

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NATIONAL CAPITAL PLANNING COMMISSION

### 1 CFR Chapter VI

#### National Environmental Policy Act Regulations.

**AGENCY:** National Capital Planning Commission

**ACTION:** Proposed rule; public meetings.

**SUMMARY:** The National Capital Planning Commission (NCPC or Commission) proposes to adopt new regulations governing NCPC's implementation of the National Environmental Policy Act (NEPA) and regulations promulgated by the Council on Environmental Quality (CEQ). Federal agencies and NCPC on behalf of non-federal agencies must comply with the requirements of NEPA and CEQ regulations for projects submitted to the Commission for review and approval.

**DATES:** Submit comments on or before July 14, 2017. Public meetings to discuss the proposed Policies and Procedures will be held on Tuesday, June 13, 2017 from 6:00 p.m.–7:30 p.m. and Thursday, June 15, 2017 from 9:30 a.m.–11:00 a.m. Both meetings will be held at the National Capital Planning Commission, 401 9th Street NW., Suite 500, Washington, DC 20004.

**ADDRESSES:** You may submit written comments on the proposed Policies and Procedures by either of the methods listed below.

1. *U.S. mail, courier, or hand delivery:* Anne R. Schuyler, General Counsel/ National Capital Planning Commission, 401 9th Street NW., Suite 500, Washington, DC 20004.

2. *Electronically:* [nepa@ncpc.gov](mailto:nepa@ncpc.gov).

**FOR FURTHER INFORMATION CONTACT:** Anne R. Schuyler, General Counsel at 202-482-7223 or [nepa@ncpc.gov](mailto:nepa@ncpc.gov).

**SUPPLEMENTARY INFORMATION:** The current regulation are published on the NCPC Web site at the following location: [https://www.ncpc.gov/ncpc/Main\(T2\)/ProjectReview\(Tr2\)/ProjectReview\(Tr3\)/](https://www.ncpc.gov/ncpc/Main(T2)/ProjectReview(Tr2)/ProjectReview(Tr3)/)

*SubmissionGuidelines.html?sgpage=3.*

These regulations lay out the process federal agencies and NCPC on behalf of non-federal agencies must follow to ensure NEPA compliance. While the subject regulations are critical to the Commission's ability to carry out its review authorities, they have not been updated since 2004. As such, NCPC proposes revisions to its Environmental Policies and Procedures to simplify the regulations and streamline the agency's NEPA process. In this proposal, NCPC is also proposing to establish a new chapter (chapter VI) in title 1 of the Code of Federal Regulations (CFR) to promote orderly codification. As the NCPC updates its regulations currently found in 1 CFR parts 455, 456 and 457 it will move them to its new chapter VI in title 1.

#### Key Changes Incorporated Into NCPC's Proposed Environmental Policies and Procedures

NCPC's current NEPA procedures were adopted in 2004 and generally remain appropriate and effective. However certain portions of the existing policies and procedures require revision to simplify, streamline, and improve the effectiveness of NCPC's process for complying with NEPA.

One of the most significant changes incorporated into the proposed Environmental Policies and Procedures (Policies and Procedures) is the elimination of procedures for complying with Section 106 of the National Historic Preservation Act (NHPA). In 2004, when it adopted its current regulations, NCPC opted to issue combined NEPA and the NHPA regulations to ensure coordinated implementation of both procedures. However, regulations promulgated by the ACHP do not require agencies to adopt agency specific processes and procedures. Instead ACHP regulations establish the processes and procedures all federal agencies must follow. This resulted in the inclusion of duplicative information in NCPC's current policies and procedures. While this information proved helpful, it diverted attention away from NCPC's agency specific NEPA policies and procedures mandated by CEQ. Accordingly, the proposed Policies and Procedures delete detailed references to Section 106 consultation procedures. They do retain references to coordination between

NEPA and NHPA and consideration of historic resources in the NEPA process.

To clarify roles and responsibilities, the proposed Policies and Procedures distinguish between federal agency applicants and non-federal agency applicants. Federal agency applicants include cabinet level departments and executive agencies such as the U.S. General Services Administration (GSA). Non-federal agency applicants include, without limitation, the Smithsonian Institution, the John F. Kennedy Center for the Performing Arts, the National Gallery of Art, the US Institute of Peace, the Government of the District of Columbia, the Maryland National Capital Park and Planning Commission (MNCPPC) and private parties implementing projects on federal land. NCPC's jurisdiction extends to non-federal agency applicants when they undertake projects on federally-owned land. Under the proposed Policies and Procedures, NCPC serves as lead agency when the applicant is a non-federal agency. While this deviates from current practice, the proposal ensures NCPC a prominent role in the NEPA process and the ability to ensure consideration of its views.

The proposed Policies and Procedures also alter the timing and sequencing of an applicant's submission of NEPA documentation for applications governed by the National Capital Planning Act and the Commemorative Works Act. Under the current regulations, an applicant must complete the NEPA process at the time of preliminary review. Under the proposed regulations, an applicant must complete its NEPA process at the time of final review. This revised approach allows the Commission an opportunity to provide input on a project when it is still in the developmental phase. It also provides a NEPA sequencing consistent with federal agency project development schedules. This eliminates the pressure on federal agency applicants to expedite its NEPA process to meet NCPC's current sequencing policies.

NCPC also proposes several changes to its list of projects eligible for application of a CATEX. NCPC proposes to eliminate three existing CATEXs because they are based on old, antiquated authorities which have little to no relationship to NCPC's present day review roles. NCPC proposes to add four

new CATEXs and to increase the number of extraordinary circumstances with the potential to negate application of CATEXs. The new CATEXs and extraordinary circumstances reflect matters addressed in federal, state and local laws and regulations and Executive Orders applicable to projects that come before NCPC.

### Section by Section Analysis of NCPC's Proposed Environmental Policies and Procedures

*Subpart A—General.* This subpart contains three subsections addressing purpose, policy and definitions.

*§ 601.1 Purpose.* This section presents a clear, succinct statement of purpose.

*§ 601.2 Policies.* This section states NCPC's policies implementing NEPA. The content is similar to that of the existing policies and procedures, but the proposed Policies and Procedures consolidate all policies into one section. The existing Policies and Procedures disperse NCPC's NEPA policies throughout multiple sections.

*§ 601.3 Definitions.* This section defines terms frequently used in the document. It deletes definitions from the existing regulations that are infrequently or no longer used in the proposed regulations.

*Subpart B—Lead and Cooperating Agencies.* This subpart assigns lead and cooperating agency status and states the obligations required of an applicant depending on their assigned status.

*§ 601.4 Designation of Lead Agency.* This section confers lead agency status on federal agency applicants and upon NCPC when the applicant is a non-federal agency. By definition, a federal agency means the executive agencies defined in 5 U.S.C. 105. A non-federal agency applicant means those applicants outside the statutory definition of federal agency that undertake projects on federal land and include, without limitation, the Smithsonian Institution, the John F. Kennedy Center for the Performing Arts, the National Gallery of Art, the U.S. Institute of Peace, the Government of the District of Columbia, MNCPPC, and private parties undertaking development on federal land.

*§ 601.5 Lead Agency obligations.* This section lists the general obligations of a lead agency.

*§ 601.6 Resolving disputes over Lead Agency status.* The section includes a dispute resolution provision for circumstances when there is a disagreement over which agency serves as the lead.

*§ 601.7 Cooperating Agencies.* This section lists the obligations of NCPC

when it serves as a cooperating agency and requires non-federal agencies to comply with the same obligations when NCPC serves as lead agency.

*Subpart C—NEPA Submission Schedules.* This subpart establishes the NEPA submission schedule for applications reviewed by the Commission pursuant to the Planning Act and the Commemorative Works Act.

*§ 601.8 NEPA Submission schedule for applications governed by the National Capital Planning Act.* This section establishes a revised NEPA submission schedule as follows: Initiation of scoping at the time of concept review; issuance of a draft environmental document (EA or EIS) at the time of preliminary review; and issuance of a final environmental document and final determination (FONSI or ROD) at the time of final review. The section also addresses the NEPA process to be undertaken by NCPC as the lead agency when emergency circumstances exist and application of a CATEX is not possible.

*§ 601.9 NEPA submission schedule for applications governed by the Commemorative Works Act.* This section establishes a new NEPA submission schedule as follows: Commencement of the NEPA process at the time of concept site and concept design review; issuance of a draft environmental document for public review at the time of preliminary approval of a site and design; and issuance of a final environmental document and a final determination (FONSI or ROD) at the time of final site and design review.

*Subpart D—Initiating the NEPA Process.* This subpart describes the characteristics of Commission actions eligible for a CATX, lists the extraordinary circumstances that may negate the application of a CATEX, and lists NCPC's CATEXs.

