



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

Reply To
Attn Of: ECO-088

Re: 02-078-AFS

April 18, 2003

Rick Elton
Toolbox Fire Recovery Project ID Team Leader
Silver Lake Ranger District
Fremont National Forest
P.O. Box 129
Silver Lake, OR 97638

We have reviewed the Federal Register Notice of Intent (NOI) to prepare Draft Environmental Impact Statements (DEIS) for the proposed **Toolbox Fire Recovery Project**. All proposed projects are located within the Fremont National Forest. Our review of the NOI was conducted in accordance with our responsibilities under National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act.

Section 309 specifically directs EPA to review and comment in writing on the environmental impacts associated with all major federal actions. Although our Section 309 and NEPA reviews are independent, we conduct both at the same time. Our review considers not only the impact to the environment but also the adequacy of the document to meet the requirements of NEPA. We offer these comments early in the NEPA process to help improve the proposed project and ensure that a good NEPA document is developed. We have enclosed a copy of *EPA's Section 309 Review: The Clean Air Act and NEPA* which provides further elaboration of our EIS review responsibilities.

The NOI states that the Toolbox Fire Recovery Project (Project) will encompass approximately 48,000 acres of 85,000 that had burned in 2002 within the Fremont National Forest of southern Oregon. The proposed project consists of salvage harvesting of commercial timber, riparian restoration and reforestation activities, revegetation of burned areas, and road reconstruction and decommissioning.

Forest fires are considered as a common, yet single most pervasive disturbance in many of the world's forest types (Perry, 1994). Wildfires are an essential natural process, improving health and providing rejuvenation to the forests of Western United States (Kohn and Franklin, 1997). While wildfires are a great diversifying agent, we support integrating fire management with post-disturbance and ecosystem management. Therefore the proposal to prepare this Project should be

viewed as a land management planning document for post-disturbance logging within the Silver Lake Ranger District.

In general, the DEIS must comply with the direction contained within 40 CFR 1500.1 (Purpose) and 1500.2 (Policy) under NEPA regulations. The regulations instruct that the primary purpose of NEPA is "to ensure that environmental information is available to public officials and citizens before decisions are made," and that those decisions should be "based on understanding of environmental consequences ..." Section 40 CFR 1500.2 (b) states that, "The EIS ...shall be supported by evidence that agencies have made the necessary environmental analyses."

The scoping comments that follow are provided to inform the Forest Service (FS) of issues that EPA believes to be significant and warrant explicit treatment during the NEPA process. In providing these comments, our goal is to have these issues addressed in the draft EIS.

Purpose and Need Statement

The DEIS should crafting a clear and succinct statement of the underlying purpose and need for the proposed project consistent with the implementing regulations of NEPA (40 CFR 1502.13) which will support the primary issues and the development of alternatives for the EIS.

As the US Forest Service (USFS) moves ahead in drafting the EIS, the document should not loose sight that the EIS is a decision making tool covering additional elements and factors as required under NEPA and other federal laws. The DEIS should follow Section 40 CFR 1502.1 which directs the lead agency to be consistent with the NEPA process to provide a full and fair discussion of all environmental impacts within the project area. In addition, we recommend that ecological restoration activities be given equal weight in the Statement to support the goals of sustainable forestry without impairing the productivity of the land (Multiple-Use, Sustained-Yield Act of 1960) while supporting the policies of promoting a sound technical and ecological basis for effective management (National Forest Management Act of 1976).

Given the size of this project area and the numerous goals and objectives in the Notice of Intent, a concise statement is of critical importance to setting up the analysis of alternatives, which could range from too tightly focused to too broad, depending on how the statement is written. Therefore, we recommend writing a short, yet direct, Purpose and Need Statement (Statement) that clearly states what the driving factors are for the project. Make the Statement about one to two sentences long; then, follow it with more in-depth discussion. The importance of the Statement is that it establishes directions and parameters for considering the alternatives. As a suggestion, one plausible method to develop a succinct and understandable Statement is to address its three elements: The Purpose, the Need, and Goals and Objectives. The Purpose defines the problem to be solved. The Need provides data to support the problem statement (Purpose). The Goals and Objectives describe other supplemental and complementary issues that need to be resolved for a successful solution to the problem.

