

Appendix 1 – Agency NEPA Procedures Template

Agencies should not interpret any portion of this template as mandatory or prescriptive. The template is not a regulation, does not carry the force and effect of law, and is not intended to bind the public or any Federal agency. It is offered solely to provide clarity and technical assistance during the development or revision of agency-specific NEPA procedures. CEQ prepared this document to facilitate CEQ's and agencies' roles pursuant to NEPA 102(2)(B), 42 U.S.C. § 4332(2)(B), which provides that all agencies shall consult with CEQ as they identify and develop methods and procedures to implement NEPA's procedural requirements.

[Agency] National Environmental Policy Act Implementing Procedures

PART XXXX—PURPOSE AND POLICY

Sec.

XXXX.1 Purpose and policy.

XXXX.2 Applicability.

§ XXXX.1 Purpose and policy.

(a) *Purpose.* The purpose of these procedures is to integrate the National Environmental Policy Act (NEPA) into [agency's] decision-making processes. Specifically, the procedures: describe the process by which [agency] determines what actions are subject to NEPA's procedural requirements and the applicable level of NEPA review; ensure that relevant environmental information is identified and considered early in the process in order to ensure informed decision making; enable [agency] to conduct coordinated, consistent, predictable and timely environmental reviews; reduce unnecessary burdens and delays; and implement NEPA's mandates regarding lead and cooperating agency roles, page and time limits, and sponsor preparation of environmental documents.

(b) *Procedural and Interpretive Rule [or Interpretive Guidance]* [Chose one depending on whether the agency publishes procedures as a regulation or as internal guidance, such as a desk manual or agency order.] This document sets forth [agency's] procedures and practices for implementing NEPA. It further explains [agency's] interpretation of certain key terms in NEPA. It does not, nor does it intend to, govern the rights and obligations of any party outside the Federal Government. It does, however, establish the procedures under which [agency] will typically fulfill its requirements under NEPA.

(c) *Consultation with the Council on Environmental Quality ("CEQ").* In addition to the process for establishing or revising categorical exclusions set forth in § XXX1.4(b) and (d), [agency] will consult with CEQ while establishing or revising their proposed NEPA implementing procedures, in accord with NEPA § 102(2)(B), 42 U.S.C. § 4332(B).

§ XXXX.2 Applicability.

(a) *Applicability.* This subchapter [or part] is applicable to [list all sub-units, components, etc., as applicable].

(b) *Authority.* NEPA imposes certain procedural requirements on the exercise of [agency's] existing legal authority in relevant circumstances. Nothing contained in these procedures is intended or should be construed to limit [agency's] other authorities or legal responsibilities.

PART XXX1—NEPA AND AGENCY PLANNING

Sec.

XXX1.1 Determining when NEPA applies.

XXX1.2 Determining the appropriate level of NEPA review.

XXX1.3 NEPA and agency decisionmaking.

XXX1.4 Categorical exclusions.

XXX1.5 Environmental assessments.

XXX1.6 Findings of no significant impact.

XXX1.7 Lead and cooperating agencies.

XXX1.8 Notices of intent and scoping.

§ XXX1.1 Determining when NEPA applies.

(a) [Agency] will determine that NEPA does not apply to a proposed agency action when:

(1) The actions or decision do not result in final agency action under the Administrative Procedure Act, *see* 5 U.S.C. § 704, or other relevant statute that also includes a finality requirement;

(2) The proposed action or decision is exempted from NEPA by law;

(3) Compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of law;

(4) In circumstances where Congress by statute has prescribed decisional criteria with sufficient completeness and precision such that [agency] retains no residual discretion to alter its action based on the consideration of environmental factors, then that function of [agency] is nondiscretionary within the meaning of NEPA § 106(a)(4) and/or § 111(10)(B)(vii) (42 U.S.C. § 4336(a)(4) and § 4336e(10)(B)(vii), respectively), and NEPA does not apply to the action in question;

(5) The proposed action is an action for which another statute's requirements serve the function of agency compliance with the Act; or

(6) The proposed action is not a "major Federal action." The terms "major" and "Federal action," each have independent force. NEPA applies only when both of these two criteria are met. While such a determination is inherently bound up in the facts and circumstances of each individual situation, and is thus reserved to the judgment of [agency] in each instance, [agency] provides its officers and the public at large with the following interpretive guidance:

(i) [Agency] anticipates, on the basis of its experience, that the following types of action are generally "major":

(A) *[Insert a list of examples from agency experience that the agency knows will usually or always trigger an EIS. Many agencies already have such a list in their existing NEPA procedures], or*

(B) *Informed by the content of the list generated in (A), Agency should consider distilling from that list an anticipatory (but nonbinding) monetary threshold above which an action will be deemed "major." This threshold can be calculated, to the extent the agency can substantiate it: 1) by project costs; and/or 2) by overall economic impact, e.g., regulatory costs].*

(ii) NEPA does not apply to "non-Federal actions." Therefore, under the terms of the statute, NEPA does not apply to actions with no or minimal Federal funding, or with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project. NEPA § 111(10)(B)(i), 42 U.S.C. § 4336e(10)(B)(i). A but-for causal relationship is insufficient to make an agency responsible for a particular action under NEPA. By the same token, minimal Federal

funding or involvement does not by itself convert that action into a Federal action within the meaning of the language of the statute.

(7) In addition to the illustrative general categories set forth in NEPA § 111(10), 42 U.S.C. § 4336e(10), [agency] has determined that the following non-exhaustive list of [agency's] actions are not subject to NEPA because [agency] anticipates they do not meet the definition of a "major Federal action": *[Add agency-specific actions to this list. For example, if an agency program authorizes a particular funding mechanism that does not meet the definition because the agency has limited control over the outcome, then that funding mechanism should be named and described explicitly. Agencies should also consider establishing express thresholds for "minimal" Federal funding or involvement to provide clarity on the agency's views in these procedures.]*

(8) The issuance or update of [agency's] NEPA procedures is not subject to NEPA review.

