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## **Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act**

### **SUBCHAPTER A—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING REGULATIONS**

#### **PART 1500—PURPOSE, AND POLICY, AND MANDATE**

Sec.

1500.1 Purpose and policy.

1500.2 ~~[Reserved]~~ Policy.

1500.3 NEPA compliance ~~Mandate~~.

1500.4 Reducing paperwork.

1500.5 Reducing delay.

1500.6 Agency authority.

**Authority:** ~~42 U.S.C. 4321–4347; NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371–4375; *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609); and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902 Mar. 5, 1970, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123 May 24, 1977); and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.~~

#### **§ 1500.1 Purpose and policy.**

(a) The National Environmental Policy Act (NEPA) is a procedural statute intended to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process ~~our basic national charter for protection of the environment. It establishes policy, sets goals (s~~ Section 101 of NEPA establishes the national environmental policy of the Federal Government to use all practicable means and measures to foster and promote the general welfare, create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans), and provides means (section 102) for carrying out the policy. ~~Section 102(2) of NEPA establishes the procedural requirements to carry out the policy stated in section 101 of NEPA. In particular, it requires Federal agencies to provide a detailed statement on proposals for major Federal actions significantly affecting the quality of the human environment contains “action forcing” provisions to make sure that federal agencies act according to the letter and spirit of the Act. The purpose and function of NEPA is satisfied if Federal agencies have considered relevant environmental information, and the public has been informed regarding the decision-making process. NEPA does not mandate particular results or substantive outcomes regulations that follow implement section 102(2). NEPA’s purpose is not to generate paperwork or litigation, —even excellent paperwork— but to provide for informed decision making and foster excellent action. Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.~~

(b) The regulations in this subchapter implement section 102(2) of NEPA. They provide direction to Federal agencies to determine what actions are subject to NEPA’s procedural

requirements and the level of NEPA review where applicable. The regulations in this subchapter are intended to ensure that relevant environmental information is identified and considered early in the process in order to ensure informed decision making by Federal agencies. The regulations in this subchapter are also intended to ensure that Federal agencies conduct environmental reviews in a coordinated, consistent, predictable and timely manner, and to reduce unnecessary burdens and delays. Finally, the regulations in this subchapter promote concurrent environmental reviews to ensure timely and efficient decision making.NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

~~(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.~~

#### **§ 1500.2 [Reserved] Policy.**

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

### § 1500.3 NEPA complianceMandate.

(a) Mandate. Parts 1500 through 1508 of this title provide regulations~~This subchapter is~~ applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*) (NEPA or the Act), ~~except where compliance would be inconsistent with other statutory requirements. These regulations~~ in this subchapter are issued pursuant to NEPA; ~~the Environmental Quality Improvement Act of 1970, as amended (Pub. L. 91–224, 42 U.S.C. 4371 *et seq.*); section 309 of the Clean Air Act, as amended (42 U.S.C. 7609); and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970), as amended by Executive Order 11991, Relating to the Protection and Enhancement of Environmental Quality (May 24, 1977); and Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (August 15, 2017). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements).~~ The regulations in this subchapter apply to the whole of section 102(2) of NEPA. The provisions of the Act and ~~of these regulations in this subchapter~~ must be read together as a whole ~~in order to comply with the spirit and letter of the law.~~

(b) Exhaustion. (1) To ensure informed decision making and reduce delays, agencies shall include a request for comments on potential alternatives and impacts, and identification of any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment in the notice of intent to prepare an environmental impact statement (§ 1501.9(d)(7) of this chapter).

(2) The draft and final environmental impact statements shall include a summary of all alternatives, information, and analyses submitted by State, Tribal, and local governments and other public commenters for consideration by the lead and cooperating agencies in developing the draft and final environmental impact statements (§ 1502.17 of this chapter).

(3) For consideration by the lead and cooperating agencies, State, Tribal, and local governments and other public commenters must submit comments within the comment periods provided, and comments shall be as specific as possible (§§ 1503.1 and 1503.3 of this chapter). Comments or objections of any kind not submitted, including those based on submitted alternatives, information, and analyses, shall be forfeited as unexhausted.

(4) Informed by the submitted alternatives, information, and analyses, including the summary in the final environmental impact statement (§ 1502.17 of this chapter) and the agency's response to comments in the final environmental impact statement (§ 1503.4 of this chapter), together with any other material in the record that he or she determines relevant, the decision maker shall certify in the record of decision that the agency considered all of the alternatives, information, and analyses, and objections submitted by States, Tribal, and local governments and other public commenters for consideration by the lead and cooperating agencies in developing the environmental impact statement (§ 1505.2(b) of this chapter).

(c) Review of NEPA compliance. It is the Council's intention that judicial review of agency compliance with ~~these~~ regulations in this subchapter not occur before an agency has issued the record of decision~~filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the~~

~~environment), or takes other final agency action that will result in irreparable injury. It is the Council's intention that any allegation of noncompliance with NEPA and the regulations in this subchapter should be resolved as expeditiously as possible. Consistent with their organic statutes, and as part of implementing the exhaustion provisions in paragraph (b) of this section, agencies may structure their procedures to include an appropriate bond or other security requirement.~~

(d) Remedies. Harm from the failure to comply with NEPA can be remedied by compliance with NEPA's procedural requirements as interpreted in the regulations in this subchapter. It is the Council's intention that the regulations in this subchapter create no presumption that violation of NEPA is a basis for injunctive relief or for a finding of irreparable harm. The regulations in this subchapter do not create a cause of action or right of action for violation of NEPA, which contains no such cause of action or right of action. It is the Council's intention that any actions to review, enjoin, stay, vacate, or otherwise alter an agency decision on the basis of an alleged NEPA violation be raised as soon as practicable after final agency action to avoid or minimize any costs to agencies, applicants, or any affected third parties. Furthermore, ~~it is also~~ the Council's intention that minor, non-substantive errors that have no effect on agency decision making shall be considered harmless and shall not invalidate an agency~~any trivial violation of these regulations not give rise to any independent cause of action.~~

(e) Severability. The sections of this subchapter 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 the Council's intention that the validity of the remainder of those parts shall not be affected, with the remaining sections to continue in effect.

#### **§ 1500.4 Reducing paperwork.**

Agencies shall reduce excessive paperwork by:

(a) Using categorical exclusions to define categories of actions that normally which do not individually or cumulatively have a significant effect on the human environment and which are therefore do not exempt from requirements to preparation of an environmental impact statement (§ 1501.57(f)(4) of this chapter).

(b) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore does not exempt from requirements to preparation of an environmental impact statement (§ 1501.57(f)(4) of this chapter).

(c) Reducing the length of environmental documents impact statements (§ 1502.2(e)), by means such as ~~set~~meeting appropriate page limits (§§ 1501.57(f)(4) and 1502.7 of this chapter).

(d) Preparing analytic and concise rather than encyclopedic environmental impact statements (§ 1502.2(a) of this chapter).

(e) Discussing only briefly issues other than significant ones (§ 1502.2(b) of this chapter).

- (fd) Writing environmental impact statements in plain language (§ 1502.8 of this chapter).
- (ge) Following a clear format for environmental impact statements (§ 1502.10 of this chapter).
- (hf) Emphasizing the portions of the environmental impact statement that are useful to decision makers and the public (*e.g.*, §§ 1502.14 and 1502.15 of this chapter) and reducing emphasis on background material (§ 1502.16 of this chapter).
- (ig) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.97 of this chapter).
- (jh) Summarizing the environmental impact statement (§ 1502.12 of this chapter) ~~and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).~~
- (ki) Using programmatic, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1501.11 and 1502.4 of this chapter ~~and 1502.20~~).
- (lj) Incorporating by reference (§ 1501.124 of this chapter).
- (mk) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.245 of this chapter).
- (nl) Requiring comments to be as specific as possible (§ 1503.3 of this chapter).
- (om) Attaching and ~~circulating~~ publishing only changes to the draft environmental impact statement, rather than rewriting and ~~circulating~~ publishing the entire statement when changes are minor (§ 1503.4(c) of this chapter).
- (pn) Eliminating duplication with State, Tribal, and local procedures, by providing for joint preparation of environmental documents where practicable (§ 1506.2 of this chapter), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3 of this chapter).
- (qe) Combining environmental documents with other documents (§ 1506.4 of this chapter).
- ~~(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (§ 1508.4).~~
- ~~(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§ 1508.13).~~

## § 1500.5 Reducing delay.

Agencies shall reduce delay by:

~~(a)~~ Using categorical exclusions to define categories of actions that normally which do not individually or cumulatively have a significant effect on the human environment (§ 1501.8.4 of this chapter) and which are therefore do not exempt from requirements to preparation of an environmental impact statement.

~~(b)~~ Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1501.8.613 of this chapter) and is therefore does not exempt from requirements to preparation of an environmental impact statement.

~~(c)~~ Integrating the NEPA process into early planning (§ 1501.2 of this chapter).

~~(d)~~ Engaging in Emphasizing interagency cooperation before or as the environmental assessment or environmental impact statement is prepared, rather than awaiting submission of adversary comments on a completed document (§§ 1501.76 and 1501.8 of this chapter).

~~(e)~~ Ensuring the swift and fair resolution of lead agency disputes (§ 1501.75 of this chapter).

~~(f)~~ Using the scoping process for an early identification of what are and what are not the real issues (§ 1501.97 of this chapter).

~~(g)~~ Meet Establishing appropriate time limits for the environmental assessment and environmental impact statement processes (§§ 1501.10 of this chapter 7(b)(2) and 1501.8).

~~(h)~~ Preparing environmental impact statements early in the process (§ 1502.5 of this chapter).

~~(i)~~ Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.245 of this chapter).

~~(j)~~ Eliminating duplication with State, Tribal, and local procedures by providing for joint preparation of environmental documents where practicable (§ 1506.2 of this chapter); and with other Federal procedures by providing that an agencies may jointly prepare or adopt appropriate environmental documents prepared by another agency (§ 1506.3 of this chapter).

~~(k)~~ Combining environmental documents with other documents (§ 1506.4 of this chapter).

~~(l)~~ Using accelerated procedures for proposals for legislation (§ 1506.8 of this chapter).

~~(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (§ 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.~~



~~(1) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.~~

## **§ 1500.6 Agency authority.**

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view ~~traditional~~ policies and missions in the light of the Act's national environmental objectives, to the extent consistent with its existing authority. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to ~~ensure~~ full compliance with the purposes and provisions of the Act as interpreted by the regulations in this subchapter. The phrase "to the fullest extent possible" in section 102 of NEPA means that each agency of the Federal Government shall comply with that section, consistent with § 1501.1 of this chapter unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible. Nothing contained in the regulations in this subchapter is intended or should be construed to limit an agency's other authorities or legal responsibilities.

## **PART 1501—NEPA AND AGENCY PLANNING**

Sec.

1501.1 NEPA thresholds~~Purpose.~~

1501.2 Apply NEPA early in the process.

1501.3 Determine the appropriate level of NEPA review.~~When to prepare an~~

1501.4 Categorical exclusions.

1501.5 ~~e~~Environmental assessments.

1501.6 Findings of no significant~~Whether to prepare an environmental impact statement.~~

1501.7 ~~5~~ Lead agencies.

1501.8 ~~6~~ Cooperating agencies.

1501.9 ~~7~~ Scoping.

1501.10 ~~8~~ Time limits.

1501.11 ~~20~~ Tiering.

1501.12 ~~12~~ Incorporation by reference.

**Authority:** 42 U.S.C. 4321–4347; NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371–4375; *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609); and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902 Mar. 5, 1970, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123 May 24, 1977); and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

## **§ 1501.1 NEPA thresholds**~~Purpose.~~

(a) In assessing whether NEPA applies or is otherwise fulfilled, Federal agencies should determine:

(1) Whether the proposed activity or decision is expressly exempt from NEPA under another statute;

(2) Whether compliance with NEPA would clearly and fundamentally conflict with the requirements of another statute;

(3) Whether compliance with NEPA would be inconsistent with Congressional intent expressed in another statute;

(4) Whether the proposed activity or decision is a major Federal action;

(5) Whether the proposed activity or decision, in whole or in part, is a non-discretionary action for which the agency lacks authority to consider environmental effects as part of its decision-making process; and

(6) Whether the proposed action is an action for which another statute's requirements serve the function of agency compliance with the Act.

