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List of Subjects in 40 CFR Parts 1500 through 1508

Administrative practice and procedure; Environmental impact statements;

Environmental protection; Natural resources

Dated: December 23, 2019.

Mary B. Neumayr,

Chairman.

For the reasons discussed in the preamble, the Council on Environmental Quality
Executive Office of the Presidentproposes to amend parts 1500 through 1508 in
title 40 of the Code of Federal Regulations to read as follows:

~~REGULATIONS~~
~~For Implementing The Procedural Provisions Of The~~
~~NATIONAL~~
~~ENVIRONMENTAL~~

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~~POLICY ACT~~



Reprint 40 CFR Parts 1500-1508 (2005)

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PART 1500—PURPOSE, POLICY, AND MANDATE

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~~quences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.~~

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§1500.2 Policy.

~~AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and~~ [Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514,](#)

[35 FR 4247, Mar. 5, 1970, as amended by E.O. 11991, 42 FR 26967, May 24, 1977\), 25, 1977; and E.O 13807, 82 FR 40463, Aug. 24, 2017.](#)

~~SOURCE: 43 FR 55990, Nov. 28, 1978, unless otherwise noted.~~

§ 1500.1 Purpose [and policy.](#)

(a) The National Environmental Policy Act (NEPA) is ~~our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains “action forcing” provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section-~~

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~~102(2). 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.~~ a procedural statute intended to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process. 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. 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. 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. NEPA's purpose is not to generate paperwork or litigation, but to provide for informed decision making and foster excellent action.

~~(b) 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~~

~~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;~~

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~~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.~~The regulations in parts 1500 through 1508 **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. These regulations 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 are also intended to ensure that Federal agencies conduct environmental reviews in a coordinated, consistent, predictable and timely

~~(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.~~

manner, and to reduce unnecessary burdens and delays. Finally, the regulations promote concurrent environmental reviews to ensure timely and efficient decision making.

§ 1500.2 [Reserved]

§ 1500.3 NEPA compliance.

(a) Mandate. Parts 1500 through 1508 of this title ~~provide regulations~~are applicable to and binding on all ~~fed-eral~~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 in-~~consistent with other statutory requirements. These regulations are issued pursuant to NEPA; the Environmental Quality Improvement Act of 1970, as amended (Pub. L.

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91–224, 42 U.S.C. 4371 *et seq.*)~~section~~; section 309 of the Clean Air Act, as amended (42~~7609~~)~~and U.S.C. 7609~~; Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, ~~1970~~,1970), as amended by Executive Order 11991, ~~May 24, 1977~~). ~~These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The~~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 apply to the whole of section 102(2) of NEPA. The provisions of the Act and of these regulations must be read together as a whole ~~in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has 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 action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action~~law. Agency NEPA procedures to implement these regulations shall not impose additional procedures or requirements beyond those set forth in these regulations, except as otherwise provided by law or for agency efficiency.

(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).

(2) The environmental impact statement shall include a summary of the comments received, including all alternatives, information, and analyses submitted by public

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commenters for consideration by the lead and cooperating agencies in developing the environmental impact statement (§ 1502.17).

(3) For consideration by the lead and cooperating agencies, comments must be submitted within the comment periods provided and shall be as specific as possible (§§ 1503.1 and 1503.3). Comments or objections not submitted shall be deemed unexhausted and forfeited. Any objections to the submitted alternatives, information, and analyses section (§ 1502.17) shall be submitted within 30 days of the notice of availability of the final environmental impact statement.

(4) Based on the summary of the submitted alternatives, information, and analyses section, the decision maker for the lead agency shall certify in the record of decision that the agency considered all of the alternatives, information, and analyses submitted by public commenters for consideration by the lead and cooperating agencies in developing the environmental impact statement (§ 1502.18).

(c) *Actions regarding NEPA compliance.* It is the Council's intention that judicial review of agency compliance with the regulations in parts 1500 through 1508 not occur before an agency has issued the record of decision or taken other final agency action.

Any allegation of noncompliance with NEPA and these regulations should be resolved as expeditiously as possible. Agencies may structure their decision making to allow private parties to seek agency stays of final agency decisions pending administrative or judicial

review of those decisions. Consistent with their organic statutes, agencies may structure their procedures to provide for efficient mechanisms for seeking, granting and imposing conditions on such stays, consistent with 5 U.S.C. 705. Such mechanisms may include the imposition of an appropriate bond requirement or other security requirement as a condition for a stay.

(d) *Remedies.* Harm from the failure to comply with NEPA can be remedied by

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compliance with NEPA's procedural requirements as interpreted in the regulations in parts 1500 through 1508. These regulations create no presumption that violation of NEPA is a basis for injunctive relief or for a finding of irreparable harm. These regulations 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, or alter an agency decision on the basis of an alleged NEPA violation be raised as soon as practicable to avoid or minimize any costs to agencies, applicants, or any affected third parties. 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 action.

(e) *Severability*. The sections of parts 1501 through 1508 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 which do not have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (§ 1501.4).

(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 exempt from requirements to prepare an environmental impact statement (§ 1501.6).

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- (c) ~~(a)~~ Reducing the length of environmental ~~impact statements~~ ~~(§1502.2(e))~~ documents by means such as ~~setting meeting~~ appropriate page limits (~~§§1501.7(b)+~~ 1501.5(e) and 1502.7).
- (d) ~~(b)~~ Preparing analytic ~~rather than encyclopedic~~ and concise environmental impact statements (§ 1502.2~~(a)~~).
- (e) ~~(c)~~ Discussing only briefly issues other than significant ones (§ 1502.2(b)).
- (f) ~~(d)~~ Writing environmental impact statements in plain language (§ 1502.8).
- (g) ~~(e)~~ Following a clear format for ~~environmental~~ environmental impact statements (§ 1502.10).
- (h) ~~(f)~~ Emphasizing the portions of the ~~environmental~~ environmental impact statement that are useful to ~~decisionmakers~~ decision makers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1502.16).
- (i) ~~(g)~~ 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 (~~§1501.7~~ 1501.9).
- (j) ~~(h)~~ Summarizing the environmental impact statement (§ 1502.12) ~~and circulating the summary instead of the entire environmental impact statement if the latter is unusually long~~ (~~§1502.19~~).
- (k) ~~(i)~~ Using ~~program~~ programmatic, policy, or plan ~~environmental~~ environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and ~~1502.20~~ 1501.11).
- (l) ~~(j)~~ Incorporating by reference (~~§1502.21~~ 1501.12).
- (m) ~~(k)~~ Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

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(n) ~~(h)~~ Requiring comments to be as specific as possible (§ 1503.3).

(o) ~~(m)~~ 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)).

(p) ~~(h)~~ Eliminating duplication with ~~state~~ State, Tribal, and local procedures, by providing for joint ~~preparation~~ ~~(§ preparation of environmental documents where~~ practicable (§ 1506.2), and with other ~~federal procedures~~ Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(q) ~~(e)~~ Combining environmental documents with other documents (§ 1506.4).

~~(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).~~

~~[43 FR 55990, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]~~

§ 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Using categorical exclusions to define categories of actions which do not have a significant effect on the human environment (§ 1501.4) and which are therefore exempt from requirements to prepare 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 (§ 1501.6) and is therefore exempt from requirements to prepare an environmental impact statement.

(c) ~~(a)~~ Integrating the NEPA process into early planning (§ 1501.2).

(d) ~~(b)~~ Engaging in interagency cooperation before the environmental

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assessment or environmental impact statement is prepared, rather than submission of ~~adversary~~ comments on a completed document (§~~1501.6~~ 1501.8).

(e) ~~(e) Insuring~~ Ensuring the swift and fair resolution of lead agency disputes (§~~1501.5~~ 1501.7).

(f) ~~(d)~~ Using the scoping process for an early identification of what are and what are not the real issues (§~~1501.7~~ 1501.9).

(g) ~~(e) Establishing~~ Meeting appropriate time limits for the environmental assessment and environmental impact statement ~~process (§§1501.7(b)(2) and 1501.8)~~ processes (§ 1501.10).

(h) ~~(f)~~ Preparing environmental impact ~~state-ments~~ statements early in the process (§ 1502.5).

(i) ~~(g)~~ Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(j) ~~(h)~~ Eliminating duplication with ~~state~~ State, Tribal, and local procedures by providing for joint ~~prepara-tion (§1506.2),~~ preparation of environmental documents where practicable (§ 1506.2) and with other ~~federal proce-dures~~ Federal procedures by providing that ~~an agency~~ agencies may jointly prepare or adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(k) ~~(i)~~ Combining environmental documents with other documents (§ 1506.4).

(l) ~~(j)~~ Using accelerated procedures for ~~propo-s-als~~ proposals for legislation (§ 1506.8).

~~(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.~~

~~(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environ-ment (§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

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authority and as a mandate to view ~~traditional~~ policies and missions in the light of the Act's national- environmental objectives. Agencies shall review their policies, procedures, and ~~regula- tions~~ regulations accordingly and revise them as necessary to ~~insure~~ ensure full compliance with the purposes and provisions of the Act: as interpreted by the regulations in parts 1500 through 1508. The phrase "to the fullest extent possible" in section 102 of NEPA means that each agency of the ~~federal-government~~ Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance

impossible. Nothing contained in the regulations in parts 1500 through 1508 is intended or should be construed to limit an agency's other authorities or legal responsibilities.

2. Revise part 1501 to read as follows:

PART 1501—NEPA AND AGENCY PLANNING

Sec.

1501.1 ~~Purpose.~~ NEPA threshold applicability analysis. 1501.2 Apply NEPA early in the

process. ~~1501.3 When to prepare an environmental assessment.~~

~~1501.4 Whether to prepare an environmental impact statement.~~

1501.3 Determine the appropriate level of NEPA review.

1501.4 Categorical exclusions.

1501.5 Environmental assessments.

1501.6 Findings of no significant impact.

1501.7 Lead agencies.

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~~1501.7~~ 1501.9 Scoping.

~~1501.8~~ 1501.10 Time limits.

1501.11 Tiering.

1501.12 Incorporation by reference.

~~AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and~~ **Authority:** 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. ~~11514~~ (11514, 35 FR 4247, Mar. 5, 1970, as amended by E.O. 11991, 42 FR 26967, May 24, 1977), 25, 1977; and E.O 13807, 82 FR 40463, Aug. 24, 2017.

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~~SOURCE: 43 FR 55992, Nov. 29, 1978, unless otherwise noted.~~

§ 1501.1 PurposeNEPA threshold applicability analysis.