*§ 601.10 Characteristics of Commission actions eligible for a Categorical Exclusion.* This section lists four types of actions the generally qualify for application of a CATEX:

*§ 601.11 Extraordinary Circumstances.* This section list ten extraordinary circumstances that may negate NCPC's application of a CATEX. Current regulations specify only five extraordinary circumstances.

*§ 601.12 National Capital Planning Commission Categorical Exclusions.* This section lists ten categorical exclusions available for use by NCPC. It includes a few new, but minor types of projects eligible for categorical exclusion and removes some existing CATEX based on old, antiquated authorities.

*Subpart E—Environmental Assessments.* This subpart identifies the characteristics of Commission actions eligible for an EA; the specific types of Commission actions eligible for an EA; the contents, process for preparing, and process for adopting an EA; the process for closing out the EA process; and the requirements for determining when a supplemental EA should be prepared.

*§ 601.13 Characteristics of Commission actions eligible for and Environmental Assessment.* This section lists four characteristics that generally render a Commission action eligible for an EA.

*§ 601.14 Commission actions generally eligible for an Environmental Assessment.* This section lists five specific actions of the Commission which comply with the criteria listed in § 601.13 above and, therefore, qualify for preparation of an EA.

*§ 601.15 Preparing an Environmental Assessment.* This section provides general guidance on the contents of an EA and the entities to be involved in the preparation of the document. The section also authorizes NCPC's Executive Director to undertake a public scoping process for an EA if he/she determines it to be appropriate, outlines the public scoping process, and authorizes NCPC in its discretion to solicit public comment on a draft EA.

*§ 601.16 Finding of No Significant Impact.* This section directs NCPC as the lead agency to prepare a FONSI, if warranted, at the conclusion of the EA process. It also provides NCPC the option of either co-signing the lead agency's FONSI or preparing its own FONSI when NCPC serves as a cooperating agency. The section also specifies remedies the Commission can pursue when a lead agency's EA fails to support a FONSI.

*§ 601.17 Supplemental Environmental Assessments.* This section establishes when a supplemental EA may be warranted.

*Subpart F—Environmental Impact Statements.* This subpart establishes the requirement for and timing of an EIS; links the requirement for an EIS to the context and intensity of impacts; requires use of techniques that minimize the length of an EIS; authorizes use of programmatic EISs and tiering; lists the contents of an EIS; sets forth the process for preparing an EIS; addresses preparation and issuance of a Final EIS; and addresses the preparation, and issuance of a ROD.

*§ 601.18 Requirement and timing of an Environmental Impact Statement.* This section requires NCPC preparation of an EIS on behalf on non-federal agency applicants, prior to the

Commission's approval of a major federal action that has the potential to significantly affect the quality of the human environment.

**§ 601.19 Context, intensity and significance of impacts.** This section requires the determination on whether an EIS is necessary and whether an impact is significant based on the context and intensity of a project's impacts. The section discusses the meaning of context and intensity and lists the characteristics that render projects significant.

**§ 601.20 Streamlining Environmental Impact Statements.** This section requires NCPC to minimize the length of an EIS when NCPC serves as the lead agency and lists techniques that can achieve this result.

**§ 601.21 Programmatic Environmental Impact Statements and tiering.** This section authorizes use of a PEA and PEIS to assess the impacts of proposed plans and projects when there is uncertainty regarding the timing, the location, and the environmental impacts of subsequent implementing actions. When NCPC proceeds with a specific action, it authorizes the use of tiering or working from where the PEA or PEIS left off to define specific issues associated with the proposed action.

**§ 601.22 Contents of an Environmental Impact Statement.** This section enumerates the specific sections and contents that must be included in an EIS when NCPC is lead agency.

**§ 601.23 The Environmental Impact Statement process.** This section specifies the parties that must be included in the draft EIS preparation process, the process to follow for determining the scope of an EIS, and the process for obtaining public comment when NCPC is lead agency.

**§ 601.24 Final Environmental Impact Statement.** This section provides for the preparation of a final EIS responsive to public comments and provides for a forty five-day Commission-sponsored review period of the final EIS before the Commission takes action when NCPC is lead agency.

**§ 601.25 Record of Decision.** This section requires the preparation of a ROD stating the Commission's decision and any conservation or mitigation measures required by the Commission when NCPC is lead agency. It also lists the required contents of a ROD. This section enables NCPC to co-sign the ROD of the lead agency if NCPC serves as a cooperating agency and concurs with the applicant's ROD.

**§ 601.26 Supplemental Environmental Impact Statement.** This section specifies a supplemental EIS may be warranted if the original

document is more than five years old and changed project specifications or new circumstances or information exist.

**§ 601.27 Legislative Environmental Impact Statement.** This sections requires NCPC to prepare an EIS when initiating the submission of draft legislation to Congress.

**Subpart G—Dispute Resolution.** This subpart sets forth a mechanism for dispute resolution.

**§ 601.28 Dispute resolution.** Unless a specific dispute resolution is invoked elsewhere in the Policies and Procedures, this section requires disputes arising under the Policies and Procedures to be resolved through interagency negotiations starting at the working levels and rising to the level necessary to resolve the dispute. If disputes cannot be settled through interagency negotiations, the parties are required to engage in mediation.

### **Compliance With Laws and Executive Orders**

#### **1. Executive Orders 12866 and 13563**

By Memorandum dated October 12, 1993 from Sally Katzen, Administrator, Office of Information and Regulatory Affairs (OIRA) to Heads of Executive Departments and Agencies, and Independent Agencies, OMB rendered the NCPC exempt from the requirements of Executive Order 12866 (See, Appendix A of cited Memorandum). Nonetheless, NCPC endeavors to adhere to the provisions of Executive Orders and developed this proposed rule in a manner consistent with the requirements of Executive Order 13563. NCPC worked closely with CEQ on the derivation of the proposed Policies and Procedures and intends to work with the land-holding agencies and certain non-federal agencies impacted by these during the public comment period.

#### **2. Executive Order 13771**

By virtue of its exemption from the requirements of EO 12866, NCPC is exemption from this executive order. NCPC confirmed this fact with OIRA.

#### **3. Regulatory Flexibility Act**

As required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the NCPC certifies that the proposed rule will not have a significant economic effect on a substantial number of small entities.

#### **4. Small Business Regulatory Enforcement Fairness Act**

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It does not have an annual effect on the economy of \$100 million or more; will not cause

a major increase in costs for individuals, various levels of governments or various regions; and does not have a significant adverse effect on completion, employment, investment, productivity, innovation or the competitiveness of US enterprises with foreign enterprises.

#### **5. Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)**

A statement regarding the Unfunded Mandates Reform Act is not required. The proposed rule neither imposes an unfunded mandate of more than \$100 million per year nor imposes a significant or unique effect on State, local or tribal governments or the private sector.

#### **6. Federalism (Executive Order 13132)**

In accordance with Executive Order 13132, the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The proposed rule does not substantially and directly affect the relationship between the Federal and state governments.

#### **7. Civil Justice Reform (Executive Order 12988)**

The General Counsel of NCPC has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of Executive Order 12988 3(a) and 3(b)(2).

#### **8. Paperwork Reduction Act**

The proposed rule does not contain information collection requirements, and it does not require a submission to the Office of Management and Budget under the Paperwork Reduction Act.

#### **9. National Environmental Policy Act**

The proposed rule is of an administrative nature, and its adoption does not constitute a major federal action significantly affecting the quality of the human environment. NCPC's adoption of the proposed rule will have minimal or no effect on the environment; impose no significant change to existing environmental conditions; and will have no cumulative environmental impacts.

#### **10. Clarity of the Regulation**

Executive Order 12866, Executive Order 12988, and the Presidential Memorandum of June 1, 1998 requires the NCPC to write all rules in plain language. NCPC maintains the proposed rule meets this requirement. Those individuals reviewing the proposed rule who believe otherwise should submit specific comments to the addresses noted above recommending revised language for those provision or portions

thereof where they believe compliance is lacking.

### 11. Public Availability of Comments

Be advised that personal information such as name, address, phone number, electronic address, or other identifying personal information contained in a comment may be made publically available. Individuals may ask NCPC to withhold the personal information in their comment, but there is no guarantee the agency can do so.

### List of Subjects in 1 CFR Part 601

Environmental Policies and Procedures.

For the reasons stated in the preamble, the National Capital Planning Commission proposes to establish 1 CFR chapter VI, consisting of part 601, to read as follows:

## CHAPTER VI—NATIONAL CAPITAL PLANNING COMMISSION

### PART 601—ENVIRONMENTAL POLICIES AND PROCEDURES

#### Subpart A—General

Sec.

