

Legislation  
proposed

FRIDAY, JUNE 9, 1978  
PART II



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**COUNCIL ON  
ENVIRONMENTAL  
QUALITY**



**NATIONAL  
ENVIRONMENTAL  
POLICY ACT**

**Proposed Regulations for  
Implementing Procedural  
Provisions**



[3125-01]

# COUNCIL ON ENVIRONMENTAL QUALITY

[40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508]

## NATIONAL ENVIRONMENTAL POLICY ACT—REGULATIONS

### Proposed Implementation of Procedural Provisions

MAY 31, 1978.

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Proposed regulations.

SUMMARY: These proposed regulations implementing procedural provisions of the National Environmental Policy Act are submitted for public comment. These regulations would provide Federal agencies with uniform procedures for implementing the law. The regulations would accomplish three principal aims: to reduce paperwork, to reduce delays, and to produce better decisions.

DATES: Comments must be received by August 11, 1978.

ADDRESSES: Comments should be addressed to: Nicholas C. Yost, General Counsel, Attention: NEPA Comments, Council on Environmental Quality, 722 Jackson Place NW., Washington, D.C. 20006.

### FOR FURTHER INFORMATION CONTACT:

Nicholas C. Yost, General Counsel on Environmental Quality (address same as above), 202-633-7032.

### SUPPLEMENTARY INFORMATION:

#### 1. PURPOSE

We are publishing for public review draft regulations to implement the National Environmental Policy Act. Their purpose is to provide all Federal agencies with an efficient, uniform procedure for translating the law into practical action. We expect the new regulations to accomplish three principal aims: To reduce paperwork, to reduce delays, and at the same time to produce better decisions, thereby better accomplishing the law's objective, which is to protect and enhance the quality of the human environment.

These regulations replace the Guidelines issued by previous Councils, under Executive Order 11514 (1970), and apply more broadly. The Guidelines assist Federal agencies in carrying out NEPA's most conspicuous requirement, the preparation of environmental impact statements (EISs). These regulations were developed in response to Executive Order 11991 issued by President Carter in 1977, and

implement "the procedural provisions of the Act." They address all nine subdivisions of Section 102(2) of the Act, rather than just the EIS provision covered by the Guidelines, and they carry out the broad purposes and spirit of the Act.

President Carter instructed us that the regulations should be:

\*\*\* designed to make the environmental impact statement more useful to decision-makers 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.

The President has also signed Executive Order 12044, dealing with regulatory reform. It is our intention that that Order and these NEPA regulations be read together and implemented consistently.

#### 2. SUMMARY OF CHANGES MADE BY THE REGULATIONS

Following this mandate in developing the new regulations, we have kept in mind the threefold objective of less paperwork, less delay, and better decisions.

##### A. REDUCING PAPERWORK

The measures to reduce paperwork are listed in sec. 1500.4 of the regulations. Neither NEPA nor these regulations impose paperwork requirements on the public. These regulations reduce such requirements on agencies of government.

i. *Reducing the length of environmental impact statements.* Agencies are directed to write concise EISs, which shall normally be less than 150 pages, or, for proposals of unusual scope and complexity, 300 pages.

ii. *Emphasize options among alternatives.* The regulations stress that the environmental analysis is to concentrate on alternatives, which are the heart of the matter; to treat peripheral matters briefly; and to avoid accumulating masses of background data which tend to obscure the important issues.

iii. *Using an early "scoping" process to determine what the important issues are.* To assist agencies in deciding what the central issues are, how long the EIS shall be, and how the responsibility for the EIS will be allocated among the lead agency and cooperating agencies, a new "scoping" procedure is established. Scoping meetings are to be held as early in the NEPA process as possible—in most cases, shortly after the decision to prepare an EIS—and shall be integrated with other planning.

iv. *Writing in plain language.* The regulations strongly advocate writing in plain, direct language.

v. *Following a clear format.* The regulations spell out a standard format

intended to eliminate repetitive discussion, stress the major conclusions, highlight the areas of controversy, and focus on the issues to be resolved.

vi. *Requiring summaries of environmental impact statements* to make the document more usable by more people.

vii. *Eliminating duplication.* To eliminate duplication, the regulations provide for Federal agencies to prepare EISs jointly with state and local units of government which have "little NEPA" requirements. They also permit a Federal agency to adopt another agency's EIS.

viii. *Consistent terminology.* The regulations provide a uniform terminology for the implementation of NEPA. For instance, the CEQ requirement for an environmental assessment will replace the following (nonexhaustive) list of comparable existing agency procedures: "survey" (Corps of Engineers), "environmental analysis" (Forest Service), "initial assessment" (Transportation), "normal or special clearance" (HUD), "environmental analysis report" (Interior), and "marginal impact statement" (HEW).

ix. *Reducing paperwork requirements.* The regulations will reduce reporting paperwork requirements as summarized below. The existing Guidelines issued under Executive Order 11514 cover section 102(2)(C) of NEPA (environmental impact statements), and the new CEQ regulations cover sections 102(2) (A) through (I). The regulations replace not only the requirements of the Guidelines concerning environmental impact statements, but also replace more than 70 different sets of existing agency regulations, although each agency will issue its own implementing procedures to explain how these regulations apply to its particular programs.