(b) Federal agencies may make determinations under this section in their agency NEPA procedures (§ 1507.3(d) of this chapter) or on an individual basis, as appropriate.

(1) Federal agencies may seek the Council's assistance in making an individual determination under this section.

(2) An agency shall consult with other Federal agencies concerning their concurrence in statutory determinations made under this section where more than one Federal agency administers the statute.~~The purposes of this part include:~~

~~(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.~~

~~(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.~~

~~(c) Providing for the swift and fair resolution of lead agency disputes.~~

~~(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.~~

~~(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.~~

#### **§ 1501.2 Apply NEPA early in the process.**

(a) Agencies should~~all~~ integrate the NEPA process with other planning and authorization processes at the earliest possible~~reasonable~~ time to ensure that agencies consider environmental impacts in their planning and decisions~~reflect environmental values~~, to avoid delays later in the process, and to head off potential conflicts.

(b)- Each agency shall:



(1a) Comply with the mandate of section 102(2)(A) of NEPA to “utilize a systematic, interdisciplinary approach which will ~~ie~~ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man’s environment,” as specified by § 1507.2(a) of this chapter.

(b2) Identify environmental effects and values in adequate detail so they ~~decision maker~~ can appropriately consider such effects and values alongside~~be compared to~~ economic and technical analyses. Whenever practicable, agencies shall review and publish Eenvironmental documents and appropriate analyses ~~shall be circulated and reviewed~~ at the same time as other planning documents.

(3e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal ~~that which~~ involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of NEPA~~the Act~~.

(4d) Provide for ~~cases where~~ actions subject to NEPA that are planned by private applicants or other non-Federal entities before Federal involvement so that:

(i4) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(ii2) The Federal agency consults early with appropriate State, Tribal, and local ~~governments agencies and Indian tribes~~ and with interested private persons and organizations when ~~their own~~ involvement is reasonably foreseeable.

(iii3) The Federal agency commences its NEPA process at the earliest ~~poss~~reasonable time (§§ 1501.5(d) and 1502.5(b) of this chapter).

### **§ 1501.3 Determine the appropriate level of NEPA review.**

(a) In assessing the appropriate level of NEPA review, Federal agencies should determine whether the proposed action:

(1) Normally does not have significant effects and is categorically excluded (§ 1501.4);

(2) Is not likely to have significant effects or the significance of the effects is unknown and is therefore appropriate for an environmental assessment (§ 1501.5); or

(3) Is likely to have significant effects and is therefore appropriate for an environmental impact statement (part 1502 of this chapter).

(b) In considering whether the effects of the proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects of the action. Agencies should consider connected actions consistent with § 1501.9(e)(1).

(1a) In considering the potentially affected environment, agencies should consider, as appropriate to the specific action, the affected area~~Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected regional, the affected interests, or and the local)~~ and its resources, such as listed species and designated critical habitat under the Endangered Species Act.

Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend **only** upon the effects in the local **area**—rather than in the world as a whole.

**(2) In considering the degree of the effects, agencies should consider the following, as appropriate to the specific action:**

**(i)- Both short- and long-term effects are relevant.**

**(b) Intensity.** This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

**(ii)1** Impacts that may be **b**Both beneficial and adverse **effects**.—A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

**(iii)2** The degree to which the proposed action **a**Effects **on** public health **and** or safety.

**(3)** Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

**(4)** The degree to which the effects on the quality of the human environment are likely to be highly controversial.

**(5)** The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

**(6)** The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

**(7)** Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

**(8)** The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

**(9)** The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

**(iv)10** Whether the action threatens **a**Effects that would violate **ion** of Federal, State, Tribal, or local law or requirements imposed for the protect**ing** **ion** of the environment.

#### **§ 1501.4 Categorical exclusions.**

(a) For efficiency, agencies shall identify in their agency NEPA procedures (§ 1507.3(e)(2)(ii) of this chapter) categories of actions that normally do not have a significant effect on the human environment, and therefore do not require preparation of an environmental assessment or environmental impact statement.

(b) If an agency determines that a categorical exclusion identified in its agency NEPA procedures covers a proposed action, the agency shall evaluate the action for extraordinary circumstances in which a normally excluded action may have a significant effect.

(1) If an extraordinary circumstance is present, the agency nevertheless may categorically exclude the proposed action if the agency determines that there are circumstances that lessen the impacts or other conditions sufficient to avoid significant effects.

(2) If the agency cannot categorically exclude the proposed action, the agency shall prepare an environmental assessment or environmental impact statement, as appropriate.

#### **§ 1501.5 When to prepare an environmental assessments.**

(a) Agencies shall prepare an environmental assessment for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown unless (§ 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in § 1507.3. An assessment is not necessary if the agency finds that a categorical exclusion (§ 1501.4) is applicable or has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decision making.

(c) An environmental assessment shall:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact; and

(2) ~~Shall include~~ Briefly discussions of the purpose and need for the proposed action, of alternatives as required by section 102(2)(E) of NEPA, and of the environmental impacts of the proposed action and alternatives, and include a listing of agencies and persons consulted.

(d) For applications to the agency requiring an environmental assessment, the agency shall commence the environmental assessment as soon as practicable after receiving the application.

~~(e) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). The~~ Agencies shall involve the public, State, Tribal, and local governments, relevant environmental agencies, and any applicants, and the public, to the extent practicable, in preparing environmental assessments required by § 1508.9(a)(1).

(f) The text of an environmental assessment shall be no more than 75 pages, not including appendices, unless a senior agency official approves in writing an assessment to exceed 75 pages and establishes a new page limit.

(g) Agencies may apply the following provisions to environmental assessments:

(1) Section 1502.21 of this chapter—Incomplete or unavailable information;

(2) Section 1502.23 of this chapter—Methodology and scientific accuracy; and

(3) Section 1502.24 of this chapter—Environmental review and consultation requirements.

**§ 1501.64 Findings of no significant impact**~~Whether to prepare an environmental impact statement.~~

~~In determining whether to prepare an environmental impact statement the Federal agency shall:~~

~~(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:~~

~~(1) Normally requires an environmental impact statement, or~~

~~(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).~~

~~(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).~~

~~(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.~~

~~(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.~~

~~(ae) An agency shall Pprepare a finding of no significant impact (§ 1508.13), if the agency determines, on the basis of the environmental assessment, not to prepare an environmental impact statement because the proposed action will not have significant effects.~~

(1) The agency shall make the finding of no significant impact available to the affected public as specified in § 1506.6**(b) of this chapter.**

(2) In ~~the following~~**certain limited** circumstances, ~~which the agency may cover in its procedures under § 1507.3,~~ the agency shall make the finding of no significant impact available for public review ~~(including State and areawide clearinghouses)~~ for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. ~~The circumstances are:~~

(i) The proposed action is; or is closely similar to; one ~~that~~**which** normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3 **of this chapter;** or

(ii) The nature of the proposed action is one without precedent.

(b) The finding of no significant impact shall include the environmental assessment or incorporate it by reference a summary of it and shall note any other environmental documents related to it (§ 1501.97(fa)(35)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

(c) The finding of no significant impact shall state the authority for any mitigation that the agency has adopted and any applicable monitoring or enforcement provisions. If the agency finds no significant impacts based on mitigation, the mitigated finding of no significant impact shall state any enforceable mitigation requirements or commitments that will be undertaken to avoid significant impacts.

#### **§ 1501.75 Lead agencies.**

(a) A lead agency shall supervise the preparation of an environmental impact statement or a complex environmental assessment if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, ~~s~~State, Tribal, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement or environmental assessment (§ 1506.2 of this chapter).

(c) If an action falls within the provisions of paragraph (a) of this section, the potential lead agencies shall determine, by letter or memorandum, which agency ~~sh~~will be the lead agency and which ~~sh~~will be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval ~~/or~~ disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State, Tribal, or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the senior agency officials of the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted ~~within 45 days~~ in a

lead agency designation within 45 days, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency. A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action-; and

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) Any potential lead agency may file a response ~~may be filed by any potential lead agency concerned~~ within 20 days after a request is filed with the Council. As soon as possible, but not later than 20 days after receiving the request and all responses to it, ~~The~~ Council shall determine ~~as soon as possible but not later than 20 days after receiving the request and all responses to it~~ which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

(g) To the extent practicable, if a proposal will require action by more than one Federal agency and the lead agency determines that it requires preparation of an environmental impact statement, the lead and cooperating agencies shall evaluate the proposal in a single environmental impact statement and issue a joint record of decision. To the extent practicable, if a proposal will require action by more than one Federal agency and the lead agency determines that it requires preparation of an environmental assessment, the lead and cooperating agencies should evaluate the proposal in a single environmental assessment and, where appropriate, issue a joint finding of no significant impact.

(h) With respect to cooperating agencies, the lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(4) Determine the purpose and need, and alternatives in consultation with any cooperating agency.

(i) The lead agency shall develop a schedule, setting milestones for all environmental reviews and authorizations required for implementation of the action, in consultation with any applicant and all joint lead, cooperating, and participating agencies, as soon as practicable.

(j) If the lead agency anticipates that a milestone will be missed, it shall notify appropriate officials at the responsible agencies. As soon as practicable, the responsible agencies shall elevate the issue to the appropriate officials of the responsible agencies for timely resolution.



## § 1501.~~86~~ Cooperating agencies.

(a) The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any ~~other~~ Federal agency with which has jurisdiction by law shall be a cooperating agency. In addition, upon request of the lead agency, any other Federal agency with which has special expertise with respect to any environmental issue, ~~which should be addressed in the statement~~ may be a cooperating agency ~~upon request of the lead agency~~. A State, Tribal, or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency by agreement with the lead agency. An agency may request that the lead agency ~~to~~ designate it a cooperating agency, and a Federal agency may appeal a denial of its request to the Council, in accordance with § 1501.7(e).

~~(a) The lead agency shall:~~

~~(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.~~

~~(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.~~

~~(3) Meet with a cooperating agency at the latter's request.~~

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest ~~possipracticable~~ time.

(2) Participate in the scoping process (described ~~below~~ in § 1501.~~97~~).

(3) On request of the lead agency, A ~~assume on request of the lead agency~~ responsibility for developing information and preparing environmental analyses, including portions of the environmental impact statement or environmental assessment concerning which the cooperating agency has special expertise.

(4) On request of the lead agency, M ~~make~~ available staff support ~~at the lead agency's request~~ to enhance the lead agency~~latter's~~ interdisciplinary capability.

(5) Normally use its own funds. To the extent available funds permit, the lead agency shall, ~~to the extent available funds permit,~~ fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(6) Consult with the lead agency in developing the schedule (§ 1501.7(i)), meet the schedule, and elevate, as soon as practicable, to the senior agency official of the lead agency any issues relating to purpose and need, alternatives, or other issues that may affect any agencies' ability to meet the schedule.

(7) Meet the lead agency's schedule for providing comments and limit its comments to those matters for which it has jurisdiction by law or special expertise with respect to any environmental issue consistent with § 1503.2 of this chapter.

(8) To the maximum extent practicable, jointly issue environmental documents with the lead agency.

(c) In response to a lead agency's request for assistance in preparing the environmental documents (described in paragraph (b)(3), (4), or (5) of this section), aA cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b) (3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement or environmental assessment. The cooperating agency shall submit aA copy of this reply shall be submitted to the Council and the senior agency official of the lead agency.

### **§ 1501.97 Scoping.**

(a) Generally. AgenciesThere shall usebe an early and open process tofor determining the scope of issues for analysis in an environmental impact statement, includingto be addressed and for identifying the significant issues and eliminating from further study non-significant issuesrelated to a proposed action. This process shall be termed scoping. Scoping may begin Aas soon as practicable after the proposal for action is sufficiently developed for agency consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intentits decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§ 1508.22) in the FEDERAL REGISTER except as provided in § 1507.3(e).

