

**Council on Environmental Quality  
Executive Office of the President**

**NATIONAL ENVIRONMENTAL POLICY ACT  
IMPLEMENTING REGULATIONS**



**40 CFR Parts 1500–1508  
(2020)**

## **Council on Environmental Quality**

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### Contact Information:

Council on Environmental Quality  
730 Jackson Place, NW  
Washington, DC 20503  
(202) 395-5750

[www.whitehouse.gov/ceq](http://www.whitehouse.gov/ceq)  
[nepa.gov](http://nepa.gov)

# TABLE OF CONTENTS

## TITLE 40 CODE OF FEDERAL REGULATIONS

### CHAPTER V—COUNCIL ON ENVIRONMENTAL QUALITY

#### SUBCHAPTER A—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING REGULATIONS .....1

PART 1500—PURPOSE AND POLICY.....	1
§ 1500.1 Purpose and policy.....	1
§ 1500.2 [Reserved].....	1
§ 1500.3 NEPA compliance.....	2
§ 1500.4 Reducing paperwork.....	3
§ 1500.5 Reducing delay.....	4
§ 1500.6 Agency authority.....	5
PART 1501—NEPA AND AGENCY PLANNING.....	5
§ 1501.1 NEPA thresholds.....	6
§ 1501.2 Apply NEPA early in the process.....	6
§ 1501.3 Determine the appropriate level of NEPA review.....	7
§ 1501.4 Categorical exclusions.....	7
§ 1501.5 Environmental assessments.....	8
§ 1501.6 Findings of no significant impact.....	9
§ 1501.7 Lead agencies.....	9
§ 1501.8 Cooperating agencies.....	11
§ 1501.9 Scoping.....	12
§ 1501.10 Time limits.....	13
§ 1501.11 Tiering.....	15
§ 1501.12 Incorporation by reference.....	15
PART 1502—ENVIRONMENTAL IMPACT STATEMENT.....	16
§ 1502.1 Purpose of environmental impact statement.....	16
§ 1502.2 Implementation.....	17
§ 1502.3 Statutory requirements for statements.....	17
§ 1502.4 Major Federal actions requiring the preparation of environmental impact statements.....	17
§ 1502.5 Timing.....	18
§ 1502.6 Interdisciplinary preparation.....	18
§ 1502.7 Page limits.....	19
§ 1502.8 Writing.....	19
§ 1502.9 Draft, final, and supplemental statements.....	19
§ 1502.10 Recommended format.....	20
§ 1502.11 Cover.....	20
§ 1502.12 Summary.....	21
§ 1502.13 Purpose and need.....	21
§ 1502.14 Alternatives including the proposed action.....	21
§ 1502.15 Affected environment.....	22
§ 1502.16 Environmental consequences.....	22
§ 1502.17 Summary of submitted alternatives, information, and analyses.....	23
§ 1502.18 List of preparers.....	23
§ 1502.19 Appendix.....	23

§ 1502.20	Publication of the environmental impact statement.....	24
§ 1502.21	Incomplete or unavailable information.....	24
§ 1502.22	Cost-benefit analysis.....	25
§ 1502.23	Methodology and scientific accuracy.....	25
§ 1502.24	Environmental review and consultation requirements.....	25
PART 1503—COMMENTING ON ENVIRONMENTAL IMPACT STATEMENTS .....		26
§ 1503.1	Inviting comments and requesting information and analyses.....	26
§ 1503.2	Duty to comment.....	27
§ 1503.3	Specificity of comments and information.....	27
§ 1503.4	Response to comments.....	28
PART 1504—PRE-DECISIONAL REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY .....		28
§ 1504.1	Purpose.....	28
§ 1504.2	Criteria for referral.....	29
§ 1504.3	Procedure for referrals and response.....	29
PART 1505—NEPA AND AGENCY DECISION MAKING .....		31
§ 1505.1	[Reserved].....	31
§ 1505.2	Record of decision in cases requiring environmental impact statements.....	31
§ 1505.3	Implementing the decision.....	32
PART 1506—OTHER REQUIREMENTS OF NEPA .....		33
§ 1506.1	Limitations on actions during NEPA process.....	33
§ 1506.2	Elimination of duplication with State, Tribal, and local procedures.....	34
§ 1506.3	Adoption.....	34
§ 1506.4	Combining documents.....	35
§ 1506.5	Agency responsibility for environmental documents.....	35
§ 1506.6	Public involvement.....	36
§ 1506.7	Further guidance.....	37
§ 1506.8	Proposals for legislation.....	37
§ 1506.9	Proposals for regulations.....	38
§ 1506.10	Filing requirements.....	38
§ 1506.11	Timing of agency action.....	39
§ 1506.12	Emergencies.....	40
§ 1506.13	Effective date.....	40
PART 1507—AGENCY COMPLIANCE.....		40
§ 1507.1	Compliance.....	40
§ 1507.2	Agency capability to comply.....	40
§ 1507.3	Agency NEPA procedures.....	41
§ 1507.4	Agency NEPA program information.....	44
PART 1508—DEFINITIONS .....		44
§ 1508.1	Definitions.....	45
§ 1508.2	[Reserved].....	49

<b>THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 .....</b>	<b>50</b>
42 U.S.C. 4321. Congressional declaration of purpose [Sec. 2].....	50
<b>SUBCHAPTER I—POLICIES AND GOALS [TITLE I] .....</b>	<b>50</b>
42 U.S.C. 4331. Congressional declaration of national environmental policy [Sec. 101].....	50
42 U.S.C. 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts [Sec. 102] .....	51
42 U.S.C. 4333. Conformity of administrative procedures to national environmental policy [Sec. 103].....	52
42 U.S.C. 4334. Other statutory obligations of agencies [Sec. 104] .....	53
42 U.S.C. 4335. Efforts supplemental to existing authorizations [Sec. 105].....	53
<b>SUBCHAPTER II – COUNCIL ON ENVIRONMENTAL QUALITY [TITLE II].....</b>	<b>53</b>
42 U.S.C. 4341. [Sec. 201] Omitted .....	53
42 U.S.C. 4342. Establishment; membership; Chairman; appointments [Sec. 202] .....	53
42 U.S.C. 4343. Employment of personnel, experts and consultants [Sec. 203].....	54
42 U.S.C. 4344. Duties and functions [Sec. 204] .....	54
42 U.S.C. 4345. Consultation with Citizens’ Advisory Committee on Environmental Quality and other representatives [Sec. 205] .....	55
42 U.S.C. 4346. Tenure and compensation of members [Sec. 206] .....	55
42 U.S.C. 4346a. Travel reimbursement by private organizations and Federal, State, and local governments [Sec. 207].....	55
42 U.S.C. 4346b. Expenditures in support of international activities [Sec. 208] .....	55
42 U.S.C. 4347. Authorization of appropriations [Sec. 209].....	55
<b>THE ENVIRONMENTAL QUALITY IMPROVEMENT ACT OF 1970 .....</b>	<b>56</b>
42 U.S.C. 4371. Congressional findings, declarations, and purposes [Sec. 202] .....	56
42 U.S.C. 4372. Office of Environmental Quality [Sec. 203] .....	56
42 U.S.C. 4373. Referral of Environmental Quality Reports to standing committees having jurisdiction [Sec. 204].....	58
42 U.S.C. 4374. Authorization of appropriations [Sec. 205].....	58
42 U.S.C. 4375. Office of Environmental Quality Management Fund [Sec. 206] .....	58
<b>THE CLEAN AIR ACT—SECTION 309 .....</b>	<b>59</b>
42 U.S.C. 7609. Policy review [Sec. 309] .....	59
<b>EXECUTIVE ORDER 11514—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY, AS AMENDED BY EXECUTIVE ORDER 11991 .....</b>	<b>60</b>
<b>EXECUTIVE ORDER 13807—ESTABLISHING DISCIPLINE AND ACCOUNTABILITY IN THE ENVIRONMENTAL REVIEW AND PERMITTING PROCESS FOR INFRASTRUCTURE PROJECTS .....</b>	<b>63</b>

**Title 40 Code of Federal Regulations**  
**Chapter V—Council on Environmental Quality**  
**Subchapter A—National Environmental Policy Act Implementing Regulations**

**PART 1500—PURPOSE AND POLICY**

Sec.

- 1500.1 Purpose and policy.
- 1500.2 [Reserved]
- 1500.3 NEPA compliance.
- 1500.4 Reducing paperwork.
- 1500.5 Reducing delay.
- 1500.6 Agency authority.

AUTHORITY: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

SOURCE: 85 FR 43357, July 16, 2020

**§ 1500.1 Purpose and policy.**

(a) The National Environmental Policy Act (NEPA) is a procedural statute intended to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process. 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) The regulations in this subchapter implement section 102(2) of NEPA. They provide direction to Federal agencies to determine what actions are subject to NEPA’s procedural requirements and the level of NEPA review where applicable. The regulations in this subchapter are intended to ensure that relevant environmental information is identified and considered early in the process in order to ensure informed decision making by Federal agencies. The regulations in this subchapter are also intended to ensure that Federal agencies conduct environmental reviews in a coordinated, consistent, predictable and timely manner, and to reduce unnecessary burdens and delays. Finally, the regulations in this subchapter promote concurrent environmental reviews to ensure timely and efficient decision making.