(b) In determining whether NEPA applies to a proposed agency action, [Agency] will consider only the action or project at hand.

§ XXX1.2 Determine the appropriate level of NEPA review.

(a) If [agency] determines under § XXX1.1 that NEPA applies to a proposed action or decision, [agency] will then determine the appropriate level of NEPA review in the following sequence and manner. At all steps in the following process, [agency] will consider the proposed action or project at hand and its effects.

(1) If [agency] has established, or adopted pursuant to NEPA § 109, 42 U.S.C. § 4336c, a categorical exclusion that covers the proposed action, [agency] will analyze whether to apply the categorical exclusion to the proposed action and apply the categorical exclusion, if appropriate, pursuant to § XXX1.4(e).

(2) If another agency has already established a categorical exclusion that covers the proposed action, [agency] will consider whether to adopt that exclusion pursuant to § XXX1.4(c) so that it can be applied to the proposed action at issue, and to future actions or decisions of that type.

(3) If the proposed action warrants the establishment of a new categorical exclusion, or the revision of an existing categorical exclusion, pursuant to § XXX1.4(b), [agency] will consider whether to establish or revise, and then apply the categorical exclusion to the proposed action pursuant to § XXX1.4(e).

(4) If [agency] cannot apply a categorical exclusion to the proposed action consistent with paragraphs (a)(1)-(a)(3), [agency] will consider the proposed action's reasonably foreseeable effects consistent with paragraph (b), and then will:

(i) if the proposed action is not likely to have reasonably foreseeable significant effects or the significance of the effects is unknown, develop an environmental assessment, as described in § XXX1.5; or

(ii) if the proposed action is likely to have reasonably foreseeable significant effects, develop an environmental impact statement, as described in part XXX2 of this [sub]chapter.

(b) When considering whether the reasonably foreseeable effects of the proposed action are significant, [agency] will analyze the potentially affected environment and degree of the effects of the action. [Agency] may use any reliable data source and will not undertake new research unless it is essential to evaluating alternatives and the cost and time of obtaining it are not unreasonable.

(1) In considering the potentially affected environment, [agency] may consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources. *[Agencies may include a list of resources relevant for consideration, consistent with agency programs.]*

(2) In considering the degree of the effects, [agency] may consider the following, as appropriate to the specific action:

- (i) Both short- and long-term effects.
- (ii) Both beneficial and adverse effects.
- (iii) Effects on public health and safety.
- (iv) Economic effects.
- (v) Effects on the quality of life of the American people.

§ XXX1.3 NEPA and agency decisionmaking.

(a) *[With reference to the agency's programs, explain how the agency will integrate the NEPA process with other planning and authorization processes at the earliest reasonable time to avoid delays later in the process, to head off potential conflicts, and to ensure that the agency considers environmental effects in their planning and decisions].*

(b) *Limitations on actions during the NEPA process.* Except as provided in paragraph (c) of this section, until [agency] issues a record of decision or finding of no significant impact, or makes a categorical exclusion determination, as applicable, [agency] will take no action concerning a proposal that would:

- (1) have an adverse environmental effect; or
- (2) limit the choice of reasonable alternatives.

(c) If [agency] is considering an application from a non-Federal entity and becomes aware that the applicant is about to take an action within [agency's] jurisdiction that would meet either of the criteria in § XXX1.3(b), [agency] will promptly notify the applicant that [agency] will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. This section does not preclude development by applicants of plans or designs or performance of other activities necessary to support an application for Federal, State, Tribal, or local permits or assistance. When considering a proposed action for Federal funding, [agency] may authorize such activities, including, but not limited to, acquisition of interests in land (e.g., fee simple, rights-of-way, and conservation easements), purchase of long lead-time equipment, and purchase options made by applicants.

(d) *Actions developed by non-Federal entities.* [Include this section if relevant and revise it consistent with agency programs]. For proposed actions that are initially developed by applicants [e.g., entities that submit applications for Federal financial assistance] or other non-Federal entities, [agency] will:

- (1) coordinate with the non-Federal entity at the earliest reasonable time in the planning process to inform the entity what information [agency] might need to comply with NEPA and establish a schedule for completing steps in the NEPA review process, consistent with NEPA's statutory deadlines and any internal agency NEPA schedule requirements; and
- (2) begin the NEPA process by determining whether NEPA applies, as described in § XXX1.1, and if it does, determine the appropriate level of NEPA review, as described in § XXX1.2, as soon as practicable after receiving the complete application.

An applicant or a contractor hired by the applicant may prepare an environmental assessment or environmental impact statement under [agency's] supervision. [Agency's] procedures for applicant-prepared environmental assessments and environmental impact statement are included in part XXX5 of this [sub]chapter.

(e) *Adjudication.* [Include and adjust if relevant. This language is intended to primarily apply to multi-member commissions that employ staff recommendations as described here.] For adjudication, the environmental document will normally precede the final staff recommendation and that portion of the

public hearing related to the impact study. In appropriate circumstances, the document may follow preliminary hearings designed to gather information for use in the statements.

(f) *Rulemaking.* [Include and adjust if relevant, e.g., include agency-specific rulemaking processes, if applicable] For informal rulemaking conducted pursuant to the Administrative Procedure Act, 5 U.S.C. § 553, the environmental document will normally accompany the proposed rule.

§ XXX1.4 **Categorical exclusions.**

(a) *Generally.* This section describes the process [agency] uses for establishing and revising categorical exclusions, for adopting other agencies' categorical exclusions, and for applying categorical exclusions to a proposed agency action. [Agency's] categorical exclusions, including categorical exclusions [agency] established and substantiated consistent with its NEPA procedures, legislative categorical exclusions, and categorical exclusions adopted from other agencies, are listed in [cite to the subsection of the procedures where the agency's CEs are listed (proposed subsection (g) below) or an appendix to these procedures].

