

REGULATORY SUMMARY

WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY NEPA PHASE TWO FINAL RULE MAY 2024

On May 1, 2024, the White House Council on Environmental Quality (CEQ) released its final National Environmental Policy Act (NEPA) Phase Two rule. This is the second in a pair of rules that significantly amended the policies and regulations governing the Act. Additional details and CEQ's regulatory redline can be found on the agency's [website](#). The rule becomes effective on July 1, 2024.

Phase Two was supposed to reflect provisions in the Fiscal Responsibility Act (FRA), legislation negotiated by the White House and Congress in June 2023 to increase the federal debt limit. Congressional Republicans had insisted on addressing permitting reform within the bill.

ARTBA [filed comments](#) on the Phase Two rule in Sept. 2023, raising concerns about many of the factors that are now incorporated within this final rule. In response to comments, the agency chose not to include prior greenhouse gas emissions (GHG) guidance. However, the remainder of the rule is problematic and unresponsive to industry comments.

NEPA reviews require federal agencies to assess the environmental impacts of transportation projects, such as potential effects on air, water, and local wildlife. These reviews also require evaluating different project alternatives, including the possibility of not proceeding. Public input is also mandatory. The Environmental Assessment (EA) determines whether a project necessitates a more comprehensive Environmental Impact Statement (EIS), which is required if significant environmental impacts are anticipated. The EA is meant to be a less in-depth, and time-consuming review, while the EIS is detailed and complex.

CEQ's final rule mandates the consideration of factors that are difficult to measure and, while it imposes page and time limits in compliance with the FRA, the vagueness of several additional requirements may still lead to permitting delays. Moreover, the rule's ambiguity increases the risk of litigation, in direct contradiction to Congress' intent in the FRA. External groups may seek to halt projects, arguing that the reviews are incomplete or inaccurate, thereby potentially complicating the permitting process.

Key features of the rule include:

- Incorporates the assessment of a project's environmental "context" and "intensity" into NEPA reviews:
 - **Context:** Defined as the proximity of proposed projects to sensitive areas or communities with environmental justice concerns. Federal agencies are required to evaluate the impact of these projects at local to global scales, considering both short-term and long-term effects, although specific considerations may vary by project.
 - **Intensity:** Focuses on the magnitude of a project's effects. The rule specifies that agencies cannot offset negative impacts with positive aspects of a project. Significant

adverse effects necessitate a comprehensive environmental review, which could delay the project.

- Requires the analysis of alternatives that reduce climate-related impacts, with "climate change" now included in the definition of environmental "effects."
- Provides a definition of "environmental justice" and requires that environmental analyses assess options that lessen negative health and environmental impacts on communities facing environmental justice concerns.
- Expands the criteria for determining when a categorical exclusion (CE) is inappropriate under NEPA, including impacts on sensitive areas, environmental justice communities, climate change, and cultural resources. A CE allows specific actions, previously identified through analysis or experience as having minimal environmental impacts, to forego detailed environmental assessments. This expedited process is designed for activities not expected to pose significant environmental risks.
- Standardizes the criteria for updating and/or supplementing Environmental Assessments (EA) and Environmental Impact Statements (EIS).
 - This alignment may lead to certain projects encountering disproportionately high requirements and costs to update their assessments when there is new information or a change in circumstances.
 - In turn, these requirements may result in delayed project timelines and increases in costs for projects that typically would not require the extensive detail of an EIS.

Contact ARTBA's Prianka Sharma at psharma@artba.org for more information.

FINAL RULE REGULATORY MARKUP

Chapter V—Council on Environmental Quality

Subchapter A—National Environmental Policy Act Implementing Regulations

Part 1500—~~§ 1500.1 Purpose and policy.~~

1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is the basic national charter for protection of the environment. It establishes policy, sets goals, and provides direction for carrying out the policy.

~~(1) a procedural statute intended to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process. Section 101(a) of NEPA establishes the national environmental policy of the Federal Government to use all practicable means and measures to foster and promote the general welfare, create and maintain conditions under which humans~~man~~ and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. Section 101(b) of NEPA establishes the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to: Section 102(2) of NEPA establishes the procedural requirements to carry out the policy stated in section 101 of NEPA. In particular, it requires Federal agencies to provide a detailed statement on proposals for major Federal actions significantly affecting the quality of the human environment. The purpose and function of NEPA is satisfied if Federal agencies have considered relevant environmental information, and the public has been informed regarding the decision-making process. NEPA does not mandate particular results or substantive outcomes. NEPA's purpose is not to generate paperwork or litigation, but to provide for informed decision making and foster excellent action.~~