Salvage Logging

Stand replacing wildfires reduce soil binding capacity of roots, while intense winter rainstorms saturate soils, causing concentrated landsliding and debris flows into streams. These immediate impacts of fire (direct mortality, habitat destruction) may be negative, but long term effects as the introduction of essential elements of stream channels such as large woody debris and coarse sediments can be positive. (Reeves et al. 1995). Salvage logging is capable of causing significant environmental impacts in part because it often takes place on sites that have suffered very recent and severe disturbance, and because it prevents processes like the introduction of woody debris and coarse sediment to streams before they can be integrated for long term benefit. Associated effects of salvage logging include soil compaction, erosion and sedimentation, decreased infiltration, increased overland flow, loss of habitat for cavity nesting species, and loss of structurally and functionally important large woody debris resulting in future degradation of aquatic systems and reduced survival of aquatic organisms. Salvage logging can also decrease future plant regeneration and can affect micro-habitat for soil microbes associated with recovery.

The NOI states salvage harvest will take place on approximately 21,500 acres, or approximately 45% of the project area. The draft EIS should discuss how much dead and live timber is being left on site, specify how salvage will occur on steep slopes, in or near riparian areas or areas where soil damage from fire was particularly severe. We recommend against salvage logging on erosive sites, fragile soils, roadless areas, riparian areas, or steep slopes. Bechsta et al.(1995) have recommended that 1) 50% of standing dead trees in each diameter class; 2) all trees greater than 20" dbh or older than 150 yrs.; and 3) all live trees should be left in place. In addition, support actions that cause additional disturbance and sedimentation in fire disturbed areas such as new road building (except to obliterate longer or deteriorated roads) and ground-based yarding should not be proposed. Active planting should not occur except where several years of data show that active regeneration is not occurring and should include regional indigenous floral species. Evidence also suggests that placement of bank hardening structures in riparian areas is not beneficial in the long term and often fail to function predictably.

Ecologically defensible limits should be established and adhered to if you decide to move forward with this part of your proposal.

Water Quality

The EIS must disclose which waterbodies may be impacted by the project, the nature of the potential impacts, and the specific pollutants likely to impair the beneficial uses of those waters. The proposed project has the potential to alter hydrologic processes, impair stream discharge, or degrade riparian and water quality. The construction of roads and the harvesting timber, including grazing and recreational activities can alter water quality. As an example, the construction of roads

can introduce and entrain sediments or alter thermal shading of streams, potentially degrading water quality and negatively impacting fish and their habitat. Specific areas are highlighted below.

303(d) Listed Waterbodies

The EIS must disclose which waterbodies may be impacted by the project, the nature of the potential impacts, and the specific pollutants likely to impact those waters. It should also report those water bodies potentially affected by the project that are listed on the State's current 303(d) list and whether Oregon Department of Environmental Quality has developed a Water Quality Restoration Plan for the waterbodies and the pollutants of concern. If a Water Quality Restoration Plan (Total Maximum Daily Load) has not been established which applies to a stream on the 303(d) list, then in the interim until one is established, it must be demonstrated that there will be no net degradation of water quality. This should be demonstrated by doing a watershed analysis. Also, the DEIS should identify other waterbodies (not just those that are listed under Section 303(d)) likely to be impacted by the project, the nature of the potential impacts, and the specific pollutants likely to impact those waters.

One of EPA's primary concerns is to prevent the degradation of water quality.

Section 303(d) of the Federal Clean Water Act (CWA) requires the State of Oregon to identify and list those waterbodies which are not meeting or not likely to meet State water quality standards. The EIS should also report those water bodies potentially affected by the project that are listed on the State's current 303(d) list, discuss the pollutants of concern, and whether Oregon Department of Environmental Quality has developed a water quality restoration plan (a load allocation plan) for any state waterbody designated as water quality limited. If a load allocation plan (Total Maximum Daily Load) has not been established for those water bodies on the 303(d) list, then in the interim until one is established, the EIS must demonstrate that there will be no net degradation of water quality to these listed waters.