(ab) Invite cooperating and participating agencies. As part of the scoping process, the lead agency shall:

(1) Invite the participation of likely affected Federal, State, Tribal, and local agencies and governments, any affected Indian tribe, the proponent of the action, and other likely affected or interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under § 1507.3(fe)(1) of this chapter. An agency may give notice in accordance with § 1506.6.

(c4) Scoping outreach. As part of the scoping process the lead agency may hHold an early scoping meeting or meetings, publish scoping information, or use other means to communicate with those persons or agencies who may be interested or affected, which the agency may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(d) 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, the lead agency shall publish a notice of intent to prepare an environmental impact statement in the Federal Register, except as provided in § 1507.3(f)(3) of this chapter. An

agency also may publish notice in accordance with § 1506.6 of this chapter. The notice shall include, as appropriate briefly:

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

(2a) A preliminary ~~D~~description ~~be~~ of the proposed action and possible alternatives the environmental impact statement will consider;

(3) A brief summary of expected impacts;

(4) Anticipated permits and other authorizations;

(5) A schedule for the decision-making process;

(6b) A ~~D~~description ~~be~~ of the public agency's proposed scoping process, including whether, when, and where any scoping meeting(s) will be held;

(7) A request for identification of potential alternatives, information, and analyses relevant to the proposed action (see § 1502.17 of this chapter); and

(8e) Contact information for ~~State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.~~

(e2) *Determination of scope.* As part of the scoping process, the lead agency shall ~~D~~determine the scope (~~§ 1508.25~~) and the significant issues to be analyzed in depth in the environmental impact statement. To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(1a) Actions (other than unconnected single actions) ~~that~~which may be:

(1) ~~C~~connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions ~~that~~which may require environmental impact statements;

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously;  
or;

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to

analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(2b) Alternatives, which include:-

(1) ~~the n~~No action alternative:-

(2) ~~O~~ther reasonable courses of actions; and:-

(3) ~~M~~itigation measures (not in the proposed action).

(3e) Impacts, which may be: (1) direct; (2) indirect; (3) cumulative.

(f) Additional scoping responsibilities. As part of the scoping process, the lead agency shall:

(13) Identify and eliminate from detailed study the issues ~~that~~~~which~~ are not significant or ~~which~~ have been covered by prior environmental review(s) (§ 1506.3 of this chapter), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(24) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(35) Indicate any public environmental assessments and other environmental impact statements ~~that~~~~which~~ are being or will be prepared ~~and~~~~that~~ are related to but are not part of the scope of the impact statement under consideration.

(46) Identify other environmental review, authorization, and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently ~~with~~ and integrated with, the environmental impact statement, as provided in § 1502.245 of this chapter.

(57) Indicate the relationship between the timing of the preparation of environmental analyses and the agencies' tentative planning and decision-making schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§ 1502.7).

(2) Set time limits (§ 1501.8).

(3) Adopt procedures under § 1507.3 to combine its environmental assessment process with its scoping process.

~~(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.~~

(ge) Revisions. An agency shall revise the determinations made under paragraphs (ba), (c), (e), and (fb) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

#### § 1501.108 Time limits.

~~(a) To ensure that agencies conduct~~~~Although the Council has decided that prescribed universal time limits for the entire NEPA reviews as efficiently and expeditiously as practicable~~~~process are too inflexible,~~ Federal agencies should~~are encouraged to~~ set time limits appropriate to individual actions or types of actions (consistent with the time intervals required by § 1506.110 of this chapter). ~~When multiple agencies are involved the reference to agency below means lead agency.~~

(ba) To ensure timely decision making, agencies shall complete:

(1) Environmental assessments within 1 year unless a senior agency official of the lead agency approves a longer period in writing and establishes a new time limit. One year is measured from the date of agency decision to prepare an environmental assessment to the publication of an environmental assessment or a finding of no significant impact.

(2) Environmental impact statements within 2 years unless a senior agency official of the lead agency approves a longer period in writing and establishes a new time limit. Two years is measured from the date of the issuance of the notice of intent to the date a record of decision is signed~~The agency shall set time limits if an applicant for the proposed action requests them: Provided, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.~~

(cb) The senior agency official may:

~~(1) Consider~~ the following factors in determining time limits:

~~(1i)~~ Potential for environmental harm.

~~(2ii)~~ Size of the proposed action.

~~(3iii)~~ State of the art of analytic techniques.

~~(4iv)~~ Degree of public need for the proposed action, including the consequences of delay.

~~(5v)~~ Number of persons and agencies affected.

~~(6vi) Availability of~~Degree to which relevant information ~~is known and if not known the time required for obtaining it.~~

~~(vii) Degree to which the action is controversial.~~

(~~7viii~~) Other time limits imposed on the agency by law, regulations, or Executive order.

(~~d2~~) The senior agency official may Set overall time limits or limits for each constituent part of the NEPA process, which may include:

(~~1i~~) Decision on whether to prepare an environmental impact statement (if not already decided).

(~~2ii~~) Determination of the scope of the environmental impact statement.

(~~3iii~~) Preparation of the draft environmental impact statement.

(~~4iv~~) Review of any comments on the draft environmental impact statement from the public and agencies.

(~~5v~~) Preparation of the final environmental impact statement.

(~~6vi~~) Review of any comments on the final environmental impact statement.

(~~7vii~~) Decision on the action based in part on the environmental impact statement.

(~~e3~~) The agency may Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(~~fe~~) State, Tribal, or local agencies or members of the public may request a Federal agency to set time limits.

#### ~~§ 15012.1120~~ Tiering.

(a) Agencies ~~should~~are encouraged to tier their environmental impact statements and environmental assessments when it wouldto eliminate repetitive discussions of the same issues, and to focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review-(§ 1508.28). Tiering may also be appropriate for different stages of actions.-(Section 1508.28).

(b) ~~Whenever an agency has prepared an broad-environmental impact statement or environmental assessment for~~has been prepared (such as a program or policy statement)-and then prepares a subsequent statement or environmental-assessment is then prepared on an action included within the entire program or policy (such as a ~~project- or site--specific action).~~the ~~tiered document~~subsequent statement or environmental assessment needs only to summarize and incorporate by reference the issues discussed in the broader document. statement and incorporate discussions from the broader statement by reference and ~~The tiered document~~ shall concentrate on the issues specific to the subsequent action. The ~~tiered~~subsequent document shall state where the earlier document is available.

(c)- Tiering is appropriate when the sequence ~~from an environmental impact~~of statements or ~~environmental assessment~~analyses is:



(1a) From a programmatic, plan, or policy environmental impact statement or environmental assessment to a program, plan, or policy statement or assessment analysis of lesser or narrower scope or to a site-specific statement or assessment analysis.

(2b) From an environmental impact statement or environmental assessment on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or assessment analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues that which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

#### § 15012.121 Incorporation by reference.

Agencies shall incorporate material, such as planning studies, analyses, or other relevant information, into an environmental documents impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. Agencies shall cite the incorporated material shall be cited in the documents statement and its content briefly described its content. Agencies. No material may not be incorporated material by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Agencies shall not incorporate by reference material based on proprietary data that which is itself not available for review and comment shall not be incorporated by reference.

### **PART 1502—ENVIRONMENTAL IMPACT STATEMENT**

Sec.

1502.1 Purpose of environmental impact statement.

1502.2 Implementation.

1502.3 Statutory requirements for statements.

1502.4 Major Federal actions requiring the preparation of environmental impact statements.

1502.5 Timing.

1502.6 Interdisciplinary preparation.

1502.7 Page limits.

1502.8 Writing.

1502.9 Draft, final, and supplemental statements.

1502.10 Recommended format.

1502.11 Cover ~~sheet.~~

1502.12 Summary.

1502.13 Purpose and need.

1502.14 Alternatives including the proposed action.

1502.15 Affected environment.

1502.16 Environmental consequences.

1502.17 Summary of submitted alternatives, information, and analyses.

1502.18 List of preparers.

1502.19 ~~8~~ Appendix.

1502.20 ~~19~~ Circulation of the environmental impact statement.

~~1502.20 Tiering.~~

~~1502.21 Incorporation by reference.~~

- 1502.2~~1~~<sup>2</sup> Incomplete or unavailable information.
- 1502.2~~2~~<sup>3</sup> Cost-benefit analysis.
- 1502.2~~3~~<sup>4</sup> Methodology and scientific accuracy.
- 1502.2~~4~~<sup>5</sup> Environmental review and consultation requirements.

**Authority:** ~~42 U.S.C. 4321–4347; NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371–4375; et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609;)~~ and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902~~Mar. 5, 1970, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123~~May 24, 1977); and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

## § 1502.1 Purpose of environmental impact statement.

The primary purpose of an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA ~~is to serve as an action forcing device to insure agencies consider the environmental impacts of their actions in decision making that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government.~~ It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of ~~the~~ reasonable alternatives ~~that~~<sup>which</sup> would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is ~~more than a disclosure document that informs.~~ ~~It shall be used by Federal agency officials in conjunction with other relevant material to plan actions and make decisions making and the public.~~

## § 1502.2 Implementation.

~~To achieve the purposes set forth in § 1502.1 agencies shall prepare environmental impact statements in the following manner:~~

- (a) Environmental impact statements shall not be ~~analytic rather than~~ encyclopedic.
- (b) Environmental impact statements shall ~~be discussed~~ impacts in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.
- (c) Environmental impact statements shall be analytic, kept concise, and ~~shall be~~ no longer than ~~absolutely~~ necessary to comply with NEPA and with ~~these~~ regulations in this subchapter. Length should be proportional to vary first with potential environmental ~~effects~~<sup>problems</sup> and ~~then with~~ project size.
- (d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of ~~NEPA the Act as interpreted in the regulations in this subchapter~~ and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ~~ultimate agency~~ decision maker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (*see also* § 1506.1 *of this chapter*).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

### § 1502.3 Statutory requirements for statements.

As required by ~~section~~ 102(2)(C) of NEPA, environmental impact statements (~~§ 1508.11~~) are to be included in every Federal agency recommendation or report:

~~O~~ on proposals (~~§ 1508.23~~).

~~F~~ for legislation and (~~§ 1508.17~~).

~~O~~ other major Federal actions (~~§ 1508.18~~).

~~S~~ significantly (~~§ 1508.27~~).

~~A~~ affecting (~~§§ 1508.3, 1508.8~~).

~~T~~ the quality of the human environment (~~§ 1508.14~~).

### § 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall ~~define~~~~make sure~~ the proposal ~~that~~~~which~~ is the subject of an environmental impact statement based on the statutory authorities for the proposed action is properly defined. Agencies shall use the criteria for scope (§ 1501.8.925(e) of this chapter) to determine which proposal(s) shall be the subject of a particular statement. Agencies shall evaluate in a single environmental impact statement ~~P~~proposals or parts of proposals ~~that~~~~which~~ are related to each other closely enough to be, in effect, a single course of action ~~shall be evaluated in a single impact statement~~.

(b) Environmental impact statements may be prepared, ~~and are sometimes required~~, for ~~programmatic~~~~broad~~ Federal actions, such as the adoption of new agency programs ~~or regulations~~ (~~§ 1508.18~~). When Agencies shall prepare such statements, on broad actions so that they should be relevant to the program decision~~policy~~ and ~~are~~ timed to coincide with meaningful points in agency planning and decision making.

(1e) When preparing statements on ~~programmatic~~~~broad~~ actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1i) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(ii) Generically, including actions ~~that~~<sup>which</sup> have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(iii) By stage of technological development including ~~f~~<sup>F</sup>ederal or federally assisted research, development or demonstration programs for new technologies ~~that~~<sup>which</sup>, if applied, could significantly affect the quality of the human environment. Statements ~~shall be prepared~~ on such programs ~~and should~~<sup>shall</sup> be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(2) Agencies shall as appropriate employ scoping (§ 1501.97 of this chapter), tiering (§ 1501.1120 of this chapter), and other methods listed in §§ 1500.4 and 1500.5 of this chapter to relate ~~programmatic~~<sup>broad</sup> and narrow actions and to avoid duplication and delay. Agencies may tier their environmental analyses to defer detailed analysis of environmental impacts of specific program elements until such program elements are ripe for final agency action.