(i) Help each generation serve as a trustee of the environment for succeeding generations;

(ii) Assure for all people safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(v) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vi) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

FINAL RULE REGULATORY MARKUP

~~(2) (b) The regulations in this subchapter implement section 102(2) of NEPA establishes. They provide direction to Federal agencies to determine what actions are subject to NEPA's procedural requirements to carry out the policy and responsibilities established in section 101 and the level of NEPA and contains "action-forcing" procedural provisions to ensure Federal agencies implement the letter and spirit of the Act. The purpose of review where applicable. The regulations in this subchapter is to set forth what Federal agencies must and should 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 policy goals of section 101.~~

~~(b) The regulations in this subchapter implement the requirements of NEPA and ensure are intended to ensure that agencies identify, consider, and disclose to the public relevant environmental information is identified and considered early in the process before decisions are made and before actions are taken. The information shall be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most importantly, environmental documents must concentrate on the issues that are truly relevant to the action in question, rather than amassing needless detail, in order to ensure informed decision making by Federal agencies. The regulations in this subchapter are also are intended to ensure that Federal agencies conduct environmental reviews in a coordinated, consistent, predictable, and timely manner, and to reduce unnecessary burdens and delays. Finally, the regulations in this subchapter promote concurrent environmental reviews to ensure timely and efficient decision making.~~

~~(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment. The regulations in this subchapter 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 decision makers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize important environmental issues and alternatives. Environmental documents shall be concise, clear, and supported by evidence that agencies have conducted 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 such procedures run concurrently rather than consecutively where doing so promotes efficiency.

FINAL RULE REGULATORY MARKUP

(d) Encourage and facilitate public engagement in decisions that affect the quality of the human environment, including meaningful engagement with communities such as those with environmental justice concerns.

(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, such as alternatives that will reduce climate change-related effects or address adverse health and environmental effects that disproportionately affect communities with environmental justice concerns.

(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 § 1500.2 [Reserved]

§ 1500.3 NEPA compliance.

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

~~(b) Exhaustion.~~

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

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

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

~~(4) Informed by the submitted alternatives, information, and analyses, including the summary in the final environmental impact statement (§ 1502.17 of this chapter) and the agency's response to comments in the final environmental impact statement (§ 1503.4 of this chapter), together with any~~

FINAL RULE REGULATORY MARKUP

~~other material in the record that he or she determines relevant, the decision maker shall certify in the record of decision that the agency considered all of the alternatives, information, and analyses, and objections submitted by States, Tribal, and local governments and other public commenters for consideration by the lead and cooperating agencies in developing the environmental impact statement (§ 1505.2(b) of this chapter).~~
(e)

(b) *Review of NEPA compliance.* It is the Council's intention that judicial review of agency compliance with the regulations in this subchapter not occur before an agency has issued the record of decision or taken other final agency action. ~~It is the Council's intention that any allegation of noncompliance with NEPA and the regulations in this subchapter should be resolved as expeditiously as possible. Consistent with their organic statutes, and as part of implementing the exhaustion provisions in paragraph (b), except with respect to claims brought by project sponsors related to deadlines under section 107(g)(3) of NEPA, of this section, agencies may structure their procedures to include an appropriate bond or other security requirement.~~

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

(c) *Severability.* The sections of this subchapter are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is the Council's intention that the validity of the remainder of those parts shall not be affected, with the remaining sections to continue in effect.

1500. 4 Concise and informative environmental documents.

§ 1500.4 Reducing paperwork.

Agencies shall prepare analytical, concise, and informative environmental documents~~reduce excessive paperwork~~ by:

(a) Meeting appropriate page limits (§§ 1501.5(g) and 1502.7 of this subchapter).

(b) Discussing only briefly issues other than important ones (e.g., § 1502.2(b) of this subchapter).

(c) Writing environmental documents in plain language (e.g., § 1502.8 of this subchapter).

(d) Following a clear format for environmental impact statements (§ 1502.10 of this subchapter).

FINAL RULE REGULATORY MARKUP

(e) Emphasizing the portions of the environmental document that are most useful to decision makers and the public (e.g., §§ 1502.14, 1502.15, and 1502.16 of this subchapter) and reducing emphasis on background material (e.g., § 1502.1 of this subchapter).

(f) Using the scoping process to identify important environmental issues deserving of study and to deemphasize unimportant issues, narrowing the scope of the environmental impact statement process (or, where an agency elects to do so, the environmental assessment process) accordingly (§§ 1501.9 and 1502.4 of this subchapter).