(b) *Establishing and revising categorical exclusions.* To establish or revise a categorical exclusion, [agency] will determine that the category of actions normally does not significantly affect the quality of the human environment. In making this determination, [agency] will:

- (1) Develop a written record containing information to substantiate its determination;
- (2) Consult with CEQ on its proposed categorical exclusion, including the written record (typically for a period of 30 days) prior to providing public notice as described in subparagraph (3); and
- (3) Provide public notice in the *Federal Register* of [agency's] establishment or revisions of the categorical exclusion and the location (e.g., website) of availability of the written record.

(c) *Adopting categorical exclusions from other Federal agencies.* Consistent with NEPA § 109, 42 U.S.C. § 4336c, [agency] may adopt a categorical exclusion listed in another agency's NEPA procedures. When adopting a categorical exclusion, [agency] will:

- (1) Identify the categorical exclusion listed in another agency's NEPA procedures that covers its category of proposed or related actions;
- (2) Consult with the agency that established the categorical exclusion to ensure that the proposed adoption of the categorical exclusion is appropriate;
- (3) Provide public notification of the categorical exclusion that [agency] is adopting, including a brief description of the proposed action or category of proposed actions to which [agency] intends to apply the adopted categorical exclusion [Agencies should add additional information to this provision to explain how the agency will notify the public of the adoption and what additional information the agency will include in the notification. For example, this may include the process the agency will use to evaluate for extraordinary circumstances when applying the adopted CE and a brief description of the agencies' consultation]; and
- (4) Document the adoption of the categorical exclusion in [agency's] implementing procedures [i.e., subsection (g) below or an appendix].

(d) *Removal of categorical exclusions.* To remove a categorical exclusion from [reference subsection of the procedures where the agency's CEs are listed, the appendix to these procedures, or where otherwise publicly available], [agency] will:

- (1) Develop a written explanation for the removal;
- (2) Consult with CEQ on its proposed removal of the categorical exclusion, including the written explanation (typically for a period of 30 days) prior to providing public notice as described in subparagraph (3); and

(3) Provide public notice of [agency's] removal of the categorical exclusion and the written explanation in the *Federal Register*. [Agency] may provide notice of the availability of the explanation in the *Federal Register* notice (i.e., as a link to an agency website) if [agency] prepares the explanation as a separate document.

(e) *Applying categorical exclusions.* If [agency] determines that a categorical exclusion covers a proposed agency action, [agency] will evaluate the action for extraordinary circumstances that indicate a normally excluded agency action is likely to have a reasonably foreseeable significant adverse effect.

(1) [Agencies may provide examples of extraordinary circumstances]. If an extraordinary circumstance is not present, [agency] will determine that the categorical exclusion applies to the proposed agency action and conclude review.

(2) [Agency] will determine that the categorical exclusion applies to the proposed agency action and conclude review if [agency] either:

- (i) Determines that, notwithstanding the extraordinary circumstance, the proposed agency action is not likely to result in reasonably foreseeable adverse significant effects; or
- (ii) Modifies the proposed agency action to avoid those effects.

If [agency] determines that it cannot apply the categorical exclusion to the proposed action, [agency] will prepare an environmental assessment or environmental impact statement, as appropriate.

(3) *[If relevant, agencies should consider explaining how they will determine that a single action's constituent parts are covered by multiple categorical exclusions such that the entire action may be categorically excluded for that reason];*

(4) *Documentation of categorical exclusion determinations.* [Agency] will document its evaluation of the applicability of a categorical exclusion in a [identify any form that the agency uses, such as a checklist or other record as described in paragraph 4 below] in each of the following cases [modify this list as needed for consistency with agency programs]:

- (i) For any application of a categorical exclusion designated by [agency] as requiring documentation, as indicated in paragraph (g) of this section [indicating which CEs require documentation and how that is done], and
- (ii) For any case in which [agency] determines that applying a categorical exclusion is appropriate consistent with paragraph (e)(2).

(5) *[Explain the format and contents of the agency's categorical exclusion documentation, i.e., agency forms such as a checklist or other record), including how the agency will document its extraordinary circumstance review].*

(f) *Applying legislative categorical exclusions.* If [agency] determines that a categorical exclusion established through legislation, or a categorical exclusion that Congress through legislation has directed [agency] to establish, covers a proposed agency action, [agency] will conclude review consistent with applicable law. If appropriate, [agency] may examine extraordinary circumstances, modify the proposed agency action, or document the determination that the legislative categorical exclusion applies, consistent with paragraph (e) of this section and the legal authority for the establishment of the legislative categorical exclusion.

(g) *Reliance on categorical exclusion determinations of other agencies.* [Agency] may also rely on another agency's determination that a categorical exclusion applies to a particular proposed agency action if the agency action covered by that determination and the [agency's] proposed action are substantially the same, or if [agency's] proposed action is a subset of the agency action covered by that

determination. [Agency] will document its reliance on another agency's categorical exclusion determination *[explain how]*.

(h) *List of categorical exclusions.* [Agency] has established the following categorical exclusions:

(1) *[List agency's CEs, noting which require documentation and which do not].*

§ XXX1.5 Environmental assessments.

(a) *Generally.* If an action is subject to NEPA, as determined following the procedures in § XXX1.1, and unless [agency] finds that the proposed action is excluded from having to prepare an environmental assessment or environmental impact statement pursuant to a categorical exclusion as determined following the procedures in § XXX1.4, or by another provision of law, [Agency] will prepare an environmental assessment with respect to a proposed agency action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown. [Agency] is mindful of Congress' direction that environmental assessments are to be "concise." NEPA § 106(b)(2); 42 U.S.C. § 4336(b)(2).