- 601.1 Purpose.
- 601.2 Policies.
- 601.3 Definitions.

#### Subpart B—Lead and Cooperating Agencies

- 601.4 Designation of Lead Agency.
- 601.5 Lead Agency obligations.
- 601.6 Resolving disputes over Lead Agency status.
- 601.7 Cooperating Agencies.

#### Subpart C—NEPA Submission Schedules

- 601.8 NEPA submission schedule for applications governed by the National Capital Planning Act.
- 601.9 NEPA submission schedule for applications governed by the Commemorative Works Act.

#### Subpart D—Initiating the NEPA Process

- 601.10 Characteristics of Commission actions eligible for a Categorical Exclusion.
- 601.11 Extraordinary Circumstances.
- 601.12 National Capital Planning Commission Categorical Exclusions.

#### Subpart E—Environmental Assessments

- 601.13 Characteristics of Commission actions eligible for an Environmental Assessment.
- 601.14 Commission actions generally eligible for an Environmental Assessment.
- 601.15 Process for preparing an Environmental Assessment.
- 601.16 Finding of No Significant Impact.
- 601.17 Supplemental Environmental Assessments.

#### Subpart F—Environmental Impact Statements

- 601.18 Requirement for and timing of an Environmental Impact Statement.
- 601.19 Context, intensity, and significance of impacts.
- 601.20 Streamlining Environmental Impact Statements.
- 601.21 Programmatic Environmental Impact Statements and tiering.
- 601.22 Contents of an Environmental Impact Statement.
- 601.23 The Environmental Impact Statement process.
- 601.24 Final Environmental Impact Statement.
- 601.25 Record of Decision.
- 601.26 Supplemental Environmental Impact Statement.
- 601.27 Legislative Environmental Impact Statement.

#### Subpart G—Dispute Resolution

- 601.28 Dispute resolution.
- 601.29 [Reserved]

Authority: 40 CFR 1507.3.

#### Subpart A—General

##### § 601.1 Purpose.

This part establishes rules that supplement the Council on Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) regulations that the National Capital Planning Commission (NCPC or Commission) and its applicants shall follow to ensure:

(a) Compliance with NEPA, as amended (42 U.S.C. 4321 *et seq.*) and CEQ regulations for implementing the procedural provisions of NEPA (40 CFR parts 1501 through 1508).

(b) Compliance with other laws, regulations, and Executive Orders identified by NCPC as applicable to a particular application.

##### § 601.2 Policies.

Consistent with 40 CFR 1500.1 and 1500.2, it shall be the policy of the NCPC to:

(a) Comply with the procedures and policies of NEPA and other related laws, regulations, and orders applicable to Commission actions.

(b) Provide applicants sufficient guidance to ensure plans and projects comply with the rules of this part and other laws, regulations, and orders applicable to Commission actions.

(c) Integrate NEPA into its decision-making process at the earliest possible stage.

(d) Integrate the requirements of NEPA and other planning and environmental reviews required by law including, without limitation, the National Historic Preservation Act, 54 U.S.C. 306108 (NHPA), to ensure all such procedures run concurrently.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects on the quality of the human environment in the National Capital Region.

(f) Use all practicable means to protect, restore, and enhance the quality of the human environment including built and socioeconomic environments and historic properties within the National Capital Region.

(g) Streamline the NEPA process and Environmental Impact Statements (EIS) to the maximum extent possible.

(h) Use the NEPA process to foster meaningful public involvement in NCPC decisions.

#### § 601.3 Definitions.

For purposes of this part, the following definitions shall apply:

*Administrative Record* means a compilation of all materials (written and electronic) that were before the agency at the time it made its final decision. An Administrative Record documents an agency's decision-making process and the basis for the decision.

*Categorical Exclusion* or *CATEX* means, as defined by 40 CFR 1508.4, a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency (NCPC) in implementation of CEQ's regulations and for which, therefore, neither an Environmental Assessment (EA) nor an EIS is required.

*Central Area* means the geographic area in the District of Columbia comprised of the Shaw School and Downtown Urban Renewal Areas or such other area as the District of Columbia and NCPC shall subsequently jointly determine.

*Chairman* means the Chairman of the National Capital Planning Commission appointed by the President, pursuant to 40 U.S.C. 8711(c).

*Commemorative Works Act* or *CWA* means the federal law codified at 40 U.S.C. 8901 *et seq.* that sets forth the requirements for the location and development of new memorials and monuments on land under the jurisdiction of the National Park Service (NPS) or the General Services Administration (GSA) in the District of Columbia and its environs.

*Commission* means the National Capital Planning Commission created by 40 U.S.C. 8711.

*Comprehensive Plan* means The Comprehensive Plan for the National Capital: Federal Elements prepared and

adopted by the Commission pursuant to 40 U.S.C. 8721(a).

*Cooperating Agency* means, as defined in 40 CFR 1508.5, any Federal Agency other than a Lead Agency and a Non-federal Agency that has jurisdiction by law or special expertise with respect to a proposal (or reasonable alternative) for legislation or other major action significantly affecting the quality of the human environment; a state or local agency of similar qualifications; or when the effects are on a reservation, an Indian Tribe when agreed to by the Lead Agency.

*Cumulative Impact* means, as defined in 40 CFR 1508.7, the impact on the environment that results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor, but collectively significant, actions taking place over a period of time.

*Emergency Circumstances* means an unexpected, serious occurrence or situation requiring immediate attention to protect the lives and safety of the public and protect property and ecological resources and functions from imminent harm.

*Environmental Assessment* or *EA* means, as defined in 40 CFR 1508.9, a concise document for which a federal agency is responsible that serves to briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or FONSI; aid an agency's compliance with NEPA when no EIS is necessary; facilitate preparation of an EIS when one is necessary; and includes a brief discussion of the need for the proposal, alternatives as required by section 102(2)(E) of NEPA, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

*Environmental Impact Statement* or *EIS* means, as defined in 40 CFR 1508.11, a detailed written statement as required by 42 U.S.C. 4332(2)(C).

*Environs* means the territory surrounding the District of Columbia included in the National Capital Region pursuant to 40 U.S.C. 8702(a)(1).

*Executive Director* means the Executive Director employed by the National Capital Planning Commission pursuant to 40 U.S.C. 8711(d).

*Executive Director's Recommendation* or *EDR* means a concise written report and recommendation prepared by NCPC staff under the direction of NCPC's Executive Director regarding a proposed

action and transmitted to the Commission for its consideration.

*Extraordinary Circumstances* means special circumstances that when present may negate an agency's ability to categorically exclude a project and may require an agency to undertake further NEPA review.

*Federal Agency* means the executive agencies of the federal government as defined in 5 U.S.C. 105.

*Finding of No Significant Impact* or *FONSI* means, as defined at 40 CFR 1508.13, a document prepared by NCPC or a Federal Agency applicant that briefly presents the reasons why an action, not otherwise excluded (40 CFR 1508.4), will not have a significant effect on the human environment and for which an EIS will not be prepared. It shall include the EA or a summary of it and shall note any other EAs or EISs related to it (40 CFR 1501.7(a)(5)). If the EA is included in the FONSI, the FONSI need not repeat any of the discussion in the EA but may be incorporated by reference.

*Lead Agency* means, as defined in 40 CFR 1508.16, the agency or agencies preparing or having primary responsibility for preparing an EA or an EIS.

*Memorandum of Understanding* or *MOU* means for purposes of implementing NEPA, a written agreement entered into between a Lead, Co-lead and a Cooperating Agency to facilitate implementation of NEPA and preparation of the requisite environmental documentation. A MOU can be written at a programmatic level to apply to all projects involving NCPC and a Federal or Non-Federal Agency applicant or on a project-by-project basis. A MOU as defined here shall be in addition to and not preclude MOUs prepared by NCPC and Federal agencies for other purposes.

*Mitigation* means, as defined in 40 CFR 1508.20, avoiding an impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and compensating for the impact by replacing or providing substitute resources or environments.

*Monumental Core* means the general area encompassed by the Capitol grounds, the Mall, the Washington Monument grounds, the White House grounds, the Ellipse, West Potomac Park, East Potomac Park, the Southwest

Federal Center, the Federal Triangle area, President's Park, the Northwest Rectangle, Arlington Cemetery and the Pentagon area, and Joint Base Myer-Henderson Hall.

*National Capital Planning Act* means the July 1952 legislative enactment, codified at 40 U.S.C. 8701 *et seq.*, that created the present day National Capital Planning Commission and conferred authority upon it to serve as the planning and zoning authority for the federal government.