**§ 1500.2 [Reserved]**

### § 1500.3 NEPA compliance.

(a) *Mandate.* This subchapter is applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*) (NEPA or the Act), except where compliance would be inconsistent with other statutory requirements. The regulations in this subchapter are issued pursuant to NEPA; the Environmental Quality Improvement Act of 1970, as amended (Pub. L. 91–224, 42 U.S.C. 4371 *et seq.*); section 309 of the Clean Air Act, as amended (42 U.S.C. 7609); Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970), as amended by Executive Order 11991, Relating to the Protection and Enhancement of Environmental Quality (May 24, 1977); and Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (August 15, 2017). The regulations in this subchapter apply to the whole of section 102(2) of NEPA. The provisions of the Act and the regulations in this subchapter must be read together as a whole to comply with the law.

(b) *Exhaustion.*

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

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

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

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

(c) *Review of NEPA compliance.* It is the Council's intention that judicial review of agency compliance with the regulations in this subchapter not occur before an agency has issued the record of decision or taken other final agency action. It is the Council's intention that any allegation of noncompliance with NEPA and the regulations in this subchapter should be resolved as expeditiously as possible. Consistent with their organic statutes, and as part of implementing the exhaustion provisions in paragraph (b) of this section, agencies may structure their procedures to include an appropriate bond or other security requirement.

(d) *Remedies.* Harm from the failure to comply with NEPA can be remedied by compliance with NEPA's procedural requirements as interpreted in the regulations in this subchapter. It is the Council's intention that the regulations in this subchapter create no presumption that violation of NEPA is a basis for injunctive relief or for a finding of irreparable harm. The regulations in this subchapter do not create a cause of action or right of action for violation of NEPA, which contains no such cause of action or right of action. It is the Council's intention that any actions to review, enjoin, stay, vacate, or otherwise alter an agency decision on the basis of an alleged NEPA violation be raised as soon as practicable after final agency action to avoid or minimize any costs to agencies, applicants, or any affected third parties. 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 this subchapter are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is the Council's intention that the validity of the remainder of those parts shall not be affected, with the remaining sections to continue in effect.

#### **§ 1500.4 Reducing paperwork.**

Agencies shall reduce excessive paperwork by:

(a) Using categorical exclusions to define categories of actions that normally do not have a significant effect on the human environment and therefore do not require preparation of an environmental impact statement (§ 1501.4 of this chapter).

(b) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and therefore does not require preparation of an environmental impact statement (§ 1501.6 of this chapter).

(c) Reducing the length of environmental documents by means such as meeting appropriate page limits (§§ 1501.5(f) and 1502.7 of this chapter).

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

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

(f) Writing environmental impact statements in plain language (§ 1502.8 of this chapter).

(g) Following a clear format for environmental impact statements (§ 1502.10 of this chapter).



- (h) Emphasizing the portions of the environmental impact statement that are useful to decision makers and the public (*e.g.*, §§ 1502.14 and 1502.15 of this chapter) and reducing emphasis on background material (§ 1502.1 of this chapter).
- (i) 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 (§ 1501.9 of this chapter).
- (j) Summarizing the environmental impact statement (§ 1502.12 of this chapter).
- (k) Using programmatic, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1501.11 and 1502.4 of this chapter).
- (l) Incorporating by reference (§ 1501.12 of this chapter).
- (m) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.24 of this chapter).
- (n) Requiring comments to be as specific as possible (§ 1503.3 of this chapter).
- (o) Attaching and publishing only changes to the draft environmental impact statement, rather than rewriting and publishing the entire statement when changes are minor (§ 1503.4(c) of this chapter).
- (p) Eliminating duplication with State, Tribal, and local procedures, by providing for joint preparation of environmental documents where practicable (§ 1506.2 of this chapter), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3 of this chapter).
- (q) Combining environmental documents with other documents (§ 1506.4 of this chapter).

### **§ 1500.5 Reducing delay.**

Agencies shall reduce delay by:

- (a) Using categorical exclusions to define categories of actions that normally do not have a significant effect on the human environment (§ 1501.4 of this chapter) and therefore do not require preparation of an environmental impact statement.
- (b) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1501.6 of this chapter) and therefore does not require preparation of an environmental impact statement.
- (c) Integrating the NEPA process into early planning (§ 1501.2 of this chapter).
- (d) Engaging in interagency cooperation before or as the environmental assessment or environmental impact statement is prepared, rather than awaiting submission of comments on a completed document (§§ 1501.7 and 1501.8 of this chapter).
- (e) Ensuring the swift and fair resolution of lead agency disputes (§ 1501.7 of this chapter).
- (f) Using the scoping process for an early identification of what are and what are not the real issues (§ 1501.9 of this chapter).
- (g) Meeting appropriate time limits for the environmental assessment and environmental impact statement processes (§ 1501.10 of this chapter).

- (h) Preparing environmental impact statements early in the process (§ 1502.5 of this chapter).
- (i) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.24 of this chapter).
- (j) Eliminating duplication with State, Tribal, and local procedures by providing for joint preparation of environmental documents where practicable (§ 1506.2 of this chapter) and with other Federal procedures by providing that agencies may jointly prepare or adopt appropriate environmental documents prepared by another agency (§ 1506.3 of this chapter).
- (k) Combining environmental documents with other documents (§ 1506.4 of this chapter).
- (l) Using accelerated procedures for proposals for legislation (§ 1506.8 of this chapter).

**§ 1500.6 Agency authority.**

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

**PART 1501—NEPA AND AGENCY PLANNING**

Sec.

- 1501.1 NEPA thresholds.
- 1501.2 Apply NEPA early in the process.
- 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.
- 1501.8 Cooperating agencies.
- 1501.9 Scoping.
- 1501.10 Time limits.
- 1501.11 Tiering.
- 1501.12 Incorporation by reference.

AUTHORITY: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

SOURCE: 85 FR 43357, July 16, 2020

### **§ 1501.1 NEPA thresholds.**

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

- (1) Whether the proposed activity or decision is expressly exempt from NEPA under another statute;
- (2) Whether compliance with NEPA would clearly and fundamentally conflict with the requirements of another statute;
- (3) Whether compliance with NEPA would be inconsistent with Congressional intent expressed in another statute;
- (4) Whether the proposed activity or decision is a major Federal action;
- (5) Whether the proposed activity or decision, in whole or in part, is a non-discretionary action for which the agency lacks authority to consider environmental effects as part of its decision-making process; and
- (6) Whether the proposed action is an action for which another statute's requirements serve the function of agency compliance with the Act.

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

- (1) Federal agencies may seek the Council's assistance in making an individual determination under this section.
- (2) An agency shall consult with other Federal agencies concerning their concurrence in statutory determinations made under this section where more than one Federal agency administers the statute.

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

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

(b) Each agency shall:

- (1) Comply with the mandate of section 102(2)(A) of NEPA to utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment, as specified by § 1507.2(a) of this chapter.
- (2) Identify environmental effects and values in adequate detail so the decision maker can appropriately consider such effects and values alongside economic and technical analyses. Whenever practicable, agencies shall review and publish environmental documents and appropriate analyses at the same time as other planning documents.
- (3) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of NEPA.

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

- (i) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.
- (ii) The Federal agency consults early with appropriate State, Tribal, and local governments and with interested private persons and organizations when their involvement is reasonably foreseeable.
- (iii) The Federal agency commences its NEPA process at the earliest reasonable time (§§ 1501.5(d) and 1502.5(b) of this chapter).

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

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

- (1) Normally does not have significant effects and is categorically excluded (§ 1501.4);
- (2) Is not likely to have significant effects or the significance of the effects is unknown and is therefore appropriate for an environmental assessment (§ 1501.5); or
- (3) Is likely to have significant effects and is therefore appropriate for an environmental impact statement (part 1502 of this chapter).

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

- (1) In considering the potentially affected environment, agencies should consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend only upon the effects in the local area.
- (2) In considering the degree of the effects, agencies should consider the following, as appropriate to the specific action:
  - (i) Both short- and long-term effects.
  - (ii) Both beneficial and adverse effects.
  - (iii) Effects on public health and safety.
  - (iv) Effects that would violate Federal, State, Tribal, or local law protecting the environment.

**§ 1501.4 Categorical exclusions.**

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

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

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

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

### **§ 1501.5 Environmental assessments.**

(a) An agency shall prepare an environmental assessment for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown unless the agency finds that a categorical exclusion (§ 1501.4) is applicable or has decided to prepare an environmental impact statement.

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

(c) An environmental assessment shall:

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

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

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

(e) Agencies shall involve the public, State, Tribal, and local governments, relevant agencies, and any applicants, to the extent practicable in preparing environmental assessments.

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

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

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

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

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

### **§ 1501.6 Findings of no significant impact.**

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

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

(2) In the following circumstances, the agency shall make the finding of no significant impact available for public review for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin:

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

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

(b) The finding of no significant impact shall include the environmental assessment or incorporate it by reference 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 discussion in the assessment but may incorporate it by reference.

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

### **§ 1501.7 Lead agencies.**

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

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

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

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

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

(1) Magnitude of agency's involvement.