(b) *Elements.* For the purpose of providing evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact, environmental assessments will *[expand upon this list to reflect agency practice, if appropriate]*:

(1) Briefly discuss the:

- (i) Purpose and need for the proposed agency action based on the [agency's] statutory authority. When the proposed agency action concerns [agency's] duty to act on an application for authorization, the purpose and need for the proposed agency action will also be informed by the goals of the applicant;
- (ii) Alternatives to the extent required by NEPA § 102(2)(H), 42 U.S.C. § 4332(2)(H); and
- (iii) The reasonably foreseeable effects of the proposed agency action and the alternatives considered.

(c) *Scope of analysis.*

(1) In preparing the environmental assessment, [Agency] will focus its analysis on whether the environmental effects of the action or project *at hand* are significant.

(2) Similarly, [agency] will document in the environmental assessment where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.

§ XXX1.6 Findings of no significant impact.

(a) [Agency] will prepare a finding of no significant impact if [agency] determines, based on the environmental assessment, not to prepare an environmental impact statement because the proposed action or project at hand will not have significant effects. The finding of no significant impact will:

(1) Include the environmental assessment or incorporate it by reference *[agency may choose one based on agency practice]*;

(2) Document the reasons why [agency] has determined that the proposed action or project at hand will not have a significant effect on the quality of the human environment;

(3) State the authority for any mitigation that [agency] has adopted and any applicable monitoring or enforcement provisions. If [agency] finds no significant effects based on mitigation, the mitigated finding of no significant impact will state any mitigation requirements enforceable by the agency or voluntary mitigation commitments that will be undertaken to avoid significant effects *[If applicable,*

include agency-specific information related to mitigation monitoring and compliance plans, including any templates or forms that the agency provides to applicants. For agencies taking applicant-driven actions, describe appropriate conditions in grants, permits, or other approvals; and the conditioning funding on mitigation.];

(4) Identify any other documents related to the finding of no significant impact; and

(5) State that an environmental impact statement will not be prepared for the proposed action or project at hand, concluding the NEPA process for that action.

(b) *[Explain how the agency will make the EA and FONSI available to the public, such as by posting on an agency website].*

§ XXX1.7 Lead and cooperating agencies.

[In this section, explain any agency-specific processes for complying with section 107(a) and (b) of NEPA with regard to the designation and roles of lead and cooperating agencies and the “one document” requirement.]

In many instances, a proposed action or decision is undertaken in the context which entails actions or decisions undertaken by other Federal agencies (e.g., where multiple Federal authorizations or analyses are required with respect to a project sponsor’s overall purpose and goal). These actions and decisions are “related actions,” in that they are each the responsibility of a particular agency but they are all interdependent parts of a larger action and depend on the larger action for their justification. In such instances, Congress has provided that the multiple agencies involved shall determine which of them will be the lead agency pursuant to the criteria identified in NEPA § 107(a)(1)(A), 42 U.S.C.

§ 4336a(a)(1)(A). When serving as the lead agency, [agency] is ultimately responsible for completing the NEPA process; when serving as the lead agency, [agency] will also determine and document the scope of the project at hand. When a joint lead relationship is established pursuant to NEPA § 107(a)(1)(B), 42 U.S.C. § 4336a(a)(1)(B), [agency] and the other joint lead agency or agencies are collectively responsible for completing the NEPA process.

§ XXX1.8 Notices of intent and scoping.

(a) As a preliminary step to determining whether, in connection with a proposal that is not excluded pursuant to a categorical exclusion, [agency] will prepare an environmental assessment or an environmental impact, [agency] will determine and document the scope of the project at hand.

(b) *Notice of intent.* As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an environmental impact statement, [agency] will publish a notice of intent to prepare an environmental impact statement. If [agency] determines that it will prepare an environmental assessment for a proposed action, [agency] may publish notice of intent to publish an environmental assessment. *[List the categories of actions the for which the agency would publish an NOI for an EA, or include factors to consider or thresholds for publishing one.]*

(1) The notice of intent for an environmental impact statement will include a request for public comment on alternatives or effects and on relevant information, studies, or analyses with respect to the proposed agency action. NEPA § 107(c); 42 U.S.C. § 4336a(c).

(2) In addition to a request for comment required for notices of intent for environmental impact statements, notice of intent for any environmental document may include:

(i) The purpose and need for the proposed action;

(ii) A preliminary description of the proposed action and alternatives the environmental impact statement will consider;

(iii) A brief summary of expected effects;

- (iv) Anticipated permits and other authorizations (*i.e.*, anticipated related actions);
- (v) A schedule for the decision-making process;
- (vi) A description of the public scoping process, including any scoping meeting(s);
- (vii) Contact information for a person within [agency] who can answer questions about the proposed action and the environmental impact statement; and
- (viii) Identification of any cooperating and participating agencies (*i.e.*, agencies responsible for related actions), and any information that such agencies require in the notice to facilitate their decisions or authorizations.

(c) *Scoping.* [Agency] may use an early and open process to determine the scope of issues for analysis in an environmental document, including identifying substantive issues that meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, eliminating from further study non-substantive issues, and determining whether connected actions should be addressed in the same environmental document. Scoping may begin as soon as practicable after the proposal for action is sufficiently developed for consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intent. *[Include agency-specific scoping procedures, including an explanation of agency practice of conducting scoping for EISs, EAs, or both. This may include the process for identifying cooperating and participating agencies, related actions, and other likely stakeholders. Agencies should require scoping activities in these procedures only to the extent they demonstrably improve the efficiency of the overall process.]*

PART XXX2—ENVIRONMENTAL IMPACT STATEMENTS

Sec.

XXX2.1 Preparation of environmental impact statements.

XXX2.2 Purpose and need.

XXX2.3 Analysis within the environmental impact statement.

XXX2.4 Page limits.

XXX2.5 Deadlines.

XXX2.6 Publication of the environmental documents.