(g) Summarizing the environmental impact statement (§ 1502.12 of this subchapter).

(h) Using programmatic environmental documents and tiering from documents of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§ 1501.11 of this subchapter).

(i) Incorporating by reference (§ 1501.12 of this subchapter).

(j) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.24 of this subchapter).

(k) Requiring that comments be as specific as possible (§ 1503.3 of this subchapter).

(l) When changes are minor, attaching and publishing only changes to the draft environmental impact statement rather than rewriting and publishing the entire statement (§ 1503.4(c) of this subchapter).

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

(n) Combining environmental documents with other documents (§ 1506.4 of this subchapter).

1500.5 Efficient process.

Agencies shall improve efficiency of their NEPA processes by:

(a) Establishing ~~(a) Using~~ categorical exclusions to define categories of actions that normally do not have a significant effect on the human environment (§§ 1501.4 and 1507.3(c)(8) of this subchapter) and therefore do not require preparation of an environmental assessment or environmental impact statement ~~(§ 1501.4 of this chapter).~~

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

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

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

FINAL RULE REGULATORY MARKUP

- ~~(e) Discussing only briefly issues other than significant ones (§ 1502.2(b) of this chapter).~~
 - ~~(f) Writing environmental impact statements in plain language (§ 1502.8 of this chapter).~~
 - ~~(g) Following a clear format for environmental impact statements (§ 1502.10 of this chapter).~~
 - ~~(h) Emphasizing the portions of the environmental impact statement that are useful to decision makers and the public (e.g., §§ 1502.14 and 1502.15 of this chapter) and reducing emphasis on background material (§ 1502.1 of this chapter).~~
 - ~~(i) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.9 of this chapter).~~
 - ~~(j) Summarizing the environmental impact statement (§ 1502.12 of this chapter).~~
 - ~~(k) Using programmatic, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1501.11 and 1502.4 of this chapter).~~
 - ~~(l) Incorporating by reference (§ 1501.12 of this chapter).~~
 - ~~(m) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.24 of this chapter).~~
 - ~~(n) Requiring comments to be as specific as possible (§ 1503.3 of this chapter).~~
 - ~~(o) Attaching and publishing only changes to the draft environmental impact statement, rather than rewriting and publishing the entire statement when changes are minor (§ 1503.4(c) of this chapter).~~
 - ~~(p) Eliminating duplication with State, Tribal, and local procedures, by providing for joint preparation of environmental documents where practicable (§ 1506.2 of this chapter), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3 of this chapter).~~
 - ~~(q) Combining environmental documents with other documents (§ 1506.4 of this chapter).~~
- § 1500.5 Reducing delay.**
Agencies shall reduce delay by:
- ~~(a) Using categorical exclusions to define categories of actions that normally do not have a significant effect on the human environment (§ 1501.4 of this chapter) and therefore do not require preparation of an environmental impact statement.~~
 - ~~(b) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1501.6 of this chapter) and therefore does not require preparation of an environmental impact statement.~~
 - ~~(c) Integrating the NEPA process into early planning (§ 1501.2 of this chapter) (§ 1501.2 of this subchapter).~~
 - ~~(d) Engaging in interagency cooperation, including with affected Federal, State, Tribal, and local agencies, before or during as the preparation of an environmental assessment or environmental impact statement is prepared, rather than waiting to request or submit awaiting submission of comments on a completed document (§§ 1501.7 and 1501.8 of this chapter) (§§ 1501.7 and 1501.8 of this subchapter).~~
 - ~~(e) Ensuring the swift and fair resolution of lead agency disputes (§ 1501.7 of this chapter) (§ 1501.7 of this subchapter).~~
 - ~~(f) Using the scoping process for an early identification of what are and what are not the important real issues (§ 1501.9 of this chapter) that require detailed analysis (§ 1502.4 of this subchapter).~~
 - ~~(g) Meeting appropriate deadline time limits for the environmental assessment and environmental impact statement processes (§ 1501.10 of this chapter) (§ 1501.10 of this subchapter).~~
 - ~~(h) Preparing environmental documents impact statements early in the process (§ 1502.5 of this chapter) (§§ 1502.5 and 1501.5(d) of this subchapter).~~

FINAL RULE REGULATORY MARKUP

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

1500.6 § 1500.6 Agency authority.

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

PART

§ 1501 ~~—1~~ NEPA AND AGENCY PLANNING thresholds.