(2) Project approval or disapproval authority.

- (3) Expertise concerning the action's environmental effects.
- (4) Duration of agency's involvement.
- (5) Sequence of agency's involvement.

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

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

- (1) A precise description of the nature and extent of the proposed action; and
- (2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

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

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

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

- (1) Request the participation of each cooperating agency in the NEPA process at the earliest practicable time.
- (2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent practicable.
- (3) Meet with a cooperating agency at the latter's request.
- (4) Determine the purpose and need, and alternatives in consultation with any cooperating agency.

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

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

### **§ 1501.8 Cooperating agencies.**

(a) The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any Federal agency with jurisdiction by law shall be a cooperating agency. In addition, upon request of the lead agency, any other Federal agency with special expertise with respect to any environmental issue may be a cooperating agency. A State, Tribal, or local agency of similar qualifications may become a cooperating agency by agreement with the lead agency. An agency may request that the lead agency 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).

(b) Each cooperating agency shall:

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

(2) Participate in the scoping process (described in § 1501.9).

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

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

(5) Normally use its own funds. To the extent available funds 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 any issues relating to purpose and need, alternatives, or other issues that may affect any agencies' ability to meet the schedule.

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

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

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



## § 1501.9 Scoping.

(a) *Generally.* Agencies shall use an early and open process to determine the scope of issues for analysis in an environmental impact statement, including identifying the significant issues and eliminating from further study non-significant issues. Scoping may begin as soon as practicable after the proposal for action is sufficiently developed for agency consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intent.

(b) *Invite cooperating and participating agencies.* As part of the scoping process, the lead agency shall invite the participation of likely affected Federal, State, Tribal, and local agencies 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), unless there is a limited exception under § 1507.3(f)(1) of this chapter.

(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(f)(3) of this chapter. An agency also may publish notice in accordance with § 1506.6 of this chapter. The notice shall include, as appropriate:

- (1) The purpose and need for the proposed action;
- (2) A preliminary description of the proposed action and alternatives the environmental impact statement will consider;
- (3) A brief summary of expected impacts;
- (4) Anticipated permits and other authorizations;
- (5) A schedule for the decision-making process;
- (6) A description of the public scoping process, including any scoping meeting(s);
- (7) A request for identification of potential alternatives, information, and analyses relevant to the proposed action (*see* § 1502.17 of this chapter); and
- (8) Contact information for a person within the agency who can answer questions about the proposed action and the environmental impact statement.

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

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

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

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

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

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

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

(4) Identify other environmental review, authorization, and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently and integrated with the environmental impact statement, as provided in § 1502.24 of this chapter.

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

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

#### **§ 1501.10 Time limits.**

(a) To ensure that agencies conduct NEPA reviews as efficiently and expeditiously as practicable, Federal agencies should set time limits appropriate to individual actions or types of actions (consistent with the time intervals required by § 1506.11 of this chapter).

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

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

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

(c) The senior agency official may consider the following factors in determining time limits:

(1) Potential for environmental harm.

(2) Size of the proposed action.

(3) State of the art of analytic techniques.

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

(5) Number of persons and agencies affected.

(6) Availability of relevant information.

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

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

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

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

(3) Preparation of the draft environmental impact statement.

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

(5) Preparation of the final environmental impact statement.

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

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

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

### **§ 1501.11 Tiering.**

(a) Agencies should tier their environmental impact statements and environmental assessments when 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. Tiering may also be appropriate for different stages of actions.

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

(c) 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, such as planning studies, analyses, or other relevant information, into environmental documents by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. Agencies shall cite the incorporated material in the document and briefly describe its content. Agencies may not incorporate material by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Agencies shall not incorporate by reference material based on proprietary data that is not available for review and comment.

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

Sec.

- 1502.1 Purpose of environmental impact statement.
- 1502.2 Implementation.
- 1502.3 Statutory requirements for statements.
- 1502.4 Major Federal actions requiring the preparation of environmental impact statements.
- 1502.5 Timing.
- 1502.6 Interdisciplinary preparation.
- 1502.7 Page limits.
- 1502.8 Writing.
- 1502.9 Draft, final, and supplemental statements.
- 1502.10 Recommended format.
- 1502.11 Cover.
- 1502.12 Summary.
- 1502.13 Purpose and need.
- 1502.14 Alternatives including the proposed action.
- 1502.15 Affected environment.
- 1502.16 Environmental consequences.
- 1502.17 Summary of submitted alternatives, information, and analyses.
- 1502.18 List of preparers.
- 1502.19 Appendix.
- 1502.20 Publication of the environmental impact statement.
- 1502.21 Incomplete or unavailable information.
- 1502.22 Cost-benefit analysis.
- 1502.23 Methodology and scientific accuracy.
- 1502.24 Environmental review and consultation requirements.

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### **§ 1502.1 Purpose of environmental impact statement.**

The primary purpose of an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA is to ensure agencies consider the environmental impacts of their actions in decision making. It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is a document that informs Federal agency decision making and the public.

## **§ 1502.2 Implementation.**

- (a) Environmental impact statements shall not be encyclopedic.
- (b) Environmental impact statements shall discuss impacts in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.
- (c) Environmental impact statements shall be analytic, concise, and no longer than necessary to comply with NEPA and with the regulations in this subchapter. Length should be proportional to potential environmental effects and project size.
- (d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of NEPA as interpreted in the regulations in this subchapter and other environmental laws and policies.
- (e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the decision maker.
- (f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (*see also* § 1506.1 of this chapter).
- (g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

## **§ 1502.3 Statutory requirements for statements.**

As required by section 102(2)(C) of NEPA, environmental impact statements are to be included in every Federal agency recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

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

- (a) Agencies shall define the proposal that is the subject of an environmental impact statement based on the statutory authorities for the proposed action. Agencies shall use the criteria for scope (§ 1501.9(e) of this chapter) to determine which proposal(s) shall be the subject of a particular statement. Agencies shall evaluate in a single environmental impact statement proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action.
- (b) Environmental impact statements may be prepared for programmatic Federal actions, such as the adoption of new agency programs. When agencies prepare such statements, they should be relevant to the program decision and timed to coincide with meaningful points in agency planning and decision making.
  - (1) When preparing statements on 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:
    - (i) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

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

(iii) By stage of technological development including Federal or federally assisted research, development or demonstration programs for new technologies that, if applied, could significantly affect the quality of the human environment. Statements on such programs should be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(2) Agencies shall as appropriate employ scoping (§ 1501.9 of this chapter), tiering (§ 1501.11 of this chapter), and other methods listed in §§ 1500.4 and 1500.5 of this chapter to relate programmatic and narrow actions and to avoid duplication and delay. Agencies may tier their environmental analyses to defer detailed analysis of environmental impacts of specific program elements until such program elements are ripe for final agency action.

### **§ 1502.5 Timing.**

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

For instance:

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

(b) For applications to the agency requiring an environmental impact statement, the agency shall commence the statement as soon as practicable after receiving the application. Federal agencies should work with potential applicants and applicable State, Tribal, and local agencies and governments 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 impact study. In appropriate circumstances, the statement may follow preliminary hearings designed to gather information for use in the statements.

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

### **§ 1502.6 Interdisciplinary preparation.**

Agencies shall prepare environmental impact statements using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of NEPA). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1501.9 of this chapter).

### **§ 1502.7 Page limits.**

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

### **§ 1502.8 Writing.**

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

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

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

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

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

(d) *Supplemental environmental impact statements.* Agencies:

- (1) Shall prepare supplements to either draft or final environmental impact statements if a major Federal action remains to occur, and:
  - (i) The agency makes substantial changes to the proposed action that are relevant to environmental concerns; or
  - (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.
- (2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.



(3) Shall prepare, publish, and file a supplement to a statement (exclusive of scoping (§ 1501.9 of this chapter)) as a draft and final statement, as is appropriate to the stage of the statement involved, unless the Council approves alternative procedures (§ 1506.12 of this chapter).

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

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

(a) Agencies shall use a format for environmental impact statements that will encourage good analysis and clear presentation of the alternatives including the proposed action. Agencies should use the following standard format for environmental impact statements unless the agency determines that there is a more effective format for communication:

(1) Cover.

(2) Summary.

(3) Table of contents.

(4) Purpose of and need for action.

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

(6) Affected environment and environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA).

(7) Submitted alternatives, information, and analyses.

(8) List of preparers.

(9) Appendices (if any).

(b) If an agency uses a different format, it shall include paragraphs (a)(1) through (8) of this section, as further described in §§ 1502.11 through 1502.19, in any appropriate format.

#### **§ 1502.11 Cover.**

The cover shall not exceed one page and include:

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

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

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

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

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

(f) The date by which the agency must receive comments (computed in cooperation with EPA under § 1506.11 of this chapter).

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

#### **§ 1502.12 Summary.**

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

#### **§ 1502.13 Purpose and need.**

The statement shall briefly specify the underlying purpose and need 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.**

The alternatives section 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). In this section, agencies shall:

- (a) Evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination.
- (b) Discuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits.
- (c) Include the no action alternative.
- (d) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
- (e) Include appropriate mitigation measures not already included in the proposed action or alternatives.
- (f) Limit their consideration to a reasonable number of alternatives.