Existing Requirements (Applicable Guidelines sections are noted.)	New Requirements (Applicable regulations sections are noted.)
Assessment (optional under Guidelines on a case-by-case basis; currently required, however by most major agencies in practice or in procedures) 1500.6.	Assessment (limited requirement: not required where there would not be environmental effects or where an EIS would normally be required) 1501.3, 4.
Notice of intent to prepare impact statement 1500.6.	Notice of intent to prepare EIS and commence scoping process 1501.7
Quarterly list of notices of intent 1500.6.	Requirement abolished.
Negative determination (decision not to prepare impact statement) 1500.6.	Finding of no significant impact 1501.4.
Quarterly list of negative determinations 1500.6.	Requirement abolished.
Draft EIS 1500.7.....	Draft EIS 1502.9
Final EIS 1500.6, 10.....	Final EIS 1502.9
EISs on legislative reports ("agency reports on legislation initiated elsewhere") 1500.5(a)(1).	Requirement abolished.
Agency report to CEQ on implementation experience 1500.14(b).	Do.



Existing Requirements (Applicable Guidelines sections are noted.)	New Requirements (Applicable regulations sections are noted.)
Agency report to CEQ on substantive guidance 1500.6(c), 14.	Do.
Record of decision (no Guideline provision but required by many agencies' own procedures and in a wide range of cases generally under the Administrative Procedure Act and OMB Circular A-95, Part I, sec. 6(c) and (d), Part II, sec. 5(b)(4)).	Record of decision (brief explanation of decision EIS has been prepared; no circulation requirement) 1505.2.

#### B. REDUCING DELAY

The measures to reduce delay are listed in § 1500.5 of the regulations.

i. *Time limits on the NEPA process.* The regulations encourage lead agencies to set time limits on the NEPA process and require that they be set when requested by an applicant.

ii. *Integrating EIS requirements with other environmental review requirements.* Often the NEPA process and the requirements of other laws proceed separately, causing delay. The regulations provide for all agencies with jurisdiction over the project to cooperate so that all reviews may be conducted simultaneously.

iii. *Integrating the NEPA process into early planning.* If environmental review is tacked on to the end of the planning process, then the process is prolonged, or else the EIS is written to justify a decision that has already been made, and genuine consideration may not be given to environmental factors.

iv. *Emphasizing interagency cooperation before the EIS is drafted.* The regulations emphasize that other agencies should begin cooperating with the lead agency before the EIS is prepared in order to encourage early resolution of differences. By having the affected agencies cooperate early in preparing a draft EIS, we hope both to produce a better draft and to reduce delays caused by unnecessarily late criticism.

v. *Swift and fair resolution of lead agency disputes.* When agencies differ as to who shall take the lead in preparing an EIS or none is willing to take the lead, the regulations provide a means for prompt resolution of the dispute.

vi. *Prepare EISs on programs and not repeat the same material in project specific EISs.* Material common to many actions may be covered in a broad EIS, and then through "tiering" may be incorporated by reference rather than reiterated in each subsequent EIS.

vii. *Legal delays.* The regulations provide that litigation should come at the end rather than in the middle of the process.

viii. *Accelerated procedures for legislative proposals.* The regulations pro-

vide accelerated simplified procedures for environmental analysis of legislative proposals, to fit better with Congressional schedules.

#### C. BETTER DECISIONS

Most of the features described above will help to improve decisionmaking. This, of course, is the fundamental purpose of the NEPA process, the end to which the EIS is a means. Section 101 of NEPA sets forth the substantive requirements of the Act, the policy to be implemented by the "action-forcing" procedures of Section 102. These procedures must be tied to their intended purpose, otherwise they are indeed useless paper work and wasted time. A central purpose of these regulations is to tie means to ends.

i. *Securing more accurate, professional documents.* The regulations insist upon accurate documents as the basis for sound decisions. The documents should draw upon all the appropriate disciplines from the natural and social sciences, plus the environmental design arts. The lead agency is responsible for the professional integrity of reports, and care should be taken to keep any possible bias from data prepared by applicants out of the environmental analysis. A list of people who helped prepare documents, and their professional qualifications, should be included in the EIS.

ii. *Recording in the decision how the EIS was used.* The new regulations require agencies to point out in the EIS analysis of alternatives which one is preferable on environmental grounds—including the often-overlooked alternative of no action at all. (However, if "no action" is identified as environmentally preferable, a second-best alternative must also be pointed out.)

Agencies must also produce a concise public record, indicating how the EIS was used in arriving at the decision. If the EIS is disregarded, it really is useless paperwork. It only contributes if it is used by the decisionmaker and the public. The record must state what the final decision was; whether the environmentally preferable alternative was selected; and if not, what considerations of national policy led to another choice.

iii. *Insure follow-up of agency decisions.* When an agency requires environmentally protective mitigation measures in its decision, the regulations provide for means to ensure that these measures are monitored and implemented.

Taken altogether, the regulations aim for a streamlined process, but one which as a broader purpose than the Guidelines they replace. The Guidelines emphasized a single document, the EIS, while the regulations emphasize the entire NEPA process, from

early planning through assessment and EIS preparation through provisions for follow-up. They attempt to gear means to ends—to insure that the action-forcing procedures of sec. 102(2) of NEPA are used by agencies to fulfill the requirements of the Congressionally mandated policy set out in sec. 101 of the Act. Furthermore, the regulations are uniform, applying in the same way to all federal agencies, although each agency will develop its own procedures for implementing the regulations. Our attempt has been with these new regulations to carry out as faithfully as possible the original intent of Congress in enacting NEPA.