#### § 1502.5 Timing.

An agency ~~should~~<sup>shall</sup> commence preparation of an environmental impact statement as close as ~~possible~~<sup>practicable</sup> to the time the agency is developing or ~~receives~~<sup>is presented with</sup> a proposal (~~§ 1508.23~~) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve ~~practically~~<sup>as an important practical</sup> contribution to the decision-making process and will not be used to rationalize or justify decisions already made (§§ ~~1500.2(e)~~, 1501.2, of this chapter and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies, the agency shall prepare the environmental impact statement ~~shall be prepared~~ at the feasibility analysis (go/no-go) stage and may ~~be supplemented~~<sup>it</sup> at a later stage, if necessary.

(b) For applications to the agency requiring an environmental impact statement, the agency shall commence the appropriate environmental assessments or statements shall be commenced no later than immediately as soon as practicable after receiving the application ~~is received~~. Federal agencies should work with potential applicants and applicable State, Tribal, and local agencies and governments prior to receipt of the application ~~are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.~~

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances, the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking, the draft environmental impact statement shall normally accompany the proposed rule.

## § 1502.6 Interdisciplinary preparation.

Agencies shall prepare ~~Environmental impact statements shall be prepared~~ using an interdisciplinary approach ~~that which~~ will ensure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of ~~NEPA the Act~~). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1501.97 of this chapter).

## § 1502.7 Page limits.

The text of final environmental impact statements (~~e.g.,~~ paragraphs ~~(a)~~(4) through ~~(6)~~(g) of § 1502.10) shall ~~normally be less than~~ 150 pages or fewer and, for proposals of unusual scope or complexity, shall ~~normally be less than~~ 300 pages or fewer unless a senior agency official of the lead agency approves in writing a statement to exceed 300 pages and establishes a new page limit.

## § 1502.8 Writing.

Agencies shall write ~~Environmental impact statements shall be written~~ in plain language and may use appropriate graphics so that decision makers and the public can readily understand such statements~~them~~. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which ~~wish~~ shall be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

## § 1502.9 Draft, final, and supplemental statements.

(a) Generally. Except for proposals for legislation as provided in § 1506.8 of this chapter, agencies shall prepare environmental impact statements ~~shall be prepared~~ in two stages and, where necessary, may be supplemented ~~them, as provided in paragraph (d)(1) of this section.~~

(b) Draft environmental impact statements. ~~Agencies shall prepare~~ ~~D~~raft environmental impact statements ~~shall be prepared~~ in accordance with the scope decided upon in the scoping process (§ 1501.9 of this chapter). The lead agency shall work with the cooperating agencies and shall obtain comments as required in part 1503 of this chapter. To the fullest extent practicable, ~~The draft statement must~~ meet/fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of NEPA as interpreted in the regulations in this subchapter~~the Act~~. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and ~~publish~~reulate a supplemental~~revised~~ draft of the appropriate portion. At appropriate points in the draft statement, ~~The agency shall~~ make every effort to disclose and discuss ~~at appropriate points in the draft statement~~ all major points of view on the environmental impacts of the alternatives including the proposed action.

(c) Final environmental impact statements. Final environmental impact statements shall ~~address/respond to~~ comments as required in part 1503 of this chapter. At appropriate points in the final statement, ~~The agency shall discuss~~ at appropriate points in the final statement any responsible opposing view ~~that which~~ was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(d) Supplemental environmental impact statements. Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if a major Federal action remains to occur, and:

(i) The agency makes substantial changes ~~to~~in the proposed action that are relevant to environmental concerns; or

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

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

~~(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.~~

~~(34)~~ Shall prepare, ~~publish~~circulate, and file a supplement to a statement ~~in the same fashion~~(exclusive of scoping (§ 1501.9 of this chapter)) as a draft and final statement, as is appropriate to the stage of the statement involved, unless the Council approves alternative procedures (§ 1506.12 of this chapter)~~are approved by the Council~~.

(4) May find that changes to the proposed action or new circumstances or information relevant to environmental concerns are not significant and therefore do not require a supplement. The agency should document the finding consistent with its agency NEPA procedures (§ 1507.3 of this chapter), or, if necessary, in a finding of no significant impact supported by an environmental assessment.

#### **§ 1502.10 Recommended format.**

(a) Agencies shall use a format for environmental impact statements ~~that~~which will encourage good analysis and clear presentation of the alternatives including the proposed action. Agencies should use ~~The following standard format for environmental impact statements should be followed~~ unless the agency determines that there is a more effective format for communication~~compelling reason to do otherwise~~:

(1a) Cover ~~sheet~~.

(2b) Summary.

(3e) Table of contents.

(4d) Purpose of and need for action.

(5e) Alternatives including the proposed action (sections 102(2)(C)(iii) and 102(2)(E) of NEPA~~the Act~~).

(6f) Affected environment ~~and~~

(g) ~~E~~Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA~~the Act~~).



(7) Submitted alternatives, information, and analyses.

(8h) List of preparers.

(i) List of agencies, organizations, and persons to whom copies of the statement are sent.

(j) Index.

(9k) Appendices (if any).

(b) If an agency uses a different format-is used, it shall include paragraphs (a)(1) through (8), (b), (e), (h), (i), and (j), of this section-and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in §§ 1502.11 through 1502.198, in any appropriate format.

#### **§ 1502.11 Cover ~~sheet~~.**

The cover ~~sheet~~ shall not exceed one page. ~~It~~ and shall include:

(a) A list of the responsible agencies, including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and, if appropriate, the titles of related cooperating agency actions), together with the ~~s~~State(s) and county(ies) (or other jurisdiction(s), if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one-paragraph abstract of the statement.

(f) The date by which the agency must receive comments ~~must be received~~ (computed in cooperation with EPA under § 1506.1 10 of this chapter). ~~The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).~~

(g) For the final environmental impact statement, the estimated total cost to prepare both the draft and final environmental impact statement, including the costs of agency full-time equivalent (FTE) personnel hours, contractor costs, and other direct costs. If practicable and noted where not practicable, agencies also should include costs incurred by cooperating and participating agencies, applicants, and contractors.

#### **§ 1502.12 Summary.**

Each environmental impact statement shall contain a summary ~~that which~~ adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of ~~disputed controversy (including~~ issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary normally will ~~normally~~ not exceed 15 pages.

### § 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need ~~to which the agency is responding in proposing the alternatives including for~~ the proposed action. When an agency's statutory duty is to review an application for authorization, the agency shall base the purpose and need on the goals of the applicant and the agency's authority.

### § 1502.14 Alternatives including the proposed action.

~~Theis alternatives section should presentis the heart of~~ the environmental impacts of the proposed action and the alternatives in comparative form statement. ~~Bb~~ased on the information and analysis presented in the sections on the ~~Aa~~ffected ~~Ee~~nvironment (§ 1502.15) and the ~~Ee~~nvironmental ~~Cc~~onsequences (§ 1502.16), ~~it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.~~ In this section, agencies shall:

(a) ~~Rigorously explore and objectively eE~~valuate ~~all~~ reasonable alternatives to the proposed action, and, for alternatives that the agency which were eliminated from detailed study, briefly discuss the reasons for their ~~having been~~ eliminationed.

(b) ~~Discusse~~vote substantial treatment to each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits.

~~(c) Include reasonable alternatives not within the jurisdiction of the lead agency.~~

~~(cd)~~ Include the no action alternative ~~of no action~~.

~~(de)~~ Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

~~(ef)~~ Include appropriate mitigation measures not already included in the proposed action or alternatives.

(f) Limit their consideration to a reasonable number of alternatives.

### § 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area(s). The environmental impact statement may combine the description with evaluation of the environmental consequences (§ 1502.16), and it shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected

environment are themselves no measure of the adequacy of an environmental impact statement.

#### **§ 1502.16 Environmental consequences.**

(a) ~~The~~ environmental consequences section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA ~~that~~which are within the scope of the statement and as much of section 102(2)(C)(iii) of NEPA as is necessary to support the comparisons. This section should not duplicate discussions in § 1502.14. The discussion ~~wi~~shall include:

(1) ~~¶~~The environmental impacts of the proposed action and reasonable alternatives ~~to~~including the proposed action and the significance of those impacts. The comparisons of the proposed action and reasonable alternatives under § 1502.14 wi~~shall~~shall be based on this discussion of the impacts.

(2) ~~¶~~Any adverse environmental effects ~~that~~which cannot be avoided should the proposal be implemented.

(3) ~~¶~~The relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(4) ~~and a~~Any irreversible or ir retrievable commitments of resources ~~that~~which would be involved in the proposal should it be implemented. ~~This section should not duplicate discussions in § 1502.14. It shall include discussions of:~~

(a) ~~Direct effects and their significance (§ 1508.8).~~

(b) ~~Indirect effects and their significance (§ 1508.8).~~

(5) ~~¶~~e Possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local ~~(and in the case of a reservation, Indian tribe)~~ land use plans, policies and controls for the area concerned. ~~(See § 1506.2(d) of this chapter.)~~

(d) ~~The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.~~

(6) ~~¶~~e Energy requirements and conservation potential of various alternatives and mitigation measures.

(7) ~~¶~~f Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(8) ~~¶~~g Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(9) ~~¶~~h Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(e)).

(10) Where applicable, economic and technical considerations, including the economic benefits of the proposed action.

(b) ~~This means that e~~ Economic or social effects are not intended by themselves do not require preparation of an environmental impact statement. However, ~~When the agency determines that an environmental impact statement is prepared and~~ economic or social and natural or physical environmental effects are interrelated, ~~then the environmental impact statement will~~ shall discuss and give appropriate consideration to ~~all of these effects on the human environment.~~

#### **§ 1502.17 Summary of submitted alternatives, information, and analyses.**

(a) The draft environmental impact statement shall include a summary that identifies all alternatives, information, and analyses submitted by State, Tribal, and local governments and other public commenters during the scoping process for consideration by the lead and cooperating agencies in developing the environmental impact statement.

(1) The agency shall append to the draft environmental impact statement or otherwise publish all comments (or summaries thereof where the response has been exceptionally voluminous) received during the scoping process that identified alternatives, information, and analyses for the agency's consideration.

(2) Consistent with § 1503.1(a)(3) of this chapter, the lead agency shall invite comment on the summary identifying all submitted alternatives, information, and analyses in the draft environmental impact statement.

(b) The final environmental impact statement shall include a summary that identifies all alternatives, information, and analyses submitted by State, Tribal, and local governments and other public commenters for consideration by the lead and cooperating agencies in developing the final environmental impact statement.

#### **§ 1502.18 List of preparers.**

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (~~§§ 1502.6 and 1502.8~~). Where possible, the environmental impact statement shall identify the persons who are responsible for a particular analysis, including analyses in background papers, ~~shall be identified~~. Normally the list will not exceed two pages.

#### **§ 1502.19 Appendix.**

If an agency prepares an appendix, ~~the agency to an environmental impact statement the appendix~~ shall publish it with the environmental impact statement, and it shall consist of:

(a) ~~Consist of m~~ Material prepared in connection with an environmental impact statement (as distinct from material ~~that which~~ is not so prepared and ~~which~~ is incorporated by reference (§ 15012.124 of this chapter)).

(b) ~~Normally consist of m~~Material ~~which~~ substantiates any analysis fundamental to the impact statement.

(c) ~~Normally be analytic and~~Material relevant to the decision to be made.

(d) For draft environmental impact statements, all comments (or summaries thereof where the response has been exceptionally voluminous) received during the scoping process that identified alternatives, information, and analyses for the agency's consideration.

(e) For final environmental impact statements, the comment summaries and responses consistent with § 1503.4 of this chapter.