### **§ 1502.15 Affected environment.**

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

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

(a) The environmental consequences section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA that 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 shall include:

- (1) The environmental impacts of the proposed action and reasonable alternatives to the proposed action and the significance of those impacts. The comparison of the proposed action and reasonable alternatives shall be based on this discussion of the impacts.
- (2) Any adverse environmental effects that cannot be avoided should the proposal be implemented.
- (3) The relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity.
- (4) Any irreversible or irretrievable commitments of resources that would be involved in the proposal should it be implemented.
- (5) Possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. (§ 1506.2(d) of this chapter)
- (6) Energy requirements and conservation potential of various alternatives and mitigation measures.
- (7) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.
- (8) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.
- (9) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(e)).

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

(b) 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, the environmental impact statement shall discuss and give appropriate consideration to these effects on the human environment.

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

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

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

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

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

**§ 1502.18 List of preparers.**

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

**§ 1502.19 Appendix.**

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

(a) Material prepared in connection with an environmental impact statement (as distinct from material that is not so prepared and is incorporated by reference (§ 1501.12 of this chapter)).

(b) Material substantiating any analysis fundamental to the impact statement.

(c) Material relevant to the decision to be made.

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

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

#### **§ 1502.20 Publication of the environmental impact statement.**

Agencies shall publish the entire draft and final environmental impact statements and unchanged statements as provided in § 1503.4(c) of this chapter. 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 agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State, Tribal, or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

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

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

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

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

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

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

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

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

(3) A summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and

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

(d) For the purposes of this section, “reasonably foreseeable” includes impacts that 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.

**§ 1502.22 Cost-benefit analysis.**

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

**§ 1502.23 Methodology and scientific accuracy.**

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

**§ 1502.24 Environmental review and consultation requirements.**

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrent and integrated with environmental impact analyses and related surveys and studies required by all other Federal environmental review laws and Executive orders applicable to the proposed action, including the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*), and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

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

## **PART 1503—COMMENTING ON ENVIRONMENTAL IMPACT STATEMENTS**

Sec.

- 1503.1 Inviting comments and requesting information and analyses.
- 1503.2 Duty to comment.
- 1503.3 Specificity of comments and information.
- 1503.4 Response to comments.

AUTHORITY: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

SOURCE: 85 FR 43357, July 16, 2020

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

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

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

(2) Request the comments of:

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

(ii) State, Tribal, or local governments that may be affected by the proposed action;

(iii) Any agency that has requested it receive statements on actions of the kind proposed;

(iv) The applicant, if any; and

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

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

(b) An agency may request comments on a final environmental impact statement before the final decision and set a deadline for providing such comments. Other agencies or persons may make comments consistent with the time periods under § 1506.11 of this chapter.

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

### **§ 1503.2 Duty to comment.**

Cooperating agencies and agencies that are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority within the time period specified for comment in § 1506.11 of this chapter. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that the environmental impact statement adequately reflects its views, it should reply that it has no comment.

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

- (a) To promote informed decision making, comments on an environmental impact statement or on a proposed action shall be as specific as possible, may address either the adequacy of the statement or the merits of the alternatives discussed or both, and shall provide as much detail as necessary to meaningfully participate and fully inform the agency of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and alternatives to the proposed action, as well as economic and employment impacts, and other impacts affecting the quality of the human environment. Comments should reference the corresponding section or page number of the draft environmental impact statement, propose specific changes to those parts of the statement, where possible, and include or describe the data sources and methodologies supporting the proposed changes.
- (b) Comments on the submitted alternatives, information, and analyses and summary thereof (§ 1502.17 of this chapter) should be as specific as possible. Comments and objections of any kind shall be raised within the comment period on the draft environmental impact statement provided by the agency, consistent with § 1506.11 of this chapter. If the agency requests comments on the final environmental impact statement before the final decision, consistent with § 1503.1(b), comments and objections of any kind shall be raised within the comment period provided by the agency. Comments and objections of any kind not provided within the comment period(s) shall be considered unexhausted and forfeited, consistent with § 1500.3(b) of this chapter.
- (c) When a participating agency criticizes a lead agency's predictive methodology, the participating agency should describe the alternative methodology that it prefers and why.
- (d) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or authorizations.
- (e) When a cooperating agency with jurisdiction by law specifies mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences, the cooperating agency shall cite to its applicable statutory authority.



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

(a) An agency preparing a final environmental impact statement shall consider substantive comments timely submitted during the public comment period. The agency may respond to individual comments or groups of comments. In the final environmental impact statement, the agency may respond by:

- (1) Modifying alternatives including the proposed action.
- (2) Developing and evaluating alternatives not previously given serious consideration by the agency.
- (3) Supplementing, improving, or modifying its analyses.
- (4) Making factual corrections.
- (5) Explaining why the comments do not warrant further agency response, recognizing that agencies are not required to respond to each comment.

(b) An agency shall append or otherwise publish all substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous).

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

### **PART 1504—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: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

SOURCE: 85 FR 43357, July 16, 2020

#### **§ 1504.1 Purpose.**

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

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

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

#### **§ 1504.2 Criteria for referral.**

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

- (a) Possible violation of national environmental standards or policies;
- (b) Severity;
- (c) Geographical scope;
- (d) Duration;
- (e) Importance as precedents;
- (f) Availability of environmentally preferable alternatives; and
- (g) Economic and technical considerations, including the economic costs of delaying or impeding the decision making of the agencies involved in the action.

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

- (a) A Federal agency making the referral to the Council shall:
  - (1) Notify the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached;
  - (2) Include such a notification whenever practicable in the referring agency’s comments on the environmental assessment or draft environmental impact statement;
  - (3) Identify any essential information that is lacking and request that the lead agency make it available at the earliest possible time; and
  - (4) Send copies of the referring agency’s views to the Council.

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

(c) The referral shall consist of:

- (1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it; and
- (2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:
  - (i) Identify any disputed material facts and incorporate (by reference if appropriate) agreed upon facts;
  - (ii) Identify any existing environmental requirements or policies that would be violated by the matter;
  - (iii) Present the reasons for the referral;
  - (iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason;
  - (v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time; and
  - (vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) No later than 25 days after the referral to the Council, the lead agency may deliver a response to the Council and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

- (1) Address fully the issues raised in the referral;
- (2) Be supported by evidence and explanations, as appropriate; and
- (3) Give the lead agency's response to the referring agency's recommendations.

(e) Applicants may provide views in writing to the Council no later than the response.

(f) No later than 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) Obtain additional views and information.
  - (4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.
  - (5) Determine that the referring and lead agencies should further negotiate the issue, and the issue is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.
  - (6) Publish its findings and recommendations (including, where appropriate, a finding that the submitted evidence does not support the position of an agency).
  - (7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.
- (g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.
- (h) The referral process is not intended to create any private rights of action or to be judicially reviewable because any voluntary resolutions by the agency parties do not represent final agency action and instead are only provisional and dependent on later consistent action by the action agencies.

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

Sec.

1505.1 [Reserved]

1505.2 Record of decision in cases requiring environmental impact statements.

1505.3 Implementing the decision.

AUTHORITY: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

SOURCE: 85 FR 43357, July 16, 2020

### **§ 1505.1 [Reserved]**

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

(a) At the time of its decision (§ 1506.11 of this chapter) or, if appropriate, its recommendation to Congress, each agency shall prepare and timely publish a concise public record of decision or joint record of decision. The record, which each agency may integrate into any other record it prepares, shall:

- (1) State the decision.

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

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

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

### **§ 1505.3 Implementing the decision.**

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

- (a) Include appropriate conditions in grants, permits, or other approvals.
- (b) Condition funding of actions on mitigation.
- (c) Upon request, inform cooperating or participating agencies on progress in carrying out mitigation measures that they have proposed and were adopted by the agency making the decision.
- (d) Upon request, publish the results of relevant monitoring.

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

Sec.

- 1506.1 Limitations on actions during NEPA process.
- 1506.2 Elimination of duplication with State, Tribal, and local procedures.
- 1506.3 Adoption.
- 1506.4 Combining documents.
- 1506.5 Agency responsibility for environmental documents.
- 1506.6 Public involvement.
- 1506.7 Further guidance.
- 1506.8 Proposals for legislation.
- 1506.9 Proposals for regulations.
- 1506.10 Filing requirements.
- 1506.11 Timing of agency action.
- 1506.12 Emergencies.
- 1506.13 Effective date.

AUTHORITY: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

SOURCE: 85 FR 43357, July 16, 2020

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

(a) 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 of this chapter, or record of decision, as provided in § 1505.2 of this chapter, no action concerning the proposal may be taken that would:

- (1) Have an adverse environmental impact; or
- (2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity and is aware that the applicant is about to take an action within the agency’s jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. This section does not preclude development by applicants of plans or designs or performance of other activities 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 programmatic environmental review is in progress and the action is not covered by an existing programmatic review, agencies shall not undertake in the interim any major Federal action covered by the program that may significantly affect the quality of the human environment unless such action:

- (1) Is justified independently of the program;

- (2) Is itself accompanied by an adequate environmental review; and
- (3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

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

(a) Federal agencies are authorized 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 NEPA.

