate discussion of mitigation.

§ 46.135 Using incorporation by reference.

(a) The Responsible Official must determine that the analysis and assumptions used in the reference document are appropriate for the analysis at hand.

(b) Citations of specific information or analysis from other source documents must include the pertinent page numbers.

(c) All literature references must be listed in the bibliography. Literature references that are incorporated by reference shall be readily available for review; literature references that are not readily available shall be made available for review as part of the administrative record supporting the proposed action.

§ 46.140 Using tiered documents.

A NEPA document that tiers to a broader NEPA document in accordance with 40 CFR 1508.28 must include a finding that the conditions and environmental effects described in the broader NEPA document are still valid.

(a) Where the impacts of the narrower action are identified and analyzed in the broader NEPA document, no further analysis is necessary.

(b) To the extent that any relevant analysis in the broader NEPA document is out-of-date or otherwise inadequate, the tiered NEPA document must explain this and provide any necessary analysis.

(c) Bureaus will review their existing guidance concerning the use of tiering, and ascertain whether additional guidance is needed. Guidance must include, but is not limited to, guidance on finding and using similar information, examples of tiered analyses, a set of procedural steps to make the most of tiered analyses, knowledge of when to use previous material, and how to use tiered analyses without sacrificing references to original sources.

§ 46.145 Using adaptive management.

Bureaus should use adaptive management as part of their decision making processes, as appropriate, particularly in circumstances where long-term impacts may be uncertain and future monitoring will be needed to make necessary adjustments in subsequent implementation decisions. The NEPA analysis conducted in support of a bureau's decision to adopt an adaptive management approach should identify the range of management options that may be taken in response to the results of monitoring, and should analyze the effects of such options. The environmental effects of any adaptive management strategy must be evaluated in this or subsequent NEPA analysis.

§ 46.150 Emergency responses.

(a) If the Responsible Official determines that an emergency exists that makes it necessary to take emergency actions before completing a NEPA analysis and documentation in accordance with the provisions in subparts D and E of this part, then these provisions apply.

(b) The Responsible Official may take emergency actions necessary to control the immediate impacts of the emergency to mitigate harm to life, property, or important resources. When taking such actions, the Responsible Official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practical.

(c) If the Responsible Official determines that proposed emergency actions, beyond actions noted in paragraph (b) of this section, are not likely to have significant environmental impacts, the Responsible Official shall document that determination in an EA and finding of no significant impact (FONSI) prepared in accordance with this regulation, unless categorically excluded (subpart C of this part). If the Responsible Official finds that the nature and scope of the subsequent actions related to the emergency require taking such proposed actions prior to completing an EA and FONSI, the Responsible Official shall consult with the Department about alternative arrangements for NEPA compliance. Consultation with the Department must be coordinated through the appropriate bureau's office.

(d) If the Responsible Official determines that proposed emergency actions, beyond actions noted in paragraph (b) of this section, are likely to have significant environmental impacts, then the Responsible Official shall consult with CEQ, through the appropriate bureau office and the Department, about alternative arrangements as soon as possible. Alternative arrangements address the proposed actions necessary to control the immediate impacts of the emergency. Other proposed actions remain subject to NEPA analysis and documentation in accordance with this regulation.

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

(a) The Responsible Official must whenever possible:

(1) Consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of bureau plans, programs, and activities within the jurisdictions or related to the interests of these outside entities; and

(2) Include consensus-based management (see § 46.110) and, when doing so, comply with the applicable provisions of the Federal Advisory Committee Act (FACA).

(b) Bureaus must develop procedures to implement this section.

§ 46.160 Limitations on actions during the NEPA analysis process.

During the preparation of a program or plan NEPA document, the Responsible Official may undertake any major Federal action within the scope of, and analyzed in the existing NEPA document supporting the current plan or program, so long as there is adequate NEPA documentation to support the individual action.

§ 46.165 Ensuring public involvement.

Bureaus should develop and implement procedures in accordance with this part to ensure:

(a) The fullest practical provision of timely public information about bureau proposed actions that have environmental impacts, including information on the environmental impacts of alternative courses of action; and

(b) Appropriate public involvement in the development of NEPA analyses and documents.

§ 46.170 Environmental effects abroad of major Federal actions.