#### 3. BACKGROUND

We have been greatly assisted in our task by the hundreds of people who responded to our call for suggestions on how to make the NEPA process work better. In public hearings which we held in June 1977, we invited testimony from a broad array of public officials, organizations, and private citizens, affirmatively involving NEPA's critics as well as its friends.

Among those represented were the U.S. Chamber of Commerce, which coordinated testimony from business; the Building and Construction Trades Department of the AFL-CIO, for labor; the National Conference of State Legislatures, for state and local governments; the Natural Resources Defense Council, for environmental groups. Scientists, scholars, and the general public were there.

There was extraordinary consensus among these diverse witnesses. All, without exception, expressed the view that NEPA benefited the public. Equally widely shared was the view that the process had become needlessly cumbersome and should be trimmed down. Witness after witness said that the length and detail of EIS's made it extremely difficult to distinguish the important from the trivial. The degree of unanimity about the good and bad points of the NEPA process was such that at one point an official spokesman for the oil industry rose to say that he adopted in its entirety the presentation of the President of the Sierra Club.

After the hearings we culled the record to organize both the problems and the solutions proposed by witnesses into a 38-page "NEPA Hearing Questionnaire." The questionnaire was sent to all witnesses, every state governor, all federal agencies, and everyone who responded to an invitation in the FEDERAL REGISTER. We received more than 300 replies, from a broad cross section of groups and individuals. By the comments we received from respondents we gauged our success in faithfully presenting the results of the public hearings. One commenter, an



electric utility official, said that for the first time in his life he knew the government was listening to him, because all the suggestions made at the hearing turned up in the questionnaire. We then collated all the responses for use in drafting the regulations.

We also met with every agency of the federal government to discuss what should be in the regulations. Guided by these extensive interactions with government agencies and the public, we prepared draft regulations which were circulated for comment to all federal agencies in December 1977. We then studied agency comments in detail, and consulted numerous federal officials with special experience in implementing the Act. Informal redrafts were circulated to the agencies with greatest experience in preparing environmental impact statements. Improvements from our December 12 draft reflect this process.

At the same time that federal agencies were reviewing the early draft, we continued to meet with, listen to, and brief members of the public, including representatives of business, labor, state and local governments, environmental groups and others. We also considered seriously and proposed in our regulations virtually every major recommendation made by the Commission on Federal Paperwork and the General Accounting Office in their recent studies on the environmental impact statement process. The studies by these two independent bodies were among the most detailed and informed reviews of the paperwork abuses of the impact statement process. In many cases, such as streamlining intergovernmental coordination, the proposed regulations go further than their recommendations.

#### 4. EXCLUSION

It should be noted that the issue of application of NEPA to environmental effects occurring outside the United States is the subject of continued discussions within the government and is not addressed in these regulations. Affected agencies continue to hold different views on this issue. Nothing in these regulations should be construed as asserting that NEPA either does or does not apply in this situation.

#### 5. ANALYSIS AND ASSESSMENT OF THE REGULATIONS

Since Executive Order 12044 became effective on March 23, 1978, after the Council's draft NEPA regulations had completed interagency review, the extent to which Executive Order 12044 applies to the Council's nearly completed process of developing NEPA regulations is not clear. Nevertheless, the requirements of Executive Order 12044 have been undertaken to the fullest extent possible. The analy-

ses required by sections 2 (b), (c), (d), and 3(b), to the extent they may apply to the Council's proposed NEPA regulations, are available on request.

The Council has prepared a special environmental assessment of these regulations to illustrate the analysis that is appropriate under NEPA. The assessment discusses alternative regulatory approaches. Some regulations lend themselves to an analysis of their environmental impacts, particularly regulations with substantive requirements of those which apply to a physical setting. Although the Council obviously believes that its regulations will work to improve environmental quality, the impacts of procedural regulations of this kind are not susceptible to detailed analysis beyond that set out in the assessment.

Both the analyses under Executive Order 12044 and the assessment described above are available on request. Comments may be made on both documents in the same manner and by the same time as the comments on the regulations.

#### 6. ADDITIONAL SUBJECTS FOR COMMENTS

Several issues have been brought to our attention as appropriate subjects to be covered in the regulations. They are difficult issues on which we particularly solicit thoughtful views.

a. *Data bank.* Many were intrigued by the idea of a national data bank in which information developed in one EIS would be stored and become available for use in a subsequent EIS. Public comment on the questionnaire led us to conclude, reluctantly, that the idea is impractical. In practice most environmental information is specific to given areas or activities. To assemble a nationwide data bank would demand financial and other resources that are simply beyond the benefits that may be achieved. We have not included a data bank in these regulations but have instead tried to insure that in the scoping process the preparers of one EIS become aware of all related EISs so they can make use of the information in them. We would, however, welcome comment on this subject.

b. *Encouragement for agencies to fund public comments on EISs when an important viewpoint would otherwise not be presented.* The Council has been urged to provide either encouragement or direction to agencies, as part of their routine EIS preparation, to provide funds to responsible groups for public comments when important viewpoints would not otherwise be presented. Although we are acutely aware of the importance of comments to the success of the EIS process, we have not included such a provision. We would welcome comment on this subject also.

#### CONCLUSION

We look forward to your comments and help. To repeat, comments should be sent by August 11, 1978, to Nicholas C. Yost, General Counsel, Attention: NEPA Comments, Council on Environmental Quality, 722 Jackson Place NW., Washington, D.C. 20006.