(b) To the fullest extent practicable unless specifically prohibited by law, agencies shall cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and State, Tribal, and local requirements, including through use of studies, analysis, and decisions developed by State, Tribal, or local agencies. Except for cases covered by paragraph (a) of this section, such cooperation shall include, to the fullest extent practicable:

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

(c) To the fullest extent practicable unless specifically prohibited by law, agencies shall cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and comparable State, Tribal, and local requirements. Such cooperation shall include, to the fullest extent practicable, joint environmental impact statements. In such cases, one or more Federal agencies and one or more State, Tribal, or local agencies shall be joint lead agencies. Where State or Tribal laws or local ordinances have environmental impact statement or similar requirements in addition to but not in conflict with those in NEPA, Federal agencies may cooperate in fulfilling these requirements, as well as those of Federal laws, so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State, Tribal, or local planning processes, environmental impact statements shall discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or 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) *Generally.* An agency may adopt a Federal draft or final environmental impact statement, environmental assessment, or portion thereof, or categorical exclusion determination provided that the statement, assessment, portion thereof, or determination meets the standards for an adequate statement, assessment, or determination under the regulations in this subchapter.

(b) *Environmental impact statements.*

(1) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the adopting agency shall republish it as a final statement consistent with § 1506.10. If the actions are not substantially the same, the adopting agency shall treat the statement as a draft and republish it, consistent with § 1506.10.

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

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

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

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

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

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

(3) The assessment or statement's adequacy is the subject of a judicial action that is not final.

**§ 1506.4 Combining documents.**

Agencies should combine, to the fullest extent practicable, any environmental document with any other agency document to reduce duplication and paperwork.

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

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

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

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



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

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

(4) Contractors or applicants preparing environmental assessments or environmental impact statements shall submit a disclosure statement to the lead agency that specifies any financial or other interest in the outcome of the action. Such statement need not include privileged or confidential trade secrets or other confidential business information.

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

#### **§ 1506.6 Public involvement.**

Agencies shall:

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

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

(1) In all cases, the agency shall 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*. An agency may notify organizations that have requested regular notice.

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

(i) Notice to State, Tribal, and local agencies that may be interested or affected by the proposed action.

(ii) Notice to interested or affected State, Tribal, and local governments.

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

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

(v) Notice through other local media.

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

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

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

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

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

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

(d) Solicit appropriate information from the public.

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

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act, as amended (5 U.S.C. 552).

#### **§ 1506.7 Further guidance.**

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

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

#### **§ 1506.8 Proposals for legislation.**

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

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

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

(1) There need not be a scoping process.

(2) Agencies shall prepare the legislative statement in the same manner as a draft environmental impact statement and need not prepare a final statement unless any of the following conditions exist. In such cases, the agency shall prepare and publish the statements consistent with §§ 1503.1 of this chapter and 1506.11:

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

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

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

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

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

### **§ 1506.9 Proposals for regulations.**

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

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

(a) Agencies shall file environmental impact statements together with comments and responses with the Environmental Protection Agency (EPA), Office of Federal Activities, consistent with EPA's procedures.

(b) Agencies shall file statements with the EPA no earlier than they are also transmitted to participating agencies and made available to the public. EPA may issue guidelines to agencies to implement its responsibilities under this section and § 1506.11.

**§ 1506.11 Timing of agency action.**

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

(b) Unless otherwise provided by law, including statutory provisions for combining a final environmental impact statement and record of decision, Federal agencies may not make or issue a record of decision under § 1505.2 of this chapter for the proposed action until the later of the following dates:

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

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

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

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

(2) An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety may waive the time period in paragraph (b)(2) of this section, 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) If an agency files the final environmental impact statement within 90 days of the filing of the draft environmental impact statement with the Environmental Protection Agency, the decision-making period and the 90-day period may run concurrently. However, subject to paragraph (e) of this section, agencies shall allow at least 45 days for comments on draft statements.

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

### **§ 1506.12 Emergencies.**

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

### **§ 1506.13 Effective date.**

The regulations in this subchapter apply to any NEPA process begun after September 14, 2020. An agency may apply the regulations in this subchapter to ongoing activities and environmental documents begun before September 14, 2020.

## **PART 1507—AGENCY COMPLIANCE**

Sec.

- 1507.1 Compliance.
- 1507.2 Agency capability to comply.
- 1507.3 Agency NEPA procedures.
- 1507.4 Agency NEPA program information.

AUTHORITY: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

SOURCE: 85 FR 43357, July 16, 2020

### **§ 1507.1 Compliance.**

All agencies of the Federal Government shall comply with the regulations in this subchapter.

### **§ 1507.2 Agency capability to comply.**

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

- (a) Fulfill the requirements of section 102(2)(A) of NEPA to utilize a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making that may have an impact on the human environment. Agencies shall designate a senior agency official to be responsible for overall review of agency NEPA compliance, including resolving implementation issues.
- (b) Identify methods and procedures required by section 102(2)(B) of NEPA to ensure that presently unquantified environmental amenities and values may be given appropriate consideration.
- (c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) of NEPA and cooperate on the development of statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.
- (d) Study, develop, and describe alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources, consistent with section 102(2)(E) of NEPA.
- (e) Comply with the requirements of section 102(2)(H) of NEPA that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.
- (f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of NEPA, Executive Order 11514, Protection and Enhancement of Environmental Quality, section 2, as amended by Executive Order 11991, Relating to Protection and Enhancement of Environmental Quality, and Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting for Infrastructure Projects.

### **§ 1507.3 Agency NEPA procedures.**

- (a) Where existing agency NEPA procedures are inconsistent with the regulations in this subchapter, the regulations in this subchapter shall apply, consistent with § 1506.13 of this chapter, unless there is a clear and fundamental conflict with the requirements of another statute. The Council has determined that the categorical exclusions contained in agency NEPA procedures as of September 14, 2020 are consistent with this subchapter.
- (b) No more than 12 months after September 14, 2020, or 9 months after the establishment of an agency, whichever comes later, each agency shall develop or revise, as necessary, proposed procedures to implement the regulations in this subchapter, including to eliminate any inconsistencies with the regulations in this subchapter. When the agency is a department, it may be efficient for major subunits (with the consent of the department) to adopt their own procedures. Except for agency efficiency (see paragraph (c) of this section) or as otherwise required by law, agency NEPA procedures shall not impose additional procedures or requirements beyond those set forth in the regulations in this subchapter.

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

(2) Agencies shall provide an opportunity for public review and review by the Council for conformity with the Act and the regulations in this subchapter before adopting their final procedures. The Council shall complete its review within 30 days of the receipt of the proposed final procedures. Once in effect, the agency shall publish its NEPA procedures and ensure that they are readily available to the public.

(c) Agencies shall adopt, as necessary, agency NEPA procedures to improve agency efficiency and ensure that agencies make decisions in accordance with the Act's procedural requirements. Such procedures shall include:

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

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

(3) 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.

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

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

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

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

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

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

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

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

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

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

(1) Those procedures required by §§ 1501.2(b)(4) (assistance to applicants) and 1506.6(e) of this chapter (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 environmental assessment and do not have a significant effect on the human environment (categorical exclusions (§ 1501.4 of this chapter)). Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect. Agency NEPA procedures shall identify when documentation of a categorical exclusion determination is required.

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

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

(f) Agency procedures may:

(1) Include specific criteria for providing limited exceptions to the provisions of the regulations in this subchapter for classified proposals. These are proposed actions 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. Agencies may safeguard and restrict from public dissemination environmental assessments and environmental impact statements that address classified proposals in accordance with agencies' own regulations applicable to classified information. Agencies should organize these documents so that classified portions are included as annexes, so that the agencies can make the unclassified portions available to the public.

(2) Provide for periods of time other than those presented in § 1506.11 of this chapter when necessary to comply with other specific statutory requirements, including requirements of lead or cooperating agencies.



(3) Provide that, where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the agency may publish the notice of intent required by § 1501.9(d) of this chapter 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) Establish a process that allows the agency to use a categorical exclusion listed in another agency's NEPA procedures after consulting with that agency to ensure the use of the categorical exclusion is appropriate. The process should ensure documentation of the consultation and identify to the public those categorical exclusions the agency may use for its proposed actions. Then, the agency may apply the categorical exclusion to its proposed actions.

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

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

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

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

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

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

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

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

### **PART 1508—DEFINITIONS**

Sec.

1508.1 Definitions.

1508.2 [Reserved]

AUTHORITY: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

SOURCE: 85 FR 43357, July 16, 2020

## § 1508.1 Definitions.

The following definitions apply to the regulations in this subchapter. Federal agencies shall use these terms uniformly throughout the Federal Government.