(a) In order to facilitate informed and responsible decision-making, the Responsible Official having ultimate responsibility for authorizing and approving proposed actions encompassed by the provisions of Executive Order (E.O.) 12114 shall follow the provisions and procedures of that E.O. E.O. 12114 represents the United States government's exclusive and complete determination of the procedural and other proposed actions to be taken by Federal agencies to further the purpose of NEPA, with respect to the environment outside the United States, its territories, and possessions.

(b) When implementing E.O. 12114, bureaus shall coordinate with the Department. The Department shall then consult with the Department of State, which shall coordinate all communications by the Department with foreign governments concerning environmental agreements and other arrangements in implementing E.O. 12114.

Subpart C—Initiating the NEPA Process

§ 46.200 Applying NEPA early.

(a) For any proposed Federal action (40 CFR 1508.23 and 1508.18) that may have environmental impacts, bureaus must coordinate, as early as feasible, with:

(1) Any other bureaus or Federal agencies, State, local, and tribal governments having jurisdiction by law or special expertise; and

(2) Appropriate Federal, State, local, and tribal governments authorized to develop and enforce environmental standards or to manage and protect natural resources or other aspects of the human environment.

(b) Bureaus must solicit the participation of all interested parties and organizations as early as possible, such as at the time an application is received, or when the bureau initiates the NEPA process for a proposed action.

(c) Bureaus should provide, where practicable, any appropriate community-based training to reduce costs, prevent delays, and facilitate and promote efficiency in the NEPA process.

(d) Bureaus should inform private or non-Federal applicants, to the extent feasible, of:

(1) Any appropriate environmental information that the applicants must include in their applications; and

(2) Any consultation with other Federal agencies, or State, local, or tribal governments that the applicant must accomplish before or during the application process.

§ 46.205 Actions categorically excluded from further NEPA review.

CXs are a group of actions that have no significant individual or cumulative effect on the quality of the human environment.

(a) Except as provided in paragraph (c) of this section, if an action is covered by a Departmental CX, the bureau is not required to prepare an EA (see subpart D of this part) or an EIS (see subpart E of this part).

(b) The actions listed in § 46.210 are categorically excluded, Department-wide, from preparation of EAs or EISs.

(c) The CEQ Regulations at 40 CFR 1508.4 require agency procedures to provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect and require additional analysis and action. Section 46.215 lists the extraordinary circumstances under which actions otherwise covered by a CX require analyses under NEPA.

(1) Any action that is normally categorically excluded must be evaluated to determine whether it meets any of these extraordinary circumstances, in which case, further analysis and environmental documents must be prepared for the action.

(2) Bureaus must work within existing administrative frameworks, including any existing programmatic agreements, when deciding how to apply any of the § 46.215 extraordinary circumstances.

(d) Congress may establish CXs by legislation, in which case the terms of the legislation determine how to apply the CX.

§ 46.210 Listing of Departmental CXs.

The following actions are categorically excluded under § 46.205(b), unless any of the extraordinary circumstances in § 46.215 apply:

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

(b) Internal organizational changes and facility and bureau reductions and closings.

(c) Routine financial transactions including such things as salaries and expenses, procurement contracts (e.g., in accordance with applicable procedures and Executive Orders for sustainable development or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

(d) Departmental legal activities including, but not limited to, such things as arrests, investigations, patents, claims, and legal opinions. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA in accordance with 40 CFR 1508.18(a).

(e) Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

(f) Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (e.g., limited size and magnitude or short-term effects).

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

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

(i) Policies, directives, regulations, and guidelines:

(1) That are of an administrative, financial, legal, technical, or procedural nature; or

(2) Whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

(j) Activities which are educational, informational, advisory, or consultative to other agencies, public and private entities, visitors, individuals, or the general public.

(k) Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical

methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities:

(1) Shall be limited to areas—

(i) In wildland-urban interface; and

(ii) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface;

(2) Shall be identified through a collaborative framework as described in ''A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10–Year Comprehensive Strategy Implementation Plan;''

(3) Shall be conducted consistent with bureau and Departmental procedures and applicable land and resource management plans;

(4) Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and

(5) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction. (Refer to the ESM Series for additional, required guidance.)

(l) Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities must comply with the following (Refer to the ESM Series for additional, required guidance.):

(1) Shall be conducted consistent with bureau and Departmental procedures and applicable land and resource management plans;

(2) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and

(3) Shall be completed within three years following a wildland fire.