*National Capital Region* means, as defined in 40 U.S.C. 8702(2), the District of Columbia; Montgomery and Prince Georges Counties in Maryland; Arlington, Fairfax, Loudon, and Prince William Counties in Virginia; and all cities in Maryland or Virginia in the geographic area bounded by the outer boundaries of the combined area of the counties listed.

*NEPA Document* or *Document* means a Categorical Exclusion determination, an EA, or an EIS.

*Non-federal Agency* means those applicants outside the definition of Federal Agency that prepare plans for or undertake projects on federal land and include, without limitation, the Smithsonian Institution, the John F. Kennedy Center for the Performing Arts, the National Gallery of Art, the United States Institute of Peace, the Government of the District of Columbia, the Maryland National Capital Parks and Planning Commission; and private parties undertaking development on federal land.

*Notice of Availability* or *NOA* means a public notice or other means of public communication that announces the availability of an EA or an EIS for public review.

*Notice of Intent* or *NOI* means, as defined in 40 CFR 1508.22, a notice published in the **Federal Register** that an EIS will be prepared and considered. The notice shall briefly describe the proposed action and possible alternatives; describe the agency's proposed Public Scoping process including whether, when, and where any Public Scoping meeting will be held; and state the name and address of a person within the agency who can answer questions about the proposed action and the EIS. For purposes of NCPC implementation of NEPA, NCPC may determine, at its sole discretion, to publish an NOI that an EA will be prepared and considered.

*Programmatic NEPA Review* means a broad or high level NEPA review that assesses the environmental impacts of proposed policies, plans or programs, or projects for which subsequent project or site-specific NEPA analysis will be

conducted. A Programmatic NEPA Review utilizes a tiering approach.

*Record of Decision* or *ROD* means a concise public record of an agency's decision in cases requiring an EIS that is prepared in accordance with 40 CFR 1505.2.

*Scope* means, as defined in 40 U.S.C. 1508.25, the range of actions (connected, cumulative and similar); alternatives (no action, other reasonable courses of action; and mitigation measures not included in the proposed action); and impacts (direct, indirect and cumulative) considered in an EIS or an EA. The process of defining and determining the scope of issues to be addressed in an EIS or EA with public involvement shall be referred to as Public Scoping. Internal scoping activities shall be referred to by the word scoping without capitalization.

*Submission Guidelines* means the formally-adopted document which describes the application process and application requirements for projects requiring review by the Commission.

*Tiering* means, as defined in 40 CFR 1508.28, an approach where Federal Agency applicants, NCPC on behalf of Non-federal Agency applicants, or NCPC for its own projects initially consider the broad, general impacts of a proposed program, plan, policy, or large scale project—or at the early stage of a phased proposal—and then conduct subsequent narrower, decision focused reviews.

## Subpart B—Lead and Cooperating Agencies

### § 601.4 Designation of Lead Agency.

(a) A Federal Agency applicant shall serve as the Lead Agency and prepare an EA or an EIS for:

(1) An application that requires Commission approval; and  
(2) An application submitted for action on a master plan that includes future projects that require Commission approval; provided that:

(i) The applicant intends to submit individual projects covered by the master plan to the Commission within five years of the date of Commission action on the master plan; and

(ii) The applicant intends to use the master plan EA or EIS to satisfy its NEPA obligation for specific projects referenced in the master plan.

(b) At the sole discretion of the Executive Director, and unless determined otherwise, NCPC shall serve as Lead Agency and prepare an EA or an EIS for:

(1) An application submitted by a Non-federal Agency that requires Commission approval;

(2) An application submitted by a Non-federal Agency for action on a master plan that includes future projects that require Commission approval; provided that:

(i) The Non-federal Agency applicant intends to submit individual projects covered by the master plan to the Commission within five years of the date of Commission action on the master plan; and

(ii) The Non-federal Agency applicant intends to use the master plan EA or EIS to satisfy its NEPA obligation for a specific project referenced in the master plan; and

(3) An application for approval of land acquisitions undertaken pursuant to 40 U.S.C. 8731–8732.

### § 601.5 Lead Agency obligations.

(a) The obligations of a Federal Agency applicant designated as the Lead Agency in accordance with § 601.4(a) shall include, without limitation, the following:

(1) Act as Lead Agency as defined in 40 CFR 1501.5 for the NEPA process.

(2) Designate NCPC to participate as a Co-lead or Cooperating Agency and consult with Commission staff as early as possible in the planning process to obtain guidance with respect to the goals, objectives, standards, purpose, need, and alternatives for the NEPA analysis.

(3) Invite affected federal, state, regional and local agencies, and other potentially interested parties to participate as a Cooperating Agency in the NEPA process.

(4) Consult with the affected agencies and entities as early as possible in the planning process to obtain guidance on the goals, objectives, standards, purpose, need, and alternatives for the NEPA analysis.

(5) Work with Cooperating Agencies and stakeholders, *e.g.*, those with a direct stake in the outcome, in the following manner:

(i) Keep them informed on the project schedule and substantive matters; and

(ii) Allow them an opportunity to review and comment within reasonable time frames on, without limitation, Public Scoping notices; technical reports; public materials (including responses to comments received from the public); potential mitigation measures; the draft EA or EIS; and the draft FONSI or ROD.

(6) Prepare the appropriate NEPA Document consistent with the applicant's NEPA regulations, the requirements of this part, and CEQ regulations.

(7) Determine in its NEPA Document whether an action will have an adverse

environmental impact or would limit the choice of reasonable alternatives under 40 CFR 1505.1(e) and take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

(8) Prepare, make available for public review, and issue a FONSI or ROD.

(9) Ensure that the draft and final EIS comply with the requirements of 40 CFR 1506.5(c) and include a disclosure statement executed by any contractor (or subcontractor) under contract to prepare the EIS document and that the disclosure appears as an appendix to the EIS.

(10) Compile, maintain, and produce the Administrative Record.

(11) Provide periodic reports on implementation of Mitigation measures to NCPC and other Cooperating Parties consistent with a schedule established in the NEPA Document.

(12) Re-evaluate and update NEPA documents that are five or more years old as measured from the time of their adoption when either or both of the following criteria apply:

(i) There are substantial changes to the proposed action that are relevant to environmental concerns; and

(ii) There are significant new circumstances or information that are relevant to environmental concerns and have a bearing on the proposed action or its impacts.

(13) Consult with NCPC on the outcome of the re-evaluation of its NEPA Document; provided that the NCPC reserves the right to make the final determination as to whether a Lead Agency's NEPA document requires updating.

(b) When NCPC serves as Lead Agency in accordance with § 601.4(b), in addition to the obligations listed in paragraphs (a)(1) through (12) of this section, NCPC may:

(1) Ask applicants, at its sole discretion, to enter into a MOU. The MOU may be prepared as a programmatic MOU that addresses a uniform approach for the treatment of all applications from a particular applicant or address a specific application. The request to enter into a project specific MOU shall be made after a determination is made as to the inability to utilize a CATEX. A MOU shall specify, without limitation, project information; roles and responsibilities; project timelines and schedules; principal contacts and contact information; and a mechanism for resolving disputes.

(2) Request assistance from a Non-federal Agency applicant with the preparation of a NEPA Document. If requested by NCPC, the assistance shall

include the provision of funding for a contractor retained by NCPC to prepare the requisite NEPA document. When Non-federal Agency financial assistance is requested, NCPC shall invite the Non-federal Agency applicant to participate in the procurement process to select the contractor.

(3) Require Non-federal Agency applicants to submit periodic reports on implementation of Mitigation measures to NCPC consistent with a schedule established in the NEPA Document.

#### **§ 601.6 Resolving disputes over Lead Agency status.**

(a) In the event of a dispute with a Federal Agency applicant or a Non-federal Agency applicant over Lead Agency status, the parties shall use their best efforts to cooperatively resolve disputes at the working levels of their respective agencies and, if necessary, by escalating such disputes within their respective agencies.

(b) If internal resolution at higher agency levels proves unsuccessful, at NCPC's sole discretion, one of the following actions shall be pursued: the parties shall request CEQ's determination on which agency shall serve as Lead, NCPC shall prepare its own NEPA Document, or NCPC shall decline to take action on the underlying application.

(c) Disputes other than those relating to the designation of Lead Agency status or Cooperating Status as described in § 601.7(b), shall be governed by the requirements of subpart G of this part.

#### **§ 601.7 Cooperating Agencies.**

(a) When a Federal Agency applicant serves as the Lead Agency, NCPC shall act as a Cooperating Agency. As a Cooperating Agency, NCPC shall, without limitation, undertake the following:

(1) Act as a Cooperating Agency as described in 40 CFR 1501.6.