~~(a) The purposes of this part include:~~In assessing whether NEPA applies, Federal agencies should determine:

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

(1) Whether the proposed action is a major Federal action.

(2) Whether the proposed action, 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.

(3) Whether the proposed action is an action for which compliance with NEPA would clearly and fundamentally conflict with the requirements of another statute.

(4) Whether the proposed action is an action for which compliance with NEPA would be inconsistent with Congressional intent due to the requirements of another statute.

(5) Whether the proposed action is an action for which the agency has determined that other analyses or processes under other statutes serve the function of agency compliance with NEPA.

~~(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.~~Federal agencies may make these determinations in their agency NEPA procedures (§ 1507.3(c)) or on an individual basis.

~~(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.

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(a) Agencies ~~shall~~should integrate the NEPA process with other planning and authorization processes at the earliest ~~possible~~reasonable time to ~~insure that~~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:

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

(2) ~~(b)~~ Identify environmental effects and values in adequate detail so they can be ~~compared to~~appropriately considered along with economic and technical analyses. ~~Environmental~~Agencies shall review and publish environmental documents and appropriate analyses ~~shall be circulated and reviewed~~ at the same time as other planning documents.

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

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

(i) ~~(H)~~ Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later ~~feder-al~~Federal action.

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(ii) ~~(2)~~The ~~federal~~Federal agency consults early with appropriate ~~state~~State, Tribal, and local ~~agencies and Indian tribes~~governments and with interested private persons and organizations when its own involvement is ~~rea-sonably~~reasonably foreseeable.

(iii) ~~(3)~~The ~~federal~~Federal agency commences its NEPA process at the earliest ~~possible~~reasonable time.

~~§1501.3 When to prepare an environmental assessment.~~

§ 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).

(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.

(1) In considering the potentially affected environment, agencies may consider, as appropriate, the affected area (national, regional, or local). ~~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 Nation as a whole. Both short- and long-term effects are relevant.~~

(2) In considering the degree of the effects, agencies should consider the following.

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as appropriate to the specific action:

(i) Effects may be both beneficial and adverse.

(ii) Effects on public health and safety.

(iii) Effects that would violate Federal, State, Tribal, or local law protecting the environment.

§ 1501.4 Categorical exclusions.

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

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

(1) If extraordinary circumstances are present for a proposed action, the agency should consider whether mitigating circumstances or other conditions are sufficient to avoid significant effects and therefore categorically exclude the proposed action.

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

§ 1501.5 Environmental assessments.

(a) ~~Agencies~~ An agency shall prepare an environmental assessment ~~(§1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in §1507.3. An assessment is not necessary if the agency~~ for a proposed action that is not

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likely to have significant effects or when the significance of the effects is unknown unless the agency finds that a categorical exclusion (§ 1501.4) is applicable or has decided to prepare an environmental impact statement.

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

(c) ~~§1501.4 Whether to prepare an~~ An environmental ~~impact statement~~ assessment shall:

(1) ~~In~~ Briefly provide sufficient evidence and analysis for determining whether to prepare an ~~envi-ronmental impact statement the federal agency shall:~~

~~(a) Determine under its procedures supple-menting these regulations (described in §1507.3) whether the proposal is one which:~~ (1) Normally requires an environmental impact statement, or a finding of no significant impact; and

~~(2) Normally does not require either an envi-ronmental impact statement or an environmen-tal assessment (categorical exclusion):~~

(2) (b) ~~#~~ Briefly discuss the purpose and need for the proposed action ~~is not covered by paragraph (a) of this section, prepare an envi-ronmental assessment (§1508.9). The agency shall involve environmental,~~ alternatives as required by section 102(2)(E) of NEPA, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(d) Agencies shall involve relevant agencies, ~~appli-cants~~ applicants, and the public, to the extent practicable; in preparing environmental assessments ~~required by §1508.9(a)(1).~~

(e) ~~(c)~~ Based on the environmental assessment make its determination whether to prepare an environmental impact statement. The text of an environmental assessment shall be no more than 75 pages, not including appendices, unless a senior agency official approves in writing an assessment to exceed 75 pages and establishes a new page limit.

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

(1) Section 1502.22 Incomplete or unavailable information:

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(2) Section 1502.24 Methodology and scientific accuracy; and

(3) Section 1502.25 Environmental review and consultation requirements.

§ 1501.6 Findings of no significant impact.

(a) ~~(d) Commence the scoping process (§1501.7), if the An~~ agency ~~will~~shall prepare ~~an environmental impact statement.~~(e) Prepare a finding of no significant impact ~~(§1508.13), if~~ the agency determines, based on the ~~basis of the~~ environmental assessment, not to prepare ~~an environmental impact~~ statement because the proposed action is not likely to have significant effects.

(1) The agency shall make the finding of no significant impact available to the affected ~~pub-lic~~public as specified in § 1506.6.

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

(i) The proposed action is, or is closely ~~sim-ilar~~similar to, one which normally requires the ~~prepa-ration~~preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

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

(b) The finding of no significant impact shall include the environmental assessment or incorporate it by reference and shall note any other environmental documents related to it (§ 1501.9(f)(3)). If the assessment is included, the finding need not repeat any of the

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discussion in the assessment but may incorporate it by reference.

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

~~§1501.5~~ **1501.7 Lead agencies.**

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

- (1) Proposes or is involved in the same action; or
- (2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, ~~state~~State, Tribal, or local agencies, ~~includ-ing~~including at least one ~~federal~~Federal agency, may act as joint lead agencies to prepare an environmental impact statement (~~§~~or environmental assessment (§ 1506.2).

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

- (1) Magnitude of agency's involvement.

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(2) Project approval/disapproval authority.

(3) Expertise concerning the action's ~~envi-ronmental~~environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

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

(e) If ~~federal~~Federal agencies are unable to agree on which agency will be the lead agency or if the- procedure described in paragraph (c) of this ~~see-tion~~section has not resulted within 45 days in a lead agency designation, any of the agencies or ~~per-~~sonspersons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency. A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

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

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

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

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[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

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

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

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

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

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

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

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

(j) If the lead agency anticipates that a milestone will be missed, it shall notify appropriate officials at the responsible agencies. The responsible agencies shall elevate,

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as soon as practicable, to the appropriate officials of the responsible agencies, the issue for timely resolution.

~~§1501.6~~ **1501.8** Cooperating agencies.

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

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

- ~~(1)Request the participation of each cooperating agency in the NEPA process at the earliest possible time.~~
- ~~(2)Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.~~
- ~~(3)Meet with a cooperating agency at the latter's request.~~

(b) Each cooperating agency shall:

- (1) Participate in the NEPA process at the earliest ~~possible~~practicable time.
- (2) Participate in the scoping process (described ~~below~~ in §~~1501.7~~ 1501.9).
- (3) Assume, on request of the lead agency, responsibility for developing information and preparing environmental analyses, including portions of the environmental impact statement or environmental assessment concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's ~~interdisciplinary~~interdisciplinary capability.

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

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

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

(c) ~~A cooperating agency may in~~ In response to a lead agency's request for assistance in preparing the environmental ~~impact statement~~ documents (described in paragraph (b) (3), (4), or (5) of this section), a cooperating agency may reply that other program ~~commit-~~ ments commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the

environmental impact ~~state-ment.~~ A statement or environmental assessment. The cooperating agency shall submit a copy of this reply ~~shall be submitted~~ to the Council and the senior agency official of the lead agency.

~~§1501.7~~ 1501.9 **Scoping.**

(a) There Generally. Agencies shall ~~be~~ use an early and open process ~~for determining~~ to determine the scope of issues ~~to be addressed and~~ for analysis in an environmental impact statement, including identifying the significant issues ~~related to a proposed action. This process~~ shall be termed scoping. As and eliminating from further study non-significant issues. Scoping may begin as soon as practicable after ~~its decision to prepare an environmental impact statement~~

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~~and before the scoping process the lead agency shall publish a notice of intent (§1508.22) in the FEDERAL REGISTER except as provided in §1507.3(e)~~the proposal for action is sufficiently developed for agency consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intent.

(b) ~~(a)~~Invite cooperating and participating agencies. As part of the scoping process, the lead agency shall:~~(1)Invite~~ invite the participation of likely affected ~~feder-al-~~ ~~state~~Federal, State, Tribal, and local agencies,~~any affected Indian tribe~~ and governments, the proponent of the action, and other likely affected or interested persons (including those who might not be in accord with the action on ~~environmen-tal~~environmental grounds), unless there is a limited exception under § 1507.3~~(e)-An agency may give~~(c).

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

(d) Notice of intent. As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an environmental impact statement, the lead agency shall publish a notice of intent to prepare an environmental impact statement in the Federal Register, except as provided in

§ 1507.3(e)(3). An agency may publish notice in accordance with § 1506.6. The notice shall include, as appropriate:

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

(2) A preliminary description of the proposed action and alternatives to be considered;

(3) A brief summary of expected impacts;

(4) Anticipated permits and other authorizations;

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

(6) A description of the public scoping process, including any scoping meeting(s);

(7) 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 (§§ 1503.1 and 1503.3); and

(8) Contact information for a person within the agency who can answer questions about the proposed action and the environmental impact statement.

(e) ~~(2) Determine the scope (§1508.25)~~ *Determination of scope.* As part of the scoping process, the lead agency shall determine the scope and the significant issues to be analyzed in depth in the environmental impact statement. To determine the scope of environmental impact statements, agencies shall consider:

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

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

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

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

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

(ii) 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 most effective 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.

(2) Alternatives, which include the no action alternative; other reasonable courses of action; and mitigation measures (not in the proposed action).

(3) Impacts.

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

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

(2) ~~(4)~~ Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the ~~state-ment~~ statement.

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

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~~(4)~~ ~~(6)~~ Identify other environmental review, authorization, and consultation requirements so the lead and ~~coop-erating~~cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact ~~state-ment~~statement as provided in § 1502.25.

~~(5)~~ ~~(7)~~ Indicate the relationship between the ~~tim-ing~~timing of the preparation of environmental ~~analy-ses~~analyses and the ~~agency's~~agencies' tentative planning and ~~decisionmaking~~decision-making schedule.

~~(b) As part of the scoping process the lead agency may:~~
~~(1) Set page limits on environmental documents (§1502.7).~~
~~(2) Set time limits (§1501.8).~~
~~(3) Adopt procedures under §1507.3 to combine its environmental assessment process with its scoping process.~~
~~(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.~~

~~(g)~~ ~~(e)~~ Revisions. An agency shall revise the determinations made under paragraphs ~~(a)~~b, ~~(c)~~, ~~(e)~~, and ~~(b)~~f of this ~~sec-tion~~section if substantial changes are made later in the proposed action, or if significant new ~~circum-stances~~circumstances or information arise which bear on the proposal or its impacts.