Thank you for cooperating with us.

CHARLES WARREN,  
Chairman.

Title 40 Chapter V is proposed to be amended by revising Part 1500 and by adding Parts 1501 through 1508 to read as follows:

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

Sec.	
1500.1	Purpose.
1500.2	Policy.
1500.3	Mandate.
1500.4	Reducing paperwork.
1500.5	Reducing delay.
1500.6	Agency authority.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970 as amended by Executive Order 11991, May 24, 1977).

##### § 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement Section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not generate paperwork—even excellent paperwork—but to foster excellent



action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

#### § 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

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

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

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

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

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

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

#### § 1500.3 Mandate.

Parts 1500-1508 of this Title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Ex-

ecutive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to Sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a finding of no significant impact, or takes action that will result in irreparable injury.

#### § 1500.4 Reducing paperwork.

Agencies shall reduce excess paperwork by:

(a) Reducing the length of environmental impact statements (§ 1502.2(c)), by means such as setting appropriate page limits (§ 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (§ 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (§ 1502.2(b)).

(d) Writing environmental impact statements in plain language (§ 1502.8).

(e) Following a clear format for environmental impact statements (§ 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1502.16).

(g) Using the scoping process not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.7).

(h) Summarizing the environmental impact statement (§ 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).

(i) Using program, 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 (§§ 1502.4 and 1502.20).

(j) Incorporating by reference (§ 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(l) Requiring comments to be as specific as possible (§ 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§ 1503.4(b)).

(n) Eliminating duplication with State and local procedures by providing for joint preparation (§ 1506.2) and with other Federal procedures by providing for one agency's adoption of appropriate environmental documents prepared by another agency (§ 1506.3).

(o) Combining environmental documents with other documents (§ 1506.4).

(p) Using categorical exclusions to exclude from environmental impact statement requirements categories of actions which do not individually or cumulatively have a significant effect on the human environment (§ 1508.4).

(q) Using a finding of no significant impact and not preparing an environmental impact statement when an action not otherwise excluded will not have a significant effect on the human environment (§ 1508.13).

#### § 1500.5 Reducing delay.

Agencies shall reduce delay by:

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

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared rather than adversary comments on a completed document (§ 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (§ 1501.5).

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

(e) Establishing appropriate time limits for the environmental impact statement process (§§ 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (§ 1502.5).

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

(h) Eliminating duplication with State and local procedures by providing for joint preparation (§ 1506.2) and with other Federal procedures by providing for one agency's adoption of appropriate environmental documents prepared by another agency (§ 1506.3).

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

(j) Using accelerated procedures for proposals for legislation (§ 1506.8).

(k) Using categorical exclusions to exclude from environmental impact statement requirements categories of actions which do not individually or cumulatively have a significant effect on the human environment (§ 1508.4).

(l) Using a finding of no significant impact and not preparing an environmental impact statement when an action not otherwise excluded will not have a significant effect on the human environment (§ 1508.13).

#### § 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to



its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. 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. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

#### PART 1501—NEPA AND AGENCY PLANNING

##### Sec.

- 1501.1 Purpose.
- 1501.2 Apply NEPA early in process.
- 1501.3 When to prepare an environmental assessment.
- 1501.4 Whether to prepare an environmental impact statement.
- 1501.5 Lead agencies.
- 1501.6 Cooperating agencies.
- 1501.7 Scoping.
- 1501.8 Time limits.

**AUTHORITY:** NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May, 24, 1977).

##### § 1501.1 Purpose.

The purposes of this part include:

- (a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.
- (b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than adversary comments on a completed document.
- (c) Providing for the swift and fair resolution of lead agency disputes.
- (d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.
- (e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

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

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

- (a) As specified by § 1507.2 comply with the mandate of sec. 102(2)(A) to "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 environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

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

- (d) Provide for cases where actions are planned by other than Federal agencies before Federal involvement so that:

- (1) The sponsor of the proposal initiates studies if Federal involvement is foreseeable.

- (2) The Federal agency consults early with appropriate State and local agencies and with interested private persons and organizations when its own involvement is reasonably foreseeable.

- (3) The Federal agency commences its NEPA process at the earliest possible time.

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

An environmental assessment (§ 1508.9) shall be prepared unless one is not necessary under the procedures adopted under § 1507.3(b). Agencies may prepare an assessment on any action at any time in order to assist agency planning and decisionmaking.

##### § 1501.4 Whether to prepare an environmental impact statement.

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

- (a) Determine under § 1507.3 whether the proposal is one which

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

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

- (b) If the proposed action is not covered by paragraph (a), prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies and the public, to the extent practicable, in preparing the assessment.

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

- (d) If the agency will prepare an environmental impact statement, the agency shall commence the scoping process (§ 1501.7).

- (e) If the agency determines on the basis of the environmental assessment not to prepare a statement, the agency shall prepare a finding of no significant impact (§ 1508.13).

- (1) The agency shall make the finding of no significant impact available in a manner calculated to inform the affected public as specified in § 1506.6.

- (2) In certain limited 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. The circumstances are:

- (i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to section 1507.3(b), or

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

##### § 1501.5 Lead agencies.

- (a) A lead agency shall supervise the preparation of an environmental impact statement 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) More than one Federal, State, or local agency, one of which must be Federal, may act as joint lead agencies to prepare an environmental impact statement (section 1506.2).