(2) Assist in the preparation of and sign a MOU if requested by the Lead Agency. At the lead agency's discretion, the MOU may be prepared as a programmatic MOU that addresses a uniform approach for the treatment of all applications where NCPC serves as a cooperating agency or address a specific application. The request to enter into a project specific MOU shall be made after a determination is made as to the inability to utilize a CATEX.

(3) Participate in the NEPA process by providing comprehensive, timely reviews of and comments on key NEPA materials including, without limitation, Public Scoping notices; technical reports; documents (including responses to comments received from the public);

the draft and final EA or EIS; and the FONSI or ROD.

(4) Supply available data, assessments, and other information that may be helpful in the preparation of the NEPA Document or the Administrative Record in a timely manner.

(5) Make an independent evaluation of the Federal Agency applicant's NEPA Document and take responsibility for the scope and contents of the EIS or EA when it is sufficient as required by 40 CFR 1506.5.

(6) Prepare and sign a ROD or FONSI or, if NCPC concurs with the contents of the document, co-sign the Federal Agency's ROD or FONSI.

(7) Provide documentation as requested and as needed by the Lead Agency for the Administrative Record.

(b) In the event a Federal Agency applicant fails to allow NCPC to participate in a meaningful manner as a Cooperating Agency, the parties shall agree to use their best efforts to cooperatively resolve the issue at the working levels of their respective agencies, and, if necessary, by escalating the issue within their respective agencies. If internal resolution at higher agency levels is unsuccessful, NCPC at its sole discretion shall either require the parties to seek mediation, prepare its own NEPA Document either as a stand-alone document or a supplement to the Federal Agency applicant's NEPA Document, or take no action on the underlying application.

(c) When NCPC serves as Lead Agency on behalf of Non-federal Agency applicant, the Non-federal Agency applicant shall serve as a Cooperating Agency and comply with the requirements of paragraphs (a)(1) through (4) and (7) of this section. Non-federal Agency applicants shall extend all assistance necessary to facilitate NCPC's compliance with NEPA including the provision of funding for consultant services if requested.

#### **Subpart C—NEPA Submission Schedules**

##### **§ 601.8 NEPA submission schedule for applications governed by the National Capital Planning Act.**

(a) Federal Agency and Non-federal Agency applicants shall comply with NEPA for the following types of projects:

(1) Projects requiring Commission approval; and

(2) Master plans requiring Commission action with future projects requiring subsequent Commission approval; provided that:

(i) The applicant intends to submit individual projects depicted in the

master plan to the Commission within five years of the date of Commission action on the master plan; and

(ii) The applicant intends to use the master plan EA or EIS to satisfy its NEPA obligation for specific projects referenced in the master plan.

(b) When Federal Agency and Non-federal Agency applicants submit projects of the type described in paragraph (a) of this section, the applicant shall submit the NEPA documentation timed to coincide with the Commission's review stages as set forth in paragraphs (c) through (f) of this section.

(c) *Concept review.* If NCPC's Submission Guidelines require review at the concept stage, the NEPA Public Scoping process shall have been initiated before the applicant submits an application for concept review. Available NEPA documentation, including a CATEX determination, shall be included in the application to facilitate effective Commission concept review.

(d) *Preliminary review.* An applicant shall have issued or published its Draft NEPA Document before the applicant submits an application for preliminary review. The NEPA information shall be provided to the Commission to facilitate the Commission's preliminary review and the provision of meaningful Commission comments and direction.

(e) *Final review.* The responsible Lead Agency shall complete and sign the final determination ROD or a FONSI) resulting from the NEPA Document before the applicant submits an application for final review. If NCPC is not the Lead Agency for NEPA, it shall at the time of final review undertake the steps outlined in § 601.7(a)(5) and (6). If applicable, the Section 106 consultation process required by the NHPA shall also be complete at this stage.

(f) *Deviations from the submission schedule for emergency circumstances.*

(1) This paragraph (f) applies when the following three conditions exist:

(i) NCPC is the Lead Agency;

(ii) Emergency Circumstances exist; and

(iii) An Extraordinary Circumstance as set forth in § 601.11 is present that precludes use of a CATEX.

(2) When the three conditions described in paragraphs (f)(1)(i) through (iii) of this section exist, the Executive Director shall make a determination as to whether the CATEX can or cannot be applied as soon as practicable. If the Executive Director determines a CATEX may not be applied, he/she shall take one of the steps indicated in paragraph (f)(2)(i) or (ii) of this section.

(i) When Emergency Circumstances render it necessary to take an action that requires an EA before the EA can be competed, the Executive Director shall develop alternative arrangements focused on minimizing environmental impacts of the proposed action. These steps shall follow those normally undertaken for an EA, to include, to the maximum extent practicable, preparation of a document with appropriate content, interagency coordination, and public notification and involvement. The Commission shall grant approval for the alternative arrangement. At the earliest opportunity, the Executive Director shall advise CEQ of the alternative arrangement.

(ii) Where Emergency Circumstances make it necessary for the Commission to take an action with significant environmental impacts without observing the rules of this part and CEQ's regulations, the Executive Director shall advise the Commission of the situation. Thereafter, as soon as practicable, the Executive Director shall consult with CEQ regarding alternative arrangements for complying with NEPA.

**§ 601.9 NEPA submission schedule for applications governed by the Commemorative Works Act.**

(a) When, pursuant to the Commemorative Works Act, NPS or GSA submits an application to the Commission for approval of a site and design for a commemorative work, the applicant shall be required to comply with NEPA and submit the NEPA documentation timed to coincide with the Commission's review stages as set forth in paragraphs (b) through (e) of this section.

(b) *Concept site review.* (1) If NCPC's Submission Guidelines require concept site review, the NEPA Scoping Process shall have been initiated before NPS or GSA submits an application to the Commission for concept site review. Available NEPA documentation for all concept sites shall be included in the application to facilitate effective Commission concept review.

(2) The Commission shall provide comments to NPS or GSA on the multiple sites to assist the applicant in selecting a preferred site.

(c) *Concept design review for preferred sites.* (1) If NCPC's Submission Guidelines require concept design review, the NEPA Public Scoping Process shall have been initiated before NPS or GSA submits an application to the Commission for a concept design review. Available NEPA documentation shall be included in the application to

facilitate effective Commission concept review.

(2) The Commission shall provide comments to NPS or GSA on the preferred site(s) and the concept designs for each site to facilitate selection of a preferred site and refinement of the memorial design for that site. The Commission may impose conditions on or establish guidelines for the applicant to follow in preparing its preliminary and final commemorative work design to avoid, minimize or mitigate environmental impacts including adverse effects on historic properties.

(d) *Preliminary site and design review.*

(1) NPS or GSA shall have issued or published its Draft NEPA Document for the site selection process and the memorial design and shall have initiated the requisite public comment period before the applicant submits an application for preliminary site and design approval. The NEPA information shall be provided to the Commission to facilitate the Commission's preliminary review and the provision of meaningful Commission comments and directions.

(2) The Commission shall take an appropriate action on the preferred site and preliminary design and provide comments to the applicant on the preliminary design to assist the applicant's preparation of a final design.

(e) *Final site and design review.* The final environmental determination (ROD or FONSI) applicable to both the site selection and memorial design shall be completed and signed by NPS or GSA before the applicant submits an application for final review. NCPC shall have either co-signed the NPS or GSA ROD or FONSI or prepared and signed its own independent document. If applicable, the Section 106 consultation process required by the NHPA shall also be complete at this stage.

**Subpart D—Initiating the NEPA Process**

**§ 601.10 Characteristics of Commission actions eligible for a Categorical Exclusion.**

(a) A categorical exclusion is a type of action that does not individually or cumulatively have a significant effect on the human environment and which has been found to have no such effect by NCPC.

(b) Actions that generally qualify for application of a categorical exclusion and do not require either an EA or an EIS exhibit the following characteristics:

- (1) Minimal or no effect on the human environment;
- (2) No significant change to existing environmental conditions;
- (3) No significant cumulative environmental impacts; and

(4) Similarity to actions previously assessed in an EA concluding in a FONSI and monitored to confirm the FONSI.

**§ 601.11 Extraordinary Circumstances.**

(a) Before applying a CATEX listed in § 601.12, the Executive Director shall consider whether a project or plan requires additional environmental review or analysis due to the existence of Extraordinary Circumstances. If any of the Extraordinary Circumstances listed in paragraphs (b)(1) through (10) of this section are present, the Executive Director shall direct staff to undertake a preliminary analysis to determine if the presence of the Extraordinary Circumstances negates the application of a CATEX. If the preliminary analysis determines application of a CATEX is not appropriate, the Executive Director shall see that the proper NEPA Document is prepared and made available to the Commission before the Commission takes action on the matter. If the Extraordinary Circumstance does not negate application of a CATEX, the appropriate CATEX shall be applied and its application documented for the record.