Antidegradation

Antidegradation provisions of the CWA apply to those water bodies in the project area where water quality standards are currently being met. The purpose of the antidegradation provisions are to prevent the deterioration of existing levels of good water quality. This provision prohibits degrading the water quality unless an analysis shows that important economic and social development necessitates degrading water quality. The DEIS should explain how the antidegradation provisions would be met for the proposed project.

Safe Drinking Water Act (SDWA)

Public drinking water supplies and/or their source areas often exist on lands under federal management. Land management activities may impact waters that serve as the source(s) of drinking water for communities. The 1996 amendments to the SDWA requires federal agencies that manage lands which serve as drinking water sources to protect these source waters. The EIS should identify all drinking water sources, any potential contamination of these sources that may result from the proposed project, and measures that will be taken to protect these sources.

Endangered Species Act

The proposed project may impact endangered, threatened or candidate species listed under the Endangered Species Act (ESA), their habitats, as well as state sensitive species. The DEIS should identify the endangered, threatened, and candidate species listed under ESA, and disclose presence of other sensitive species within the proposed project area. In addition, to be consistent with Sections 7(a)1 and 7(a)2, the DEIS should describe the critical habitat for these species, identify any impacts the proposed project will have on these species and their critical habitat, and how it will meet all requirements under ESA, including consultation efforts with the U.S. Fish and Wildlife Service, and National Marine Fisheries Service.

Grazing

At this stage of the NEPA process, we are not clear if livestock grazing activities will continue within the post-disturbance areas. Over a century of livestock grazing has significantly damaged the ecology of forests east of the Cascade range within Oregon (Interior Columbia Basin Ecosystem Management Project, 1995). For example, livestock grazing has changed eastside forests by: 1) depleting the herbaceous vegetation layer which historically out-competed successfully conifer seedlings thereby reducing tree density and 2) removing the productive herbaceous biomass that would otherwise have promoted fuel low-intensity fires (ICPEMP, 1995).

If the proposed project would still allow for livestock grazing activities, the EIS should describe current, past and proposed grazing activities, impacts resulting from of these activities, and measures that will be taken to minimize the impacts from these activities with project implementation. The alternatives in the EIS should evaluate the extent and risks associated with continued grazing on listed, threatened, endangered or sensitive species, water and soil quality and the indirect effects of grazing through the colonization and establishment of noxious weeds. The EIS should also disclose efforts towards restoration of native habitat disrupted by the colonization and establishment of noxious weeds from grazing and other activities that may occur as a result of the proposed project.

In addition, to satisfy the intent of NEPA, we strongly recommend that the DEIS include the following measures:

- The FEIS should state if current rangeland conditions are in compliance with the Taylor Grazing Act. One of the long-term goals of this law is the improvement of rangeland conditions, specifically to "preserve the land and resources from destruction or unnecessary injury."
- The DEIS should account for special circumstances such as drought, wildfires, or reduced grazing use when necessary so as to be consistent with 43 CFR 4110.3-3 (BLM, Grazing Administration, Modifications of Permits or Leases).

Forest Ecosystem Management and Silvicultural Prescriptions

EPA encourages that the DEIS present a clear picture of the cause and extent of the burned areas, discuss the back-fires areas effected by firefighters, the age of the timber in the project area, and describe those areas impacted both by ground fires and crowned fires. Understanding the cause and intensity of the fire will help in EIS development and reviewing.

We recommend that the DEIS describe on how project proposals comply with the current forest plan. In order to understand what are the anticipated silvicultural prescriptions for the proposed salvage logging project, we recommend that the DEIS discuss the following silvicultural issues:

- Salvage logging concerns in sensitive areas, including areas where post-disturbance logging should be considered for restrictive entry.
To minimize environmental damage in a project area already impaired by wildfire, the DEIS should adequately discuss how logging will proceed in sensitive areas (i.e., severely burned areas, fragile soils, steep slopes, riparian areas, 303(d) listed waterbodies, watersheds with severe sedimentation problems, and fish population strongholds).
- Timing of project area entry and access.
The DEIS should explain the need for entry (human intervention) onto a landscape that has been recently disturbed by wildfire.
- Preserve capabilities of tree species to naturally regenerate
The DEIS should discuss how proposed prescriptions will promote and restore forest structure, composition, and function, especially in areas where stand-replacement fires occurred near or adjacent to stream corridors.
- Removal of merchantable timber.
The EIS should disclose how removal of large woody structures (including dead and dying trees) will promote desired future conditions towards the range of variability in which a historical landscape did contain legacy trees, both standing and fallen, in diverse stages of senescence.
- Habitat fragmentation and connectivity.
We recommend that the proposed project should disclose how logging prescriptions will support retention of forest structures (i.e., large snags, down logs, large organic debris on forest floor) which are importance for wildlife migration, recruitment and dispersal, rearing and feeding.
- Unique habitat assemblages
We recommend that the EIS discuss how post-disturbance logging would maintain the integrity of refugia areas for ESA or sensitive species.

- Invasive Species (IS)

There is documented evidence that IS can opportunistically spread into burned areas (Harrod, 1994). Nationally, the establishment of invasive nuisance species has rapidly become an issue of extreme environmental and economic significance. Therefore, the EIS should provide a discussion to comply with the Executive Order (EO 13112) on IS.

Roads

Forest roads have resulted in numerous and significant adverse impacts to soils, watershed hydrology and water quality (Jones and Grant, 1996), wildlife, and other biological resources (*Influences of Forest and Rangeland Management on Salmonids Fishes and their Habitats*, 1991). Roads contribute more sediment to streams per unit area is often greater than that from any other management activity (Gibbons and Salo, 1971). In addition, roads and their use contribute to habitat fragmentation, wildlife disturbance, the introduction or exacerbation of existing noxious weeds infestations, and increased fire danger from recreational activities.

The EIS should include a description of how roads in the watershed impact resources, provide the current number of road miles and density in the project area, and a discussion on the changes in road miles and density that will occur as a result of the project. In addition, the EIS should describe how this complies with the forest plan.

If the project will result in the closure of roads, then the EIS should describe the criteria used to select which roads to close, and the goals the project intends to meet by closing these roads. Criteria that might be used to close roads are the degree of sediment delivery to streams, risk of mass wasting, wildlife disturbance, risk of introduction of noxious weeds, or fire risk.

The EIS should also describe how roads will be closed. Road closures can range from administrative (signage or barricading at the road entrance to prevent off-road vehicles from entering) to obliterating, revegetating, and stabilizing the road to reduce the risk of mass wasting and to improve wildlife habitats. If the project includes administrative road closures, the EIS should describe what enforcement measures will be utilized and the monitoring program that will be implemented to ensure they are effective.

Off Road Vehicles (ORV)

Unauthorized ORV use is becoming a concern on many FS areas since unregulated and unsanctioned ORV disturbance is inconsistent with two Executive Orders (11644 and 11989). Even the CEQ has written a report (1979) stating the environmental damage that ORV's have caused on stream reaches across numerous ecosystems throughout the United States. In general, unregulated and unsanctioned motorized vehicle use on public lands is incompatible with soil and aquatic resource management. Therefore within the Project Area, the EIS should discuss how will the FS prevent both short and long-term access of unauthorized motorized traffic, especially by 4-wheel

drive vehicles (or ATVs), prevent unrestrained access across fragile soils and other sensitive areas, and effectively enforce access to restricted areas.

Direct, Indirect and Cumulative Impacts

The DEIS will be required to conduct a direct and indirect impact analysis (40 CFR 1502.16 and 40 CFR 1508.8). Indirect or secondary impacts include changes in land use. Furthermore, the DEIS will be required to conduct a cumulative impact analysis (40 CFR 1508.7).

EPA has issued guidance on how we are to provide comments on the assessment of cumulative impacts, *Consideration of Cumulative Impacts in EPA Review of NEPA Documents*, which can be found on EPA's Office of Federal Activities home page at: <http://www.epa.gov/compliance/resources/nepa.html>. The guidance states that in order to assess the adequacy of the cumulative impacts assessment, five key areas should be considered. EPA tries to assess whether the cumulative effects analysis:

1. Identifies resources if any, that are being cumulatively impacted;
2. Determines the appropriate geographic (within natural ecological boundaries) area and the time period over which the effects have occurred and will occur;
3. Looks at all past, present, and reasonably foreseeable future actions that have affected, are affecting, or would affect resources of concern;
4. Describes a benchmark or baseline;
5. Includes scientifically defensible threshold levels.