§ 46.215 CXs: Extraordinary circumstances.

Extraordinary circumstances (see § 46.205(c)) exist for individual actions within CXs that may meet any of the criteria listed in paragraphs (a) through (l) of this section. Applicability of extraordinary circumstances to CXs is determined by the Responsible Official.

(a) Have significant impacts on public health or safety.

(b) Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (E.O. 11990); floodplains (E.O. 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

(c) Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)].

(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) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

(g) Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places.

(h) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.

(i) Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

(j) Have a disproportionately high and adverse effect on low income or minority populations (E.O. 12898).

(k) Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (E.O. 13007).

(l) Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and E.O. 13112).

§ 46.220 How to designate lead agencies.

(a) In most cases, the Responsible Official should designate one Federal agency as the lead with the remaining Federal, State, tribal governments, and local agencies assuming the role of cooperating agency. In this manner, the other Federal, State, and local agencies can work to ensure that the NEPA document will meet their needs for adoption and application to their related decision(s).

(b) In some cases, a non-Federal agency (including a tribal government) must comply with State or local requirements that are comparable to the NEPA requirements. In these cases, the Responsible Official may designate the non-Federal agency as a joint lead agency. (See 40 CFR 1501.5 and 1506.2 for a description of the selection of lead agencies, the settlement of lead agency disputes, and the use of joint lead agencies.)

(c) In some cases, the Responsible Official may establish a joint lead relationship among several Federal agencies. If there is a joint lead, then one Federal agency must be identified as the agency responsible for filing the EIS with EPA.

§ 46.225 How to select cooperating agencies.

(a) An ''eligible governmental entity'' is:

(1) Any Federal agency that is qualified to participate in the development of an EIS as provided for in 40 CFR 1501.6 and 1508.5 by virtue of its jurisdiction by law, as defined in 40 CFR 1508.15; or

(2) Any Federal agency that is qualified to participate in the development of an EIS by virtue of its special expertise, as defined in 40 CFR 1508.26; or

(3) Any non-Federal agency (State, Tribal, or local) with qualifications similar to those in paragraphs (a)(1) and (a)(2) of this section.

(b) Except as described in paragraph (c) of this section, the Responsible Official for the lead bureau must invite eligible governmental entities to participate as cooperating agencies when the bureau is developing an EIS.

(c) The Responsible Official for the lead bureau must consider any request by an eligible governmental entity to participate in a particular EIS as a cooperating agency. If the Responsible Official for the lead bureau denies a request, or determines it is inappropriate to extend an invitation, it must state the reasons in the EIS. Denial of a request or not extending an invitation for cooperating agency status is not subject to any internal administrative appeals process, nor is it a final agency action subject to review under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

(d) Bureaus should work with cooperating agencies to develop and adopt a memorandum of understanding

that includes their respective roles, assignment of issues, schedules, and staff commitments so that the NEPA process remains on track and within the time schedule. Memoranda of understanding must be used in the case of non-Federal agencies and must include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the bureau of the draft NEPA document.

(e) The procedures of this section may be used for an EA.

§ 46.230 Role of cooperating agencies in the NEPA process.

In accordance with 40 CFR 1501.6, throughout the development of an environmental document the lead bureau will collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise. Cooperating agencies may, by agreement with the lead bureau, help to do the following:

(a) Identify issues to be addressed in the EIS;

(b) Arrange for the collection and/or assembly of necessary resource, environmental, social, economic, and institutional data;

(c) Analyze data;

(d) Develop alternatives;

(e) Evaluate alternatives and estimate the effects of implementing each alternative; and

(f) Carry out any other task necessary for the development of the EIS.

§ 46.235 NEPA scoping process.

(a) Scoping is a process that continues throughout the planning and early stages of preparation of an EIS. While scoping is required for an EIS, as described in this section, it may also be appropriate to engage in scoping during the preparation of an EA. For an EIS, bureaus must use scoping to engage State, local and tribal governments, and the public in the early identification of concerns, potential impacts, possible alternative actions, and interdisciplinary considerations. Scoping is an opportunity to bring agencies and applicants together to lay the groundwork for setting time limits, expediting reviews where possible, integrating other environmental reviews, and identifying any major obstacles that could delay the process. The Responsible Official shall determine whether, in some cases, the invitation requirement in 40 CFR 1501.7(a)(1) may be satisfied by including such an invitation in the notice of intent (NOI).