(b) Extraordinary Circumstances that may negate the application of a CATEX include:

(1) A reasonable likelihood of significant impact on public health or safety.

(2) A reasonable likelihood of significant environmental impacts on sensitive resources unless the impact has been resolved through another processes to include, without limitation, Section 106 of the NHPA.

Environmentally sensitive resources include without limitation:

(i) Proposed federally listed, threatened or endangered species or their designated critical habitats.

(ii) Properties listed or eligible for listing on the National Register of Historic Places.

(iii) Areas having special designation or recognition based on federal law or an Executive Order, to include without limitation, National Historic Landmarks, floodplains, wetlands, and National Parks.

(iv) Cultural, scientific or historic resources.

(3) A reasonable likelihood of effects on the environment that are risky, highly uncertain, or unique.

(4) A reasonable likelihood of violating an Executive Order, or federal, state or local law or requirements imposed for the protection of the environment.

(5) A reasonable likelihood of causing a significant increase in surface



transportation congestion, disruption of mass transit, and interference with pedestrian and bicycle movements.

(6) A reasonable likelihood of significantly degrading air quality or violating air quality control standards under the Clean Air Act (42 U.S.C. 7401–7671q).

(7) A reasonable likelihood of significantly impacting water quality, public water supply systems, or state or local water quality control standards under the Clean Water Act (33 U.S.C. 1251 *et seq.*) and the Safe Drinking Act (42 U.S.C. 300f).

(8) A reasonable likelihood of a disproportional high and adverse effect on low income and minority populations.

(9) A reasonable likelihood of degrading existing unsatisfactory environmental conditions.

(10) A reasonable likelihood of establishing a precedent for future action or making a decision in principle about future actions with potentially significant environmental effects.

(c) The Executive Director shall include in his EDR, or the documentation of a Delegated Action, his/her decision to apply or not apply a Categorical Exclusion because of Extraordinary Circumstances and the rationale for this decision.

#### **§ 601.12 National Capital Planning Commission Categorical Exclusions.**

Commission actions that may be categorically excluded and normally do not require either an EA or an EIS include:

(a) Approval of the installation or restoration of onsite primary or secondary electrical distribution systems including minor solar panel arrays.

(b) Approval of the installation or restoration of minor site elements, such as but not limited to identification signs, sidewalks, patios, fences, curbs, retaining walls, landscaping, and trail or stream improvements. Additional features include water distribution lines and sewer lines which involve work that is essentially replacement in kind.

(c) Approval of the installation or restoration of minor building elements, such as, but not limited to windows, doors, roofs, building signs, and rooftop equipment and green roofs.

(d) Adoption of a Federal Element of the Comprehensive Plan or amendment thereto or broad based policy or feasibility plans prepared and adopted by the Commission in response to the Comprehensive Plan.

(e) Approval of an action proposed by a District of Columbia agency which the agency has determined is not a major

action significantly affecting the quality of the human environment or is designated an exclusion in accordance with the requirements and procedures of DC Code. 8–109.06 and any regulations adopted to implement the referenced statutory provision.

(f) Approval of changes to highway plans for portions of the District of Columbia prepared by the Mayor, pursuant to D.C Code. 9–103.02, subject to documentation by the District that such plans involve no major traffic volume increase, have minimal or no effect on the environment, result in no significant change to existing environmental conditions, and impose no significant cumulative environmental impact associated with the action associated with the action as demonstrated in accordance with the requirements and procedures of DC Code. 8–109.01 *et seq.* and any regulations adopted to implement the referenced statutory provisions.

(g) Approval of the sale by the Secretary of the Interior of parcels of real estate held by the United States in the District of Columbia under the jurisdiction of NPS that are no longer needed for public purposes pursuant to 40 U.S.C. 8735. Such an action shall be accompanied by a NPS NEPA determination that demonstrates minimal or no effect on the environment, no significant change to existing environmental conditions, and no significant cumulative environmental impact associated with the action.

(h) Approval of the exchange of parcels of District-owned land, or part thereof, for an abutting lot or parcel of land, or part thereof pursuant to DC Code. 10–901, when such plans involve minimal or no effect on the environment, no significant change to existing environmental conditions, and no significant cumulative environmental impact associated with the action as demonstrated in accordance with the requirements and procedures of DC Code 8–109.01 *et seq.* and any regulations adopted to implement the referenced statutory provisions.

(i) Approval of the installation of communication antennae on federal buildings and co-location of communication antennae on federal property consistent with GSA Bulletin FMR D–242, Placement of Commercial Antennas on Federal Property.

(j) Approval of new construction, building expansion, or improvements to existing facilities, when:

(1) The new structure and proposed use are in compliance with local planning and zoning and any applicable

District of Columbia, state, or federal requirements.

(2) The site and the scale of construction are consistent with those of existing adjacent or nearby buildings.

(3) The proposed use will not substantially increase the number of motor vehicles at the Facility.

(4) There is no evidence of community controversy or other environmental issues.

(k) Approval of transfers of jurisdiction pursuant to 40 U.S.C. 8421(a) that will not lead to anticipated changes in the use of land and that have no potential for environmental impact.

(l) Approval of a minor modification to a General Development Plan applicable to lands acquired pursuant to the Capper-Cramton Act, 46 Stat. 482 (1930), as amended, when no or minimal environmental impacts are anticipated.

(m) Approval of an action proposed by a Federal Agency applicant when such applicant has determined a categorical exclusion set forth in its NEPA-implementing procedures applies to the proposed action; provided the Executive Director shall review the determination as to both the applicability of the exclusion and the absence of any extraordinary circumstances.

(n) Reorganization of NCPC.

(o) Personnel actions, including, but not limited to, investigations; performance reviews; award of personal service contracts, promotions, and awards; reductions in force, reassignments and relocations; and employee supervision and training.

(p) Legal activities including, but not limited to, legal advice and opinions; litigation or other methods of dispute resolution; and procurement of outside legal services.

(q) Procurement of goods and services, transactions, and other types of activities related to the routine and continuing administration, management, maintenance and operations of the Commission or its facilities.

(r) Adoption and issuance of rules, directives, official policies, guidelines, and publications or recommendations of an educational, financial, informational, legal, technical or procedural nature.

#### **Subpart E—Environmental Assessments**

##### **§ 601.13 Characteristics of Commission actions eligible for an Environmental Assessment.**

(a) An EA is a concise document with sufficient information and analysis to enable the Executive Director to

determine whether to issue a FONSI or prepare an EIS.

(b) Commission actions that generally require an EA exhibit the following characteristics:

(1) Minor but likely insignificant degradation of environmental quality;

(2) Minor but likely insignificant cumulative impact on environmental quality; and

(3) Minor but likely insignificant impact on protected resources.

**§ 601.14 Commission actions generally eligible for an Environmental Assessment.**

Commission actions that typically require preparation of an EA include without limitation:

(a) Approval of final plans for Federal public buildings in the District of Columbia, and the provisions for open space in and around the same, pursuant to 40 U.S.C. 8722(d) and DC Code 2–1004(c), unless such plans meet the criteria of § 601.12(j).

(b) Approval of final plans for District of Columbia public buildings and the open space around them within the Central Area pursuant to 40 U.S.C. 8722(e) and DC Code 2–1004(d) unless such plans meet the criteria of § 601.12(e) or (j).

(c) Recommendations to a Federal or District of Columbia agency on any master plan or master plan modification submitted to the Commission that include proposed future projects that require Commission approval pursuant to 40 U.S.C. 8722(d)–(e) and DC Code 2–1004(c)–(d) within a five-year timeframe.

(d) Approval of a final site and design for a commemorative work authorized under the Commemorative Works Act pursuant to 40 U.S.C. 8905.

(e) Approval of transfers of jurisdiction over properties within the District of Columbia owned by the United States or the District among or between federal and District authorities, pursuant to 40 U.S.C. 8124(a), unless such transfers met the criteria of § 601.12(k).

**§ 601.15 Process for preparing an Environmental Assessment.**

An EA prepared by NCPC as the Lead Agency for a project requiring Commission approval shall comply with the following requirements:

(a) The EA shall include, without limitation, a brief discussion of the proposed action; the need for the proposed action; the environmental impacts of the proposed action; the environmental impacts of the alternatives considered; Mitigation measures, if necessary; and a list of agencies and persons consulted in preparation of the assessment.

(b) The NCPC shall involve, as appropriate, applicants; Federal and District of Columbia agencies; the public; and stakeholders (those with an economic, cultural, social, or environmental “stake” in the action) in the preparation of an EA.

(c) The NCPC, at the sole discretion of the Executive Director, may undertake Public Scoping for an action requiring an EA. The Public Scoping shall commence thirty calendar days after issuance of a public notice of NCPC’s intent to prepare an EA. The notice shall include the date, time and location of the Public Scoping meeting.