~~(d) Be circulated with the environmental impact statement or be readily available on request.~~

#### **§ 1502.2019 Circulation of the environmental impact statement.**

Agencies shall ~~publish~~~~circulate~~ the entire draft and final environmental impact statements ~~except for certain appendices as provided in § 1502.18(d) and unchanged statements as provided in § 1503.4(c) of this chapter. However, if the statement is unusually long, the~~ agency shall ~~transmit~~~~may circulate the summary instead, except that~~ the entire statement electronically (or in paper copy, if so requested due to economic or other hardship)~~shall be furnished~~ to:

(a) Any Federal agency ~~that~~~~which~~ has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State, Tribal, or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement, any person, organization, or agency ~~that~~~~which~~ submitted substantive comments on the draft.

~~If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.~~

#### **~~§ 1502.20 Tiering.~~**

~~Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site-specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues~~

~~specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).~~

#### ~~§ 1502.21 Incorporation by reference.~~

~~Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.~~

#### **§ 1502.21~~2~~ Incomplete or unavailable information.**

(a) When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement, and there is incomplete or unavailable information, the agency shall ~~always~~ make clear that such information is lacking.

(~~ba~~) If the incomplete but available information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives, and the overall costs of obtaining it are not ~~unreasonable~~exorbitant, the agency shall include the information in the environmental impact statement.

(~~cb~~) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are ~~unreasonable~~exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

- (1) ~~Aa~~ statement that such information is incomplete or unavailable;
- (2) ~~Aa~~ statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
- (3) ~~Aa~~ summary of existing credible scientific evidence ~~that~~which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and
- (4) ~~t~~The agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

(d) For the purposes of this section, "reasonably foreseeable" includes impacts ~~that~~which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

~~(e) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the FEDERAL REGISTER on or~~



~~after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.~~

#### **§ 1502.223 Cost-benefit analysis.**

If ~~the agency is considering~~ a cost-benefit analysis ~~for the proposed action~~ relevant to the choice among ~~environmentally different~~ alternatives ~~with different environmental effects is being considered for the proposed action~~, ~~the agency~~ it shall ~~be incorporated~~ ~~the cost-benefit analysis~~ by reference or appended ~~it~~ to the statement as an aid in evaluating the environmental consequences. ~~In such cases, To~~ assess the adequacy of compliance with section 102(2)(B) of NEPA (ensuring appropriate consideration of unquantified environmental amenities and values in decision making, along with economical and technical considerations), ~~the Act~~ the statement shall, ~~when a cost-benefit analysis is prepared~~, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, ~~agencies need not display~~ the weighing of the merits and drawbacks of the various alternatives ~~need not be displayed~~ in a monetary cost-benefit analysis and should not ~~do so~~ be when there are important qualitative considerations. ~~However, in any event~~, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, ~~that which~~ are likely to be relevant and important to a decision.

#### **§ 1502.234 Methodology and scientific accuracy.**

Agencies shall ~~ensure~~ the professional integrity, including scientific integrity, of the discussions and analyses in environmental ~~documents~~ ~~impact statements~~. Agencies shall make use of reliable existing data and resources. Agencies may make use of any reliable data sources, such as remotely gathered information or statistical models. They shall identify any methodologies used and shall make explicit reference ~~by footnote~~ to the scientific and other sources relied upon for conclusions in the statement. ~~An agencies~~ may place discussion of methodology in an appendix. Agencies are not required to undertake new scientific and technical research to inform their analyses. Nothing in this section is intended to prohibit agencies from compliance with the requirements of other statutes pertaining to scientific and technical research.

#### **§ 1502.245 Environmental review and consultation requirements.**

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements ~~concurrently with~~ and integrated with environmental impact analyses and related surveys and studies required by all other Federal environmental review laws and Executive orders applicable to the proposed action, including the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (~~5416~~ U.S.C. ~~300101470~~ *et seq.*), and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), ~~and other environmental review laws and executive orders.~~

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other ~~authorizations that entitlements which~~ must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other ~~authorization entitlement~~ is necessary, the draft environmental impact statement shall so indicate.

## PART 1503—COMMENTING ON ENVIRONMENTAL IMPACT STATEMENTS

Sec.

1503.1 Inviting comments and requesting information and analyses.

1503.2 Duty to comment.

1503.3 Specificity of comments and information.

1503.4 Response to comments.

**Authority:** ~~42 U.S.C. 4321–4347; NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371–4375; *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609;)~~ and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902 ~~Mar. 5, 1970, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; May 24, 1977), and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.~~

### § 1503.1 Inviting comments and requesting information and analyses.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency ~~that~~which has jurisdiction by law or special expertise with respect to any environmental impact involved or ~~which~~ is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State, Tribal, and local agencies ~~that~~which are authorized to develop and enforce environmental standards;

(ii) ~~State, Indian Tribes, or local governments that may be affected by the proposed action when the effects may be on a reservation; and~~

(iii) Any agency ~~that~~which has requested ~~that~~ it receive statements on actions of the kind proposed; ~~Office of Management and Budget Circular A–95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.~~

~~(iv3) Request comments from~~ The applicant, if any; and

~~(v4) Request comments from~~ The public, affirmatively soliciting comments in a manner designed to inform ~~from~~ those persons or organizations who may be interested in or affected by the proposed action.

(3) Invite comment specifically on the submitted alternatives, information, and analyses and the summary thereof (§ 1502.17 of this chapter).

(b) An agency may request comments on a final environmental impact statement before the final decision and set a deadline for providing such comments is finally made. ~~In any case~~

~~Other agencies or persons may make comments consistent with the time periods before the final decision unless a different time is provided~~ under § 1506.119 of this chapter.

(c) An agency shall provide for electronic submission of public comments, with reasonable measures to ensure the comment process is accessible to affected persons.

### **§ 1503.2 Duty to comment.**

~~Cooperating Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved~~ and agencies ~~that which~~ are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. ~~Agencies shall comment~~ within the time period specified for comment in § 1506.119 of this chapter. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that the environmental impact statement adequately reflects its views ~~are adequately reflected in the environmental impact statement~~, it should reply that it has no comment.

### **§ 1503.3 Specificity of comments and information.**

(a) To promote informed decision making, ~~C~~omments on an environmental impact statement or on a proposed action shall be as specific as possible, ~~and~~ may address either the adequacy of the statement or the merits of the alternatives discussed or both, and shall provide as much detail as necessary to meaningfully participate and fully inform the agency of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and alternatives to the proposed action, as well as economic and employment impacts, and other impacts affecting the quality of the human environment. Comments should reference the corresponding section or page number of the draft environmental impact statement, propose specific changes to those parts of the statement, where possible, and include or describe the data sources and methodologies supporting the proposed changes.

(b) Comments on the submitted alternatives, information, and analyses and summary thereof (§ 1502.17 of this chapter) should be as specific as possible. Comments and objections of any kind shall be raised within the comment period on the draft environmental impact statement provided by the agency, consistent with § 1506.11 of this chapter. If the agency requests comments on the final environmental impact statement before the final decision, consistent with § 1503.1(b), comments and objections of any kind shall be raised within the comment period provided by the agency. Comments and objections of any kind not provided within the comment period(s) shall be considered unexhausted and forfeited, consistent with § 1500.3(b) of this chapter.

(c) When a ~~common~~participating agency criticizes a lead agency's predictive methodology, the ~~common~~participating agency should describe the alternative methodology that which it prefers and why.

(de) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects

associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or authorizations and entitlements.

(~~ed~~) When a cooperating agency with jurisdiction by law ~~objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the~~ mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences, the cooperating agency shall cite to its applicable statutory authority.

#### **§ 1503.4 Response to comments.**

(a) An agency preparing a final environmental impact statement shall ~~assess and~~ consider substantive comments timely submitted during the public comment period. The agency may respond to both individually comments or groups of comments and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. In the final environmental impact statement, the agency may respond by ~~Possible responses are to:~~

(1) Modify ing alternatives including the proposed action.

(2) Develop ing and evaluate ing alternatives not previously given serious consideration by the agency.

(3) Supplement ing, improv ing, or modify ing its analyses.

(4) Mak ing factual corrections.

(5) Explaining ing why the comments do not warrant further agency response, recognizing that agencies are not required to respond to each comment ~~iting the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.~~

(b) An agency shall append or otherwise publish all substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous); ~~should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.~~

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, an agency ~~ies~~ may write any ~~changes them~~ on errata sheets and attach ~~the~~ responses to the statement instead of rewriting the draft statement. In such cases, only the comments, the responses, and the changes and not the final statement need be ~~publishe~~ regulated (§ 1502. ~~2049~~ of this chapter). The agency shall file the entire document with a new cover sheet with the Environmental Protection Agency ~~shall be filed~~ as the final statement (§ 1506. ~~109~~ of this chapter).

#### **PART 1504—PRE-~~DECISION~~ AL REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY**

Sec.

1504.1 Purpose.

1504.2 Criteria for referral.

1504.3 Procedure for referrals and response.

**Authority:** ~~42 U.S.C. 4321–4347; NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371–4375; *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609); and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902 (Mar. 5, 1970), as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123 (May 24, 1977), and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.~~

#### § 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) ~~Under s~~Section 309 of the Clean Air Act (42 U.S.C. 7609), ~~directs~~ the Administrator of the Environmental Protection Agency ~~is directed~~ to review and comment publicly on the environmental impacts of Federal activities, including actions for which agencies prepare environmental impact statements ~~are prepared~~. If, after this review, the Administrator determines that the matter is “unsatisfactory from the standpoint of public health or welfare or environmental quality,” section 309 directs that the matter be referred to the Council (hereafter “environmental referrals”).

(c) Under section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)), ~~the Act~~ other Federal agencies may prepare ~~make~~ similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council, and the public.

#### § 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as ~~possible~~ practicable in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

- (a) Possible violation of national environmental standards or policies;~~;~~
- (b) Severity;~~;~~
- (c) Geographical scope;~~;~~
- (d) Duration;~~;~~
- (e) Importance as precedents;~~;~~
- (f) Availability of environmentally preferable alternatives; and.

(g) Economic and technical considerations, including the economic costs of delaying or impeding the decision making of the agencies involved in the action.

### **§ 1504.3 Procedure for referrals and response.**

(a) A Federal agency making the referral to the Council shall:

(1) ~~Notify~~Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached~~;~~;

(2) Include such a notification whenever practicable~~leadvice~~ in the referring agency's comments on the environmental assessment or draft environmental impact statement~~, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.~~;

(3) Identify any essential information that is lacking and request that the lead agency make it ~~be made~~ available at the earliest possible time~~;~~; and

(4) Send copies of the referring agency's views~~such advice~~ to the Council.

(b) The referring agency shall deliver its referral to the Council not later than ~~twenty five~~ (25) days after the lead agency has made the final environmental impact statement ~~has been made~~ available to the Environmental Protection Agency, ~~common~~participating agencies, and the public, and in the case of an environmental assessment, no later than 25 days after the lead agency makes it available. Except when the lead agency grants an extension of this period~~has been granted by the lead agency~~, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it~~; and, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.~~

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any disputed material facts ~~in controversy~~ and incorporate (by reference if appropriate) agreed upon facts~~;~~;

(ii) Identify any existing environmental requirements or policies ~~that~~which would be violated by the matter~~;~~;

(iii) Present the reasons ~~for why~~ the referring agency believes the matter is ~~environmentally unsatisfactory.~~;

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason~~;~~;



(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time~~;~~ and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than ~~twenty-five (25)~~ days after the referral to the Council, the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral~~;~~

(2) Be supported by evidence and explanations, as appropriate; and-

(3) Give the lead agency's response to the referring agency's recommendations.

(e) ~~Interested persons (including the aApplicants)~~ may ~~providedeliver their~~ views in writing to the Council. ~~Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than~~ the response.

(f) Not later than ~~twenty-five (25)~~ days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) ~~Hold public meetings or hearings to e~~Obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the ~~referring and lead agencies~~issue should ~~be~~ further negotiated ~~by~~ the ~~issue, referring and lead agencies~~ and the issue is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including, where appropriate, a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.

(h) The referral process is not intended to create any private rights of action or to be judicially reviewable because any voluntary resolutions by the agency parties do not represent final agency action and instead are only provisional and dependent on later consistent action by the action agencies. ~~When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).~~

## **PART 1505—NEPA AND AGENCY DECISION MAKING**

Sec.