- (a) *Act* or *NEPA* means the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq.*).
- (b) *Affecting* means will or may have an effect on.
- (c) *Authorization* means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to implement a proposed action.
- (d) *Categorical exclusion* means a category of actions that the agency has determined, in its agency NEPA procedures (§ 1507.3 of this chapter), normally do not have a significant effect on the human environment.
- (e) *Cooperating agency* means any Federal agency (and a State, Tribal, or local agency with agreement of the lead agency) other than a lead agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action that may significantly affect the quality of the human environment.
- (f) *Council* means the Council on Environmental Quality established by title II of the Act.
- (g) *Effects* or *impacts* means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.
  - (1) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects. Effects may also include those resulting from actions that may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.
  - (2) A “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action.
  - (3) An agency’s analysis of effects shall be consistent with this paragraph (g). Cumulative impact, defined in 40 CFR 1508.7 (1978), is repealed.
- (h) *Environmental assessment* means a concise public document prepared by a Federal agency 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 of this chapter.

(i) *Environmental document* means an environmental assessment, environmental impact statement, finding of no significant impact, or notice of intent.

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

(k) *Federal agency* means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. For the purposes of the regulations in this subchapter, Federal agency also includes States, units of general local government, and Tribal governments assuming NEPA responsibilities from a Federal agency pursuant to statute.

(l) *Finding of no significant impact* means a document by a Federal agency briefly presenting the reasons why an action, not otherwise categorically excluded (§ 1501.4 of this chapter), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared.

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

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

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

(p) *Legislation* means a bill or legislative proposal to Congress developed by a Federal agency, but does not include requests for appropriations or legislation recommended by the President.

(q) *Major Federal action or action* means an activity or decision subject to Federal control and responsibility subject to the following:

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

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

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

(iii) Activities or decisions that do not result in final agency action under the Administrative Procedure Act or other statute that also includes a finality requirement;

(iv) Judicial or administrative civil or criminal enforcement actions;

(v) Funding assistance solely in the form of general revenue sharing funds with no Federal agency control over the subsequent use of such funds;

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

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

(2) Major Federal actions may include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§ 1506.8 of this chapter).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(u) *Notice of intent* means a public notice that an agency will prepare and consider an environmental impact statement.

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

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

(x) *Proposal* means a proposed action at a stage when an agency has a goal, is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and can meaningfully evaluate its effects. A proposal may exist in fact as well as by agency declaration that one exists.

(y) *Publish* and *publication* mean methods found by the agency to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication, and adopted by agency NEPA procedures pursuant to § 1507.3 of this chapter.

(z) *Reasonable alternatives* means a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.

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

(bb) *Referring agency* means the Federal agency 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) *Scope* consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§ 1501.11 of this chapter).

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

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

(ff) *Tiering* refers to the coverage of general matters in broader environmental impact statements or environmental assessments (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin-wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.

**§ 1508.2 [Reserved]**

# **The National Environmental Policy Act of 1969**

## **42 U.S.C. 4321. Congressional declaration of purpose [Sec. 2]**

The purposes of this chapter 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.

(Pub. L. 91–190, § 2, Jan. 1, 1970, 83 Stat. 852)

## **SUBCHAPTER I—POLICIES AND GOALS [TITLE I]**

### **42 U.S.C. 4331. Congressional declaration of national environmental policy [Sec. 101]**

(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 chapter, 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 esthetically 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 responsibility to contribute to the preservation and enhancement of the environment.

(Pub. L. 91-190, title I, § 101, Jan. 1, 1970, 83 Stat. 852)

**42 U.S.C. 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts [Sec. 102]**

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 chapter 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 subchapter II of this chapter, 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 agencies, 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, 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, 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 subchapter II of this chapter.

(Pub. L. 91-190, title I, § 102, Jan. 1, 1970, 83 Stat. 853; Pub. L. 94-83, Aug. 9, 1975, 89 Stat. 424)

**42 U.S.C. 4333. Conformity of administrative procedures to national environmental policy [Sec. 103]**

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 chapter 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 chapter.

(Pub. L. 91–190, title I, § 103, Jan. 1, 1970, 83 Stat. 854)

**42 U.S.C. 4334. Other statutory obligations of agencies [Sec. 104]**

Nothing in section 4332 [Sec. 102] or 4333 [Sec. 103] 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.

(Pub. L. 91–190, title I, § 104, Jan. 1, 1970, 83 Stat. 854)

**42 U.S.C. 4335. Efforts supplemental to existing authorizations [Sec. 105]**

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.

(Pub. L. 91–190, title I, § 105, Jan. 1, 1970, 83 Stat. 854)

**SUBCHAPTER II – COUNCIL ON ENVIRONMENTAL QUALITY [TITLE II]**

**42 U.S.C. 4341. [Sec. 201] Omitted**

*Section 201 which required the President to transmit to Congress annually an Environmental Quality Report, was terminated by Congress, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.*

(Pub. L. 91–190, title II, § 201, Jan. 1, 1970, 83 Stat. 854; Pub. L. 104–66, title III, § 3003, Dec. 21, 1995 of as amended, 31 U.S.C. 1113)

**42 U.S.C. 4342. Establishment; membership; Chairman; appointments [Sec. 202]**

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 subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, 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.

(Pub. L. 91–190, title II, § 202, Jan. 1, 1970, 83 Stat. 854)

*Provisions stating that notwithstanding this section, the Council was to consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council, were contained in the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Pub. L. 109–54, title III, Aug. 2, 2005, 119 Stat. 543, and were repeated in provisions of subsequent appropriations acts which are not set out in the Code.*

#### **42 U.S.C. 4343. Employment of personnel, experts and consultants [Sec. 203]**

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter. 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, (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.

(Pub. L. 91–190, title II, § 203, Jan. 1, 1970, 83 Stat. 855; Pub. L. 94–52, § 2, July 3, 1975, 89 Stat. 258)

#### **42 U.S.C. 4344. Duties and functions [Sec. 204]**

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 4341[Sec. 201] 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 subchapter I of this chapter, 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 subchapter I of this chapter 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.

(Pub. L. 91–190, title II, § 204, Jan. 1, 1970, 83 Stat. 855)

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\* CEQ notes that Congress amended 42 U.S.C. 4341 to remove the Environmental Quality Report requirement.

**42 U.S.C. 4345. Consultation with Citizens’ Advisory Committee on Environmental Quality and other representatives [Sec. 205]**

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 numbered 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.

(Pub. L. 91–190, title II, § 205, Jan. 1, 1970, 83 Stat. 855)

**42 U.S.C. 4346. Tenure and compensation of members [Sec. 206]**

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 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV o[f] the Executive Schedule Pay Rates (5 U.S.C. 5315).

(Pub. L. 91–190, title II, § 206, Jan. 1, 1970, 83 Stat. 856)

**42 U.S.C. 4346a. Travel reimbursement by private organizations and Federal, State, and local governments [Sec. 207]**

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.

(Pub. L. 91–190, title II, § 207, as added Pub. L. 94–52, § 3, July 3, 1975, 89 Stat. 258)

**42 U.S.C. 4346b. Expenditures in support of international activities [Sec. 208]**

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.

(Pub. L. 91–190, title II, § 208, as added Pub. L. 94–52, § 3, July 3, 1975, 89 Stat. 258)

**42 U.S.C. 4347. Authorization of appropriations [Sec. 209]**

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.

(Pub. L. 91–190, title II, § 209, formerly § 207, Jan. 1, 1970, 83 Stat. 856, renumbered § 209, Pub. L. 94–52, § 3, July 3, 1975, 89 Stat. 258)

## **The Environmental Quality Improvement Act of 1970**

### **42 U.S.C. 4371. Congressional findings, declarations, and purposes [Sec. 202]**

(a) The Congress finds –

- (1) that man has caused changes in the environment;
- (2) that many of these changes may affect the relationship between man and his environment; and
- (3) that population increases and urban concentration contribute directly to pollution and the degradation of our environment.

(b) (1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. This policy is evidenced by statutes heretofore enacted relating to the prevention, abatement, and control of environmental pollution, water and land resources, transportation, and economic and regional development.

(2) The primary responsibility for implementing this policy rests with State and local government.

(3) The Federal Government encourages and supports implementation of this policy through appropriate regional organizations established under existing law.

(c) The purposes of this chapter are—

(1) to assure that each Federal department and agency conducting or supporting public works activities which affect the environment shall implement the policies established under existing law; and

(2) to authorize an Office of Environmental Quality, which, notwithstanding any other provision of law, shall provide the professional and administrative staff for the Council on Environmental Quality established by Public Law 91–190.

(Pub. L. 91–224, title II, § 202, Apr. 3, 1970, 84 Stat. 114)

### **42 U.S.C. 4372. Office of Environmental Quality [Sec. 203]**

#### **(a) Establishment; Director; Deputy Director**

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) Compensation of Deputy Director**

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) Employment of personnel, experts, and consultants; compensation**

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) Duties and Functions of Director**

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;
- (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 encourage[ing] 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) Authority of Director to contract**

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.

(Pub. L. 91–224, title II, § 203, Apr. 3, 1970, 84 Stat. 114; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085)

**42 U.S.C. 4373. Referral of Environmental Quality Reports to standing committees having jurisdiction [Sec. 204]**

Each Environmental Quality Report required by Public Law 91–190 [NEPA] shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.\*\*

(Pub. L. 91–224, title II, § 204, Apr. 3, 1970, 84 Stat. 115)

**42 U.S.C. 4374. Authorization of appropriations [Sec. 205]**

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 [NEPA]:

(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.