(d) The NCPC may solicit public review and comment of a Draft EA. The public comment period shall be a minimum of thirty calendar days. The public comment period shall begin when the Executive Director announces the availability of the Draft EA on the NCPC Web site ([www.ncpc.gov](http://www.ncpc.gov)). The NCPC, at its sole discretion, may decline to circulate a draft EA for non-controversial projects.

**§ 601.16 Finding of No Significant Impact.**

(a) If NCPC is the Lead Agency and the final EA supports a FONSI, NCPC shall prepare and execute a FONSI. The FONSI shall be prepared following closure of the discretionary public comment period on a Draft EA, or if no circulation is deemed necessary, at the conclusion of the preparation of an EA. The FONSI shall briefly state the reasons why the proposed action will not have a significant effect on the environment and include the EA or a summary thereof, any Mitigation commitments, and a schedule for implementing the Mitigation commitments.

(b) If NCPC is not the Lead Agency, it shall evaluate the adequacy of the Lead Agency’s FONSI, and if determined adequate, NCPC may co-sign the Lead Agency’s FONSI. Alternatively, NCPC may prepare and execute its own FONSI consistent with the requirements of paragraph (a) of this section.

(c) A FONSI prepared by NCPC shall be available for public review seven calendar days before the Commission takes action on the underlying application.

(d) If the Commission determines a Lead Agency’s EA does not support a FONSI, either the Lead Agency shall prepare an EIS, or the Commission shall not approve or consider further the underlying application.

**§ 601.17 Supplemental Environmental Assessments.**

(a) The NCPC shall prepare a supplemental EA if five or more years have elapsed since adoption of the EA and:

(1) There are substantial changes to the proposed action that are relevant to environmental concerns; and

(2) There are significant new circumstances or information that are relevant to environmental concerns and have a bearing on the proposed action or its impacts.

(b) The NCPC may supplement a Draft or Final EA at any time to further the purposes of NEPA.

(c) The NCPC shall prepare, circulate, and file a supplement to a Draft or Final EA, and adopt a FONSI in accordance with the requirements of §§ 601.15 and 601.16. If NCPC is not the Lead Agency, it shall proceed as outlined in § 601.16(b) and (c).

**Subpart F—Environmental Impact Statements**

**§ 601.18 Requirement for and timing of an Environmental Impact Statement.**

Prior to the Commission’s approval of a major federal action significantly affecting the quality of the human environment, the Executive Director shall prepare an EIS on behalf of a Non-federal Agency applicant.

**§ 601.19 Context, intensity, and significance of impacts.**

(a) As required by 40 CFR 1508.27(a) and (b), the determination of whether an EIS is required and whether impacts are significant shall be made with consideration to the context and intensity of the impacts associated with a proposed action.

(b) The significance of an action is determined in the context of its effects on society as a whole, the National Capital Region and its environs, the particular interests affected, and the specific locality or area within which the proposed action is located. The context will vary from project to project and will be based on the type, attributes, and characteristics of a particular proposal.

(c) The significance of an action is also determined based on the severity of impacts imposed by the proposal. Severity shall be determined based on an evaluation of a proposal in the manner outlined in 40 CFR 1508.27(b)(1) through (10). The evaluation shall also be informed by the relevant policies of “The Comprehensive Plan for the National Capital: Federal Elements” and other applicable Commission plans and programs. Proposed actions that conflict

with or delay achievement of the goals and objectives of Commission plans and programs are generally more likely to be found to have significant impacts than proposals that are consistent with Commission plans and programs.

(d) Proposed actions shall also be deemed significant and require an EIS if they exhibit the following characteristics:

(1) The proposed action results in extensive change to the Monumental Core.

(2) The proposed action causes substantial alteration to the important historical, cultural, and natural features of the National Capital and its Environs.

(3) The proposed action is likely to be controversial because of its impacts on the human environment.

#### **§ 601.20 Streamlining Environmental Impact Statements.**

The NCPC as Lead Agency shall use all available techniques to minimize the length of an EIS. Such techniques include, without limitation, drafting an EIS in clear, concise language; preparing an analytic vs. encyclopedic EIS; reducing emphasis on background information; using the scoping process to emphasize significant issues and de-emphasize non-significant issues; incorporating relevant information by reference; using a programmatic EIS and tiering to eliminate duplication in subsequent EISs; and following the format guidelines of § 601.22.

#### **§ 601.21 Programmatic Environmental Impact Statements and tiering.**

(a) The NCPC shall prepare a programmatic NEPA Document (Programmatic EA or PEA or Programmatic EIS or PEIS) to assess the impacts of proposed projects and plans when there is uncertainty regarding the timing, location and environmental impacts of subsequent implementing actions. At the time NCPC undertakes a site or project specific action within the parameters of the PEA or PEIS, NCPC shall tier its NEPA Document by summarizing information in the PEIS or PEA, as applicable, and concentrate on the issues applicable to the specific action.

(b) A PEIS or PEA prepared by NCPC shall be governed by the CEQ regulations and the rules of this part.

#### **§ 601.22 Contents of an Environmental Impact Statement.**

When NCPC serves as Lead Agency for an EIS, the following information shall be included in the EIS:

(a) A cover sheet. The cover sheet shall be one-page and include a list of responsible and Cooperating Agencies; the title of the proposed action that is

the subject of the EIS; the name, address, and telephone number of the NCPC point of contact; the designation as to whether the statement is draft, final, or draft or final supplement; a one paragraph abstract of the EIS; and the date by which comments must be received.

(b) A summary. The summary shall accurately summarize the information presented in the EIS. The summary shall focus on the main conclusions, areas of controversy, and the issues to be resolved. The summary shall not exceed fifteen pages.

(c) A table of contents. The table of contents shall allow a reader to quickly locate subject matter in the EIS—either by topic area and/or alternatives analyzed.

(d) The purpose and need. A statement of the purpose of and need for the action briefly stating the underlying purpose and need to which the agency is responding.

(e) The identification of alternatives including the proposed action. This section shall provide a brief description and supporting documentation for all alternatives including the proposed action; the no action alternative; all reasonable alternatives including those not within the jurisdiction of the agency; alternatives considered but eliminated and the reason for their elimination; the agency's preferred alternative, if one exists; the environmentally preferred alternative; and Mitigation measures not already included in the proposed action.

(f) The identification of the affected environment. This section shall provide a succinct description of the environment to be affected by the proposed action and the alternatives considered. This section shall include, if applicable, other activities in the area affected by or related to the proposed action.

(g) The identification of environmental consequences. This section shall focus on the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible commitments of resources which would be involved if the proposal is implemented. The impacts shall be discussed in terms of direct, indirect and cumulative effects and their significance, as well as any appropriate means to mitigate adverse impacts. The discussion shall also include issues and impact topics

considered but dismissed to reveal non-impacted resources. Resource areas and issues requiring consideration shall include those identified in the scoping process, and, without limitation, the following:

(1) Possible conflicts between the proposed action and the land use plans, policies, or controls (local, state, or Indian tribe) for the area concerned.

(2) Natural and biological resources including topography, hydrology, soils, flora, fauna, floodplains, wetlands, and endangered species.

(3) Air quality.

(4) Noise.

(5) Water resources including wastewater treatment and storm water management.

(6) Utilities including energy requirements and conservation.

(7) Solid waste and hazardous waste generation/removal.

(8) Community facilities.

(9) Housing.

(10) Transportation network.

(11) Socio-cultural and economic environments.

(12) Environmental Justice and the requirements of Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations).

(13) Urban quality and design of the built environment including visual resources and aesthetics.

(14) Historic and cultural resources to include documentation of the results of the Section 106 Consultation process.

(15) Public health and safety.

(h) A list of preparers. This list shall include all pertinent organizations, agencies, individuals, and government representatives primarily responsible for the preparation of the EIS and their qualifications.

(i) An index. The index shall be structured to reasonably assist the reader of the Draft or Final EIS in identifying and locating major topic areas or elements of the EIS information. The level of detail of the index shall provide sufficient focus on areas of interest to any reader not just the most important topics.

(j) An appendix. The appendix shall consist of material prepared in connection with an EIS (as distinct from material which is incorporated by reference) and material which substantiates any analysis fundamental to the EIS. The material in the appendix shall be analytical and relevant to the decision to be made. The appendix shall be circulated with the EIS or be readily available upon request.