1505.1 [Reserved] ~~Agency decisionmaking procedures.~~

1505.2 Record of decision in cases requiring environmental impact statements.

1505.3 Implementing the decision.

**Authority:** ~~42 U.S.C. 4321–4347; NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371–4375; *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609); and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902 Mar. 5, 1970, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123 May 24, 1977); and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.~~

### **§ 1505.1 [Reserved] ~~Agency decisionmaking procedures.~~**

~~Agencies shall adopt procedures (§ 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:~~

~~(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1);~~

~~(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them;~~

~~(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings;~~

~~(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions;~~

~~(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.~~

## § 1505.2 Record of decision in cases requiring environmental impact statements.

(a) At the time of its decision (§ 1506.1 ~~10 of this chapter~~) or, if appropriate, its recommendation to Congress, each agency shall prepare and timely publish a concise public record of decision or joint record of decision. The record, which each agency may ~~be~~ integrated into any other record ~~it prepares~~ by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6(c) and (d), and part II, section 5(b)(4), shall:

(1a) State ~~what~~ the decision ~~was~~.

(2b) Identify ~~all~~ alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives ~~which were~~ considered ~~to be~~ environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors, including any essential considerations of national policy, that the agency ~~which were~~ balanced ~~by the agency~~ in making its decision and state how those considerations entered into its decision.

(3e) State whether the agency has adopted all practicable means to avoid or minimize environmental harm from the alternative selected ~~have been adopted~~, and if not, why they ~~agency did were~~ not. The agency shall adopt and summarize, where applicable, a monitoring and enforcement program ~~shall be adopted and summarized where applicable~~ for any enforceable mitigation requirements or commitments.

(b) Informed by the summary of the submitted alternatives, information, and analyses in the final environmental impact statement (§ 1502.17(b) of this chapter), together with any other material in the record that he or she determines to be relevant, the decision maker shall certify in the record of decision that the agency has considered all of the alternatives, information, analyses, and objections submitted by State, Tribal, and local governments and public commenters for consideration by the lead and cooperating agencies in developing the environmental impact statement. Agency environmental impact statements certified in accordance with this section are entitled to a presumption that the agency has considered the submitted alternatives, information, and analyses, including the summary thereof, in the final environmental impact statement (§ 1502.17(b)).

## § 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2 ~~(ae)~~ (3)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits, or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or ~~common~~participating agencies on progress in carrying out mitigation measures ~~that~~which they have proposed and ~~which~~ were adopted by the agency making the decision.

(d) Upon request, ~~publish~~make available to the public the results of relevant monitoring.

## **PART 1506—OTHER REQUIREMENTS OF NEPA**

Sec.

1506.1 Limitations on actions during NEPA process.

1506.2 Elimination of duplication with State, Tribal, and local procedures.

1506.3 Adoption.

1506.4 Combining documents.

1506.5 Agency responsibility for environmental documents.

1506.6 Public involvement.

1506.7 Further guidance.

1506.8 Proposals for legislation.

1506.9 Proposals for regulations.

1506.10 Filing requirements.

1506.1~~10~~ Timing of agency action.

1506.1~~2~~ Emergencies.

1506.1~~3~~ Effective date.

**Authority:** ~~42 U.S.C. 4321–4347; NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371–4375; *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609); and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902 Mar. 5, 1970, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123 May 24, 1977); and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.~~

### **§ 1506.1 Limitations on actions during NEPA process.**

(a) ~~Except as provided in paragraphs (b) and (c) of this section, U~~ntil an agency issues a finding of no significant impact, as provided in § 1501.6 of this chapter, or record of decision, as provided in § 1505.2 of this chapter~~(except as provided in paragraph (c) of this section)~~, no action concerning the proposal ~~may~~shall be taken ~~that~~which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the 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 work necessary to support an application for Federal, State, Tribal, or local permits or assistance. An agency considering a proposed action for Federal funding 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~~ Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g. long lead-time equipment, and purchase options) made by ~~applicants~~ non-governmental entities seeking loan guarantees from the Administration.

(c) While work on a required programmatic environmental ~~review~~ impact statement is in progress and the action is not covered by an existing programmatic review statement, agencies shall not undertake in the interim any major Federal action covered by the program ~~that~~ which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental ~~review~~ impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

~~(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g. long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.~~

## § 1506.2 Elimination of duplication with State, Tribal, and local procedures.

(a) ~~Federal Agencies~~ are authorized ~~by law~~ to cooperate with State, Tribal, and local agencies ~~that are responsible for preparing environmental documents, including those prepared of statewide jurisdiction~~ pursuant to section 102(2)(D) of NEPA ~~the Act may do so~~.

(b) To the fullest extent practicable unless specifically prohibited by law, Agencies shall cooperate with State, Tribal, and local agencies ~~to the fullest extent possible~~ 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 ~~unless the agencies are specifically barred from doing so by some other law~~. Except for cases covered by paragraph (a) of this section, such cooperation shall ~~to the fullest extent possible~~ include, to the fullest extent practicable:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) To the fullest extent practicable unless specifically prohibited by law, Agencies shall cooperate with State, Tribal, and local agencies ~~to the fullest extent possible~~ to reduce duplication between NEPA and comparable State, Tribal, and local requirements, ~~unless the~~

~~agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, s~~Such cooperation shall include, to the fullest extent ~~possible~~practicable, ~~include~~ joint environmental impact statements. In such cases, one or more Federal agencies and one or more State, Tribal, or local agencies shall be joint lead agencies. Where State or Tribal laws or local ordinances have environmental impact statement or similar requirements in addition to but not in conflict with those in NEPA, ~~f~~Federal agencies may~~shall~~ cooperate in fulfilling these requirements, as well as those of Federal laws, so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State, Tribal, or local planning processes, environmental impact statements shall discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan ~~or~~ laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law. While the statement should discuss any inconsistencies, NEPA does not require reconciliation.

### **§ 1506.3 Adoption.**

(a) Generally. An agency may adopt a Federal draft or final environmental impact statement, environmental assessment, or portion thereof, or categorical exclusion determination provided that the statement, assessment, ~~or~~ portion thereof, or determination meets the standards for an adequate statement, assessment, or determination under these regulations in this subchapter.

(b) Environmental impact statements. (1) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the ~~agency adopting another agency's statement shall republishis not required to recirculate it except~~ as a final statement consistent with § 1506.10. ~~If the actions are not substantially the same, Otherwise~~ the adopting agency shall treat the statement as a draft and ~~republishereirculate it (except as provided in paragraph (c) of this section),~~ consistent with § 1506.10.

(2e) Notwithstanding paragraph (b)(1) of this section, a cooperating agency may adopt in its record of decision without ~~republishingeirculating~~ the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(c) Environmental assessments. If the actions covered by the original environmental assessment and the proposed action are substantially the same, the adopting agency may adopt the environmental assessment in its finding of no significant impact and provide notice consistent with § 1501.6 of this chapter.

(d) Categorical exclusions. An agency may adopt another agency's determination that a categorical exclusion applies to a proposed action if the action covered by the original categorical exclusion determination and the adopting agency's proposed action are substantially the same. The agency shall document the adoption.

(e) Identification of certain circumstances. The adopting agency shall specify if one of the following circumstances is present:



~~(1d) When an~~ The agency is adopting an assessment or statement that ~~which~~ is not final within the agency that prepared it.

~~(2), or when~~ The action it assessed in the assessment or statement is the subject of a referral under part 1504 of this chapter.

~~(3), or when~~ The assessment or statement's adequacy is the subject of a judicial action that ~~which~~ is not final; ~~the agency shall so specify.~~

#### **§ 1506.4 Combining documents.**

Agencies should combine, to the fullest extent practicable, any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

#### **§ 1506.5 Agency responsibility for environmental documents.**

(a) Responsibility. The agency is responsible for the accuracy, scope (§ 1501.9(e) of this chapter), and content of environmental documents prepared by the agency or by an applicant or contractor under the supervision of the agency.

(b) Information. ~~If a~~ An agency may require an applicant to submit environmental information for possible use by the agency in preparing an environmental ~~document.~~ impact statement, then An agency also may direct an applicant or authorize a contractor to prepare an environmental document under the supervision of the agency.

(1) ~~The~~ The agency should assist the applicant by outlining the types of information required or, for the preparation of environmental documents, shall provide guidance to the applicant or contractor and participate in their preparation.

(2) ~~The~~ The agency shall independently evaluate the information submitted or the environmental document and shall be responsible for its accuracy, scope, and contents.

(3) ~~If~~ The agency shall include ~~chooses to use the information submitted by the applicant in the environmental document.~~ impact statement, either directly or by reference, then the names and qualifications of the persons preparing environmental documents, and conducting ~~responsible for~~ the independent evaluation of any information submitted or environmental documents prepared by an applicant or contractor, such as ~~shall be included~~ in the list of preparers for environmental impact statements (§ 1502.18 ~~7~~ of this chapter). It is the intent of this paragraph (b)(3) that acceptable work not be redone, but that it be verified by the agency.

~~(b) Environmental assessments.~~ If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(4e) Contractors or applicants preparing environmental assessments or environmental impact statements shall submit a disclosure statement to the lead agency that specifies any

~~financial or other interest in the outcome of the action. Such statement need not include privileged or confidential trade secrets or other confidential business information.~~  
~~Environmental impact statements. Except as provided in §§ 1506.2 and 1506.3, any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under § 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents.~~

(5) Nothing in this section is intended to prohibit any agency from requesting any person, including the applicant, to submit information to it or to prohibit any person from submitting information to any agency for use in preparing environmental documents.

#### **§ 1506.6 Public involvement.**

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures (§ 1507.3 of this chapter).

(b) Provide public notice of NEPA-related hearings, public meetings, and other opportunities for public involvement, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected by their proposed actions. When selecting appropriate methods for providing public notice, agencies shall consider the ability of affected persons and agencies to access electronic media.

(1) In all cases, the agency shall ~~mail-~~notify ~~ee to~~ those who have requested ~~notice~~ it on an individual action.

(2) In the case of an action with effects of national concern, notice shall include publication in the Federal Register ~~FEDERAL REGISTER~~ and ~~notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor.~~ An agency ~~engaged in rulemaking may provide-~~notify ~~ee by mail to national organizations that who have requested regular~~ that notice ~~regularly be provided. Agencies shall maintain a list of such organizations.~~

(3) In the case of an action with effects primarily of local concern, the notice may include:

(i) Notice to State, Tribal, and local agencies that may be interested or affected by the proposed action ~~are~~ wide-clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to interested or affected State, Indian ~~tribes,~~ Tribes, and local governments ~~when effects may occur on reservations.~~

(iii) Following the affected ~~s~~State or Tribe's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(x) Notice through electronic media (e.g., a project or agency website, email, or social media).

(c) Hold or sponsor public hearings, ~~or~~ public meetings, or other opportunities for public involvement whenever appropriate or in accordance with statutory requirements applicable to the agency. Agencies may conduct public hearings and public meetings by means of electronic communication except where another format is required by law. When selecting appropriate methods for public involvement, agencies shall consider the ability of affected entities to access electronic media. Criteria shall include whether there is:

~~(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.~~

~~(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).~~

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act, as amended (5 U.S.C. 552), ~~without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.~~

## § 1506.7 Further guidance.

(a) The Council may provide further guidance concerning NEPA and its procedures consistent with Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (August 5, 2017), Executive Order 13891, Promoting the Rule of Law Through Improved Agency Guidance Documents (October 9, 2019), and any other applicable Executive orders.~~including:~~

(b) To the extent that Council guidance issued prior to September 14, 2020 is in conflict with this subchapter, the provisions of this subchapter apply.