§ XXX2.1 Preparation of environmental impact statements.

(a) [Agency] will prepare an environmental impact statement only with respect to proposed agency actions that otherwise require preparation of an environmental document and that have a reasonably foreseeable significant effect on the quality of the human environment. NEPA § 106(b)(1); 42 U.S.C. § 4336(b)(1). Whether an impact rises to the level of “significant is a matter of [agency’s] expert judgment.

(b) [Agency] anticipates, on the basis of its experience, that the following types of action generally “significantly affect[] the quality of the human environment,” consistent with section NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C):

(1) *[Insert examples from agency experience]*; or

(2) *[Informed by the content of the list generated in (1), Agency should consider distilling from that list an anticipatory (but nonbinding) monetary threshold above which an action’s reasonably foreseeable environmental effects will be deemed “significant.” This threshold can be calculated, to the extent the agency can substantiate it, by reference to the cost it would typically take to remediate the proximate effect of an action of this type on the environment.]*

(c) During the process of preparing an environmental impact statement, [agency]:

(1) Will obtain the comments of:

- (i) any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact of the action or project at hand or is authorized to develop and enforce environmental standards that govern the action or project at hand.
- (ii) Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards.

(2) May request the comments of:

- (i) State, Tribal, or local governments that may be affected by the proposed action;
- (ii) Any agency that has requested it receive statements on actions of the kind proposed;
- (iii) The applicant, if any; and
- (iv) The public, including by affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action.

(d) This process of obtaining and requesting comments pursuant to (c) above may be undertaken at any time that is reasonable in the process of preparing the environmental impact statement. [Agency] will ensure that the process of obtaining and requesting comments pursuant to (c) above, and [agency’s] analysis of and response to those comments, does not cause [agency] to violate the congressionally mandated deadline for completion of an environmental impact statement.

(e) *Addressing comments contained in environmental impact statements.* [Agency] will address any substantive comments received consistent with paragraph (c) of this section in the environmental

impact statement. *[To facilitate streamlined responses to comments, agencies should consider including here any specific steps they may take to address and document action taken in response to any substantive issues raised and/or recommendations made in the comments received in the environmental impact statement. To illustrate, such actions may include:*

- (1) Modifying alternatives, including the proposed action.*
- (2) Developing and evaluating alternatives not previously given serious consideration.*
- (3) Supplementing, improving, or modifying analyses, to include consideration of science or literature not previously considered.*
- (4) Making factual corrections.*
- (5) No action needed. The agency may provide brief rationale for taking no action, such as:*
 - (i) The comment is outside the scope of what is being proposed;*
 - (ii) There is an insufficient causal relationship between the actions the agency is proposing and the issue raised and/or recommendation made;*
 - (iii) The commenter misinterpreted the information provided; or*
 - (iv) The recommendation made does not comply with applicable laws or regulations and/or are not feasible to implement (technically or economically), etc.]*
- (f) [Agencies should describe the process for submitting public comments in those instances where the agency solicits public comments, including electronic submission. Agencies should also describe any requirements or suggestions to commenters to assist them in submitting comments useful to the agency, such as focusing on the merit of alternatives, how specific comments should be, and focusing on why the issues raised are important to the consideration of potential effects and alternatives.]*

§ XXX2.2 Purpose and need.

The statement will include the purpose and need for the proposed agency action based on the [agency's] statutory authority. When the proposed agency action concerns [agency's] duty to act on an application for authorization, the purpose and need for the proposed agency action will also be informed by the goals of the applicant.

§ XXX2.3 Analysis within the environmental impact statement.

- (a) The environmental impact statement will include a detailed statement on:
- (1) reasonably foreseeable environmental effects of the proposed agency action;
 - (2) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;
 - (3) a reasonable range of alternatives to the proposed agency action, including an analysis of any adverse environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are, in [agency's] expert judgment, technically and economically feasible, and meet the purpose and need of the proposal;
 - (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;
 - (5) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented; and

(6) Any means identified to mitigate adverse environmental effects of the proposed action. [Agency] is mindful in this respect that NEPA itself does not require or authorize [agency] to impose any mitigation measures.

(b) *Scope of analysis.*

(1) In preparing the environmental impact statement, [Agency] will focus its analysis on whether the environmental effects of the action or project at hand are significant.

(2) Similarly, [agency] will document in the environmental impact statement where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.

(c) *Proportionate analysis.* Environmental impact statements will discuss effects in proportion to their significance. With respect to issues that are not of a significant nature and do not meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, there will be no more than the briefest possible discussion to explain why those issues are not significant and therefore not worthy of any further analysis. Environmental impact statements will be analytic, concise, and no longer than necessary to comply with NEPA in light of the congressionally mandated page limits and deadlines.

§ XXX2.4 Publication of the environmental impact statement.

[Agency] will publish the entire environmental impact statement. [Explain how the agency will make the EIS public].

PART XXX3—EFFICIENT ENVIRONMENTAL REVIEWS

XXX3.1 Deadlines

XXX3.2 Page Limits Adoption.

XXX3.3 Programmatic environmental documents and tiering.

XXX3.4 Reliance on existing environmental documents.

XXX3.5 Publishing predecisional environmental documents.

XXX3.6 Combining documents.

XXX3.7 Incorporation.

XXX3.8 Supplements to environmental documents.

XXX3.9 Integrity and completeness of information.

XXX3.10 Integrating NEPA with other environmental requirements.

XXX3.11 Elimination of duplication with State, Tribal, and local procedures.

XXX3.12 Proposals for regulations.

XXX3.13 Unique identification numbers.

XXX3.14 Emergencies.

