

E. When archeological sites included in the National Register or which meet the Criteria are found to exist on the project site or in the area of the project's environmental impact, and where the project is likely to disturb such resources, and where the adverse effect of such disturbance cannot be negated by archeological salvage, a determination of "Adverse Effect" is appropriate in accordance with §801.3(a)(2)(iii).

PART 805—PROCEDURES FOR IMPLEMENTATION OF NATIONAL ENVIRONMENTAL POLICY ACT

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AUTHORITY: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978); E.O. 11593, 3 CFR 1971 Comp., p. 154; President's Memorandum on Environmental Quality and Water Resources Management, July 12, 1978.

SOURCE: 45 FR 4353, Jan. 22, 1980, unless otherwise noted.

§ 805.1 Background.

(a) The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) Executive Order 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR parts 1500-1508) on November 29, 1978, which are binding on all Federal agen-

cies as of July 30, 1979. These regulations provide that each Federal agency shall as necessary adopt implementing procedures to supplement the regulations. Section 1507.3(b) of the NEPA regulations identifies those sections of the regulations which must be addressed in agency procedures.

§ 805.2 Purpose.

The purpose of this part is to establish Council procedures that supplement the NEPA regulations and provide for the implementation of those provisions identified in §1507.3(b) of the regulations (40 CFR 1507.3(b)).

§ 805.3 Applicability.

(a) These procedures apply to actions of the full Council and the Council staff acting on behalf of the full Council.

(b) The following actions are covered by these procedures:

- (1) Recommendations for legislation.
- (2) Regulations implementing section 106 of the National Historic Preservation Act (NHPA).
- (3) Procedures implementing other authorities.
- (4) Policy recommendations that do not require implementation by another Federal agency.

(c) In accordance with §1508.4 of the NEPA regulations (40 CFR 1508.4), Council comments on Federal, federally assisted and federally licensed undertakings provided pursuant to section 106 of the NHPA and 36 CFR part 800 are categorically excluded from these procedures. This exclusion is justified because Federal agencies seeking the Council's comments under section 106 have the responsibility for complying with NEPA on the action they propose. The Council's role is advisory and its comments are to be considered in the agency decisionmaking process. Coordination between the section 106 and the NEPA processes is set forth in 36 CFR 800.9.

§ 805.4 Ensuring environmental documents are actually considered in Council decisionmaking.

(a) Section 1505.1 of the NEPA regulations (40 CFR 1505.1) contains requirements to ensure adequate consideration of environmental documents in

agency decisionmaking. To implement these requirements the Council shall:

(1) Consider all relevant environmental documents in evaluating proposals for action;

(2) Ensure that all relevant environmental documents, comments, and responses accompany the proposal through internal Council review processes;

(3) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating proposals for the Council action; and,

(4) Where an environmental impact statement (EIS) has been prepared consider the specific alternative analyzed in the EIS when evaluating the proposal which is the subject of the EIS.

(b) For each of the Council's principal activities covered by NEPA, the following chart identifies the point at which the NEPA process begins, the point at which it ends, and the key officials required to consider environmental documents in their decision-making.

Activity	Start of NEPA process	Completion of NEPA process	Key officials required to consider environmental documents
Recommendations for legislation.	During staff formulation of proposal.	Prior to submission to Congress or OMB.	Executive Director and full Council, as appropriate.
Regulations and procedures ...	Prior to publication of draft regulations in FEDERAL REGISTER.	Prior to publication of final regulations in FEDERAL REGISTER.	Executive Director and full Council as appropriate.
Policy recommendations	During staff formulation of proposal.	Prior to adoption by full Council or Executive Director.	Executive Director and full Council, as appropriate.

§ 805.5 Typical classes of action.

(a) Section 1507.3(c)(2) (40 CFR 1507.3(c)(2)) in conjunction with §1508.4 requires agencies to establish three typical classes of action for similar treatment under NEPA: actions normally requiring EIS; actions normally requiring assessments but not necessarily EISs; and actions normally not requiring assessments or EISs. Each of the covered categories of Council actions generally falls within the second category, normally requiring an assessment but not necessarily an EIS.

(b) The Council shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for Council action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 805.6 Interagency cooperation.

The Council shall consult with appropriate Federal and non-Federal agencies and with interested private persons and organizations when it is con-

sidering actions involving such parties and requiring environmental assessments. Where other Federal agencies are involved in the proposed action, the Council shall cooperate in the required environmental assessment and the preparation of necessary environmental documents. Where appropriate as determined by the nature and extent of Council involvement in the proposed action, the Council shall assume the status of lead agency.

§ 805.7 Environmental information.

Interested persons may contact the Executive Director for information regarding the Council's compliance with NEPA.

PART 810—FREEDOM OF INFORMATION ACT REGULATIONS

- Sec.
- 810.1 Purpose and scope.
- 810.2 Procedure for requesting information.
- 810.3 Action on requests.
- 810.4 Appeals.
- 810.5 Fees.
- 810.6 Exemptions.

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