(b) In scoping meetings, newsletters, or other communication methods, the lead agency must make it clear that the lead agency is ultimately responsible for the scope of an EIS and that suggestions obtained during scoping are considered to be advisory.

§ 46.240 Establishing time limits for the NEPA process.

(a) For each proposed action, on a case-by-case basis, bureaus shall:

(1) Set time limits from the start through to the finish of the NEPA analysis and documentation consistent with the requirements of 40 CFR 1501.8 and other legal obligations, including statutory and regulatory timeframes;

(2) Consult with cooperating agencies in setting time limits; and

(3) Encourage cooperating agencies to meet established time frames.

(b) Time limits should reflect the availability of personnel and funds. Efficiency of the NEPA process is dependent on the management capabilities of the lead bureau, which must assemble a qualified staff commensurate with the type of project to be analyzed to ensure timely completion of NEPA documents.

Subpart D—Environmental Assessments

§ 46.300 Purpose of an EA and when it must be prepared.

The purpose of an EA is to allow the Responsible Official to determine whether to prepare an EIS or a FONSI.

(a) A bureau must prepare an EA for all proposed Federal actions, except those:

(1) That are covered by a CX;

(2) That are covered sufficiently by an earlier environmental document as determined by the Responsible Official; or

(3) For which the bureau has already decided to prepare an EIS.

(b) A bureau may prepare an EA for any proposed action at any time to:

(1) Assist in planning and decision-making;

(2) Further the purposes of NEPA when no EIS is necessary; or

(3) Facilitate EIS preparation.

§ 46.305 Public involvement in the EA process.

(a) The bureau must provide for public notification when an EA is being prepared. The bureau must, to the extent practicable, provide for public involvement when an EA is being prepared. However, the method for providing opportunities for public involvement is at the discretion of the bureau.

(1) The bureau must consider comments resulting from the notice that are timely received, whether specifically solicited or not.

(2) Although scoping is not required, the bureau may apply a scoping process to an EA.

(b) Publication of a ''draft'' EA is not required. Bureaus may seek comments on an EA if they determine it to be appropriate, such as when the level of public interest or the uncertainty of effects warrants.

(c) The bureau must notify the public of the availability of an EA and any associated FONSI once they have been completed. Comments on a FONSI must be solicited only as required by 40 CFR 1501.4(e)(2).

(d) Bureaus may allow cooperating agencies (as defined in § 46.225) to participate in developing EAs.

§ 46.310 Contents of an EA.

(a) At a minimum, an EA must include brief discussions of:

(1) The proposal;

(2) The need for the proposal;

(3) The environmental impacts of the proposed action;

(4) The environmental impacts of the alternatives considered; and

(5) A list of agencies and persons consulted.

(b) When there is consensus about the proposed action with respect to alternative uses of available resources, the EA need only consider the proposed action and proceed without consideration of additional alternatives, including the no action alternative. (See section 102(2)(e) of NEPA).

(c) In addition, an EA may describe a broader range of alternatives to facilitate planning and decision-making.

(d) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(e) The level of detail and depth of impact analysis should normally be limited to the minimum needed to determine whether there would be significant environmental effects.

(f) Bureaus may choose to provide additional detail and depth of analysis as appropriate in those EAs prepared under § 46.300(b).

(g) An EA must contain objective analyses that support conclusions concerning environmental impacts.

§ 46.315 How to format an EA.

(a) An EA may be prepared in any format useful to facilitate planning, decision-making, and appropriate public participation.

(b) An EA may be accompanied by any other planning or decision-making document. The portion of the document that analyzes the environmental impacts of the proposal and alternatives must be clearly and separately identified and not spread throughout or interwoven into other sections of the document.

§ 46.320 Adopting EAs prepared by another agency, entity, or person.

(a) A Responsible Official may adopt an EA prepared by another agency, entity, or person, including an applicant, if the Responsible Official:

(1) Independently reviews the EA; and

(2) Finds that the EA complies with this subpart and relevant provisions of the CEQ Regulations and with other program requirements.

(b) When appropriate, the Responsible Official may augment the EA to be consistent with the bureau's proposed action.

(c) In adopting or augmenting the EA, the Responsible Official will cite the original EA.