~~§1501.8~~ 1501.10 Time limits.

~~(a) Although the Council has decided that pre-scribed universal time limits for the entire NEPA process are too inflexible, federal agencies are encouraged to~~ To ensure that agencies conduct NEPA reviews as efficiently and expeditiously as practicable, Federal agencies should set time limits appropriate to ~~indi-vidual~~individual actions or types of actions (consistent with the time intervals required by ~~§1506.10~~ 1506.11). When multiple agencies are involved the reference to agency below means lead agency.

~~(a) The agency shall set time limits if an appli-cant for the proposed action requests them: Provided, That the limits are consistent with the purposes of NEPA and other essential considera-tions of national policy.~~

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

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(1) Environmental assessments within 1 year unless a senior agency official of the lead agency approves a longer period in writing and establishes a new time limit. One year is measured from the date of decision to prepare an environmental assessment to the publication of a final environmental assessment.

(2) Environmental impact statements within 2 years unless a senior agency official of the lead agency approves a longer period in writing and establishes a new time limit. Two years is measured from the date of the issuance of the notice of intent to the date a record of decision is signed.

(c) ~~(b)~~ The senior agency official may: ~~(1) Consider~~ consider the following factors in ~~deter-mining~~ determining time limits:

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

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

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

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

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

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

~~(vii) Degree to which the action is controver-sial.~~

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

(d) ~~(2) Set~~ The senior agency official may set overall time limits or limits for each constituent part of the NEPA process, which may include:

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

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

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

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

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

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

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

(e) ~~(3)~~ ~~Designate~~ The agency may designate a person (such as the project manager or a person in the agency's office with- NEPA responsibilities) to expedite the NEPA process.

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

§ 1501.11 Tiering.

(a) Agencies are encouraged to tier their environmental impact statements and environmental assessments where it would eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review. Whenever an agency has prepared an environmental impact statement or environmental assessment for a program or policy and then prepares a subsequent statement or environmental assessment on an action included within the entire program or policy (such as a project- or site-specific action), the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from

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the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions.

(b) Tiering is appropriate when the sequence from an environmental impact statement or environmental assessment is:

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

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

§ 1501.12 Incorporation by reference.

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

3. Revise part 1502 to read as follows:

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PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Sec.

1502.1 ~~Purpose.~~ Environmental impact statement

purpose. 1502.2 Implementation.

1502.3 Statutory requirements for statements.

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

1502.5 Timing.

1502.6 Interdisciplinary preparation.

1502.7 Page limits.

1502.8 Writing.

1502.9 Draft, final, and supplemental statements.

1502.10 Recommended format.

1502.11 Cover ~~sheet.~~

1502.12 Summary.

1502.13 Purpose and need.

1502.14 Alternatives including the proposed action.

1502.15 Affected environment.

1502.16 Environmental consequences.

1502.17 Summary of submitted alternatives, information, and analyses.

1502.18 Certification of submitted alternatives, information, and analyses section.

1502.19 List of preparers.

~~1502.18~~ 1502.20 Appendix.

~~1502.19~~ Circulation 1502.21 Publication of the environmental impact statement.

~~1502.20~~ Tiering. ~~1502.21~~ Incorporation by reference. 1502.22 Incomplete or unavailable information.

1502.23 Cost-benefit analysis.

1502.24 Methodology and scientific accuracy.

1502.25 Environmental review and consultation requirements.

~~AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and~~ Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. ~~11514~~ 11514, 35 FR 4247, Mar. 5, 1970, as amended by E.O. 11991, 42 FR 26967, May 24, 1977, 25, 1977; and E.O 13807, 82 FR 40463, Aug. 24, 2017.

~~SOURCE: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.~~

§ 1502.1 ~~Purpose~~ Environmental impact statement purpose.

The primary purpose of an environmental impact statement ~~is to serve as an action forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the federal government~~ prepared pursuant to 102(2)(c) is to ensure agencies consider

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the environmental impacts of their actions in decision making. It shall provide full and

fair ~~dis-cussion~~discussion of significant environmental impacts and shall inform

~~decisionmakers~~decision makers and the public of ~~the~~ reasonable alternatives which would

avoid or minimize adverse impacts or enhance the quality of the human environment.

Agencies shall focus on significant environmental issues and alternatives and shall

reduce paperwork and the accumulation of extraneous background data.

Statements shall be concise, clear, and to the point, and shall be supported by evidence

that the agency has made the necessary ~~envi-ronmental~~environmental analyses. An

environmental impact statement is ~~more than a disclosure document. It shall be used by federal~~

~~officials in conjunction with other relevant material to plan actions and make decisions~~a document

that informs. Federal agency decision making.

§ 1502.2 Implementation.

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

(a) Environmental impact statements shall not be ~~analytic rather than~~ encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be ~~kept~~analytic, concise, and ~~shall be~~ no longer than ~~absolutely~~ necessary to comply with NEPA and with ~~these~~the regulations ~~in~~ parts 1500 through 1508. Length should ~~vary first with~~ be proportional to potential environmental ~~problems~~effects and ~~then with~~ project size.

(d) Environmental impact statements shall state how alternatives considered in it and ~~deci-sions~~decisions based on it will or will not achieve the requirements of sections 101

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and 102(1) of ~~the Act~~ NEPA and other environmental laws and policies.

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

(f) Agencies shall not commit resources ~~prej-udicing~~ prejudicing selection of alternatives before making a final decision (§ 1506.1).

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

§ 1502.3 Statutory requirements for statements.

As required by ~~see.~~ section 102(2)(C) of NEPA ~~envi-ronmental,~~ environmental impact statements ~~(§1508.11)~~ are to be included in every Federal agency recommendation or report. ~~On on~~ proposals (~~§1508.23~~). ~~For~~ for legislation and (~~§1508.17~~). ~~Other major federal actions~~ (~~§1508.18~~). ~~Significantly~~ (~~§1508.27~~). ~~Affecting~~ (~~§§1508.3, 1508.8~~). ~~The~~ other major Federal actions significantly affecting the quality of the human environment (~~§1508.14~~).

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

(a) Agencies shall ~~make sure~~ define the proposal ~~which~~ that is the subject of an environmental impact statement ~~is properly defined~~ based on the statutory authorities for the proposed action. Agencies shall use the criteria for scope (~~§1508.25~~ 1501.9) to ~~deter-~~ mine determine which proposal(s) shall be the subject of a particular statement. ~~Proposals~~ Agencies shall evaluate in a single environmental impact statement proposals or parts of ~~pro-posal~~ ~~which~~ proposals that are related to each other closely enough to be, in effect, a single course of action ~~shall be evaluated in a single impact statement~~.

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

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

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

(2) Generically, including actions which have relevant similarities, such as common ~~tim ing~~ timing, impacts, alternatives, methods of ~~imple mentation~~ implementation, media, or subject matter.

(3) By stage of technological development including ~~federal~~ Federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could ~~sig nificantly~~ significantly affect the quality of the human ~~envi ronment~~ environment. Statements ~~shall be prepared~~ on such programs ~~and shall~~ should be available before the ~~pro gram~~ program has reached a stage of investment or ~~com mitment~~ commitment to implementation likely to determine subsequent development or restrict later ~~alter natives~~ alternatives.

(d) Agencies shall as appropriate employ scoping (§~~1501.7~~ 1501.9), tiering (§~~1502.20~~ 1501.11), and other methods listed in §§ 1500.4 and 1500.5 to relate ~~broad~~ programmatic and narrow actions and to avoid duplication and delay. Agencies may tier their

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environmental analyses to defer detailed analysis of environmental impacts of specific program elements until such program elements are ripe for decisions that would involve an irreversible or irretrievable commitment of resources.

§ 1502.5 Timing.

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

(a) For projects directly undertaken by ~~feder-al~~Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go- no go) stage and may be supplemented at a later stage if necessary.

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

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the

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impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft ~~envi-ronmental~~environmental impact statement shall normally accompany the proposed rule.

§ 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an ~~inter-~~interdisciplinary approach which will ~~insure~~ensure the integrated use of the ~~natu-~~natural and social sciences and the environmental design arts (section 102(2)(A) of ~~the~~ActNEPA). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§~~1501.7~~ 1501.9).

§ 1502.7 Page limits.

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

§ 1502.8 Writing.

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

§ 1502.9 Draft, final, and supplemental statements.

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(a) Generally. Except for proposals for legislation as ~~pro-vided~~provided in § 1506.8 environmental impact ~~state-ments~~statements shall be prepared in two stages and ~~may,~~where necessary, shall be supplemented: as provided in paragraph (d)(1) of this section.

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

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

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

(i) The agency makes substantial changes in the proposed action that are relevant to

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~~environ-mental~~environmental concerns; or

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

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

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

(3) ~~(4)~~ Shall prepare, ~~circulate~~publish, and file a ~~sup-plement~~supplement to a statement in the same fashion (exclusive of scoping) as a draft and final ~~state-~~
~~ment~~statement unless alternative procedures are approved by the Council.

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

§ 1502.10 Recommended format.

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

(1) ~~(a)~~ Cover ~~sheet~~.

(2) ~~(b)~~ Summary.

(3) ~~(c)~~ Table of contents.

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(4) ~~(4)~~ Purpose of and need for action.

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

(6) ~~(f)~~ Affected environment. ~~(g)~~ Environmental and environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of ~~the Act~~ NEPA).

(7) Submitted, alternatives, information, and analyses.

(8) ~~(h)~~ List of preparers.

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

~~(j) Index.~~

(9) ~~(k)~~ Appendices (if any).

(b) If an agency uses a different format ~~is used~~, it shall include paragraphs (a), (b), (c), ~~(h), (i), and (j), of this section and shall include the substance of paragraphs~~ (d), (e), (f), (g), and ~~(k)~~ (h) of this section, as further described in §§ 1502.11 through ~~1502.18,~~ 1502.20, in any appropriate format.

§ 1502.11 Cover ~~sheet~~.

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

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

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

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

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

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

(f) The date by which comments must be received (computed in cooperation with EPA under § ~~1506.10~~). ~~The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).~~ 1506.11).

(g) The estimated total cost of preparing the environmental impact statement, including the costs of agency full-time equivalent (FTE) personnel hours, contractor costs, and other direct costs.

§ 1502.12 Summary.

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

§ 1502.13 Purpose and need.

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

§ 1502.14 Alternatives including the proposed action.