**§ 601.23 The Environmental Impact Statement process.**

(a) The NCPC shall involve the applicant, Federal and District of Columbia agencies, members of the public and stakeholders in the preparation of an EIS. Public participation shall be required as part of Public Scoping process and review of the Draft EIS. The NCPC shall also consult with agencies having jurisdiction by law or expertise. Agencies with “jurisdiction by law” are those with ultimate jurisdiction over a project and whose assistance may be required on certain issues and those with other kinds of regulatory or advisory authority with respect to the action or its effects on particular environmental resources.

(b) To determine the scope of an EIS through a Public Scoping process, NCPC shall proceed as follows:

(1) Disseminate a NOI in accordance with 40 CFR 1506.6.

(2) Publish a NOI in the **Federal Register** which shall begin the Public Scoping process.

(3) Include the date, time, and location of a Public Scoping meeting in the NOI. The public meeting shall be announced at least thirty calendar days in advance of its scheduled date.

(4) Hold Public Scoping meeting(s) in facilities that are accessible to the disabled; include Translators requested in advance; include signers or interpreters for the hearing impaired if requested in advance; and allow special arrangements for consultation with affected Indian tribes or other Native American groups who have environmental concerns that cannot be shared in a public forum.

(5) Consider all comments received during the announced comment period regarding the analysis of alternatives, the affected environment, and identification of potential impacts.

(6) Apply the provisions of this section to a Supplemental EIS if the Executive Director of NCPC, in his/her sole discretion, determines a Public Scoping process is required for a Supplemental EIS.

(c) A Draft EIS shall be available to the public for their review and comment, for a period of not less than forty-five calendar days. The public comment period shall begin when EPA publishes a NOA of the document in the **Federal Register**. The NCPC shall hold at least one public meeting during the public comment period on a Draft EIS. The public meeting shall be announced at least thirty calendar days in advance of its scheduled occurrence. The announcement shall identify the subject

of the Draft EIS and include the public meeting date, time, and location.

**§ 601.24 Final Environmental Impact Statement.**

(a) The NCPC shall prepare a Final EIS following the public comment period and the public meeting(s) on the Draft EIS. The Final EIS shall respond to oral and written comments received during the Draft EIS public comment period.

(b) The Commission shall take final action on an application following a thirty-day Commission-sponsored review period of the Final EIS. The thirty-day period shall start when the EPA publishes a NOA for the Final EIS in the **Federal Register**.

**§ 601.25 Record of Decision.**

(a) If NCPC as the Lead Agency decides to recommend approval of a proposed action covered by an EIS, it shall prepare and sign a ROD stating the Commission’s decision and any conservation or Mitigation measures required by the Commission. The ROD shall include among others:

(1) A statement of the decision.

(2) The identification of alternatives considered in reaching a decision specifying the alternatives that were considered to be environmentally preferable. The ROD shall discuss preferences among alternatives based on relevant factors including economic and technical planning considerations and the Commission’s statutory mission. The ROD shall identify those factors balanced to reach a decision and the influence of various factors on the decision.

(3) A statement as to whether all practicable means to avoid or minimize environmental harm from the alternative selected has been adopted, and if not, why they are not.

(4) A monitoring and enforcement program that summarizes Mitigation measures.

(5) Date of issuance.

(6) Signature of the Chairman.

(b) The contents of the ROD proposed for Commission adoption shall be summarized in the EDR and a full version of the document shall be included as an Appendix to the EDR. The proposed ROD, independently of the EDR, shall be made available to the public for review fourteen calendar days prior to the Commission’s consideration of the proposed action for which the EIS was prepared.

(c) The Commission shall arrive at its decision about the proposed action and its environmental effects in a public meeting of record as identified by the Commission’s monthly agenda.

(d) If NCPC is not the Lead Agency, it shall either co-sign the Lead Agency’s ROD if it agrees with its contents and conclusions or it shall prepare and sign its own ROD consistent with the requirements of paragraph (a) of this section.

(e) If the Commission determines a Lead Agency’s EIS fails to support a ROD, the Lead Agency shall revise its EIS, or, alternatively, the Commission shall not approve or give any further consideration to the underlying application.

**§ 601.26 Supplemental Environmental Impact Statement.**

(a) The NCPC shall prepare a supplemental EIS if five or more years has elapsed since adoption of the EIS and:

(1) There are substantial changes to the proposed action that are relevant to environmental concerns; and

(2) There are significant new circumstances or information that are relevant to environmental concerns and have a bearing on the proposed action or its impacts.

(b) The NCPC may supplement a Draft or Final EIS at any time, to further the purposes of NEPA.

(c) The NCPC shall prepare, circulate, and file a supplement to a Draft or Final EIS in accordance with the requirements of §§ 601.22 through 601.24 of this part except that Public Scoping is optional for a supplemental EIS.

(d) The NCPC shall prepare a ROD for a Supplemental EIS. The ROD’s contents, the procedure for public review, and the manner in which it shall be adopted shall be as set forth in § 601.25.

**§ 601.27 Legislative Environmental Impact Statement.**

(a) Consistent with 40 CFR 1506.8, the Executive Director shall prepare an EIS for draft legislation initiated by NCPC for submission to Congress. The EIS for the proposed legislation shall be included as part of the formal transmittal of NCPC’s legislative proposal to Congress.

(b) The requirements of this section shall not apply to legislation Congress directs NCPC to prepare.

**Subpart G—Dispute Resolution****§ 601.28 Dispute resolution.**

Any disputes arising under this part, shall be resolved, unless otherwise stated, by the parties through interagency, good faith negotiations starting at the working levels of each agency, and if necessary, by escalating such disputes within the respective agencies. If resolution at higher levels is

unsuccessful, the parties shall resort to mediation.

**§ 601.29 [Reserved]**

Dated: May 23, 2017.

**Anne R. Schuyler,**  
General Counsel.

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**BILLING CODE P**

**DEPARTMENT OF ENERGY**

**2 CFR Chapter IX**

**5 CFR Chapter XXIII**

**10 CFR Chapters II, III and X**

**41 CFR Chapter 109**

**48 CFR Chapter 9**

**Reducing Regulation and Controlling Regulatory Costs**

**AGENCY:** Office of the Secretary, Department of Energy.

**ACTION:** Request for information (RFI).

**SUMMARY:** As part of its implementation of Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” issued by the President on January 30, 2017, the Department of Energy (DOE) is seeking comments and information from interested parties to assist DOE in identifying existing regulations, paperwork requirements and other regulatory obligations that can be modified or repealed, consistent with law, to achieve meaningful burden reduction while continuing to achieve the Department’s statutory obligations. **DATES:** Written comments and information are requested on or before July 14, 2017.

**ADDRESSES:** Interested persons are encouraged to submit comments, identified by “Regulatory Burden Reduction RFI,” by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Email:* [Regulatory.Review@hq.doe.gov](mailto:Regulatory.Review@hq.doe.gov). Include “Regulatory Burden RFI” in the subject line of the message.

*Mail:* U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., Room 6A245, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Daniel Cohen, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586-5000. Email: [Regulatory.Review@hq.doe.gov](mailto:Regulatory.Review@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** On January 30, 2017, the President issued Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. Toward that end, for fiscal year 2017, E.O. 13771 requires:

(1) “Unless prohibited by law, whenever an executive department or agency . . . publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.” Sec. 2(a).

(2) “For fiscal year 2017, . . . the heads of all agencies are directed that the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by the Director of the Office of Management and Budget . . .” Sec. 2(b).

(3) “In furtherance of the requirement of subsection (a) of this section, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.” Sec. 2(c).

Further, the Executive Order requires that for fiscal year 2018, and for each fiscal year thereafter, the head of each agency shall identify, for each regulation that increases incremental cost, offsetting regulations, and provide the agency’s best approximation of the total costs or savings associated with each new regulation or repealed regulation. During the Presidential budget process beginning in fiscal year 2018 and for each year thereafter, the Director of the Office of Management and Budget (Director) will identify to each agency a total amount of incremental costs that will be allowed for such agency in issuing new regulations and repealing regulations for the next fiscal year. No regulations exceeding the agency’s total incremental cost allowance will be permitted in that fiscal year, unless required by law or approved in writing by the Director. The total incremental cost allowance may allow an increase or require a reduction in total regulatory cost.

Additionally, on February 24, 2017, the President issued Executive Order 13777, “Enforcing the Regulatory Reform Agenda.” The Order required

the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO shall oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force will make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force shall attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified. Finally, on March 28, 2017, the President signed Executive Order 13783, entitled “Promoting Energy Independence and Economic Growth. Among other things, E.O. 13783 requires the heads of agencies to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. Such review does not include agency actions that are mandated by law, necessary for the public interest, and consistent with the policy set forth elsewhere in that order.

Executive Order 13783 defined burden for purposes of the review of existing regulations to mean to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources.

To implement these Executive Orders, the Department is taking two immediate steps. *First*, as described further below,