§ XXX3.1 Deadlines

(a) *Deadlines.* As the Supreme Court has repeatedly held, NEPA is governed by a “rule of reason.” Congress supplied the measure of that reason in the 2023 revision of NEPA by setting the deadlines for environmental assessments and environmental impact statements in NEPA § 107(g) of NEPA, 42 U.S.C. § 4336a(g). These deadlines indicate Congress’s determination that an agency, working within Congress’s allocation of resources, has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such circumstances, an extension will be given only for such time as is *necessary* to complete the analysis. Thus, *[agencies that rely on project sponsor preparation of EAs or EISs should include the following caveat]* absent a project sponsor’s payment of a fee for an expedited deadline pursuant to Section 112 of NEPA (addressed in Part XXX5 below):

(1) *[Agency]* will complete the environmental impact statement not later than the date that is 2 years after the sooner of:

(i) *[Consistent with NEPA § 107(g)(1)(A), 42 U.S.C. § 4336a(g)(1)(A), explain the applicable start date for EISs based on agency programs and types of actions. Alternatively, explain how the agency will identify the start date on an individual basis. The trigger is to be the earliest possible date.]*

(ii) *[Describe the end dates for EISs that the agency will use to calculate the deadlines.]*

(iii) The environmental impact statement will publish (unless the deadline is extended pursuant to the provision below) on the day the deadline elapses, in as substantially complete form as is possible.

(2) *[Agency]* will complete the environmental assessment not later than the date that is 1 year after:

(i) *[Explain the applicable start date for EAs based on agency programs and types of actions. Alternatively, explain how the agency will identify the start date on an individual basis. As Congress provided in the statute, NEPA § 107(g)(1)(B), 42 U.S.C. § 4336a(g)(1)(B), the start date is to be the soonest of the three triggering events which occurs, as applicable to the particular agency action at hand.]*

(ii) *[Describe the end dates for EAs that the agency will use to calculate the deadlines.]*

(iii) The environmental assessment will publish (unless the deadline is extended pursuant to the provision below), at the latest, on the day the deadline elapses, in as substantially complete form as is possible.

(3) *Deadline extensions.* If [agency] determines it is not able to meet a deadline prescribed by NEPA § 107(g)(1), 42 U.S.C. § 4336a(g)(1), it must consult with the applicant, if any, pursuant to NEPA § 107(g)(2), 42 U.S.C. § 4336a(g)(2). After such consultation, if needed, and for cause stated, it may establish a new deadline. Cause for establishing a new deadline is only established if the environmental impact statement or environmental assessment is so incomplete, at the time at which [agency] determines it is not able to meet the statutory deadline, that issuance pursuant to subsection (4) above would, in [agency's] view, result in an inadequate analysis. Such new deadline must provide only so much additional time as is necessary to complete such environmental impact statement or environmental assessment. The announcement of the new deadline will specify the reason why the environmental impact statement or environmental assessment was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline.

(4) *Certification Related to Deadlines.* When the environmental impact statement or environmental assessment is published, a responsible official will certify (and the certification will be incorporated into the environmental impact statement or environmental assessment) that the resulting environmental impact statement or environmental assessment represents [agency's] good-faith effort to fulfill NEPA's requirements within the congressional timeline; that such effort is substantially complete; that, in [agency's] expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in [agency's] judgment, the analysis contained therein is adequate to inform and reasonably explain [agency's] final decision regarding the proposed Federal action.

§ XXX3.2 Page Limits

(a) The text of an environmental assessment is strictly prohibited from exceeding 75 pages, not including citations or appendices.

(b) Except as provided in paragraph (c), the text of an environmental impact statement will not exceed 150 pages, not including citations or appendices.

(c) An environmental impact statement for a proposed agency action of extraordinary complexity is strictly prohibited from exceeding 300 pages, not including any citations or appendices. [Agency] will determine at the earliest possible stage of preparation of an environmental impact statement whether the conditions for exceeding the page limit in paragraph (a) are present. [Agency may provide a representative list of actions of extraordinary complexity or factors the agencies considers in making this determination.]

(d) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment or environmental impact statement. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.

(e) Environmental impact statements and environmental assessments will be formatted for an 8.5"x11" page with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5"x11", each such item will count as one page.

(f) *Certification Related to Page Limits.* The breadth and depth of analysis in an environmental impact statement or environmental assessment will be tailored to ensure that the environmental analysis does

not exceed these page limits. In this regard, as part of the finalization of the environmental impact statement or environmental assessment, a responsible official will certify (and the certification will be incorporated into the environmental impact statement or environmental assessment) that [agency] has considered the factors mandated by NEPA; that the environmental impact statement or environmental assessment represents [agency's] good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects [agency's] expert judgment; and that any considerations addressed briefly or left unaddressed were, in [agency's] judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed.

§ XXX3.3 Programmatic environmental documents and tiering.

[Include this section to the extent relevant to agency practice and programs, and revise it to reflect agency programs as appropriate.]

(a) [Agency] may prepare environmental documents for programmatic Federal actions, such as the adoption of new agency programs. [Agency] may evaluate the proposal(s) in one of the following ways:

- (1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.
- (2) Generically, including actions that have relevant similarities, such as common timing, effects, alternatives, methods of implementation, media, or subject matter.
- (3) By stage of technological development.

(b) Consistent with NEPA § 108, 42 U.S.C. § 4336b, and § XXX3.2, after completing a programmatic environmental assessment or environmental impact statement, [agency] may rely on that document for 5 years if there are not substantial new circumstances or information about the significance of adverse effects that bear on the analysis. After 5 years, as long as [agency] reevaluates the analysis in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid and briefly documents its reevaluation and explains why the analysis remains valid considering any new and substantial information or circumstances, [agency] may continue to rely on the document.

(c) *[If applicable, agencies may provide specific procedures describing how the agency will “rely” on programmatic environmental documents in more granular detail, e.g., describing the relationship between the earlier programmatic environmental document and later site-specific action, and how the agency will identify the prior analyses that are being relied upon in the site-specific action.]*

§ XXX3.4 Reliance on existing environmental documents.