This section ~~is the heart of the environmen-tal impact statement. Based~~ should present the environmental impacts of the proposed action and the alternatives in comparative form based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16). ~~it should~~

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~~present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.~~ In this section, agencies shall:

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

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

(c) Include ~~reasonable alternatives not within the jurisdiction of the lead agency.~~ ~~(d) Include the alternative of the~~ no action alternative.

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

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

§ 1502.15 Affected environment.

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

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environment are ~~them-selves~~themselves no measure of the adequacy of an ~~envi-~~
~~ronmental~~environmental impact statement.

§ 1502.16 Environmental consequences.

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

(1) The environmental impacts of the proposed action and reasonable alternatives ~~including to~~
the proposed action, ~~any~~ and their significance. The comparison of the proposed action and reasonable alternatives shall be based on this discussion of the impacts.

(2) Any adverse environmental effects which cannot be avoided should the proposal be implemented, ~~the rela-tionship,~~

(3) The relationship between short-term uses of man's ~~envi-~~
~~ronment~~environment and the maintenance and enhancement of long-term productivity, ~~and any,~~

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

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

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

(5) (c) Possible conflicts between the proposed action and the objectives of ~~federal~~Federal, regional, ~~state~~State, Tribal, and local ~~(and in the case of a reservation, Indian~~

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~~tribe~~ land use plans, policies and ~~controls~~controls for the area concerned. (See § 1506.2(d).)

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

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

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

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

(9) ~~(h)~~ Means to mitigate adverse environmental impacts (if not fully covered under §1502.14(f)).
[43 FR 55994, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

§ 1502.14(e).

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

(b) Economic or social effects by themselves do not require preparation of an environmental impact statement. However, when the agency determines that economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss and give appropriate consideration to these effects on the human environment.

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

The environmental impact statement shall include a summary of all alternatives, information, and analyses submitted by public commenters for consideration by the lead and cooperating agencies in developing the environmental impact statement. Consistent with § 1503.1(a)(3), the lead agency shall invite comment on the completeness of the

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summary in the draft environmental impact statement.

§ 1502.18 Certification of submitted alternatives, information, and analyses section.

Based on the summary of the submitted alternatives, information, and analyses section, the decision maker for the lead agency shall certify in the record of decision that the agency has considered all of the alternatives, information, and analyses submitted by 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 conclusive presumption that the agency has considered the information included in the submitted alternatives, information, and analyses section.

§ 1502.19 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional ~~disci- plines~~disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the ~~state- ment~~statement (§§ 1502.6 and 1502.8).

Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

§~~1502.18~~ 1502.20 Appendix.

If an agency prepares an appendix ~~to an,~~ it shall be published with the environmental impact statement ~~the appendix~~and shall ~~(a) Consist~~ consist of material ~~prepared in connec- tion;~~

(a) Prepared in connection with an environmental impact statement (as distinct from

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material which is not so prepared and which is incorporated by reference (§~~1502.21~~ 1501.12)).

(b) ~~Normally consist of material which sub-~~stantiates Substantiating any analysis fundamental to the impact statement.

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

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

~~§1502.19 Circulation~~ 1502.21 Publication of the environmental impact statement.

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

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

(b) The applicant, if any.

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

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft. ~~If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.~~

~~§1502.20 Tiering.~~

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

~~§1502.21 Incorporation by reference.~~

~~Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.~~ **§ 1502.22 Incomplete or unavailable information.**

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

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

(c) ~~(b)~~ If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of ~~obtain-ing~~obtaining it are ~~exorbitant~~unreasonable or the means to obtain it are not known, the agency shall include within the environmental impact statement: ~~(1) A state-ment~~

(1) A statement that such information is incomplete or unavailable; ~~(2) a~~

(2) A statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human

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environment; ~~(3)~~a

(3) A summary of existing credible scientific ~~evi-dence~~evidence which is relevant to evaluating the ~~rea-sonably~~reasonably foreseeable significant adverse impacts on the human environment; and ~~(4)~~the

(4) The agency's evaluation of such impacts based upon ~~theoret-ical~~theoretical approaches or research methods generally accepted in the scientific community.

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

~~(c)The amended regulation will be applica-ble to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the FEDERAL REGISTER on or after May 27, 1986. For environmental impact state-ments in progress, agencies may choose to com-ply with the requirements of either the original or amended regulation.~~

~~{51 FR 15625, Apr. 25, 1986}~~

§ 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different ~~alter-natives~~alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in ~~evaluat-ing~~evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of ~~the Act~~NEPA the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-~~bene-fit~~benefit analysis and should not be when there are

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important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

§ 1502.24 Methodology and scientific accuracy.

Agencies shall ~~insure~~ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental ~~impact statements~~documents. Agencies shall make use of reliable existing data and resources and are not required to undertake new scientific and technical research to inform their analyses. Agencies may make use of any reliable data sources, such as remotely gathered information or statistical models. They shall identify any methodologies used and shall make explicit ~~ref-erence by-~~footnotereference to the scientific and other sources relied upon for conclusions in the ~~state-ment~~statement. An agency may place discussion of methodology in an appendix.

§ 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact ~~state-ments concurrently with~~statements concurrent and integrated with environmental impact analyses and related ~~sur-veys~~surveys and studies required by all other Federal environmental review laws and Executive orders applicable to the proposed action, including the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), ~~and other environmental review laws and exec-utive orders.~~

(b) The draft environmental impact ~~state-ment~~statement shall list all ~~federal~~Federal permits, licenses, and other ~~entitlements~~authorizations which must be obtained in

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implementing the proposal. If it is uncertain whether a ~~federal~~Federal permit, license, or other ~~enti-tlement~~authorization is necessary, the draft environmental impact statement shall so indicate.

4. Revise part 1503 to read as follows:

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: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air~~

~~Act, as amended (~~Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609~~);~~
and E.O. ~~11514 (11514, 35 FR 4247, Mar. 5, 1970, as amended by E.O. 11991, 42 FR~~
26967, May 24, 1977).~~25, 1977.~~

~~SOURCE: 43 FR 55997, Nov. 29, 1978, unless otherwise noted.~~

§ 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~~Federal agency 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~~State, Tribal, and local agencies which are authorized to develop and enforce environmental standards;

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

(iii) Any agency which has requested that it receive statements on actions of the kind ~~pro-posed. Office of Management and Budget Circular A-95 (Revised), through its system of~~

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~~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.~~proposed:

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

~~(v) (4)Request comments from the~~The public, ~~affirmatively~~affirmatively soliciting comments ~~from~~in a manner designed to inform those ~~per-sons~~persons or organizations who may be interested in or affected by the proposed action.

(3) Invite comment specifically on the completeness of the submitted alternatives, information, and analyses section (§ 1502.17).

(b) An agency may request comments on a final environmental impact statement before the final decision ~~is finally made. In any case other agencies.~~ An agency shall request comments and provide a 30-day comment period on the final environmental impact statement's submitted alternatives, information, and analyses section (§ 1502.17). Other agencies or persons may make comments ~~before the final decision unless a different time is provided~~consistent with the time periods provided for under § ~~1506.10.~~ 1506.11.

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

§ 1503.2 Duty to comment.

~~Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved~~Cooperating agencies and agencies ~~which~~that are authorized to develop and enforce ~~environmental~~environmental standards shall comment on statements ~~with in~~within their jurisdiction, expertise, or authority. ~~Agencies shall comment~~ within the time period specified for comment in § ~~1506.10.~~ 1506.11. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

§ 1503.3 Specificity of comments and information.

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

(b) Comments on the submitted alternatives, information, and analyses section (§ 1502.17) should identify any additional alternatives, information, or analyses not included in the draft environmental impact statement, and shall be as specific as possible. Comments on and objections to this section shall be raised within 30 days of the publication of the notice of availability of the final environmental impact statement. Comments not provided within 30 days shall be considered exhausted and forfeited, consistent with § 1500.3(b).

(c) ~~(b)~~When a ~~commenting~~participating agency criticizes a lead agency's predictive methodology, the ~~com-menting~~participating agency should describe the alternative methodology which it prefers and why.

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(d) ~~(e)~~ A cooperating agency shall specify in its comments whether it needs additional ~~informa-tion~~information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall ~~spec-~~ify any additional information it needs to ~~com-ment~~comment adequately on the draft statement's ~~analy-sis~~analysis of significant site-specific effects associated with the granting or approving by that ~~cooperat-ing~~cooperating agency of necessary ~~federal~~Federal permits, ~~licens-es~~licenses, or ~~entitlements~~authorizations.

(e) ~~(d)~~ When a cooperating agency with ~~juris-diction by law objects to or expresses reserva-~~tions about the proposal on grounds of environ-mental impacts, the agency expressing the objection or reservation shall specify the miti-gationjurisdiction by law specifies mitigation measures it considers necessary to allow the agency to grant or approve applicable ~~per-mit~~permit, license, or related requirements or ~~concur-rences~~concurrences, the cooperating agency shall cite to its applicable statutory authority.

§ 1503.4 Response to comments.

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

- (1) Modify alternatives including the ~~pre-posed~~proposed action.
- (2) -Develop and evaluate alternatives not previously given serious consideration by the agency.
- (3) Supplement, improve, or modify its analyses.
- (4) Make factual corrections.

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(5) Explain why the comments do not ~~warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further~~warrant further agency response.

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

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write ~~them~~the changes on errata sheets and attach ~~them~~the responses to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be ~~circulated~~ (~~§1502.19~~published (§ 1502.20)). The entire document with a new cover sheet shall be filed with the Environmental Protection Agency as the final ~~statement~~ (~~§1506.9~~), statement (§ 1506.10).

5. Revise part 1504 to read as follows:

PART 1504—~~PREDECISION~~PRE-DECISIONAL REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

- Sec.
- 1504.1 Purpose.
- 1504.2 Criteria for referral.
- 1504.3 Procedure for referrals and response.

~~AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609);~~ Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514 (11514, 35 FR 4247, Mar. 5, 7,

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1970, as amended by E.O. 11991, [42 FR 26967](#), May ~~24, 1977~~, [25, 1977](#).

Source: ~~43FR 55998, Nov. 29, 1978 unless otherwise noted.~~

§ 1504.1 Purpose.

(a) This part establishes procedures for ~~refer-ring~~[referring](#) to the Council ~~federal~~[Federal](#) interagency ~~dis-agreements~~ [disagreements](#) concerning proposed major ~~federal~~[Federal](#) actions that might cause unsatisfactory ~~environ-mental~~[environmental](#) effects. It provides means for early ~~reso-~~ [lution](#)[resolution](#) of such disagreements.

