

Requirements and Guidance Associated with Cooperating and Commenting Agency Roles

In addition to the Low Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA), Federal requirements and guidance relating to the decision before the Commission include the following:

- Title 40 of the *Code of Federal Regulations*, (40 CFR) 1501.6 states, “[u]pon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition, any other Federal agency which has special expertise... may be a cooperating agency....”
- 40 CFR 1508.5 defines a “cooperating agency” as, “any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal....”
- 40 CFR 1501.6(c) states, “[a] cooperating agency may in response to a lead agency’s request for assistance in preparing the environmental impact statement... reply that other program commitments preclude any involvement or the degree of involvement requested....”
- Title 10 of the *Code of Federal Regulations* §51.10(b), which implements National Environmental Policy Act of 1969 (NEPA), provides U.S. Nuclear Regulatory Commission (NRC, or the Commission) with flexibility in its decision on whether or not to become a cooperating agency, “... the Commission will... [f]ollow the provisions of 40 CFR 1501.5 and 1501.6 relating to lead agencies and cooperating agencies, except that the Commission reserves the right to prepare an independent environmental impact statement whenever the NRC has regulatory jurisdiction over an activity even though the NRC has not been designated as lead agency for preparation of the statement....”
- Council on Environmental Quality (CEQ) specifies independence for the cooperating agency role, “[i]f the lead agency leaves out a significant issue or ignores the advice and expertise of the cooperating agency, the EIS may be found later to be inadequate.” Further, “disagreements about conclusions to be drawn from the environmental impact statement (EIS) need not inhibit agencies from issuing a joint document, or adopting another agency’s EIS if the analysis is adequate.” With regard to the record of decision (ROD) generated, “[a] cooperating agency with jurisdiction by law may determine in its own ROD that alternative A is the environmentally preferable action, even though the lead agency has decided in its separate ROD that Alternative B is environmentally preferable.” (“Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations,” 14b [46 FR 18026, 18030 (1981)]).
- Recent CEQ guidance to all Federal agencies emphasizes the efficiency of cooperating agency interactions, “[w]hen more than one federal agency has NEPA responsibilities... then the agencies should work together, either as joint-leads or as lead and cooperating agencies, to avoid redundant, duplicative NEPA work and cooperating agency status is one way to accomplish these responsibilities” (Memorandum for the Heads of Federal Agencies from James L. Connaughton, December 23, 2004, Attachment 2, “Cooperating Agency Report to the Council on Environmental Quality, Frequently Asked Questions and Answers,” p. 2).