

The Council on Environmental Quality (CEQ) provides this redline for the convenience of reviewing the changes to its regulations. While CEQ has taken steps to ensure the accuracy of this redline, it is not an official version of the final rule. Please refer to the official final rule, available at <https://regulations.gov> in Docket No. CEQ–2019–0003.

## **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 compliance~~Mandate.~~

~~(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 (§ 1501.4 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 (§ 1501.6 of this chapter).

(c) Reducing the length of environmental documents impact statements (§ 1502.2(e)), by means such as setting 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 (§ 1501.21 ~~2.124~~ of this chapter).
- (mk) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.24 ~~5~~ 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).
- (qo) 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 (§ 1501.4 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 (§ 1501.613 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.~~64~~ ~~Findings of no significant~~Whether to prepare an environmental impact statement.

1501.~~75~~ Lead agencies.

1501.~~86~~ Cooperating agencies.

1501.~~97~~ Scoping.

1501.~~108~~ Time limits.

1501.2.11~~20~~ Tiering.

1501.2.12~~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:

~~(i1)~~ 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:~~

(ii1) ~~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.~~

(iii2) ~~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.~~

(iv10) ~~Whether the action threatens a~~**Effects that would violate**~~ion of Federal, State, Tribal, or local law or requirements imposed for the protect~~**ion**~~ion of the environment.~~

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





















































## 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.~~

~~(iv) Request comments from~~ (3) The applicant, if any; and

~~(v) Request comments from~~ (4) 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~~







(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~~advice~~ 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 applicants)~~ may ~~provided~~ deliver 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~~ 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:~~

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

(2~~b~~) 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.

(3~~e~~) 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~~0~~ 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 ~~e~~nsure 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),

~~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~~ederal 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 ~~republishereulate~~ it ~~(except as provided in paragraph (e) 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 requires 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 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 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 (§ 1502.187 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~~ notify 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~~ provide notify by mail to national organizations ~~that who~~ that 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~~ clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to interested or affected State, Indian 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 T~~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 D~~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 T~~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 withiregulated 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 which~~ 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 ~~commonparticipating~~ 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 § 1506.110.

#### § 1506.110 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 minimum prescribed~~ 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 ~~minimum prescribed~~ periods and ~~may~~ upon a showing by any other Federal agency of compelling reasons of national policy, also may extend ~~the minimum prescribed~~ 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, 2020 is 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~~ 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 12 eight months after September 14, 2020 publication of these regulations as finally adopted in the FEDERAL REGISTER, or 9 five months after the establishment of an agency, whichever shall comes later, each agency shall develop or revise, as necessary, proposed adopt procedures to sup implement 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) Agencies The procedures shall provide be 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 procedures be filed with the Council and ensure that they are made 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 makers agency 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 documents impact 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.

(e) 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 pProcedures for introducing a supplement to an environmental assessment or environmental impact statement into its formal administrative record, if such a record exists.

(f) Agency procedures may:

(1) ~~i~~Include specific criteria for providing limited exceptions to the provisions of these regulations in this subchapter for classified proposals. ~~These~~ they 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 ~~E~~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 ~~T~~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.

(2) ~~d~~Agency ~~procedures may p~~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—DEFINITIONS, TERMINOLOGY 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 Definitions Terminology.**

The following definitions apply to the regulations in this subchapter. Federal agency terminology of this part shall use these terms ~~be~~ 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. include:

(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) 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 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 judicial or administrative civil or criminal enforcement actions;~~

~~(v) 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;~~

~~(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 ~~A~~ctions 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 fFederal agency thatwhich 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]**