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

- (1) Magnitude of agency's involvement.

- (2) Project approval/disapproval authority.

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

- (4) Duration of agency's involvement.

- (5) Sequence of agency's involvement.

- (d) If potential lead agencies fail to agree on which agency shall be the lead agency as specified in paragraph (c) of this section, (1) any Federal agency or (2) any State or local agency or private person substantially affected by the absence of agreement on lead agency designation may make a



written request to 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 (d) of this section has not resulted within a reasonable time in a lead agency designation, 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;

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

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine within 20 days after receiving the request and all responses which Federal agency shall be the lead agency and the extent to which the other Federal agencies concerned shall be cooperating Federal agencies.

#### § 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency.

(a) The lead agency shall:

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

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

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

(b) Each cooperating agency shall:

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

(2) Participate in the scoping process.

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

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

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

#### § 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§ 1508.21) in the FEDERAL REGISTER.

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action).

(2) Determine the scope (§ 1508.24) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 1506.3), 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 a reference to their coverage elsewhere.

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

(5) Indicate any environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement which is the subject of the meeting.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may comply with section 1502.25.

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

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

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

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

(2) Set time limits (§ 1501.8).

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

#### § 1501.8 Time limits.

Although the Council has decided that universal time limits for the entire NEPA process are too inflexible to prescribe, Federal agencies are encouraged to set time limits appropriate to individual action (consistent with § 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall:

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

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed actions, including the consequences of delay.

(v) Number of persons and agencies affected.

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

(vii) Degree to which the action is controversial.

(2) Set limits if an applicant for the proposed action requests them, provided that they are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Set overall time limits or limits for each constituent part of the NEPA process, which may include:

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

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

(iii) Preparation of the draft environmental impact statement.

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

(v) Preparation of the final environmental impact statement.

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

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

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

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.



# **PART 1502—ENVIRONMENTAL IMPACT STATEMENT**

- Sec.  
 1502.1 Purpose.  
 1502.2 Implementation.  
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 1502.23 Cost-Benefit Analysis.  
 1502.24 Methodology and Scientific Accuracy.  
 1502.25 Environmental Review and Consultation Requirements.

**AUTHORITY:** NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

## **§ 1502.1 Purpose.**

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

## **§ 1502.2 Implementation.**

To achieve the purposes set forth in § 1502.1 agencies shall prepare envi-

ronmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

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

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those the ultimate agency decisionmaker considers.

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

(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 sec. 102(2)(C) of NEPA environmental impact statements (§ 1508.11) are to be included in every recommendation or report

On proposals (§ 1508.22).

For legislation and (§ 1508.16).

Other major Federal actions (§ 1508.17).

Significantly (§ 1508.25).

Affecting (§§ 1508.3, 1508.8).

The quality of the human environment (§ 1508.14).

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

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§ 1508.24) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new

agency programs or regulations (§ 1508.17). Agencies shall prepare statements on broad actions to be relevant to policy and timed to coincide with meaningful points in agency planning and decisionmaking.

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

(1) Geographic, including actions occurring in the same general location, such as an ocean, region, or metropolitan area.

(2) Generic, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) Technological development including federal or federally assisted research, development or demonstration programs aimed at developing new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

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

## **§ 1502.5 Timing.**

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency makes or is presented with a proposal (§ 1508.22) 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 practically serve as an important contribution to the decisionmaking process and shall not be used to rationalize or justify decisions already made (§§ 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies such statements shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate preliminary environmental assessments or statements shall be commenced at the latest immediately after the application is received, but federal agencies are encouraged to prepare them earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall nor-



mally 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.

#### § 1502.6 Interdisciplinary preparation.

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

#### § 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of § 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

#### § 1502.8 Writing.

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

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

Except as provided in § 1506.8, environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503. At the time the draft statement is prepared it must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. In the draft statement the agency shall make every effort to disclose and discuss at appropriate points in the text all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503. In the final statement the agency shall discuss at

appropriate points in the text the existence of any responsible opposing view not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

#### (c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

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

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

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

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

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft statement unless alternative procedures are approved by the Council.

#### § 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed actions. The following standard format for environmental impact statements should be followed unless there is a compelling reason to do otherwise:

- (a) Cover sheet
- (b) Summary
- (c) Table of Contents
- (d) Purpose of and Need for Action
- (e) Alternatives Including Proposed Action (secs. 102(2)(C)(iii) and 102(2)(E) of the Act).
- (f) Environmental Consequences (especially secs. 102(2)(C) (i), (ii), (iv), and (v) of the Act).
- (g) Affected Environment.
- (h) List of Preparers.
- (i) List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent.
- (j) Index.
- (k) Appendices (if any).

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

#### § 1502.11 Cover sheet.

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

(a) The name of the responsible agencies including the lead agency and any cooperating agencies.

(b) The name of the proposed action that is the subject of the statement (and if appropriate the names of related cooperating agency actions), together with the State(s) and county(ies) (or the country 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 comments must be received (computed in cooperation with EPA § 1506.10)).

#### § 1502.12 Summary.

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

#### § 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the action and alternatives. Normally this section shall not exceed one page.

#### § 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Environmental Consequences (§ 1502.15) and the Affected Environment (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharpening the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for such elimination.

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

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

(d) Include the no action alternative.