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

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

[43 FR 55998, Nov. 29, 1978]

§ 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as ~~possible~~[practicable](#) in the process), but ~~unsuccess-ful~~[unsuccessful](#) attempts to resolve differences with the lead agency. In determining what environmental objections

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to the matter are appropriate to refer to the Council, an agency should weigh ~~potential~~ potential adverse environmental impacts, ~~considering~~ considering:

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

~~[43 FR 55998, Nov. 29, 1978]~~

(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~~ Federal agency making the referral to the Council shall:

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

- (2) Include such advice whenever practicable 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.

- (4) Send copies of such advice to the Council.

- (b) The referring agency shall deliver its referral to the Council ~~not~~ no later than ~~twenty five (25)~~ 25 days after the lead agency has made the final environmental impact

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statement ~~has been made~~ available to the Environmental Protection Agency, ~~commenting~~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 ~~an extension~~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 ~~refer-ral~~referral and the reasons for it, ~~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 ~~evi-dence~~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 which would be ~~violat-ed~~violated by the matter_;

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

(ii) ~~(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_;

(iii) ~~(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

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

(d) ~~Not~~ No later than ~~twenty-five (25)~~ days after the referral to the Council, the lead agency may deliver a response to the Council, and the ~~refer-ring~~ 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.
- (3) Give the lead agency's response to the referring agency's recommendations.

(e) ~~Interested persons (including the appli-cant)~~ Applicants may ~~deliver their~~ provide views in writing to the Council. ~~Views in support of the referral should be delivered not~~ no later than the ~~referral. Views in support of the response shall be delivered not later than the~~ response.

(f) ~~Not~~ No 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~~ 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.

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(5) Determine that the issue should be ~~fur-ther~~further negotiated by the referring and lead ~~agen-cies~~agencies and is not appropriate for Council ~~consid-eration~~consideration until one or more heads of agencies- report to the Council that the agencies' ~~dis-agreements~~disagreements are irreconcilable.

(6) Publish its findings and ~~recommenda-tions~~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 ~~para-graph~~paragraph (f)(2), (3), or (5) of this section.

(h) ~~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 consis-tent with 5 U.S.C. 557(d) (Administrative Procedure Act).~~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

[43 FR 55998, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

represent final agency action and instead are only provisional and dependent on later consistent action by the action agencies.

6. Revise part 1505 to read as follows:

PART 1505—NEPA AND AGENCY ~~DECISIONMAKING~~DECISION MAKING

Sec.

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

1505.2 Record of decision in cases requiring environmental impact statements.

1505.3 Implementing the decision.

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~~AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and~~ **Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. ~~11514~~(11514, 35 FR 4247, Mar. 5, 7, 1970, as amended by E.O. 11991, 42 FR 26967, May 24, 1977), 25, 1977; and E.O 13807, 82 FR 40463, Aug. 24, 2017.**

~~SOURCE: 43 FR 55999, Nov. 29, 1978, unless otherwise noted.~~

§ 1505.1 Agency decisionmaking procedures.[Reserved]

~~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 state ment 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 decision maker 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.

At the time of its decision (§~~1506.10~~ 1506.11) 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~~ integratedintegrate into any other record ~~prepared 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)~~ it prepares, shall:

- (a) State ~~what~~ the decision ~~was~~.
- (b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were ~~consid-ered~~ considered to be environmentally preferable. An agency may discuss preferences among ~~alterna-~~ tivesalternatives based on relevant factors including ~~eco-nomic~~ economic and technical

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considerations and agency statutory missions. An agency shall identify and discuss all such factors, including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) 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 were not~~. At the agency did 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.

(d) Address any comments or objections received on the final environmental impact statement's submitted alternatives, information, and analyses section.

(e) Include the decision maker's certification regarding the agency's consideration of the submitted alternatives, information, and analyses submitted by public commenters (§§ 1502.17 and 1502.18).

§ 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(c)) 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 ~~mitiga-tion~~mitigation.

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

(d) Upon request, ~~make available to the pub-lic~~publish the results of relevant monitoring.
7. Revise part 1506 to read as follows:

PART 1506—OTHER REQUIREMENTS OF NEPA

Sec.

1506.1 Limitations on actions during NEPA process.

1506.2 Elimination of duplication with ~~state~~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.

~~1506.10~~1506.11 Timing of agency action. ~~1506.11~~1506.12

Emergencies.

~~1506.12~~1506.13 Effective date.

~~AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and~~ **Authority:** 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. ~~11514~~(11514, 35 FR 4247, Mar. 5, 7, 1970, as amended by E.O. 11991, 42 FR 26967, May 24, 1977), 25, 1977; and E.O 13807, 82 FR 40463, Aug. 24, 2017.

~~SOURCE: 43 FR 56000, Nov. 29, 1978, unless otherwise noted.~~

§ 1506.1 Limitations on actions during NEPA process.

(a) ~~Until~~Except as provided in paragraphs (b) and (c) of this section, until an agency issues a finding of no significant impact, as provided in § 1501.6, or record of deci-
~~sion~~decision, as provided in §~~1505.2 (except as provided in paragraph (c) of this section), 1505.2,~~
no action ~~con-erning~~concerning the proposal ~~shall~~may be taken which would:

(1) Have an adverse environmental impact; or

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(2) Limit the choice of reasonable ~~alternatives~~alternatives.

(b) If any agency is considering an ~~application~~application from a non-~~federal~~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~~applicant that the agency will take appropriate action to ~~insure~~ensure that the objectives and procedures of NEPA are achieved. This section does not preclude

development by applicants of plans or designs or performance of other activities necessary to support an application for Federal, State, Tribal, or local permits or assistance. An agency considering a proposed action for Federal funding may authorize such activities, including, but not limited to, acquisition of interests in land (e.g., fee simple, rights-of-way, and conservation easements), purchase of long lead-time equipment, and purchase options made by applicants.

(c) While work on a required ~~program environmental~~programmatic environmental impact statement or environmental assessment is in progress and the action is not covered by an existing ~~program~~programmatic statement, agencies shall not undertake in the interim any major ~~federal~~Federal action covered by the program 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 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

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

(b) Agencies shall cooperate with ~~state~~ State, Tribal, and local agencies to the fullest extent ~~possible~~ practicable to reduce duplication between NEPA and ~~state~~ State, Tribal, and local requirements, including through use of environmental studies, analysis, and decisions conducted in support of Federal, State, Tribal, or local environmental reviews or authorization decisions, 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~~ practicable include:

- (1) Joint planning processes.
- (2) Joint environmental research and studies.
- (3) Joint public hearings (except where ~~oth-erwise~~ otherwise provided by statute).
- (4) Joint environmental assessments.

(c) Agencies shall cooperate with ~~state~~ State, Tribal, and local agencies to the fullest extent ~~possible~~ practicable to reduce duplication between NEPA and ~~empa-~~ rable comparable State, Tribal, and local requirements, unless the agencies are specifically

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barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall include, to the fullest extent ~~possible include~~ practicable, joint environmental impact statements. In such cases one or more ~~federal~~ Federal agencies and one or more ~~state~~ State, Tribal, or local agencies shall be joint lead ~~agen-cies~~ agencies. Where ~~state~~ 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, ~~federal~~ Federal agencies ~~shall~~ may cooperate in ~~ful-filling~~ fulfilling these requirements, as well as those of ~~federal~~ Federal laws, so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into ~~state~~ State, Tribal, or local planning ~~process-es~~, processes, environmental impact statements shall discuss any inconsistency of a proposed action with any approved ~~state~~ State, Tribal, or local plan ~~and-laws~~ or law (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) An agency may adopt a ~~federal~~ Federal environmental assessment, draft or final environmental impact statement, or portion thereof, provided that the assessment, statement, or portion thereof meets the standards for an adequate assessment or statement under ~~these~~ the regulations ~~-in parts 1500 through 1508.~~

(b) If the actions covered by the original environmental impact statement and the

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~~pre-posed~~proposed action are substantially the same, the agency adopting another agency's statement ~~is not required to recirculate it except~~shall republish it as a final statement.

Otherwise, the adopting agency shall treat the statement as a draft and

~~recirculate~~republish it (except as provided in paragraph (c) of this section). consistent with § 1506.10.

(c) A cooperating agency may adopt in its record of decision without ~~recirculating~~republishing the environmental impact ~~state-ment~~statement of a lead agency when, after an ~~independ-ent~~independent review of the statement, the cooperating agency concludes that its comments and ~~sug-gestions~~suggestions have been satisfied.

(d) If the actions covered by the original environmental assessment and the proposed action are substantially the same, an agency may adopt another agency's environmental assessment in its finding of no significant impact and provide notice consistent with § 1501.6.

(e) The adopting agency shall specify if one of the following circumstances are present:

(1) ~~(d)When an~~The agency ~~adopts a~~is adopting an assessment or statement ~~which~~that is not final within the agency that ~~pre-pared it, or when the~~prepared it.

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

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

(f) An agency may adopt another agency's determination that a categorical exclusion

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applies to a proposed action if the adopting agency's proposed action is substantially the same.

§ 1506.4 Combining documents.

~~Any~~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) *Information.* If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental ~~impact statement~~document, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its ~~accuracy~~accuracy. If the agency chooses to use the ~~information~~information submitted by the applicant in the ~~environmental impact statement~~environmental document, either directly or by reference, then the names of the persons ~~responsible~~responsible for the independent evaluation shall be included in the list of preparers (§~~1502.17~~ 1502.19). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

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

(c) *Environmental impact statements.* Except as provided in §§~~1506.2 and 1506.3 any~~

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~~envi-ronmental~~ 1506.2 and 1506.3, the lead agency, a contractor or applicant under the direction of the lead agency, or a cooperating agency, where appropriate (§ 1501.8(b)). may prepare an 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 agen-cies, 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 appropri-ate the cooperating agency, specifying that they have no financial or other interest in the out-come of the project.~~

(1) If a contractor or applicant prepares the document ~~is prepared by contract~~, the responsible ~~federal~~Federal official shall ~~furnish~~provide guidance ~~and~~, participate in ~~the prepara-tion and shall~~its preparation, independently evaluate ~~the state-ment~~it prior to its approval, and take ~~responsibili-ty~~responsibility for its scope and contents.

(2) 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 ~~pub-lic~~public in preparing and implementing their NEPA procedures (§ 1507.3).

(b) Provide public notice of NEPA-related hearings, public meetings, and other opportunities for public engagement, and the availability of environmental documents so as to inform those persons and agencies who may be ~~inter-ested~~interested or affected by their proposed actions.