(Pub. L. 91–224, title II, § 205, Apr. 3, 1970, 84 Stat. 115; Pub. L. 93–36, May 18, 1973, 87 Stat. 72; Pub. L. 94–52, § 1, July 3, 1975, 89 Stat. 258; Pub. L. 94–298, May 29, 1976, 90 Stat. 587; Pub. L. 95–300, June 26, 1978, 92 Stat. 342; Pub. L. 97–350, § 1, Oct. 18, 1982, 96 Stat. 1661; Pub. L. 98–581, § 1, Oct. 30, 1984, 98 Stat. 3093)

**42 U.S.C. 4375. Office of Environmental Quality Management Fund [Sec. 206]**

**(a) Establishment; financing of study contracts and Federal interagency environmental projects**

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) Study contract or project initiative**

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.

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\*\* CEQ notes that Congress amended 42 U.S.C. 4341 to remove the Environmental Quality Report requirement.

**(c) Regulations**

The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

(Pub. L. 91–224, title II, § 206, as added Pub. L. 98–581, § 2, Oct. 30, 1984, 98 Stat. 3093)

**The Clean Air Act—Section 309**

**42 U.S.C. 7609. Policy review [Sec. 309]**

**(a) Environmental impact**

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) Unsatisfactory legislation, action, or regulation**

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, ch. 360, title III, § 309, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1709)



## **Executive Order 11514—Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991**

**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 policies, 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 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 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.*

[Selection 4 amends Executive Order 11472 of May 29, 1969, Chapter 40.]

## **Executive Order 13807—Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects**

SOURCE: The provisions of Executive Order 13807 of Aug. 15, 2017, appear at 82 FR 40463.

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure that the Federal environmental review and permitting process for infrastructure projects is coordinated, predictable, and transparent, it is hereby ordered as follows:

**Section 1. Purpose.** America needs increased infrastructure investment to strengthen our economy, enhance our competitiveness in world trade, create jobs and increase wages for our workers, and reduce the costs of goods and services for our families. The poor condition of America's infrastructure has been estimated to cost a typical American household thousands of dollars each year. Inefficiencies in current infrastructure project decisions, including management of environmental reviews and permit decisions or authorizations, have delayed infrastructure investments, increased project costs, and blocked the American people from enjoying improved infrastructure that would benefit our economy, society, and environment. More efficient and effective Federal infrastructure decisions can transform our economy, so the Federal Government, as a whole, must change the way it processes environmental reviews and authorization decisions.

**Sec. 2. Policy.** It is the policy of the Federal Government to:

- (a) safeguard our communities and maintain a healthy environment;
- (b) ensure that Federal authorities make informed decisions concerning the environmental impacts of infrastructure projects;
- (c) develop infrastructure in an environmentally sensitive manner;
- (d) provide transparency and accountability to the public regarding environmental review and authorization decisions;
- (e) be good stewards of public funds, including those used to develop infrastructure projects, and avoid duplicative and wasteful processes;
- (f) conduct environmental reviews and authorization processes in a coordinated, consistent, predictable, and timely manner in order to give public and private investors the confidence necessary to make funding decisions for new infrastructure projects;
- (g) speak with a coordinated voice when conducting environmental reviews and making authorization decisions; and
- (h) make timely decisions with the goal of completing all Federal environmental reviews and authorization decisions for major infrastructure projects within 2 years.

**Sec. 3. Definitions.** The terms of this order shall be applied consistently with those defined under 42 U.S.C. 4370m and implementing guidance to the maximum extent possible. The following definitions shall specifically apply:

(a) “Authorization” means any license, permit, approval, finding, determination, or other administrative decision issued by a Federal department or agency (agency) that is required or authorized under Federal law in order to site, construct, reconstruct, or commence operations of an infrastructure project, including any authorization under 42 U.S.C. 4370m(3).

(b) “CAP Goals” means Federal Government Priority Goals established by the Government Performance and Results Act (GPRA) Modernization Act of 2010, Public Law 111–352, 124 Stat. 3866, and commonly referred to as Cross-Agency Priority (CAP) Goals.

(c) “Federal Permitting Improvement Steering Council” or “FPISC” means the entity established under 42 U.S.C. 4370m–1.

(d) “Infrastructure project” means a project to develop the public and private physical assets that are designed to provide or support services to the general public in the following sectors: surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production and generation, including from fossil, renewable, nuclear, and hydro sources; electricity transmission; broadband Internet; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; and other sectors as may be determined by the FPISC.

(e) “Major infrastructure project” means an infrastructure project for which multiple authorizations by Federal agencies will be required to proceed with construction, the lead Federal agency has determined that it will prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and the project sponsor has identified the reasonable availability of funds sufficient to complete the project.

(f) “Permitting timetable” means an environmental review and authorization schedule, or other equivalent schedule, for a project or group of projects that identifies milestones—including intermediate and final completion dates for action by each agency on any Federal environmental review or authorization required for a project or group of projects—that is prepared by the lead Federal agency in consultation with all cooperating and participating agencies.

**Sec. 4. Agency Performance Accountability.** Federal agencies should follow transparent and coordinated processes for conducting environmental reviews and making authorization decisions. These processes must include early and open coordination among Federal, State, tribal, and local agencies and early engagement with the public. Holding Federal agencies accountable for their progress on implementing the policy set forth in section 2 of this order should, among other things, produce measurably better environmental outcomes with respect to infrastructure development.

(a) *Performance Priority Goals.*

(i) *CAP Goal.* A CAP Goal is a Federal tool for accelerating progress in priority areas that require active collaboration among multiple agencies to overcome organizational barriers and to achieve better performance than one agency could achieve on its own. Within 180 days of the date of this order, the Director of the Office of Management and Budget (OMB), in consultation with the FPISC, shall establish a CAP Goal on Infrastructure Permitting Modernization so that, where permitted by law:

(A) Federal environmental reviews and authorization processes for infrastructure projects are consistent, coordinated, and predictable; and

(B) the time for the Federal Government's processing of environmental reviews and authorization decisions for new major infrastructure projects should be reduced to not more than an average of approximately 2 years, measured from the date of the publication of a notice of intent to prepare an environmental impact statement or other benchmark deemed appropriate by the Director of OMB.

(ii) *Agency Goals.* All Federal agencies with environmental review, authorization, or consultation responsibilities for infrastructure projects shall modify their Strategic Plans and Annual Performance Plans under the GPRA Modernization Act of 2010 to include agency performance goals related to the completion of environmental reviews and authorizations for infrastructure projects consistent with the new CAP Goal on Infrastructure Permitting Modernization. The agencies shall integrate the achievement of these performance goals into appropriate agency personnel performance plans, such as those of the agency Chief Environmental Review and Permitting Officers (CERPOs) or other appropriate officials, consistent with guidance to be provided by OMB, in consultation with the Office of Personnel Management. Progress on these goals shall be reviewed and analyzed by agency leadership, pursuant to the GPRA Modernization Act of 2010.

(b) *Accountability.* Within 180 days of the establishment of the CAP Goal on Infrastructure Permitting Modernization, as described in subsection (a) of this section, or such longer period of time as determined by the Director of OMB, OMB, in consultation with the FPISC, shall issue guidance for establishing a performance accountability system to facilitate achievement of the CAP Goal.

(i) *Tracking of Major Infrastructure Projects.* The performance accountability system shall track each major infrastructure project. The performance accountability system shall include, at a minimum, assessments of the agency's performance with respect to each of the following areas, as applicable:

(A) whether major infrastructure projects are processed using the "One Federal Decision" mechanism, as described in subsection 5(b) of this order;

(B) whether major infrastructure projects have a permitting timetable;

(C) whether major infrastructure projects follow an effective process that automatically elevates instances in which permitting timetable milestones are missed or extended, or are anticipated to be missed or extended, to appropriate senior agency officials;

(D) whether agencies are meeting the established milestones in the permitting timetable;

(E) the time it takes to complete the processing of environmental reviews and authorizations for each major infrastructure project; and

(F) the costs of the environmental reviews and authorizations for each major infrastructure project.

(ii) *Scoring.* The accountability system shall include a scoring mechanism that shall follow, at a minimum, the following procedures:

(A) agencies will submit information to OMB, consistent with existing reporting mechanisms to the maximum extent possible, on the assessment areas described in subsection (b)(i) of this section;

(B) at least once per quarter, OMB will produce a scorecard of agency performance and overall progress toward achieving CAP Goal targets;

(C) where an agency's inability to meet a permitting timetable milestone results in a significant delay of the project timeline, after consulting with the project sponsor and relevant agencies, agencies will submit (based on OMB guidance) an estimate of the delay's costs to the project; and

(D) the Director of OMB will consider each agency's performance during budget formulation and determine whether appropriate penalties, including those authorized at 23 U.S.C. 139(h)(7) and 33 U.S.C. 2348(h)(5), must or should be imposed, to the extent required or permitted by law, for those that significantly fail to meet a permitting timetable milestone or in other situations deemed appropriate by the Director of OMB after considering the causes of any poor performance.

(iii) *Best Practices.* Agencies shall implement the techniques and strategies the FPISC annually identifies as best practices pursuant to 42 U.S.C. 4370m-1(c)(2)(B), as appropriate. The performance accountability system shall track and score agencies on the incorporation and implementation of appropriate best practices for all infrastructure projects, including the implementation of such best practices at an agency's field level.