~~(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.~~

~~(b) Publication of the Council's Memoranda to Heads of Agencies.~~

~~(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:~~

~~(1) Research activities;~~

~~(2) Meetings and conferences related to NEPA; and~~

~~(3) Successful and innovative procedures used by agencies to implement NEPA.~~

## § 1506.8 Proposals for legislation.

(a) When developing legislation, agencies shall integrate ~~The~~ NEPA process for proposals for legislation ~~(§ 1508.17)~~ significantly affecting the quality of the human environment ~~shall be integrated~~ with the legislative process of the Congress. Technical ~~Drafting assistance~~ does not by itself constitute a legislative proposal ~~significant cooperation~~. Only the agency that which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

(b) A legislative environmental impact statement is the detailed statement required by law to be included in an agency's recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement ~~that which~~ can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

~~(c)~~ Preparation of a legislative environmental impact statement shall conform to the requirements of ~~these~~ regulations in this subchapter, except as follows:

(1) There need not be a scoping process.

(2) Agencies shall prepare ~~The~~ legislative statement ~~shall be prepared~~ in the same manner as a draft environmental impact statement and need not prepare a final statement unless any of

~~the following conditions exist, but shall be considered the “detailed statement” required by statute; Provided, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal. In such cases, the agency shall be prepared and publish the statements consistent with the regulations as provided by §§ 1503.1 of this chapter and 1506.110:-~~

(i) A Congressional committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*) ~~and the Wilderness Act (16 U.S.C. 1131 *et seq.*)~~).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects ~~that~~<sup>which</sup> the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

~~(de)~~ Comments on the legislative statement shall be given to the lead agency, which shall forward them along with its own responses to the Congressional committees with jurisdiction.

#### **§ 1506.9 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, the agency may substitute it for the corresponding requirements in this subchapter and need not carry out duplicative procedures or documentation. Agencies shall identify which corresponding requirements in this subchapter are satisfied and consult with the Council to confirm such determinations.

#### **§ 1506.10 Filing requirements.**

(a) ~~Agencies shall file E~~Environmental impact statements together with comments and responses ~~shall be filed~~ with the Environmental Protection Agency (EPA), ~~attention~~ Office of Federal Activities, consistent with EPA’s procedures~~EIS Filing Section, Ariel Rios Building (South Oval Lobby), Mail Code 2252 A, Room 7220, 1200 Pennsylvania Ave., NW., Washington, DC 20460. This address is for deliveries by US Postal Service (including USPS-Express Mail).~~

(b) ~~For deliveries in person or by commercial express mail services, including Federal Express or UPS, the correct address is: US Environmental Protection Agency, Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Room 7220, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.~~

~~(e) Agencies shall file S~~statements ~~shall be filed~~ with the EPA no earlier than they are also transmitted to ~~commonparticipa~~ting agencies and made available to the public. ~~EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President.~~ EPA may issue guidelines to agencies to implement its responsibilities under this section and § 1506.1~~10~~.

#### **§ 1506.1~~10~~ Timing of agency action.**

(a) The Environmental Protection Agency shall publish a notice in the Federal Register~~FEDERAL REGISTER~~ each week of the environmental impact statements filed since its prior notice~~during the preceding week~~. The minimum time periods set forth in this section are~~shall be~~ calculated from the date of publication of this notice.

(b) Unless otherwise provided by law, including statutory provisions for combining a final environmental impact statement and record of decision, Federal agencies may not make or issue a record of~~No~~ decision under § 1505.2 of this chapter for~~on~~ the proposed action shall be made or recorded under § 1505.2 by a Federal agency until the later of the following dates:

(1) ~~Ninety (90)~~ days after publication of the notice described ~~above~~ in paragraph (a) of this section for a draft environmental impact statement.

(2) ~~Thirty (30)~~ days after publication of the notice described ~~above~~ in paragraph (a) of this section for a final environmental impact statement.

(c) An agency may make an exception to the rule on timing set forth in paragraph (b) of this section for a proposed action in the following circumstances:~~An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal.~~

(1) Some agencies have a formally established appeal process after publication of the final environmental impact statement that~~which~~ allows other agencies or the public to take appeals on a decision and make their views known; after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the agency may make and record the decision ~~may be made and recorded~~ at the same time it publishes the environmental impact statement ~~is published~~. This means that the period for appeal of the decision and the 30-day period set forth~~prescribed~~ in paragraph (b)(2) of this section may run concurrently. In such cases, the environmental impact statement shall explain the timing and the public's right of appeal and provide notification consistent with § 1506.10; or—

(2) An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section, and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement, and provide notification consistent with § 1506.10, as described in paragraph (a) of this section.

(de) If an agency files the final environmental impact statement ~~is filed~~ within ~~ninety (90)~~ days of the filing of the~~after a~~ draft environmental impact statement ~~is filed~~ with the Environmental Protection Agency, the decision-making~~minimum thirty (30) day~~ period and the ~~minimum ninety (90)~~ day period may run concurrently. However, subject to



paragraph (ed) of this section, agencies shall allow at least~~not less than~~ 45 days for comments on draft statements.

(ed) The lead agency may extend the minimumprescribed periods in paragraph (b) of this section and provide notification consistent with § 1506.10. Upon a showing by the lead agency of compelling reasons of national policy, ~~The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy~~ reduce the minimumprescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy, also may extend the minimumprescribed periods, but only after consultation with the lead agency. The lead agency may modify the minimum periods when necessary to comply with other specific statutory requirements. (Also see § 1507.3(f)(2) of this chapter.) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

#### **§ 1506.121 Emergencies.**

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of ~~these~~ regulations in this subchapter, the Federal agency taking the action should consult with the Council about alternative arrangements for compliance with section 102(2)(C) of NEPA. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

#### **§ 1506.132 Effective date.**

The ~~effective date of these~~ regulations in this subchapter apply to any NEPA process begun after September 14, 2020. An agency may apply the regulations in this subchapter to ongoing activities and environmental documents begun before September 14, 2020is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under section 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) ~~These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the FEDERAL REGISTER of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.~~

(b) ~~NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.~~

## PART 1507—AGENCY COMPLIANCE

Sec.

1507.1 Compliance.

1507.2 Agency capability to comply.

1507.3 Agency NEPA procedures.

1507.4 Agency NEPA program information.

**Authority:** 42 U.S.C. 4321–4347; NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371–4375; *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609;) ~~and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902~~ Mar. 5, 1970, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123 ~~May 24, 1977; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.~~

### § 1507.1 Compliance.

All agencies of the Federal Government shall comply with ~~these~~ regulations in this subchapter. ~~It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by § 1507.3 to the requirements of other applicable laws.~~

### § 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements of NEPA and the regulations in this subchapter ~~enumerated below.~~ Such compliance may include use of ~~the other's~~ resources of other agencies, applicants, and other participants in the NEPA process, but the ~~using~~ agency using the resources shall itself have sufficient capability to evaluate what others do for it and account for the contributions of others. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of ~~NEPA the Act~~ to utilize a systematic, interdisciplinary approach ~~that which~~ will ~~ensure~~ the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making ~~that which~~ may have an impact on the human environment. Agencies shall designate a senior agency official person to be responsible for overall review of agency NEPA compliance, including resolving implementation issues.

(b) Identify methods and procedures required by section 102(2)(B) of NEPA to ~~ensure~~ that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) of NEPA and ~~cooperate~~ comment on the development of statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal ~~that which~~ involves unresolved conflicts concerning alternative uses of available resources, consistent with. ~~This requirement of~~ section 102(2)(E) of NEPA ~~extends to all such~~

~~proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.~~

(e) Comply with the requirements of section 102(2)(H) of NEPA that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of ~~NEPA, the Act and of~~ Executive Order 11514, Protection and Enhancement of Environmental Quality, ~~Section 2, as amended by Executive Order 11991, Relating to Protection and Enhancement of Environmental Quality, and Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting for Infrastructure Projects.~~

### § 1507.3 Agency NEPA procedures.

(a) ~~Where existing agency NEPA procedures are inconsistent with the regulations in this subchapter, the regulations in this subchapter shall apply, consistent with § 1506.13 of this chapter, unless there is a clear and fundamental conflict with the requirements of another statute. The Council has determined that the categorical exclusions contained in agency NEPA procedures as of September 14, 2020 are consistent with this subchapter.~~

~~(b) Not more later than 12eight months after September 14, 2020publication of these regulations as finally adopted in the FEDERAL REGISTER, or 9five months after the establishment of an agency, whichever shall comes later, each agency shall develop or revise, as necessary, proposedadopt procedures to supimplement these regulations in this subchapter, including to eliminate any inconsistencies with the regulations in this subchapter. When the agency is a department, it may be efficient for major subunits are encouraged (with the consent of the department) to adopt their own procedures. Except for agency efficiency (see paragraph (c) of this section) or as otherwise required by law, agency NEPA procedures shall not impose additional procedures or requirements beyond those set forth in the regulations in this subchapter. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures.~~

(1) Each agency shall consult with the Council while developing or revising its proposed procedures and before publishing them in the Federal Register~~FEDERAL REGISTER~~ for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants.

~~(2)- AgenciesThe procedures shall providebe adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations in this subchapter before adopting their final procedures. The Council shall complete its review within 30 days of the receipt of the proposed final procedures. Once in effect, the agency they shall publish its NEPA proceduresbe filed with the Council and ensure that they aremade readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.~~

(c) Agencies shall adopt, as necessary, agency NEPA procedures (§ 1507.3) to improve agency efficiency and ensure that agencies make decisions are made in accordance with the policies and purposes of the Act's procedural requirements. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(1b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process begins at the earliest reasonable time, consistent with § 1501.2 of this chapter, and aligns with the correspondings decision points with them.

(2e) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(3d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that decision makersagency officials use the statement in making decisions.

(4e) Requiring that the alternatives considered by the decision maker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decision maker consider the alternatives described in the environmental documentsimpact statement. If another decision document accompanies the relevant environmental documents to the decision maker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

(5) Requiring the combination of environmental documents with other agency documents. Agencies may designate and rely on one or more procedures or documents under other statutes or Executive orders as satisfying some or all of the requirements in this subchapter, and substitute such procedures and documentation to reduce duplication. When an agency substitutes one or more procedures or documents for the requirements in this subchapter, the agency shall identify the respective requirements that are satisfied.

(d) Agency procedures should identify those activities or decisions that are not subject to NEPA, including:

(1) Activities or decisions expressly exempt from NEPA under another statute;

(2) Activities or decisions where compliance with NEPA would clearly and fundamentally conflict with the requirements of another statute;

(3) Activities or decisions where compliance with NEPA would be inconsistent with Congressional intent expressed in another statute;

(4) Activities or decisions that are non-major Federal actions;

(5) Activities or decisions that are non-discretionary actions, in whole or in part, for which the agency lacks authority to consider environmental effects as part of its decision-making process; and

(6) Actions where the agency has determined that another statute's requirements serve the function of agency compliance with the Act.

(~~eb~~) Agency procedures shall comply with these regulations in this subchapter except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by §§ 1501.2(~~b~~)(4) (assistance to applicants),  
~~1502.9(e)(3), 1505.1, and~~ 1506.6(e) of this chapter (status information), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment and do not have a significant effect on the human environment (categorical exclusions (§ 15018.4 of this chapter)). Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect. Agency NEPA procedures shall identify when documentation of a categorical exclusion determination is required.

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(3) ~~Shall adopt~~ Procedures for introducing a supplement to an environmental assessment or environmental impact statement into its formal administrative record, if such a record exists.

(~~fe~~) Agency procedures may:

(1) ~~Include~~ specific criteria for providing limited exceptions to the provisions of these regulations in this subchapter for classified proposals. These ~~are~~ proposed actions ~~that which~~ are specifically authorized under criteria established by an Executive ~~O~~order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive ~~O~~order or statute. Agencies may safeguard and restrict from public dissemination ~~Environmental assessments and environmental impact statements that which~~ address classified proposals ~~may be safeguarded and restricted from public dissemination~~ in accordance with agencies' own regulations applicable to classified information. Agencies should organize ~~These documents may be organized~~ so that classified portions ~~are~~ can be included as annexes, so that the agencies can make ~~in order that~~ the unclassified portions ~~can be made~~ available to the public.

(~~2d~~) ~~Agency procedures may~~ Provide for periods of time other than those presented in § 1506.110 of this chapter when necessary to comply with other specific statutory requirements, including requirements of lead or cooperating agencies.