(a) *Generally.* [Agency] may rely on an environmental impact statement, environmental assessment, or portion thereof, provided that the statement, assessment, or portion thereof meets the standards for an adequate statement or assessment under these procedures. When relying on an environmental impact statement, environmental assessment, or portion thereof, [agency] will cite, briefly describe the content and relevance to the environmental document, and may make modifications that are necessary to render the relied-upon document, or portion thereof, fit for fulfilling NEPA's analytic requirements for the action at hand.

(b) *Substantial Similarity.*

(1) If the actions covered by the original environmental impact statement or environmental assessment and the proposed action are substantially the same, the [agency] will republish the relied-upon statement or assessment.

(2) If the actions are not substantially the same, [agency] may modify the statement or assessment as necessary to render the statement fit for fulfilling NEPA's analytic requirements for the action at hand, and publish the relied-upon statement or assessment, as modified. Where appropriate, [agency] may solicit comment to the extent that solicitation of comment will assist [agency] in expeditiously adapting the relied-upon statement or assessment so that it is fit for [agency's] purposes.

§ XXX3.5 Publishing predecisional environmental documents.

During the process of preparing any environmental document provided for by these procedures, [agency] may publish such draft, predecisional materials as in its judgment may assist in fulfilling its responsibilities under NEPA and this [chapter, guidance, manual, etc.]. *[Explain how the agency will make such predecisional materials that the agency may choose to make publicly available].*

§ XXX3.6 Combining documents.

[Include if applicable. Agency may explain circumstances when this may apply.]

[Agency] will combine, to the fullest extent practicable, any environmental document with any other agency document to reduce duplication and paperwork.

§ XXX3.7 Incorporation.

(a) *Incorporation.* [Agency] may incorporate material, such as planning studies, analyses, or other relevant information, into environmental documents by reference when the effect will be to cut down on bulk without impeding [agency] and public review of the action. When incorporating material by reference, [agency] will cite, briefly describe the content and relevance to the environmental document, and make the materials reasonably available for review by potentially interested parties. [Agency] will not use incorporation as a means to evade the statutory page limits.

(b) *[Include this provision if the agency conducts cost benefit analyses of agency proposals to comply with other agency requirements.]* Although NEPA itself does not require cost-benefit analysis, [agency] conducts cost-benefit analysis *[fill in details of when agency does this]*. To the extent that this cost-benefit analysis is relevant to any alternatives analysis [agency] is conducting pursuant to NEPA, [agency] will incorporate the cost-benefit analysis or append it to the statement to avoid duplication in evaluating the environmental effects. In such cases, the environmental document will discuss the relationship between that analysis and any analyses of unquantified environmental effects, values, and amenities.

§ XXX3.8 Supplements to environmental documents.

[Agency] will prepare supplements to environmental documents only if a major Federal action remains to occur, and:

(a) [Agency] makes substantial changes to the proposed action that are relevant to environmental concerns; or

(b) [Agency] decides, in its discretion, that there are substantial new circumstances or information about the significance of the adverse effects that bear on the proposed action or its effects.

§ XXX3.9 Integrity and completeness of information.

(a) [Agency] will not undertake new scientific and technical research to inform its analyses unless that is essential to a reasoned choice among alternatives and the overall costs and time frame of such undertaking are not unreasonable. Rather, [agency] will make use of reliable existing data and resources.

(b) When [agency] is evaluating an action's reasonably foreseeable effects on the human environment, and there is incomplete or unavailable information that cannot be obtained at a reasonable cost or the means to obtain it are unknown, [agency] will make clear in the relevant environmental document that such information is lacking.

§ XXX3.10 Integrating NEPA with other environmental requirements.

(a) To the fullest extent possible, [agency] will prepare environmental documents concurrently with and integrated with analyses and related surveys and studies required by other Federal statutes.

(b) [Agency] will combine an environmental document prepared in compliance with NEPA with any other agency document to reduce duplication and paperwork. Thus, [agency] may combine an environmental document with related plans, rules, or amendments as a single consolidated document.

(c) If comments on a notice of intent or other aspects of a scoping process identify consultations, permits, or licenses necessary under other environmental laws, the environmental document may contain a section briefly listing the applicable requirements and how [agency] has or will meet them (e.g., permits applied for or received, consultations initiated or concluded).

§ XXX3.11 Elimination of duplication with State, Tribal, and local procedures.

(a) [Agency] may cooperate with State, Tribal, and local agencies that are responsible for preparing environmental documents.

(b) To the fullest extent practicable unless specifically prohibited by law, [agency] will cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and State, Tribal, and local requirements, including through use of studies, analysis, and decisions developed by State, Tribal, or local agencies. Such cooperation may include:

- (1) Joint planning processes;
- (2) Joint environmental research and studies;
- (3) Joint public hearings (except where otherwise provided by statute); or
- (4) Joint environmental documents.

§ XXX3.12 Proposals for regulations.

Where the proposed action is the promulgation of a rule or regulation, procedures and documentation pursuant to other statutory or Executive order requirements may satisfy one or more requirements of this subchapter. When a procedure or document satisfies one or more requirements of this subchapter, [agency] may substitute it for the corresponding requirements in this subchapter and need not carry out duplicative procedures or documentation. Agencies will identify which corresponding requirements in this subchapter are satisfied and consult with CEQ to confirm such determinations.

§ XXX3.13 Unique identification numbers.

For all environmental documents, [agency] will provide a unique identification number for tracking purposes, which [agency] will reference on all associated environmental review documents prepared for the proposed agency action and in any database or tracking system for such documents. [Agency] will

coordinate with the CEQ and other Federal agencies to ensure uniformity of such identification numbers across Federal agencies

§ XXX3.14 Emergencies.