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

(2) In the case of an action with effects of national concern, notice shall include publication in the ~~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 rule-making may provide notice by mail to national~~Federal Register. An agency may notify organizations ~~who~~that have requested ~~that~~regular notice ~~regularly be provided~~. Agencies shall maintain a list of such organizations.

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

(i) Notice to ~~state and area-wide clearing-houses pursuant to OMB Circular A-95 (Revised).~~State and local agencies that may be interested or affected by the proposed action.

(ii) Notice to ~~Indian tribes when effects may occur on reservations~~affected Tribal governments.

(iii) Following the affected ~~state~~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~~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~~occupants of nearby or affected property.

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(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). For actions occurring in whole or part in an area with limited access to high-speed internet, public notification may not be limited to solely electronic methods.

(c) Hold or sponsor public hearings ~~or~~, public meetings, or other opportunities for public

engagement whenever appropriate or in ~~accordance~~ accordance with statutory requirements applicable to the agency. ~~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).~~ Agencies may conduct public hearings and public meetings by means of electronic communication except where another format is required by law.

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where ~~interested~~ 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.

The Council may provide further guidance concerning NEPA and its procedures

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~~including:~~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.

~~(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) ~~The~~When developing or providing significant cooperation and support in the development of legislation, agencies shall integrate the NEPA process for proposals for ~~legislation (§1508.17)~~legislation significantly affecting the quality of the human

environment ~~shall be integrated~~ with the legislative process of the Congress. 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. Only the agency 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 a recommendation or report on a legislative proposal to Congress.

A legislative environmental impact statement shall be considered part of the formal

~~transmit~~ ~~tal~~transmittal of a legislative proposal to Congress; ~~how ever~~however, it may be

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transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement ~~which~~that can serve as the basis for public and Congressional debate.

The statement must be available in time for Congressional hearings and deliberations.

(c) (b)Preparation of a legislative ~~environmen-tal~~environmental impact statement shall conform to the requirements of ~~these~~the regulations in parts 1500 through 1508, except as ~~fol-lows~~follows:

(1) There need not be a scoping process.

(2) ~~The~~Agencies shall prepare the legislative statement ~~shall be pre- pared~~ in the same manner as a draft ~~statement, but shall be considered the “detailed statement” required by statute;~~

~~Provided, That when~~environmental impact statement and need not prepare a final statement unless any of the following conditions exist ~~both the draft and final environmental impact statement on the legislative proposal shall be prepared and circu- lated as provided by §§1503.1 and 1506.10.~~ In such cases, the agency shall prepare and publish the statements consistent with §§ 1503.1 and 1506.11:

(i) A Congressional committee with ~~jurisdic- tion~~jurisdiction over the proposal has a rule requiring both draft and final environmental impact ~~state- ments~~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 ~~feder- at~~Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by

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the General Services Administration, a draft ~~state-ment~~statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be ~~com-pleted~~completed before site acquisition.

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

(d) ~~(e)~~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.

(a) Where the proposal for major Federal action is the promulgation of a rule or regulation, analyses prepared pursuant to other statutory or Executive order requirements may serve as the functional equivalent of the EIS and be sufficient to comply with NEPA.

(b) To determine that an analysis serves as the functional equivalent of an EIS, an agency shall find that:

(1) There are substantive and procedural standards that ensure full and adequate consideration of environmental issues;

(2) There is public participation before a final alternative is selected; and

(3) A purpose of the analysis that the agency is conducting is to examine environmental issues.

§ 1506.10 Filing requirements.

(a) Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, ~~attention~~Office of Federal Activities (~~MC2252-A~~), ~~1200 Pennsylvania Ave., NW., Washington, DC 20460.~~, consistent with EPA's procedures.

(b) Statements shall be filed with the EPA- no earlier than they are also transmitted to-
~~com-menting~~

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participating agencies and made available to the public. EPA ~~shall deliver one copy of each state-ment to the Council, which shall satisfy the requirement of availability to the President.~~ EPA may issue guidelines to agencies to ~~imple-ment~~implement its responsibilities under this section and §~~1506.10.~~ 1506.11.

§~~1506.10~~ 1506.11 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 ~~state-ments~~statements filed ~~during the preceding week~~since its prior notice. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) ~~No decision on~~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 decision under § 1505.2 for 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 ~~state-ment~~statement.

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

(c) An agency may make 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.~~ rule on timing set forth in paragraph (b) of this section for a proposed action in the following circumstances.

(1) Some ~~agen-cies~~agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final ~~environ-mental~~environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be

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made and recorded at the same time the environmental impact statement is published.

This means that the period for appeal of the decision and the 30-day period ~~prescribed~~set forth in paragraph (b)(2) of this

section may run ~~con-currently~~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.~~

(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.

(d) ~~(e)~~ If an agency files the final environmental impact ~~state-ment is filed~~statement within ~~ninety (90) days after a~~of the filing of the draft environmental impact statement ~~is filed~~ with the Environmental Protection Agency, the ~~minimum thirty (30) day~~decision-making period and the ~~mini-mum ninety (90)~~90-day period may run ~~concur-rently~~concurrently. However, subject to paragraph ~~(d)~~ of this section, agencies shall allow ~~not less than~~at least 45 days for comments on draft statements.

(e) ~~(d)~~ The lead agency may extend ~~prescribed periods.~~the minimum periods in paragraph (b) of this section and provide notification consistent with § 1506.10. The Environmental Protection Agency may upon a showing by the lead agency of ~~com-pelling~~compelling reasons of national policy reduce the ~~pre-scribed~~minimum periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend ~~prescribed~~the minimum periods, but only after consultation with the lead agency. The lead agency may modify the minimum periods when necessary to

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comply with other specific statutory requirements. (~~Also see~~ § 1507.3(~~de~~)-(2)) Failure to file timely ~~com~~~~ments~~comments shall not be a sufficient reason for ~~extend~~~~ing~~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.

[43 FR 56000, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

~~§1506.11~~ 1506.12 **Emergencies.**

Where emergency circumstances make it ~~nee~~~~essary~~necessary to take an action with significant ~~environ~~~~mental~~environmental impact without observing the provisions of ~~these~~the regulations, in parts 1500 through 1508, the ~~federal~~Federal agency taking the action should consult with the Council about ~~alter~~~~native~~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.

~~§1506.12~~ 1506.13 **Effective date.**

The ~~effective date of these regulations 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~~regulations in parts 1500 through 1508 apply to any NEPA process begun after [EFFECTIVE DATE OF FINAL RULE]. An agency may apply these regulations to ongoing activities and environmental documents begun before [EFFECTIVE DATE OF FINAL RULE].

~~State or local agencies to adopt their implement~~~~ing~~ 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 complet~~~~ed~~

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~~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.~~

8. Revise part 1507 to read as follows:

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: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and~~ **Authority:** 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514 (11514, 35 FR 4247, Mar. 5, 1970, as amended by E.O. 11991, 42 FR 26967, May 24, 1977).25, 1977; and E.O 13807, 82 FR 40463, Aug. 24, 2017.

~~SOURCE: 43 FR 56002, Nov. 29, 1978, unless otherwise noted.~~

§ 1507.1 Compliance.

All agencies of the ~~federal government~~ Federal Government shall comply with ~~these regulations. It is the intent of these~~ the regulations ~~to allow each agency flexibility in adapting its implementing procedures authorized by §1507.3 to the requirements of other applicable laws.~~ in parts 1500 through 1508.

§ 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements ~~enumerated below.~~ of NEPA and the regulations in parts 1500 through 1508. Such compliance may include use of ~~other's~~ the resources of other agencies, applicants, and other participants in the NEPA process, but the using agency shall itself have sufficient capability to evaluate what others do for it and account for the contributions of others. Agencies shall:

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

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

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

(d) Study, develop, and describe alternatives to recommended courses of action in any ~~pro-posal~~ proposal which involves unresolved conflicts ~~con-cerning~~ concerning alternative uses of available resources. 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) of NEPA where the ~~dis-~~ 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 ~~the Act~~ and of NEPA, Executive Order 11514, Protection and Enhancement of Environmental

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Quality, ~~Sec. 2~~ 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) ~~Not later~~ No more than ~~eight months after publica- tion of these regulations as finally adopted in the FEDERAL REGISTER, or five~~ 12 months after [PUBLICATION DATE OF FINAL RULE] in the *Federal Register*, or 9 months after the establishment of an agency, whichever ~~shall come~~ comes later, each agency shall develop or revise, as necessary ~~adopt procedures to supplement these regula- tions,~~ proposed procedures to implement the regulations in parts 1500 through 1508, including to eliminate any inconsistencies with these regulations.

When the agency is a department, major- subunits are encouraged (with the consent of the department) to adopt their own procedures. ~~Such procedures shall not paraphrase these reg- ulations. They shall confine themselves to implementing procedures.~~ Except as otherwise provided by law or for agency efficiency, agency NEPA procedures shall not impose additional procedures or requirements beyond those set forth in these regulations.

(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. ~~The procedures~~

(2) Agencies shall ~~be adopted only after~~ provide an opportunity for public review and ~~after~~ review by the Council for conformity with the Act and ~~these regula- tions~~ the

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regulations in parts 1500 through 1508 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 ~~they shall be filed with the Council and made,~~ the agency shall publish its NEPA procedures and ensure that they are 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.~~

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

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

(2) 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.

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

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

(5) 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 impact

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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.

(6) Requiring the combination of environmental documents with other agency documents, and may include designation of analyses or processes that shall serve the function of agency compliance with NEPA and the regulations in parts 1500 through 1508. To determine that an analysis individually or analyses in the aggregate serve as the functional equivalent of an EIS, an agency shall find that:

(i) There are substantive and procedural standards that ensure full and adequate consideration of environmental issues;

(ii) There is public participation before a final alternative is selected; and

(iii) A purpose of the analysis that the agency is conducting is to examine environmental issues.

(c) Agency procedures may include identification of actions that are not subject to NEPA, including:

(1) Non-major Federal actions;

(2) Actions that are non-discretionary actions, in whole or in part;

(3) Actions expressly exempt from NEPA under another statute;

(4) Actions for which compliance with NEPA would clearly and fundamentally conflict with the requirements of another statute; and

(5) Actions for which compliance with NEPA would be inconsistent with Congressional intent due to the requirements of another statute.