(e) Identify the environmentally preferable alternative (or alternatives if two or more are equally preferable) and the reasons for identifying it. If



the alternative identified is for no action, the agency shall also identify the alternative other than no action that is environmentally preferable and the reasons for identifying it.

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

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

#### § 1502.15 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by secs. 102(2)(C) (i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of sec. 102(2)(C)(iii) as is necessary to support the comparisons. This includes the environmental impacts of the proposed action and alternatives, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented. The Council intends that preparers not cause duplication in the discussions under § 1502.14 and this section. This section shall include discussions of:

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

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

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local land use plans, policies, and controls for the area concerned.

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

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

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

(g) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(g)).

#### § 1502.16 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area or areas to be affected by the alternatives under consideration. The descriptions shall be no longer than is necessary to under-

stand 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.

#### § 1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications and professional disciplines (§ 1502.6 and 1502.8), 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 names of persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

#### § 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference § 1502.21)).

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

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

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

#### § 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except as provided in § 1502.18(d) and 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

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

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

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

If the agency circulates the summary and thereafter receives a timely

request for the entire statement, the time for comment for that requestor only shall be extended by at least 15 days beyond the minimum period.

#### § 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.26). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate such discussions by reference and shall concentrate on the issues specific to the subsequent action. Tiering may also be appropriate for different stages of actions. (Section 1508.26).)

#### § 1502.21 Incorporation by reference.

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

#### § 1502.22 Incomplete or unavailable information.

Agencies dealing with gaps in relevant information including scientific uncertainty, shall always make clear that such information is lacking or that uncertainty exists.

(a) If the information is essential to a reasoned choice among alternatives and is not known and the costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information is important to the decision and the means to obtain it are not known (e.g., the means for obtaining it are beyond the state of the art) the agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the agency proceeds, it shall include a worst case analysis.



### § 1502.23 Cost-benefit analysis.

If a cost-benefit analysis is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with sec. 102(2)(B) of the Act the statement shall when a cost-benefit analysis is prepared discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities.

### § 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional, including scientific, integrity of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.

### § 1502.25 Environmental review and consultation requirements.

To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. Sec. 661 et seq.) the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), the Endangered Species Act of 1972 (16 U.S.C. Sec. 1531 et seq.) and other environmental review laws.

## PART 1503—COMMENTING

### Sec.

- 1503.1 Inviting Comments.
- 1503.2 Duty to Comment.
- 1503.3 Specificity of Comments.
- 1503.4 Response to Comments.

**AUTHORITY:** NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

### § 1503.1 Inviting comments.

(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 which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of appropriate State and local agencies which are authorized to develop and enforce environmental standards, or any agency which has requested that it re-

ceive statements on actions of the kind proposed.

(3) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) After preparing a final environmental impact statement an agency may request comments on it before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under § 1506.10.

### § 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved or which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. A Federal agency may (and a cooperating agency that is satisfied that its views are adequately reflected in the environmental impact statement would) reply that it has no comment.

### § 1503.3 Specificity of comments.

Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both. When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

### § 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below specifying its response in the final statement. Possible responses are to:

- (1) Modify the proposed action.
- (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
- (3) Supplement, improve, or modify its analyses.
- (4) Make factual corrections.
- (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion

by the agency in the text of the statement.

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

## PART 1504—PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS FOUND TO BE ENVIRONMENTALLY UNSATISFACTORY

### Sec.

- 1504.1 Purpose.
- 1504.2 Criteria for Referral.
- 1504.3 Procedure for Referrals and Response.

**AUTHORITY:** NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

### § 1504.1 Purpose.

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

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

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

### § 1504.2 Criteria for referral.

Environmental referrals should only be made to the Council after concerted, timely (as early as possible 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.

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

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

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

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

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

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in § 1504.3(c)(2) below.

(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 material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,
- (ii) Identify any existing environmental requirements or policies which would be violated by the matter,
- (iii) Present the reasons the referring agency believes the matter is environmentally unsatisfactory,
- (iv) Contain a finding by the agency whether the issue raised is one of na-

tional importance because of the threat to national environmental resources or policies or for some other reason.

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

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

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

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

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

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

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

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

(3) Hold public meetings or hearings to obtain additional views and information.

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

(5) Determine that the issue should be further negotiated by the referring and lead agencies and 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.

#### PART 1505—NEPA AND AGENCY DECISIONMAKING

Sec.

1505.1 Agency decisionmaking procedures.

1505.2 Record of decision in those cases requiring environmental impact statements.

1505.3 Implementing the decision.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

#### § 1501.1 Agency decisionmaking procedures.

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

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

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

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

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

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

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

At the same time of its decision (or, if appropriate, its recommendation to Congress) each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95, part I, sections 6 (c) and (d), and part II, section 5(b)(4), shall state:

(a) What the decision was.

(b) If an alternative other than those designated pursuant to § 1502.14(e) has been selected, the reasons why other specific considerations of national policy overrode those alternatives.



(c) Whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why they were not. For any mitigation adopted, a monitoring and enforcement program where applicable shall be adopted and summarized.

**§ 1505.3 Implementing the decision.**

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2(c)) and other conditions established in or during the review of the environmental impact statement and committed as part of the decision shall be implemented by the appropriate 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 commenting agencies on progress in carrying out mitigation measures proposed by any such agency and adopted by the agency making the decision.