~~(3e) Agency procedures may provide that, where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the agency may publish the notice of intent required by § 1501.97(d) of this chapter may be published at a reasonable time in advance of preparation of the draft statement. Agency procedures shall provide for publication of supplemental notices to inform the public of a pause in its preparation of an environmental impact statement and for any agency decision to withdraw its notice of intent to prepare an environmental impact statement.~~

~~(43) Adopt procedures under § 1507.3 to combine its environmental assessment process with its scoping process.~~

~~(5) Establish a process that allows the agency to use a categorical exclusion listed in another agency's NEPA procedures after consulting with that agency to ensure the use of the categorical exclusion is appropriate. The process should ensure documentation of the consultation and identify to the public those categorical exclusions the agency may use for its proposed actions. Then, the agency may apply the categorical exclusion to its proposed actions.~~

#### **§ 1507.4 Agency NEPA program information.**

~~(a) To allow agencies and the public to efficiently and effectively access information about NEPA reviews, agencies shall provide for agency websites or other means to make available environmental documents, relevant notices, and other relevant information for use by agencies, applicants, and interested persons. Such means of publication may include:~~

~~(1) Agency planning and environmental documents that guide agency management and provide for public involvement in agency planning processes;~~

~~(2) A directory of pending and final environmental documents;~~

~~(3) Agency policy documents, orders, terminology, and explanatory materials regarding agency decision-making processes;~~

~~(4) Agency planning program information, plans, and planning tools; and~~

~~(5) A database searchable by geographic information, document status, document type, and project type.~~

~~(b) Agencies shall provide for efficient and effective interagency coordination of their environmental program websites, including use of shared databases or application programming interface, in their implementation of NEPA and related authorities.~~

#### **PART 1508—DEFINITIONSTERMINOLOGY AND INDEX**

Sec.

1508.1 ~~Definitions~~Terminology.

1508.2 ~~[Reserved]~~Act.

~~1508.3 Affecting.~~

~~1508.4 Categorical exclusion.~~



~~1508.5 Cooperating agency.~~  
~~1508.6 Council.~~  
~~1508.7 Cumulative impact.~~  
~~1508.8 Effects.~~  
~~1508.9 Environmental assessment.~~  
~~1508.10 Environmental document.~~  
~~1508.11 Environmental impact statement.~~  
~~1508.12 Federal agency.~~  
~~1508.13 Finding of no significant impact.~~  
~~1508.14 Human environment.~~  
~~1508.15 Jurisdiction by law.~~  
~~1508.16 Lead agency.~~  
~~1508.17 Legislation.~~  
~~1508.18 Major Federal action.~~  
~~1508.19 Matter.~~  
~~1508.20 Mitigation.~~  
~~1508.21 NEPA process.~~  
~~1508.22 Notice of intent.~~  
~~1508.23 Proposal.~~  
~~1508.24 Referring agency.~~  
~~1508.25 Scope.~~  
~~1508.26 Special expertise.~~  
~~1508.27 Significantly.~~  
~~1508.28 Tiering.~~

**Authority:** ~~42 U.S.C. 4321–4347; NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371–4375; *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609); and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902; Mar. 5, 1970, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; May 24, 1977); and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.~~

#### **§ 1508.1 DefinitionsTerminology.**

The following definitions apply to the regulations in this subchapter. Federal agency terminology of this part shall use these termsbe uniformly throughout the Federal Government.

#### **§ ~~1508.2~~ Act.**

(a) Act or NEPA means the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq.*)~~which is also referred to as “NEPA.”~~

#### **§ ~~1508.3~~ Affecting.**

(b) Affecting means will or may have an effect on.

(c) 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.



#### **§ 1508.4 Categorical exclusion.**

(d) Categorical exclusion means a category of actions that which the agency has determined, in its agency NEPA procedures (§ 1507.3 of this chapter), normally do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

#### **§ 1508.5 Cooperating agency.**

(e) Cooperating agency means any Federal agency (and a State, Tribal, or local agency with agreement of the lead agency) other than a lead agency that which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action that may significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in § 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

#### **§ 1508.6 Council.**

(f) Council means the Council on Environmental Quality established by title II of the Act.

#### **§ 1508.7 Cumulative impact.**

Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

#### **§ 1508.8 Effects.**

(g) 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, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.

(1a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population-

~~density or growth rate, and related effects on air and water and other natural systems, including ecosystems.~~

~~Effects and impacts as used in these regulations are synonymous.~~ Effects includes 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, whether direct, indirect, or cumulative. Effects may also include those resulting from actions that which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

(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 its limited statutory authority or would occur regardless of the proposed action.

(3) An agency’s analysis of effects shall be consistent with this paragraph (g). Cumulative impact, defined in 40 CFR 1508.7 (1978), is repealed.

#### **§ 1508.9 Environmental assessment.**

(h) Environmental assessment:

(a) Mmeans a concise public document prepared by for which a Federal agency is responsible that serves to:-

~~(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.~~

~~(2) A~~aid an agency’s compliance with the Act and support its determination of whether to prepare an when no environmental impact statement or a finding of no significant impact, as provided in § 1501.6 of this chapter is necessary.

~~(3) Facilitate preparation of a statement when one is necessary.~~

~~(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.~~

#### **§ 1508.10 Environmental document.**

(i) Environmental document means includes the documents specified in § 1508.9 (an environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), or and § 1508.22 (notice of intent).

#### **§ 1508.11 Environmental impact statement.**

(j) Environmental impact statement means a detailed written statement as required by section 102(2)(C) of NEPA the Act.

#### **§ 1508.12 Federal agency.**

(k) Federal agency means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. For the purposes of the regulations in this subchapter, Federal agency ~~It also includes for purposes of these regulations s~~States, ~~and~~ units of general local government, ~~and Indian Tribales governments~~ assuming NEPA responsibilities from a Federal agency pursuant to statute under section 104(h) of the Housing and Community Development Act of 1974.

#### **§ 1508.13 Finding of no significant impact.**

(l) Finding of no significant impact<sup>22</sup> means a document by a Federal agency briefly presenting the reasons why an action, not otherwise categorically excluded (§ 15018.4 of this chapter), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. ~~It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.~~

#### **§ 1508.14 Human environment.**

(m) Human environment means~~shall be interpreted~~ comprehensively ~~to include~~ the natural and physical environment and the relationship of present and future generations of Americans~~people~~ with that environment. (See also the definition of “effects” in paragraph (g) of this section(§ 1508.8).) ~~This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.~~

#### **§ 1508.15 Jurisdiction by law.**

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

#### **§ 1508.16 Lead agency.**

(o) Lead agency means the agency or agencies, in the case of joint lead agencies, preparing or having taken primary responsibility for preparing the environmental impact statement.

#### **§ 1508.17 Legislation.**

(p) Legislation means~~includes~~ a bill or legislative proposal to Congress developed by ~~or with the significant cooperation and support of~~ a Federal agency, but does not include requests for appropriations or legislation recommended by the President. ~~The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for~~

~~legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.~~

#### **§ 1508.18 Major Federal action.**

~~(q) Major Federal action or action means an~~includes activity or decisions ~~with effects that may be major and which are potentially subject to Federal control and responsibility subject to the following: Major reinforces but does not have a meaning independent of significantly (§ 1508.27).~~

(1) Major Federal action does not include the following activities or decisions:

(i) Extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States;

(ii) Activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority;

(iii)- Activities or decisions that do not result in final agency action~~include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other statute that also includes a finality requirement; applicable law as agency action.~~

(iv) Actions do not include bringing jJudicial or administrative civil or criminal enforcement actions;-

(v) Actions do not include fFunding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 *et seq.*, with no Federal agency control over the subsequent use of such funds;

(vi) Non-Federal projects with minimal Federal funding or minimal Federal involvement where the agency does not exercise sufficient control and responsibility over the outcome of the project; and

(vii) Loans, loan guarantees, or other forms of financial assistance where the Federal agency does not exercise sufficient control and responsibility over the effects of such assistance (for example, action does not include farm ownership and operating loan guarantees by the Farm Service Agency pursuant to 7 U.S.C. 1925 and 1941 through 1949 and business loan guarantees by the Small Business Administration pursuant to 15 U.S.C. 636(a), 636(m), and 695 through 697g).

(2a) Major Federal Actions may include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by ~~f~~Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, ~~1508.17 of this chapter~~). ~~Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control~~

~~over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.~~

(3b) Major Federal actions tend to fall within one of the following categories:

(i1) Adoption of official policy, such as rules, regulations, and interpretations adopted ~~underpursuant to~~ the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* or other statutes; implementation of treaties and international conventions or agreements, including those implemented pursuant to statute or regulation; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(ii2) Adoption of formal plans, such as official documents prepared or approved by ~~F~~Federal agencies, which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(iii3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(iv4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as ~~F~~Federal and federally assisted activities.

#### **§ 1508.19 Matter.**

(r) Matter includes for purposes of ~~P~~part 1504 of this chapter:

(1a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(2b) With respect to all other agencies, any proposed major ~~F~~Federal action to which section 102(2)(C) of NEPA applies.

#### **§ 1508.20 Mitigation.**

(s) 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:

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

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

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

(4d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(5e) Compensating for the impact by replacing or providing substitute resources or environments.

#### **~~§ 1508.21 NEPA process.~~**

(t) *NEPA process* means all measures necessary for compliance with the requirements of section 2 and title I of NEPA.

#### **~~§ 1508.22 Notice of intent.~~**

(u) *Notice of intent* means a public notice that an agency will prepare and consider an environmental impact statement ~~will be prepared and considered. The notice shall briefly:~~

~~(a) Describe the proposed action and possible alternatives.~~

~~(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.~~

~~(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.~~

(v) *Page* means 500 words and does not include explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information.

(w) *Participating agency* means a Federal, State, Tribal, or local agency participating in an environmental review or authorization of an action.

#### **~~§ 1508.23 Proposal.~~**

(x) *Proposal* means a proposed action exists at that stage in the development of an action when an agency subject to the Act has a goal, and is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and the effects can be meaningfully evaluated its effects. Preparation of an environmental impact statement on a proposal should be timed (§ 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

(y) *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, and adopted by agency NEPA procedures pursuant to § 1507.3 of this chapter.

(z) *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.



(aa) Reasonably foreseeable means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

**§ 1508.24 Referring agency.**

(bb) Referring agency means the Federal agency that~~which~~ has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

**§ 1508.25 Scope.**

(cc) Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§ 15012.1120 of this chapter and 1508.28).~~To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:~~

~~(a) Actions (other than unconnected single actions) which may be:~~

~~(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:~~

~~(i) Automatically trigger other actions which may require environmental impact statements.~~

~~(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.~~

~~(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.~~

~~(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.~~

~~(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.~~

~~(b) Alternatives, which include:~~

~~(1) No action alternative.~~

~~(2) Other reasonable courses of actions.~~

~~(3) Mitigation measures (not in the proposed action).~~

~~(c) Impacts, which may be: (1) direct; (2) indirect; (3) cumulative.~~

**~~§ 1508.26 Special expertise.~~**

~~(dd) *Senior agency official* means an official of assistant secretary rank or higher (or equivalent) that is designated for overall agency NEPA compliance, including resolving implementation issues.~~

~~(ee) *Special expertise* means statutory responsibility, agency mission, or related program experience.~~

**~~§ 1508.27 Significantly.~~**

~~*Significantly as used in NEPA requires considerations of both context and intensity:*~~

~~(a) *Context.* This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short and long term effects are relevant.~~

~~(b) *Intensity.* This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:~~

~~(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.~~

~~(2) The degree to which the proposed action affects public health or safety.~~

~~(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.~~

~~(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.~~

~~(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.~~

~~(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.~~

~~(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.~~

~~(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.~~

~~(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.~~

~~(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.~~

#### **§ 1508.28 Tiering.**

*(ff)* 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. ~~Tiering is appropriate when the sequence of statements or analyses is:~~

~~(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.~~

~~(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.~~

#### **§ 1508.2 [Reserved]**