**Sec. 5. *Process Enhancements.*** In furtherance of the policy described in section 2 of this order, Federal agencies shall follow a more unified environmental review and authorization process.

(a) *Processing of Major Infrastructure Projects.* In processing environmental reviews and authorizations for major infrastructure projects, Federal agencies shall:

(i) use "One Federal Decision" described in subsection (b) of this section;

(ii) develop and follow a permitting timetable, which shall be reviewed and updated at least quarterly by the lead Federal agency in consultation with Federal cooperating and participating agencies; and

(iii) follow an effective process that automatically elevates instances where a permitting timetable milestone is missed or extended, or is anticipated to be missed or extended, to appropriate senior agency officials of the lead Federal agency and the cooperating and participating Federal agency or agencies to which the milestone applies.

(b) *One Federal Decision.*

(i) Each major infrastructure project shall have a lead Federal agency, which shall be responsible for navigating the project through the Federal environmental review and authorization process, including the identification of a primary Federal point of contact at each Federal agency. All Federal cooperating and participating agencies shall identify points of contact for each project, cooperate with the lead Federal agency point of contact, and respond to all reasonable requests for information from the lead Federal agency in a timely manner.

(ii) With respect to the applicability of NEPA to a major infrastructure project, the Federal lead, cooperating, and participating agencies for each major infrastructure project shall all record any individual agency decision in one Record of Decision (ROD), which shall be coordinated by the lead Federal agency unless the project sponsor requests that agencies issue separate NEPA documents, the NEPA obligations of a cooperating or participating agency have already been satisfied, or the lead Federal agency determines that a single ROD would not best promote completion of the project's environmental review and authorization process. The Federal lead, cooperating, and participating agencies shall all agree to a permitting timetable that includes the completion dates for the ROD and the federally required authorizations for the project.

(iii) All Federal authorization decisions for the construction of a major infrastructure project shall be completed within 90 days of the issuance of a ROD by the lead Federal agency, provided that the final EIS includes an adequate level of detail to inform agency decisions pursuant to their specific statutory authority and requirements. The lead Federal agency may extend the 90-day deadline if the lead Federal agency determines that Federal law prohibits the agency from issuing its approval or permit within the 90-day period, the project sponsor requests that the permit or approval follow a different timeline, or the lead Federal agency determines that an extension would better promote completion of the project's environmental review and authorization process.

(iv) The Council on Environmental Quality (CEQ) and OMB shall develop the framework for implementing One Federal Decision, in consultation with the FPISC.

(A) The framework should be consistent with the model processes established under 42 U.S.C. 4370m-2, 23 U.S.C. 139, 33 U.S.C. 2348, the 2015 "Red Book" (officially entitled "Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects"), and CEQ guidance on efficient and timely environmental reviews under NEPA.



(B) The framework shall also include guidance on the development of permitting timetables by the lead Federal agencies, in collaboration with Federal cooperating and participating agencies. Permitting timetables shall identify estimated intermediate and final completion dates for all environmental reviews and authorizations that are reasonably anticipated as being needed for a project, including the process for granting extensions of any established dates. The guidance shall specify that lead Federal agencies need not include the estimated intermediate and final completion dates of any such reviews or authorizations until the design of a project has sufficiently advanced so that they can be developed. In such cases, the guidance shall instruct lead Federal agencies to estimate when the project's design will be advanced enough to determine such dates. The timelines shall account for any federally required decisions or permits that are assumed by, or delegated to, State, tribal, or local agencies and the extent to which any approval or permit to be issued by a Federal agency is dependent upon the issuance of such a decision or permit.

(C) CEQ and OMB shall also develop guidance for applying One Federal Decision whenever the lead agency is a State, tribal, or local agency exercising an assignment or delegation of an agency's NEPA responsibilities.

(c) *Dashboard.* All projects subject to 23 U.S.C. 139 and "covered projects" under 42 U.S.C. 4370m shall be tracked on the Dashboard established under 42 U.S.C. 4370m–2(b). Other projects or classes of projects subject to special environmental review and authorization streamlining processes similar to those referenced in this subsection may also be tracked on the Dashboard at the discretion of the FPISC Executive Director. The dates for milestones of all projects tracked on the Dashboard shall be updated monthly, or on another appropriate timeline as may be determined by the FPISC Executive Director.

(d) *Executive Order 13766.* For purposes of implementing Executive Order 13766 of January 24, 2017 (Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects), all infrastructure projects that meet the criteria for, and are subject to, 23 U.S.C. 139, 33 U.S.C. 2348, or 42 U.S.C. 4370m–4370m–12 shall qualify as high priority projects under Executive Order 13766. Other projects or classes of projects subject to special environmental review and authorization streamlining processes, similar to those referenced in this subsection as may be determined by the FPISC Executive Director in consultation with OMB and CEQ, shall also qualify as high priority infrastructure projects under Executive Order 13766. The CEQ Chairman's responsibilities under sections 2 and 3 of Executive Order 13766 shall be satisfied by referring the project to the FPISC Executive Director, the Secretary of Transportation, or the Assistant Secretary of the Army for Civil Works, as appropriate.

(e) *Council on Environmental Quality.*

(i) *Directives.* Within 30 days of the date of this order, the CEQ shall develop an initial list of actions it will take to enhance and modernize the Federal environmental review and authorization process. Such actions should include issuing such regulations, guidance, and directives as CEQ may deem necessary to:

(A) ensure optimal interagency coordination of environmental review and authorization decisions, including by providing for an expanded role and authorities for lead agencies, more clearly defined responsibilities for cooperating and participating agencies, and Government-wide applicability of NEPA decisions and analyses;

(B) ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient;

(C) provide for agency use, to the maximum extent permitted by law, of environmental studies, analysis, and decisions conducted in support of earlier Federal, State, tribal, or local environmental reviews or authorization decisions; and

(D) ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, including by using CEQ's authority to interpret NEPA to simplify and accelerate the NEPA review process.

(ii) *Dispute Resolution.* Except where dispute resolution processes are otherwise provided for in law, including under 42 U.S.C. 4370m-2, or by Executive Order or other Presidential directive, upon request of a lead Federal agency, cooperating agency, or participating agency, CEQ may mediate interagency disputes arising between Federal agencies concerning Federal environmental review or authorization decisions for any infrastructure project pertaining to any environmental law, regulation, order or policy, and shall facilitate resolution of any conflicting positions of the relevant agencies.

(iii) *Agency Procedures.* CEQ shall form and lead an interagency working group, consisting of the Director of OMB, agency CERPOs, and such other representatives of agencies as CEQ deems appropriate. The working group shall review the NEPA implementing regulations and other environmental review and authorization processing policies of agencies that are members of the FPISC to identify impediments to efficient and effective environmental reviews and authorizations for infrastructure projects. The working group shall also identify those agencies that require an action plan to address identified impediments. Based on this review, agencies shall develop action plans that set forth the actions they will take and timelines for completing those actions, and they shall submit those action plans to CEQ and OMB for comment. Each agency's action plan shall, at a minimum, establish procedures for a regular review and update of categorical exclusions, where appropriate.

(f) *Federal Permitting Improvement Steering Council.*

(i) *Organizational Support.* Unless otherwise determined by the Director of OMB, the General Services Administration (GSA) shall provide necessary administrative and organizational support to the FPISC, including personnel, procurement, and budget support. The GSA Administrator, or the head of another agency designated by the Director of OMB, may delegate any authority to the FPISC Executive Director necessary for the operation and administration of the FPISC and the Office of the Executive Director, and the Executive Director may redelegate these authorities, as appropriate.

(ii) *Additional Duties.* In addition to the duties and responsibilities charged to the FPISC Executive Director under 42 U.S.C. 4370m–4370m–12 and this order, the FPISC Executive Director may, upon request of a FPISC member agency or a project sponsor, work with the lead agency or any cooperating and participating agencies to facilitate the environmental review and authorization process for any infrastructure project regardless of whether the project is a “covered project” under 42 U.S.C. 4370m, including by resolving disputes and promoting early coordination. The FPISC Executive Director, the Director of OMB, or the Chairman of CEQ may establish any appropriate policies or procedures concerning the FPISC Executive Director’s facilitation of the environmental review and authorization process under this subsection. Agencies must cooperate with the FPISC Executive Director with respect to the implementation of these additional duties.

(g) *Energy Corridors.* The Departments of the Interior and Agriculture, as appropriate, shall be the lead agencies for facilitating the identification and designation of energy right-of-way corridors on Federal lands for Government-wide expedited environmental review for the development of energy infrastructure projects.

(h) The Department of the Interior shall provide to OMB a strategy and recommendations for a multi-agency reorganization effort that would further the aims of this order. OMB, in consultation with the Department of the Interior, shall coordinate with the heads of other agencies affected to incorporate the strategy, as appropriate, into the comprehensive reorganization plan developed under Executive Order 13781 of March 13, 2017 (Comprehensive Plan for Reorganizing the Executive Branch).

**Sec. 6.** Executive Order 13690 of January 30, 2015 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input), is revoked.

**Sec. 7. *General Provisions.***

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.