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

**PART 1506—OTHER REQUIREMENTS OF NEPA**

Sec.

1506.1 Limitations on actions during NEPA process.

1506.2 Elimination of duplication with State and local procedures.

1506.3 Adoption.

1506.4 Combining documents.

1506.5 Agency responsibility.

1506.6 Public involvement.

1506.7 Further guidance.

1506.8 Proposals for legislation.

1506.9 Filing requirements.

1506.10 Timing of agency action.

1506.11 Emergencies.

1506.12 Effective date.

**AUTHORITY:** NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

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

(a) Until an agency issues a record of decision as provided in § 1505.2 (except as provided in subsection (c)), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is planning to take an action within the agency's jurisdiction that would meet either of the criteria in § 1506.1(a), then the agency shall promptly notify

the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

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

(1) Is justified independently of the program;

(2) 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; and

(3) Is itself accompanied by an adequate environmental impact statement.

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

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication in NEPA and comparable State and local requirements, unless they are specifically barred from doing so by some other law. Except where an agency is proceeding in the manner specified by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

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

(4) Joint environmental assessments and joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling the requirements of those as well as Federal laws so that one document will comply with all applicable laws.

(c) To better integrate environmental impact statements into state or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned).

**§ 1506.3 Adoption.**

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided

that the agency treats the statement as a draft and recirculates it (except as provided below in paragraph (b) of this section): *And provided*, That the statement or portions thereof meets the standards for an adequate draft statement under these regulations.

(b) A cooperating agency may adopt without recirculating 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) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

**§ 1506.4 Combining documents.**

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

**§ 1506.5 Agency responsibility.**

(a) If an agency relies on an applicant to submit initial environmental information, the agency should assist the applicant by outlining the types of information required. In all cases, the agency should make its own evaluation of the environmental issues and take responsibility for the scope and content of environmental assessments.

(b) Except as provided in §§ 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or under contract to the lead agency or where appropriate under § 1501.6(b), a cooperating agency. In the case of such contract it is the intent of these regulations that the contractor be chosen solely by the lead agency or by the lead agency in cooperation with cooperating agencies or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency or where appropriate the cooperating agency specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or any person from submitting information to any agency.

**§ 1506.6 Public involvement.**

Agencies shall: (a) Make diligent effort to involve the public in prepar-



ing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, meetings, and the availability of environmental documents by means calculated to inform those persons and agencies who may be interested or affected.

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

(2) In the case of an action with effects of national concern such notice shall include publication in the FEDERAL REGISTER and notice by mail to national organizations with interest in the matter and may include listing in the 102 Monitor.

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

(i) Notice to State and local agencies pursuant to OMB Circular A-95.

(ii) Following the affected State's public notice procedures for comparable actions.

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

(iv) Notice through other local media.

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

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

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

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

(c) Hold or sponsor public hearings or public meetings whenever appropriate. Criteria shall include whether there is:

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

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful.

(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 (5 U.S.C. 552), without regard to the exclusion of intra- or interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action.

#### § 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

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

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

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

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

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

#### § 1506.8 Proposals for legislation.

The NEPA process for proposals for legislation (§ 1508.16) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law which shall accompany proposed legislation to the Congress. Preparation of a legislative environmental impact statement shall include consultation with appropriate agencies (which may be pursuant to OMB Circular A-19) and conform with the requirements of these regulations except as follows:

(a) There need not be a scoping process.

(b) The legislative statement shall otherwise be treated in the same manner as a draft statement except as further specified. There need not be a final environmental impact statement: *Provided*, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by sections 1503.1 and 1506.10.

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

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

(3) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building or the 11(b) Report of

Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

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

(c) 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.

(d) The Environmental Protection Agency may reduce the period for review required by § 1506.10 to insure that comments and responses are received by the appropriate Congressional committee prior to hearings on the proposal.

#### § 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, D.C. 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President.

#### § 1506.10 Timing of agency action.

(a) No decision on the proposed action shall be made or recorded under § 1505.2 by a Federal agency until the later of the following dates:

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

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

*Provided*, That when an agency has formally established an internal appeal process, through which agencies or the public may take appeals and make their views known after preparation of the final environmental impact statement, and which provides a real opportunity to alter the decision, an administratively reviewable decision in the proposed action may be made after publication of the notice described in paragraph (d) of this section for a final environmental impact statement. This means that the period for appeal and the period prescribed by paragraph (a)(2) of this section may run concurrently. In such a case the environmental impact statement shall explain the timing and the public's right of appeal.

*Provided further*, That when an agency's primary purpose is the protection of public health and safety, the agency may, with the approval of the Council, adopt procedures under § 1507.3 providing for a finding to be



published in the *FEDERAL REGISTER* that it is necessary to waive the time requirement specified in paragraph (a)(2) of this section to preserve public health and safety.

*Provided further*, That when an agency's primary purpose is the protection of public health and safety and when that agency publishes proposed rules in the *FEDERAL REGISTER* for a period of public review prescribed by a statute the agency administers, that time period and the period prescribed under paragraph (a)(2) of this section may run concurrently.

(b) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently.

(c) Subject to paragraph (e) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The Environmental Protection Agency shall publish a notice in the *FEDERAL REGISTER* each week of the environmental impact statements filed with the Environmental Protection Agency the preceding week. The date of publication of this notice shall be the date from which the minimum time periods of this section shall be calculated.