(d) The Responsible Official must ensure that its bureau's public involvement requirements have been met before it adopts another agency's EA.

§ 46.325 Conclusion of the EA process.

(a) Upon review of the EA by the Responsible Official, the EA process concludes in either:

(1) A NOI to prepare an EIS;

(2) A FONSI; or

(3) No further action on the proposal.

(b) Bureaus must document the final decision reached under paragraph (a) of this section.

Subpart E—Environmental Impact Statements

§ 46.400 Timing of EIS development.

(a) The bureau must prepare an EIS for each proposed major Federal action significantly affecting the quality of the human environment before making a decision on whether or not to proceed with the proposed action.

(b) The Responsible Official must inform applicants as soon as practicable of any responsibility they will bear for funding environmental analyses associated with their proposals.

§ 46.405 Remaining within page limits.

To the extent possible, bureaus should use techniques such as incorporation by reference and tiering in an effort to remain within the normal page limits stated in 40 CFR 1502.7.

§ 46.415 EIS format.

The Responsible Official may use any EIS format and design as long as the statement is in accordance with 40 CFR 1502.10.

(a) *Contents.* The Responsible Official may use any EIS format as long as the statement discloses:

(1) A statement of the purpose and need for the action;

(2) A description of the proposed action;

(3) The environmental impact of the proposed action;

(4) A brief description of the affected environment;

(5) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(6) Alternatives to the proposed action;

(7) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

(8) Any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented; and

(9) The incremental process used, if any, of coordination with other Federal agencies, State, Tribal and local governments, and commonly recognized community groups pursuant to §§ 46.110, 46.145 and 46.155 and the results thereof.

(b) *Alternatives.* The EIS shall document the examination of reasonable alternatives to the proposed action. Reasonable alternatives are those that meet the purpose and need and address one or more significant issues (40 CFR 1501.7) related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed. In addition to the requirements at 40 CFR 1502.14, the Responsible Official has an option to use the following procedures to develop and analyze alternatives.

(1) The effects of the no-action alternative may be documented by contrasting the current condition and expected future condition should the proposed action not be undertaken with the impacts of the proposed action and any reasonable alternatives.

(2) To facilitate collaborative processes and sound decisions, the Responsible Official may collaborate with interested parties to modify a proposed action and alternative(s) under consideration prior to issuing a draft EIS. In such cases the Responsible Official may consider the incremental changes as alternatives considered. The documentation of these incremental changes to a proposed action or alternatives may be incorporated by reference in accordance with 40 CFR 1502.21 rather than duplicating the description and analysis in the statement.

(3) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(c) *Circulating and filing draft and final EISs.*

(1) The draft and final EISs shall be filed with EPA's Office of Federal Activities in Washington, DC (40 CFR 1506.9).

(2) If preliminary drafts are prepared, the Responsible Official shall make those preliminary draft and preliminary final EISs available to those interested and affected persons and agencies for comment; however, requirements at 40 CFR 1506.10 and 40 CFR 1502.19 shall only apply to the last draft statement and the final statement.

§ 46.420 Terms used in an EIS.

The following terms are commonly used to describe concepts or activities in an EIS:

(a) *Statement of purpose and need.* In accordance with 40 CFR 1502.13, the statement of purpose and need briefly indicates the underlying purpose and need to which the bureau is responding.

(1) In some instances it may be appropriate for the bureau to describe its ''purpose'' and its ''need'' as distinct aspects. The ''need'' for the action may be described as the underlying problem or opportunity to which the agency is responding with the action. The ''purpose'' may refer to the goal or objective that the agency is trying to achieve, and should be stated to the extent possible, in terms of desired outcomes.

(2) When an agency is asked to approve an application or permit, the agency should consider the needs and goals of the parties involved in the application or permit as well as the public interest.

(b) *Reasonable alternatives.* In addition to the requirements of 40 CFR 1502.14, this term also includes

alternatives that are technically and economically practical or feasible and that meet the purpose and need of the proposed action.

(c) *Range of alternatives.* This term includes all alternatives that would reasonably accomplish the purpose of the proposed action, that will be rigorously explored and objectively evaluated as well as other alternatives that are analyzed in any preliminary draft or preliminary final EIS.