Monitoring, Evaluation and Reporting

We fully agree with Forest Service BMP 11.6 (Soil and Water Conservation Handbook, FSH 2509.22), which states that "monitoring is an essential part of all BMPs as well as the overall BMP process" and recommend that project be designed to include an effective feedback element, which includes both implementation and effectiveness monitoring. The BMP process includes the following action elements:

1. BMP design
2. BMP application
3. Monitoring
4. Evaluation
5. Reporting
6. BMP re-design (if necessary)

Without a balanced approach to each component of the BMP process, we do not believe that BMP 11.6 can be adequately implemented. We have found it extremely difficult to relate monitoring efforts undertaken as part of an area-wide or forest-wide strategy to projects such as the proposed timber salvage project. Consequently, we recommend that the project include a monitoring program designed to monitor both BMP implementation and BMP effectiveness, along with a clear description of the evaluation methodologies and reporting mechanisms to be used.

Without an integrated approach to the evaluation of the BMP "process," the effectiveness of the management practices being used to protect water quality/fish habitat on the Fremont cannot be determined in a meaningful way.

Tribal Consultation and Coordination

The proposed project may affect historical or traditional cultural places of importance to the area's Tribes. The EIS needs to identify historic resources, and assure that treaty rights, and privileges are addressed appropriately. If the proposed project will have impacts on Tribes, the development of the EIS should be conducted in consultation with all affected tribal governments, consistent with Executive Order (EO) 13175 (*Consultation and Coordination with Indian Tribal Governments*). EO 13175 states that the U.S. government will continue "to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights." Documentation of these consultations should be included in the EIS. Consistent with the July 28, 1999 memorandum from the Council on Environmental Quality (CEQ) to Heads of Federal Agencies, we strongly urge the Forest Service to consider inviting affected Tribal governments to participate in the EIS development process as cooperating agencies. This would provide for the establishment of a mechanism for addressing intergovernmental issues throughout the EIS development process.

The DEIS should disclose whether the Tribe(s) consider(s) certain sites within the project area to be "sacred sites" and provide a prescriptive accommodation plan to resolve concerns. According to Executive Order 13607, federal land managers are to "accommodate access to and ceremonial use of Indian sacred sites."

Public Participation and Environmental Justice

The EIS should disclose what efforts were taken to ensure effective public participation. In addition, if low income or people of color communities will be impacted by the proposed project, the EIS should disclose what efforts were taken to meet environmental justice requirements consistent with Executive Order (EO) 12898 (*Federal Actions to Address Environmental Justice in Minority and Low-Income Populations*). This includes that the EIS must demonstrate that communities bearing disproportionately high and adverse effects have had meaningful input into the decisions being made about the project. The EIS needs to describe what was done to inform the communities about the project and the potential impacts it will have on their communities (notices, mailings, fact sheets, briefings, presentations, exhibits, tours, news releases, translations, newsletters, reports, community interviews, surveys, canvassing, telephone hotlines, question and answer sessions, stakeholder meetings, and on scene information), what input was received from the communities, and how that input was utilized in the decisions that were made regarding the project.

We appreciate the opportunity to participate early in the scoping process. We are available to discuss issues or answer questions that arise while you develop the Draft EIS. Should you have any questions regarding our comments please contact me at (206) 553-4423 or by email at connor.tom@epa.gov.

Sincerely,



Tom Connor
NEPA Reviewer

Enclosure

EPA's Section 309 Review: The Clean Air Act and NEPA

ENVIRONMENTAL REVIEW AND THE CLEAN AIR ACT

The Clean Air Act, a law to prevent pollution of a single environmental medium, contains an unusual provision. That provision is Section 309, which authorizes the Environmental Protection Agency (EPA) to review certain proposed actions of other federal agencies in accordance with the National Environmental Policy Act (NEPA) and to make those reviews public. If the proposing agency (the "lead" agency) does not make sufficient revisions and the project remains environmentally unsatisfactory, EPA may refer the matter to the President's Council on Environmental Quality for mediation. (See Highlight A.)