(d) ~~(b)~~ Agency procedures shall comply with ~~these~~the regulations in parts 1500 through 1508 except where compliance would be inconsistent with statutory ~~requirements~~requirements

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and shall include:

- (1) Those procedures required by §§ 1501.2(~~d~~), ~~1502.9(e)(3)~~, ~~1505.1(b)(4)~~ (assistance to applicants), and 1506.6(e), and ~~1508.4~~ (status information).
- (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 ~~environ-mental~~environmental assessment and do not have a significant effect on the human environment (categorical exclusions (~~§1508.4~~) 1501.4). 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 where documentation of a categorical exclusion determination is required.
 - (iii) Which normally require environmental assessments but not necessarily environmental impact statements.
- (3) Procedures for introducing a supplement to an environmental assessment or environmental impact statement into its formal administrative record, if such a record exists.
- (e) (e) Agency procedures may ~~include~~:
 - (1) Include specific ~~cri-teria~~criteria for providing limited exceptions to the ~~provi-~~sions provisions of ~~these~~the regulations in parts 1500 through 1508 for classified proposals. ~~They~~These are proposed actions ~~which~~that are specifically authorized under criteria established by an Executive 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 Order or statute. ~~Environmental assess-~~ments Agencies may safeguard and restrict from public dissemination environmental

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assessments and environmental impact statements ~~which~~that address classified proposals ~~may be safeguarded and restricted from public dissemination in accordance~~in accordance with agencies' own regulations applicable to classified information. ~~These~~Agencies should organize these documents ~~may be organized~~ so that classified portions ~~can be included~~are included as annexes, ~~in order~~so that the agencies can make the unclassified ~~portions can be made~~portions available to the public.

(2) (d) Agency procedures may provide Provide for ~~peri-ods~~periods of time other than those presented in §~~1506.10~~ 1506.11 when necessary to comply with other specific statutory requirements.

(3) (e) Agency procedures may provide Provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual ~~prepa-ration~~preparation, the agency may publish the notice of intent required by §~~1501.7 may be published~~ 1501.9 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.

(4) Adopt procedures to combine its environmental assessment process with its scoping process.

(5) Provide for a process where the agency may consult with and apply a categorical exclusion listed in another agency's NEPA procedures to its proposed action by establishing a process that ensures application of the categorical exclusion is appropriate.

§ 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

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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.

9. Revise part 1508 to read as follows:

PART 1508—~~TERMINOLOGY AND~~ DEFINITIONS

~~INDEX~~

~~-AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and~~ **Authority:** 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. ~~11514~~(11514, 35 FR 4247, Mar. 5, 7, 1970, as amended by E.O. 11991, 42 FR 26967, May 24, 1977).25, 1977; and E.O 13807, 82 FR 40463, Aug. 24, 2017.

~~SOURCE: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.~~

§ 1508.1 ~~Terminology~~ Definitions.

The ~~terminology of this part shall be uniform throughout the federal government.~~ following definitions apply to the regulations in parts 1500 through 1508.

Federal agencies shall use these terms uniformly throughout the Federal Government.

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(a) ~~§1508.2 Act.~~ “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.”~~

(b) ~~§1508.3 Affecting.~~

Sec.

~~1508.1 Terminology.~~

~~“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.

(d) Categorical exclusion means a category of actions which the agency has

determined in its agency NEPA procedures (§ 1507.3) normally do not have a significant

effect on the human environment.

1508.2 Act.	effect on.
1508.3 Affecting.	
1508.4 Categorical exclusion.	§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.	
	§1508.5 Cooperating agency.
	“Cooperating agency” means any federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved

Cooperating agency means any Federal agency (and a State, Tribal, or local agency with agreement of the lead agency) other than a lead agency which has jurisdiction by law or special

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expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major ~~federal~~Federal action ~~signifi- cantly~~significantly affecting the quality of the human ~~envi- ronment. 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~~environment.

(c) ~~§1508.6 Council.~~“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.~~

~~“Effects” include:~~

(f) ~~(a) Direct effects, which are caused by the action and~~Effects or impacts means effects of the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives. Effects include reasonably foreseeable effects that occur at the same time and place.~~(b) Indirect effects, which are caused by the action and~~and may include reasonably foreseeable effects that 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.~~

(1) ~~Effects and impacts as used in these regula- tions are synonymous. Effects includes ecologi- cal~~include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, ~~cul- tural~~cultural, economic (such as the effects on employment), social, or health,~~whether direct, indirect, or cumulative~~effects. Effects may also include those resulting from actions ~~which~~that may

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have both beneficial and

detrimental effects, even if- on balance the agency believes that the effect will be beneficial.

~~§1508.9 Environmental assessment.~~

~~“Environmental assessment”:~~

(2) A “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should not be considered significant if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action. Analysis of cumulative effects is not required.

(g) ~~(a) Means~~ *Environmental assessment means* a concise public document ~~for which a federal~~ prepared by a Federal agency ~~is responsible that serves to:~~(1) Briefly provide sufficient evidence and analysis for determining to aid an agency’s compliance with the Act and support its determination of whether to prepare an environmental impact statement or ~~a~~ finding of no significant impact, as provided in § 1501.6.

~~(2) Aid an agency’s compliance with the Act when no environmental impact statement 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.~~

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

(i) ~~§1508.11~~ *Environmental impact statement.* “Environmental impact statement” means a detailed written statement as required by section 102(2)(C) of ~~the Act~~ NEPA.

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(j) ~~§1508.12~~ *Federal agency.* “Federal agency” means all agencies of the ~~federal government~~ 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. It also includes, for purposes of ~~these~~ the regulations ~~states and~~ in parts 1500 through 1508, States, units of general local government, and ~~Indian tribes~~ Tribal governments assuming NEPA responsibilities ~~under section 104(h) of the Housing and Community Development Act of 1974.~~ §1508.13 Finding of no significant impact from a Federal agency pursuant to statute.

(k) *“Finding of no significant impact”* means a document by a ~~federal~~ Federal agency briefly presenting the reasons why an action, not otherwise categorically excluded (~~§1508.4~~ 1501.4), will not have a significant effect on the human environment and for which an environmental impact statement ~~there fore will not be prepared. It shall include the envi-ronmental 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 incorpo-rate it by reference.~~ therefore will not be prepared.

(l) ~~§1508.14~~ *Human environment.* “Human environment” shall be interpreted means comprehensively ~~to include~~ the natural and physical environment and the relationship of ~~people~~ present and future generations of Americans with that environment. (See the ~~defini-tion~~ definition of “effects.” (~~§1508.8.~~) This means that economic or social effects are not intended by themselves to require preparation of an environ-mental impact statement. When an ~~environmen-tal 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.~~)

(m) ~~§1508.15~~ *Jurisdiction by law.* “Jurisdiction by law” means agency ~~authori-ty~~ authority to

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approve, veto, or finance all or part of the proposal.

(n) ~~§1508.16~~ *Lead agency*. ~~“Lead agency”~~ means the agency or agencies, in the case of joint lead agencies, preparing or having taken primary ~~responsibility~~ responsibility for preparing the environmental impact ~~statement~~ statement.

(o) ~~§1508.17~~ *Legislation*. ~~“Legislation”~~ includes means a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a ~~federal~~ Federal agency, but does not include requests for ~~appropriations~~. ~~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.~~ appropriations or legislation recommended by the President.

~~§1508.18~~ Major federal action.

(p) ~~“Major federal action”~~ includes actions Major Federal action or action means an action subject to Federal control and responsibility with effects that may be ~~major and which are potentially subject to federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals~~ significant. Major Federal action does not include non-discretionary decisions made in accordance with the agency’s statutory authority or activities that do not result in final agency action under the Administrative Procedure Act or other applicable law as agency action. Major Federal action also does not include non-Federal projects with minimal Federal funding or minimal Federal involvement where the agency cannot control the outcome of the project.

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(1) ~~(a)~~ Actions Major Federal actions may include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by ~~federal~~ Federal agencies; new or revised agency rules, regulations, plans, ~~poli-cies,~~ policies,

or procedures; and legislative proposals (~~§§1506.8, 1508.17~~ § 1506.8). 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~~ with no Federal agency control over the subsequent use of such funds. Actions do not include loans, loan guarantees, or other forms of financial assistance where the Federal agency does not exercise sufficient control and responsibility over the effects of the action. Actions do 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 697f. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

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

(i) ~~(4)~~ Adoption of official policy, such as rules, regulations, and interpretations adopted ~~pur-suant~~ pursuant to the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*; implementation of treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(ii) ~~(2)~~ Adoption of formal plans, such as official documents prepared or approved by ~~federal~~ Federal agencies which ~~guide or~~ prescribe alternative uses of ~~federal~~ Federal resources, upon which future agency actions will be based.

(iii) ~~(3)~~ Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency ~~deci-sions~~ decisions allocating agency resources to implement a specific statutory program or executive ~~direc-tive~~ directive.

(iv) ~~(4)~~ Approval of specific projects, such as construction or management

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activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as ~~federal~~Federal and federally ~~assist-~~ed~~assisted~~ activities.

(q) ~~§1508.19 Matter.~~“~~Matter~~” includes for purposes of ~~Part~~part 1504:

(1) ~~(a)~~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).

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

(r) ~~§1508.20 Mitigation.~~“~~Mitigation~~” includes:Mitigation means measures that avoid, minimize, or compensate for reasonably foreseeable impacts to the human environment caused by a proposed action as described in an environmental document or record of decision and that have a nexus to the effects of a proposed action. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation.

Mitigation includes:

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

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

(3) ~~(c)~~Rectifying the impact by repairing, ~~reha-bilitating~~rehabilitating, or restoring the affected environment.

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

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(5) ~~(e)~~Compensating for the impact by ~~replac-ing~~replacing or providing substitute resources or ~~envi-ronments~~environments.

(s) ~~§1508.21~~ NEPA process: ~~“NEPA process”~~ means all measures ~~neeces-sary~~necessary for compliance with the requirements of section 2 and title I of NEPA.

(t) ~~§1508.22~~ Notice of intent: ~~“Notice of intent”~~ means a public notice that an agency will prepare and consider an

environmental impact statement ~~will be pre-pared and considered. The notice shall briefly:~~

(a) Describe the proposed

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

(v) Participating agency means a Federal, State, Tribal, or local agency participating in an environmental review or authorization of an action and possi-ble alternatives.

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

(w) ~~(c) State the name and address of a person within the agency who can answer questions about~~

the Proposal means a proposed action ~~and the environmen-tal impact statement.~~

~~§1508.23 Proposal: “Proposal” exists at that a stage in the devel-opment 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. Preparation of an environmental impact state-ment 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 rec-ommendation or report on the proposal. A pro-posal evaluate its effects. A proposal may exist in fact as well as by agency ~~dec-laration~~ declaration that one exists.~~

~~§1508.24 Referring agency.~~

(x) 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.

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(y) 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.