(e) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see § 1507.3(d).) If the lead agency does not concur, the matter shall be referred to CEQ for resolution. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

#### § 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency proposing to take the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such waivers to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

#### § 1506.12 Effective date.

The effective date of these regulations is eight months after their final publication in the *FEDERAL REGISTER*.

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

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

### PART 1507—AGENCY COMPLIANCE

Sec.

1507.1 Compliance.

1507.2 Agency Capability to Comply.

1507.3 Agency Procedures.

**AUTHORITY:** NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

#### § 1507.1 Compliance.

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

#### § 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability, at minimum, to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of Sec. 102(2)(A) of the Act to 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 the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by Sec. 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to Sec. 102(2)(C) and comment on 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 which involves unresolved conflicts concerning alternative uses of available resources. This requirement of Sec. 102(2)(E) extends to all such proposals, not just the more limited scope of Sec. 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

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

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

#### § 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the *FEDERAL REGISTER*, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the *FEDERAL REGISTER* for comment. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by §§ 1501.2(d), 1502.9(c)(3), 1503.1(c), 1505.1, 1506.6(e), and 1508.4.



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

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (§ 1508.4)).

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

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for 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. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in § 1506.10 when necessary to comply with other specific statutory requirements.

#### PART 1508—TERMINOLOGY AND INDEX

##### Sec.

- 1508.1 Terminology.
- 1508.2 Act.
- 1508.3 Affecting.
- 1508.4 Categorical Exclusion.
- 1508.5 Cooperating Agency.
- 1508.6 Council.
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- 1508.23 Referring Agency.
- 1508.24 Scope.
- 1508.25 Significantly.
- 1508.26 Tiering.

**AUTHORITY:** NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

##### § 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

##### § 1508.2 Act.

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

##### § 1508.3 Affecting.

"Affecting" means will or may have an effect on.

##### § 1508.4 Categorical exclusion.

"Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact is needed. Any such procedures shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

##### § 1508.5 Cooperating agency.

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

##### § 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

##### § 1508.7 Cumulative impact.

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

##### § 1508.8 Effects.

"Effects" include:

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

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

##### § 1508.9 Environmental assessment.

"Environmental Assessment":

(a) Means a public document for which a Federal agency is responsible that serves to:

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

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

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

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by sec. 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. Most environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. Most environmental assessments do not exceed several pages in length.

##### § 1508.10 Environmental document

"Environmental Document" includes the documents specified in §§ 1508.9, 1508.11, 1508.13 and 1508.21.

##### § 1508.11 Environmental impact statement

"Environmental Impact Statement" means a detailed written statement as required by Sec. 102(2)(C) of the Act.

##### § 1508.12 Federal agency.

"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.

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

"Finding of No Significant Impact" means a document by a Federal



agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)).

#### § 1508.14 Human environment.

"Human Environment" shall be interpreted comprehensively to include the natural and physical environment and the interaction of people with that environment. (See the definition of "effects" (§ 1508.8).) This means that exclusively economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

#### § 1508.15 Lead agency.

"Lead Agency" means the agency or agencies which have prepared or have taken primary responsibility to prepare the environmental impact statement.

#### § 1508.16 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations.<sup>1</sup> The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

#### § 1508.17 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.25). Actions include the circumstance where the responsible officials fail to act and that failure to act is re-

viewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action. If a Federal program is delegated or otherwise transferred to State or local government, unless Congress intended otherwise, the Federal agency shall continue to be responsible for compliance with the Act and shall insure the preparation of environmental impact statements if they would be required but for the delegation or transfer. If the Federal agency may legally require the State or local agency to follow an environmental impact statement process, as a condition of the delegation or transfer, it shall do so. If not, the Federal agency shall prepare the statements (except as provided in § 1506.5).

(a) Actions 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, 1508.16). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing civil or criminal enforcement actions.

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

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

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

(3) 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.

(4) 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.

#### § 1508.18 Matter.

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed

legislation, project, action or regulation as those terms are used in Section 309(a) of the Clean Air Act (42 U.S.C. 7609).

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

#### § 1508.19 Mitigation.

"Mitigation" includes:

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

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

(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

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

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

#### § 1508.20 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of Section 2 and Title I of NEPA.

#### § 1508.21 Notice of intent.

"Notice of Intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

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

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

#### § 1508.22 Proposal.

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

#### § 1508.23 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public

<sup>1</sup>The Council in consultation with OMB had been prepared to propose this wording and § 1508.12 for comment. Thereafter *Sierra Club v. Andrus* (D.C. Cir. No. 75-1871, May 15, 1978) was decided. We would appreciate comment on the implications of that case for these provisions.



health or welfare or environmental quality.

#### § 1508.24 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§ 1502.20 and 1508.26). In scoping environmental impact statements agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

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

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

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

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

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

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

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

(b) Alternatives, which include: (1) No action alternative. (2) Other reasonable courses of actions. (3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct. (2) Indirect. (3) Cumulative.

#### § 1508.25 Significantly.

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

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

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

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

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

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

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

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

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

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

(8) Whether the action may have a significant adverse effect on an area or site listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) Whether the action may have a significant adverse effect on the habitat or an endangered or threatened species that has been determined to be critical under the Endangered Species Act of 1973.

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

#### § 1508.26 Tiering.

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

Tiering is appropriate when the sequence of statements or analyses is:

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

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

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