Where emergency circumstances make it necessary to take an action with reasonably foreseeable significant environmental effects without observing the provisions of these procedures, [agency] will consult with the CEQ about alternative arrangements for compliance with NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C). *[Add additional information as relevant if the agency has other emergency procedures to include, such as agency-specific emergency procedures for environmental assessments and categorical exclusions.]*

PART XXX4—AGENCY DECISION MAKING

Sec.

XXX4.1 Decision documents.

XXX4.2 Filing requirements.

§ XXX4.1 Decision documents.

[Edit consistent with agency programs and practices. Explain when the agency will issue a decision document, such as a record of decision or decision (ROD) for environmental impact statements, environmental assessments, or categorical exclusion determinations to close out the process and how such decision documents will be published.]

At the time of its decision on its proposed action, [agency] may prepare and timely publish a concise public decision document or joint decision document notifying the public that the decisionmaker has certified that [agency] has considered all relevant information raised in the NEPA process and that the NEPA process has closed.

§ XXX4.2 Filing requirements.

[Agency] will file environmental impact statements together with comments and any responses with the Environmental Protection Agency (EPA), Office of Federal Activities for publication in the *Federal Register*.

PART XXX5—PROCEDURES FOR PROJECT SPONSOR-PREPARED NEPA DOCUMENTS

§ XXX5.1 Procedures for project sponsor-prepared environmental documents.

In accordance with NEPA § 107(f), 42 U.S.C. § 4336a(f), [agency] has established procedures allowing project sponsors, or contractors hired by project sponsors, to prepare NEPA documents under [agency's] supervision. *[Revise or expand on this section consistent with agency programs and practice].*

- (a) [Agency] will independently evaluate the environmental document and will take responsibility for its contents.
- (b) [Agency] will assist project sponsors and project sponsor-hired contractors by providing guidance and outlining the types of information required for the preparation of the environmental document. [Agency] may also provide appropriate guidance and assist in environmental document preparation, to the extent that [agency's] resources and policy priorities admit. [Agency] will work with the project sponsor to define the purpose and need, and, when appropriate, to develop a reasonable range of alternatives to meet that purpose and need.
- (c) [Agency] will develop and modify, as appropriate, a schedule for preparation of the environmental document. Major changes to the schedule or related matters will be documented through written correspondence.
- (d) [Agency] may request from a project sponsors environmental information for use by [agency] in preparing or evaluating an environmental document. This may include a decision file consisting of any factual, scientific, or technical information used, developed, or considered by the project sponsor or project sponsor-hired contractor in the course of preparing the environmental document, including any correspondence with [agency] or with third parties.
- (e) Project sponsors intending to pay a fee for an expedited environmental impact statement or environmental assessment deadline pursuant to section 112 of NEPA for which [agency] would be the lead agency should consult with [agency] before submitting a request to the Council on Environmental Quality. [Agency] will use such consultation to assist the project sponsor in providing an accurate description of the project as it relates to the anticipated environmental impact statement or environmental assessment-associated costs.

PART XXX6—DEFINITIONS [*Agencies may wish to adapt a definitions section for their NEPA procedures, relying in the first instance on the definition section in the 2020 rule or, where it differs, on the illustrative material provided below*]

§ XXX6.1 Definitions.

As used in these implementing procedures, terms have the meanings provided in NEPA § 111, 42 U.S.C. § 4336e. In addition:

(a) *NEPA* means the National Environmental Policy Act, as amended (42 U.S.C. § 4321, *et seq.*).

(b) *Authorization* means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to implement a proposed action.

(c) *Connected action* means a separate Federal action within the authority of [agency] that is closely related to the proposed agency action and should be addressed in a single environmental document because the proposed agency action:

(1) Automatically triggers the separate Federal action, which independently would require the preparation of additional environmental documents;

(2) Cannot proceed unless the separate Federal action is taken previously or simultaneously; or

(3) Is an interdependent part of a larger Federal action that includes a separate Federal action, which mutually depend on the larger Federal action for their justification.

(d) *Effects* or *impacts* means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.

(1) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects. Effects appropriate for analysis under NEPA may be either beneficial or adverse, or both, with respect to these values.

(2) A “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to the limits of its regulatory authority, or that would occur regardless of the proposed action, or that would need to be initiated by a third party.

(e) *Human environment* means comprehensively the natural and physical environment and the relationship of Americans with that environment. (*See also* the definition of “effects” in paragraph (e) of this section.)

(f) *Jurisdiction by law* means agency authority to approve, veto, or finance all or part of the proposal.

(g) *Mitigation* means measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those effects. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation includes:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action.

(2) Minimizing effects by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (5) Compensating for the impact by replacing or providing substitute resources or environments.
- (h) *NEPA process* means all measures necessary for compliance with the requirements of section 2 and title I of NEPA § 102(2), 42 U.S.C. § 4332(2).
- (i) *Notice of intent* means a public notice that an agency will prepare and consider an environmental document.
- (j) *Participating agency* means a Federal, State, Tribal, or local agency participating in an environmental review or authorization of an action.
- (k) *Publish* and *publication* mean methods found by the agency to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication.
- (l) *Related action* means an action undertaken by an agency, *e.g.*, a permitting action, some other type of authorization action, an analysis required by statute, or the like, that bears a relationship to other actions undertaken by other agencies relevant to NEPA, *e.g.*, that is an interdependent parts of a larger action and depend on the larger action for its justification.
- (m) *Reasonable alternatives* means a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.
- (n) *Reasonably foreseeable* means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.
- (o) *Scope* consists of the range of actions, alternatives, and effects to be considered in an environmental document. The scope of an individual statement may depend on its relationships to other statements.
- (p) *Tiering* refers to the coverage of general matters in broader environmental impact statements or environmental assessments (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin-wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.

PART XXX7—Severability.

§ XXX7.1 Severability.

The sections of this [sub]chapter are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is [*agency's*] intention that the validity of the remainder of those parts will not be affected. The remaining sections or portions therein shall continue in effect.