HIGHLIGHT A: Section 309 of the Clean Air Act

(a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this Act or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which Section 102(2)(C) of Public Law 91-190 [*] applies, and (3) proposed regulations published by any department or agency of the Federal government. Such written comment shall be made public at the conclusion of any such review.

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

[*] NEPA (42 USC 4332(2)(C) et seq.)

Section 309 originated in 1970, the year in which landmark national legislation created new agencies and new requirements for restoring and protecting the environment. Besides NEPA and its creation of CEO, the National Oceanic and Atmospheric Administration (NOAA) and EPA

were established, and, at the end of 1970, the Clean Air Act was passed. At that time, many issues of environmental consequence were brewing (see **Highlight B**), one of which—the proposed supersonic transport aircraft (SST)—became a crucial test of NEPA. (See **The National Environmental Policy Act section**, below.)

The lead agency for the SST project, the Department of Transportation (DOT), chose not to disclose EPA's comments on the NEPA-required environmental impact statement (EIS) before having issued its final decision, construing NEPA to contain no explicit public disclosure requirements. Although later CEQ regulations under the Act would clarify this ambiguity, the Congress had a vehicle at hand in which to make its point: the draft Clean Air Act. Senator Edmund Muskie, sponsor of Section 309, said to the Senate when submitting the conference report, that as soon as EPA has completed its review of a proposed action, it must make its written comments public, and "not when the environmental impact agency decides the public should be informed." (116 Cong. Rec. S-20802, Dec. 18, 1970)

HIGHLIGHT B: When NEPA Was New: 1970-1971 Issues

- Trans-Alaska oil pipeline and the North Slope-Valdez route
- Supersonic transport aircraft
- Cross-Florida Barge Canal
- Clearcutting "areas of scenic beauty" in national forests
- Tennessee-Tombigbee Waterway
- Dredging and filling in wetlands
- Calvert Cliffs (MD) nuclear power plant

To correct another ambiguity of NEPA, Section 309 places the requirement to review EISs upon EPA, because NEPA "does not assure that Federal environmental agencies will effectively participate in the decision-making process. It is essential that mission-oriented Federal agencies have access to environmental expertise in order to give adequate consideration to environmental factors." (Sen. Rept. No. 91-1196, 91st Cong., 2d Sess. 43, 1970) Consequently, EPA has reviewed most of the approximately 20,000 draft and final EISs produced since the passage of NEPA.

Section 309 confers upon EPA broad review responsibilities for proposed federal actions. (See **Highlight C**.) The EPA Administrator has delegated responsibility of national program manager to the Office of Federal Activities (OFA), and to the ten EPA Regional Administrators for review of regional specific actions. OFA has developed a set of criteria for rating draft EISs. The rating system provides a basis upon which EPA makes recommendations to the lead agency for improving the draft. If improvements are not made in the final EIS, EPA may refer the final EIS to CEQ. (See

HIGHLIGHT C: Materials Which EPA Reviews Under Section 309 Authority

- Proposed legislation
- Proposed regulation
- Environmental assessment (EA)
- Environmental impact statement (EIS), draft and final
- Any proposal that the lead agency maintains does not require an EIS but that EPA believes constitutes a major federal action significantly affecting the environment so as to require an EIS.

sections on **The National Environmental Policy Act and Referrals**, below.)

Figure 1: EPA's Criteria for Sec. 309 Review of Impact Statements

Rating Environmental Impacts:

LO—Lack of Objections

EC—Environmental Concerns—Impacts identified that should be avoided. Mitigation measures may be required.

EO—Environmental Objections—Significant impacts identified. Corrective measures may require substantial changes to the proposed action or consideration of another alternative, including any that was either previously considered or eliminated from the study, or the no-action alternative). Reasons can include:

- o violation of a federal environmental standard;
- o violation of the federal agency's own environmental standard;
- o violation of an EPA policy direction;
- o potential for significant environmental degradation; or,
- o precedent-setting for future actions that collectively could result in significant environmental impacts.