(d) *Proposed action.* This term refers to the agency activity under consideration. It includes a non-Federal entity's planned activity that falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal approvals, funding, or regulatory instruments. The proposed action:

(1) Is not necessarily, but may become, during the NEPA process, a preferred alternative or an environmentally preferable alternative; and

(2) Must be clearly described in order to proceed with NEPA analysis.

(e) *Preferred alternative.* This term refers to the alternative which the agency believes would best accomplish the purpose and need of the proposed action, while fulfilling its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. It may or may not be the same as the agency's or the non-Federal entity's proposed action.

(f) *No action alternative.* This term has two interpretations. First ''no action'' may mean ''no change'' from a current management direction or level of management intensity. Second ''no action'' may mean ''no project'' in cases where a new project is proposed for construction. Regardless of the interpretation, a ''no action'' alternative is required to be analyzed in an EIS.

§ 46.425 Identification of the preferred alternative in an EIS.

(a) Unless another law prohibits the expression of a preference, the draft EIS should identify the bureau's preferred alternative or alternatives, if one or more exists.

(b) Unless another law prohibits the expression of a preference, the final EIS must identify the bureau's preferred alternative.

§ 46.430 Environmental review and consultation requirements.

(a) An EIS that also addresses other environmental review and consultation requirements must clearly identify and discuss all the associated analyses, studies, and surveys relied upon by the agency as a part of that review and consultation. Also:

(1) The EIS should indicate that the associated analyses are included;

(2) The EIS must reference or include as an appendix any supporting analyses or reports; and

(3) The bureau preparing the EIS must send copies of all supporting analyses or reports to reviewing agencies as appropriate in accordance with applicable regulations or procedures.

(b) The draft EIS must list all Federal permits, licenses, or approvals that must be obtained to implement the proposal. To the extent possible and authorized by law, the environmental analyses for these related permits, licenses, and approvals should be integrated and performed concurrently. The bureau may complete the NEPA analysis before all approvals are in place.

§ 46.435 Inviting comments.

(a) A bureau must seek comment from the public as part of the NOI to prepare an EIS and notice of availability on the draft EISs;

(b) In addition to paragraph (a) of this section, a bureau must request comments from:

(1) Federal agencies;

(2) State agencies through procedures established by the Governor under E.O. 12372;

(3) Local agencies, to the extent that they include the affected local jurisdictions; and

(4) Applicant, if any, and persons or organizations who may be interested or affected.

(c) The bureau must request comments from the tribal government, unless the tribal government has designated an alternate review process, when the proposed action may affect the environment of either:

(1) Indian trust or restricted land; or

(2) Other Indian trust resources, trust assets, or tribal health and safety.

(d) A bureau does not need to delay preparation and issuance of a final EIS when any Federal, State, and local agencies, or tribal governments from which comments must be obtained or requested do not comment within the prescribed time period.

§ 46.440 Eliminating duplication with State and local procedures.

A bureau must incorporate in its regulations provisions allowing a State agency to jointly prepare an EIS, to the extent provided in 40 CFR 1506.2.

§ 46.445 Preparing a legislative EIS.

When required, the Department must ensure that a legislative EIS is included as a part of the formal transmittal of a legislative proposal to the Congress.

§ 46.450 Identifying the environmentally preferable alternative.

In accordance with the requirements of 40 CFR 1505.2, a bureau must identify the environmentally preferable alternative in the ROD. It is not necessary that the environmentally preferable alternative be selected in the ROD.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 071218860–7866–01]

RIN 0648–AW26

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to approve and implement changes to the Pacific Halibut Catch Sharing Plan (Plan) for the International Pacific Halibut Commission's (IPHC or Commission) regulatory Area 2A off Washington, Oregon, and California (Area 2A). NMFS proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC, which includes the sport fishery management measures for Area 2A. These actions are intended to enhance the conservation of Pacific halibut, to provide greater angler opportunity where available, and to protect yelloweye rockfish and other overfished groundfish species from incidental catch in the halibut fisheries.

DATES: Comments on the proposed changes to the Plan and on the proposed domestic Area 2A halibut management measures must be received no later than 5 p.m., local time on February 1, 2008.

ADDRESSES: Copies of the Plan and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) are available from D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070. Electronic copies of the Plan, including proposed changes for 2008, and of the draft RIR/IRFA are also available at the NMFS Northwest Region website: *http://www.nwr.noaa.gov*, click on ''Groundfish & Halibut.''