(bb) “Referring agency” means the federal/Federal agency which/that 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.

(cc) §1508.25 Scope. “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~~relationships to other statements (§§1502.20 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: § 1501.11).~~

- ~~(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.

~~“Special expertise” means statutory responsibility, agency mission, or related program experience.~~

§1508.27 Significantly.

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~~“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. [43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]~~

(dd) *Senior agency official* means an official of assistant secretary rank or higher, or equivalent, that is designated for agency NEPA compliance, including resolving implementation issues and representing the agency analysis of the effects of agency actions on the human environment in agency decision-making processes.

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

(ff) ~~§1508.28 Tiering.~~ *Tiering* refers to the coverage of general matters in broader environmental impact statements or environmental assessments (such as national

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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” refers to the coverage of general matters in broader environmental impact state-ments (such as national program or policy state-ments) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by refer-ence 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 environ-mental 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 analy-sis at a later stage (such as environmental miti-gation). 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.~~

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Editorial Note: This listing is provided for information purposes only.

It is compiled and kept up-to-date by the Council on Environmental Quality.

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THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

~~An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.~~

~~Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “National Environmental Policy Act of 1969.”~~

PURPOSE

Sec. 2 [42 USC § 4321].

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

TITLE I

Congressional Declaration of National Environmental Policy

Sec. 101 [42 USC § 4331].

(a) ~~The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the federal government, in cooperation with state and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial~~

~~and technical assistance, in a manner calculated to foster and promote the general welfare, to 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.~~

(b) ~~In order to carry out the policy set forth in this Act, it is the continuing responsibility of the federal government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate federal plans, functions, programs, and resources to the end that the Nation may —~~

- ~~1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;~~
- ~~2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;~~
- ~~3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;~~
- ~~4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;~~
- ~~5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities; and~~
- ~~6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.~~

(c) ~~The Congress recognizes that each person should enjoy a healthful environment and that each person has a~~

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~~responsibility to contribute to the preservation and enhancement of the environment.~~

~~Sec. 102 [42 USC § 4332].~~

~~The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance~~

~~with the policies set forth in this Act, and (2) all agencies of the federal government shall—~~

~~(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;~~

~~(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations;~~

~~(C) include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—~~

~~(i) the environmental impact of the proposed action;~~

~~(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;~~

~~(iii) alternatives to the proposed action;~~

~~(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and~~

~~(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.~~

~~Prior to making any detailed statement, the responsible federal official shall consult with and obtain the comments of any federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate federal, state, and local agen-~~

~~-cies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;~~

~~(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a state agency or official, if:~~

~~(i) the state agency or official has statewide jurisdiction and has the responsibility for such action;~~

~~(ii) the responsible federal official furnishes guidance and participates in such preparation;~~

~~(iii) the responsible federal official independently evaluates such statement prior to its approval and adoption; and~~

~~(iv) after January 1, 1976, the responsible federal official provides early notification to, and solicits the views of, any other state or any federal land management entity of any action or any alternative thereto which may have significant impacts upon such state or affected federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.~~

~~The procedures in this subparagraph shall not relieve the federal official of his responsibilities for the scope,~~

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~~objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by state agencies with less than statewide jurisdiction.~~

~~(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;~~

~~(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;~~

~~(G) make available to states, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;~~

~~(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and~~

~~(I) assist the Council on Environmental Quality established by title II of this Act.~~

~~Sec. 103 [42 USC § 4333].~~

~~All agencies of the federal government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.~~

~~Sec. 104 [42 USC § 4334].~~

~~Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other federal or state agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other federal or state agency.~~

~~Sec. 105 [42 USC § 4335].~~

~~The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of federal agencies.~~

TITLE II

~~COUNCIL ON ENVIRONMENTAL QUALITY Sec. 201 [42 USC § 4341].~~

~~The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth~~

- ~~(1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the federal government, the state and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.~~

~~Sec. 202 [42 USC § 4342].~~

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~~There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the federal government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.~~

~~**Sec. 203 [42 USC § 4343].**~~

- ~~(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).~~
- ~~(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.~~

~~**Sec. 204 [42 USC § 4344].**~~

~~It shall be the duty and function of the Council—~~

- ~~1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;~~
- ~~2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;~~
- ~~3. to review and appraise the various programs and activities of the federal government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;~~
- ~~4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;~~
- ~~5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;~~
- ~~6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;~~
- ~~7. to report at least once each year to the President on the state and condition of the environment; and~~
- ~~8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.~~

~~**Sec. 205 [42 USC § 4345].**~~

~~In exercising its powers, functions, and duties under this Act, the Council shall—~~

- ~~1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order~~

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~~No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, state and local governments and other groups, as it deems advisable; and~~

~~2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.~~

~~Sec. 206 [42 USC § 4346].~~

~~Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].~~

~~Sec. 207 [42 USC § 4346a].~~

~~The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the federal government, any state, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.~~

~~Sec. 208 [42 USC § 4346b].~~

~~The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.~~

~~Sec. 209 [42 USC § 4347].~~

~~There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.~~

~~**The Environmental Quality Improvement Act**, as amended (Pub. L. No. 91-224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.~~

~~42 USC § 4372.~~

~~(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality~~

~~(hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.~~

~~(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.~~

~~(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions; under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.~~

~~(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the federal government affecting environmental quality by—~~

~~1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91-190;~~

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- ~~2. assisting the federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the federal government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;~~
 - ~~3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;~~
 - ~~4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;~~
 - ~~5. assisting in coordinating among the federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;~~
 - ~~6. assisting the federal departments and agencies in the development and inter-relationship of environmental quality criteria and standards established throughout the federal government;~~
 - ~~7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.~~
- ~~(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.~~

~~**42 USC § 4373.**~~

~~Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.~~

~~**42 USC § 4374.**~~

~~There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91-190:~~

- ~~(a) \$2,126,000 for the fiscal year ending September 30, 1979.~~
- ~~(b) \$3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.~~
- ~~(c) \$44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.~~
- ~~(d) \$480,000 for each of the fiscal years ending September 30, 1985 and 1986.~~

~~**42 USC § 4375.**~~

- ~~(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance~~
- ~~1. study contracts that are jointly sponsored by the Office and one or more other federal agencies; and~~
 - ~~2. Federal interagency environmental projects (including task forces) in which the Office participates.~~
- ~~(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.~~
- ~~(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.~~

~~**THE CLEAN AIR ACT § 309***~~

~~**§ 7609. Policy review**~~

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~~(a)The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administration, contained in any (1) legislation proposed by any federal department or agency, (2) newly authorized federal projects for construction and any major federal agency action (other than a project for construction) to which section 4332(2)(C) of the title applies, and (3) proposed regulations published by any department or agency of the federal government. Such written comment shall be made public at the conclusion of any such review.~~

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

~~*July 14, 1955, c. 360, § 309, as added December 31, 1970, Pub. L. 91-604 § 12(a), 42 U.S.C. § 7609 (1970).~~

Executive Order 11514—Protection and enhancement of environmental quality

~~Source: The provisions of Executive Order 11514 of Mar. 5, 1970, appear at 35 FR 4247, 3 CFR, 1966-1970, Comp., p. 902, unless otherwise noted.~~

~~By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:~~

~~**Section 1. Policy.** The federal government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their~~

~~olicies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.~~

~~**Sec. 2. Responsibilities of federal agencies.** Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the "Act", the heads of federal agencies shall:~~

~~(a)Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate federal, state and local agencies in carrying out their activities as they affect the quality of the environment.~~

~~(b)Develop procedures to ensure the fullest practicable provision of timely public information and understanding of federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage state and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.~~

~~(c)Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to federal agencies, states, counties, municipalities, institutions, and other entities, as appropriate.~~

~~(d)Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants,~~

~~contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which~~

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~~prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.~~

~~(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.~~

~~(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act.~~

~~(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.~~

~~[Sec. 2 amended by Executive Order 11991 of May 24, 1977, 42 FR 26967, 3 CFR, 1977 Comp., p. 123]~~

~~**Sec. 3. Responsibilities of Council on Environmental Quality.** The Council on Environmental Quality shall:~~

~~(a) Evaluate existing and proposed policies and activities of the federal government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.~~

~~(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for the enhancement of the environment.~~

~~(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.~~

~~(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.~~

~~(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.~~

~~(f) Coordinate federal programs related to environmental quality.~~

~~(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.~~

~~(h) Issue regulations to federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution.~~

~~(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the~~

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~~Council's responsibilities under the Act.~~

~~(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act.~~

~~(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies there on, and (iii) means of preventing or reducing adverse effects from such technologies.~~

~~[Sec. 3 amended by Executive Order 11991 of May 24, 1977, 42 FR 26967, 3 CFR, 1977 Comp., p. 123]~~

~~Sec. 4. Amendments of E.O. 11472.~~

~~[Sec. 4 amends Executive Order 11472 of May 29, 1969, Chapter 40. The amendments have been incorporated into that order.]~~

NEPANet: <http://ceq.ch.doe.gov/nepanet.htm>

~~NEPANet is the web site established to serve as a central repository for NEPA information. It provides access to NEPA, the regulations and procedures employed by federal agencies, CEQ guidance, and NEPA points of contact within the federal agencies, tribes and the states. The site also provides a mechanism for identifying potential participants (state, tribal, and local governments) and serves as a link to environ-~~

~~mental resource information (statistical trends and tracking data). The NEPANet site also interfaces with other federal agencies' sites by providing links to their environmental planning information sites, guidance, and NEPA points of contact within the federal agencies, tribes and the states. The site also provides a mechanism for identifying potential participants (state, tribal, and local governments) and serves as a link to environmental resource information (statistical trends and tracking data). The NEPANet site also interfaces with other federal agencies' sites by providing links to their environmental planning information sites.~~

~~Access to environmental datasets is provided on the "environmental statistics" page of the NEPANet web site which provides a compilation of environmental statistics and trends, complemented with hot links—or passageways—to the data compiled by EPA, Interior, and other government agencies. In addition, the "environmental impact analysis data links" page of NEPANet provides access to online environmental datasets and libraries compiled by the United States Geological Survey. For example, the USGS site provides access to data sets such as the National Wetlands Inventory maps and data, the USGS maps and data tables for water data stations in the US, as well as to libraries such as the largest known collection of on-line publications related to forestry research maintained by the Forest Service.~~

Sec. 1506.9 Filing requirements.

~~(a) Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities, 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.~~

~~(c) Statements shall be filed with the EPA no earlier than they are~~

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~~also transmitted to commenting 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 Sec. 1506.10.~~

[70 FR 41148, July 18, 2005]

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