EU—Environmentally Unsatisfactory—Impacts identified are so severe that the action must not proceed as proposed. If these deficiencies are not corrected in the final EIS, EPA may refer the EIS to CEQ. Reasons, in addition to impacts identified, can include:

- o substantial violation of a federal environmental standard;
- o severity, duration, or geographical extent of impacts that warrants special attention; or,
- o national importance, due to threat to national environmental resources or policies.

Rating Adequacy of the Impact Statement:

1 (Adequate)—No further information is required for review.

2 (Insufficient Information)—Either more information is needed for review, or other alternatives should be evaluated. The identified additional information or analysis should be included in the final EIS.

3 (Inadequate)—Seriously lacking in information or analysis to address potentially significant environmental impacts. The draft EIS does not meet NEPA and/or Section 309 requirements. If not revised or supplemented and provided again as a draft EIS for public comment, EPA may refer the EIS to CEQ.

(See Selected Publications, below; EPA's *Policy and Procedures for the Review of Federal Actions Impacting the Environment*)

Annually, OFA and its regional counterparts review about 450 EISs and some 2000 other actions (see Figures 1 and 2). Among the variety of proposed actions that may be reviewed, besides that for which an agency provides an impact statement, are: legislation proposed by a federal agency; a proposed agency regulation; the renewal of an action originally approved before the enactment of NEPA; a proposal for which an agency has determined that no impact statement is needed; whether or not the agency has published a Finding of No Significant Impact.

(FONS); and, an action that is actually a segment of either a program or a reasonably expected succession of actions that could result in a cumulative negative impact on human health or welfare or the environment.

In addition to conducting environmental reviews, OFA develops guidance materials and provides training courses on NEPA and Section 309 requirements for EPA regional staff, and promotes coordination between EPA offices and other federal agencies.

THE NATIONAL ENVIRONMENTAL POLICY ACT AND CEQ

The National Environmental Policy Act (NEPA, 42 USC 4321 et seq.) was enacted on January 1, 1970 in recognition of the widening influence on the human and natural environment that individual federal agency actions can exert. With its stated purpose (see **Highlight D**) and with heightened public awareness of environmental quality questions, NEPA makes its goals and policies "supplemental to those set forth in existing authorities of Federal agencies" (NEPA, Section 105). In this way, the agencies' authorizing statutes were amended to include NEPA requirements.

Title I of NEPA requires the federal government to use all practicable means to preserve and maintain conditions under which human beings can coexist with the natural world in productive harmony. Section 102 directs federal agencies to lend appropriate support to initiatives and programs meant to anticipate and prevent degradation of world environmental quality. Further, this section requires federal agencies to incorporate environmental considerations in their decision-making, using a systematic, interdisciplinary approach.

Title II of NEPA establishes the Council on Environmental Quality (CEQ, or the Council). Two months after enactment of NEPA, the President issued Executive Order 11514 authorizing CEQ to guide the Sec. 102 process. Under this order, the Council immediately published guidelines, followed in 1978 by regulations (40 CFR Parts 1500-1508) requiring all Federal agencies to issue NEPA regulations consistent with CEQ's. Advisory to the President, CEQ conducts studies, prepares the annual Environmental Quality Report to Congress, and reviews EISs. Moreover, CEQ mediates interagency disputes concerning environmental analyses of matters of national importance. (See **Referrals** section, below.)

As evidence of compliance with the NEPA Section 102 provisions for a proposed major action that could significantly affect the environment, CEQ requires the lead agency to prepare a

HIGHLIGHT D: The Purposes of NEPA

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

(P.L. 91-190, 42 USC 4321 et seq.)

detailed written statement addressing NEPA concerns, i.e., an EIS (40 CFR Part 1501). The lead agency may first prepare an environmental assessment (EA), which is a concise public document (40 CFR Part 1501.3) that determines whether an EIS or a FONSI (40 CFR Part 1501.4(e)) should be prepared. An EA is not necessary, however, if the agency has decided at the outset to prepare an EIS.

For review, the lead agency provides the EIS to those federal agencies having statutory jurisdiction or special expertise, as well as to appropriate other federal, state, and local agencies; Indian tribes; when the proposed action might impact tribal lands; and, the interested or affected public (40 CFR Part 1503.1). Once the EIS is final, the lead agency must file it formally, simultaneously making it available to the public, together with the reviewers' comments and the lead agency's responses to those comments (40 CFR Part 1506.9). The CEQ regulations designate EPA the official recipient of all final EISs, which responsibility the EPA Administrator delegates to OFA.

REFERRALS TO THE COUNCIL ON ENVIRONMENTAL QUALITY

The "predecision referrals" provision (40 CFR Part 1504) enables any federal agency under NEPA to refer another agency's final EIS to CEQ during the 30-day waiting period before a lead agency can proceed with the action. On the other hand, Section 309 authorizes EPA to refer to CEQ a broader range of federal activities, not only actions for which EISs are prepared. The CEQ regulations (40 CFR 1504.1(b)) implement Section 309 of the Clean Air Act, acknowledging that EPA has been assigned more extensive review and referral authority than the other agencies (see Highlight C).

Within 25 days after the lead agency has made the final EIS available to the public, the referring agency must provide early notification to that agency about its intention, and make its referral in writing to CEQ. The lead agency, once it has received written notification from CEQ, is to respond in writing within 25 days. During that same period, other agencies and the public may submit written comments to CEQ. Then CEQ may publish Findings and Recommendations; mediate between the disputing agencies; hold public meetings or hearings; refer irreconcilable disputes to the Executive Office of the President for action; or, conclude either that the issue is not of national importance or

Figure 2: EPA'S REGIONAL SECTION 309 REVIEWERS

REGION 1 : (817) 265-3422
Office of Environmental Review
JFK Federal Bldg., Room 2700
Boston, MA 02203

REGION 2 : (212) 637-3504
Envir. Planning & Protection
290 Broadway
New York, NY 10007-0848

REGION 3 : (215) 814-2895
Envir. Programs Branch
821 Chestnut Street
Philadelphia, PA 19107

REGION 4 : (404) 562-9811
Office of Envir. Assessment
190 Alabama Street, SW
Atlanta, GA 30303

REGION 5 : (312) 884-7342
Federal Activities Program
77 West Jackson Blvd.
Chicago, IL 60604-2507

REGION 6 : (214) 653-7431
Office - Planning & Coordination
1400 Ross Avenue, Suite 1200
Dallas, TX 75270-2122

REGION 7 : (813) 551-7148
Environmental Review
320 Minnesota Avenue
Kansas City, MO 64108

REGION 8 : (303) 312-6226
Brownston Protection Program
999 18th Street, Suite 500
Denver, CO 80202-2488

REGION 9 : (415) 744-1584
Office of Federal Activities
11 New Montgomery Street
San Francisco, CA 94108

REGION 10 : (206) 503-6811
Office of Economic and
Community Affairs
Attn: ECO-088
1200 Sixth Avenue
Seattle, WA 98101-1128

that insufficient information has been submitted upon which to base a decision.

In the time since the referral process was formally established in 1973, agencies have referred a total of 24 proposed federal actions to CEQ. Of these, EPA was responsible for 16, of which one was referred jointly with the Department of the Interior (DOI). (See Figure 2 for EPA regional environmental review offices.) So far, in no case has CEQ made a formal referral to the Office of the President. Most often, CEQ has issued Findings and Recommendations. In a few cases the lead agency has withdrawn the proposal, and in three cases CEQ determined that the issue was not a matter of national importance.

In 1989, CEQ upheld EPA's Section 309 referral authority. At issue was a DOI Bureau of Reclamation proposal to renew longterm water contracts for irrigation operations of the Friant Unit in the Central Valley Project of California. The reason for referral was that no EIS had been prepared on the contract renewals, which individually and in the aggregate were likely to result in unsatisfactory environmental effects. In response, DOI questioned EPA's right to challenge the agency's decision that no EIS was needed. In rejecting that argument, CEQ established a precedent, that is, affirmed that EPA may identify a major federal action significantly affecting the environment, even though the lead agency disagrees.

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