1501.1 Purpose.

1501.2 Apply ~~(a)~~ In assessing whether NEPA early in the process.

1501.3 Determine the appropriate level of NEPA review.

1501.4 Categorical exclusions.

1501.5 Environmental assessments.

1501.6 Findings of no significant impact.

1501.7 Lead agency.

1501.8 Cooperating ~~applies or is otherwise fulfilled,~~ Federal agencies ~~should determine:~~

FINAL RULE REGULATORY MARKUP

1501.9 ~~(1) Whether the proposed activity or decision is expressly exempt from NEPA under another statute;~~

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

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

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

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

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

Public and governmental engagement.

1501.10 Deadlines and schedule for the NEPA process.

1501.11 Programmatic environmental documents and tiering.

1501.12 Incorporation by reference into environmental documents.

1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into agency planning at an early stage to facilitate appropriate consideration of NEPA's policies, promote an efficient process, and reduce delay;

(b) Providing for early engagement in the environmental review process with other agencies, State, Tribal, and local governments, and affected or interested persons, entities, and communities before a decision is made;

(c) Providing for the swift and fair resolution of interagency disputes;

(d) Identifying at an early stage the important environmental issues deserving of study, and deemphasizing unimportant issues, narrowing the scope of the environmental review and enhancing efficiency accordingly; and

(e) Promoting accountability by establishing appropriate deadlines and requiring schedules.

1501.2) or on an individual basis, as appropriate.

FINAL RULE REGULATORY MARKUP

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

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

§ 1501.2 Apply NEPA early in the process.

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

(b) Each agency shall:

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

(2) Identify environmental effects and values in adequate detail so the decision maker can appropriately consider such effects and values alongside economic and technical analyses. Whenever practicable, agencies shall review and publish environmental documents and appropriate analyses at the same time as other planning documents.

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

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

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

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

(iii) The Federal agency commences its NEPA process at the earliest reasonable time ~~{§§ 1501.5(d) and 1502.5(b) of this chapter~~{§§ 1501.5(d) and 1502.5(b) of this subchapter}.-

FINAL RULE REGULATORY MARKUP

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

(a) Applicability. As a threshold determination, an agency shall assess whether NEPA applies to the proposed activity or decision. In assessing whether the appropriate level of NEPA applies review, Federal agencies should determine:

(1) whether the proposed activity or decision is exempted from NEPA by law;

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

(3) Whether the proposed activity or decision is not a major Federal action (§ 1508.1(w) of this subchapter);

(4) Whether the proposed activity or decision is not a final agency action within the meaning of such term in ; or

(5) Whether the proposed activity or decision is a non-discretionary action with respect to which such agency ~~(1) Normally~~ does not have authority to take environmental factors into consideration in determining whether to take the proposed action.

(b) Scope of action and analysis. If the agency determines that NEPA applies, the agency shall consider the scope of the proposed action and its significant effects to inform the agency's determination of the appropriate level of NEPA review and whether aspects of the action are non-discretionary. The agency shall use, as appropriate, the public engagement and scoping mechanisms in §§ 1501.9 and 1502.4 of this subchapter to inform consideration of the scope of the proposed action and determination of the level of NEPA review. The agency shall evaluate, in a single review, proposals or parts of proposals that are related closely enough to be, in effect, a single course of action. The agency shall not avoid a determination of significance under paragraph (c) of this section by terming an action temporary that is not temporary in fact or segmenting an action into smaller component parts. The agency also shall consider whether there are connected actions, which are closely related Federal activities or decisions that should be considered in the same NEPA review that:

(1) Automatically trigger other actions that may require NEPA review;

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

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

(c) Levels of NEPA review. In assessing the appropriate level of NEPA review, agencies may make use of any reliable data source and are not required to undertake new scientific or technical research unless it is essential to a reasoned choice among alternatives, and the overall costs and timeframe of obtaining it are not unreasonable. Agencies should determine whether the proposed action:

(1) Is appropriately ~~and is~~ categorically excluded (~~§ 1501.4~~ § 1501.4);

FINAL RULE REGULATORY MARKUP

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

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

~~(d) *Significance determination — context and intensity.*~~ In considering whether ~~an adverse effect the effects~~ of the proposed action ~~is~~ are significant, agencies shall ~~examine both the context analyze the potentially affected environment and degree of the effects~~ of the action. ~~Agencies should consider connected actions consistent with~~ § 1501.9(e)(1) and the intensity of the effect.

~~(1) In assessing context and intensity~~ considering the potentially affected environment, agencies should consider the duration of the effect. Agencies may also consider the extent to which an effect is adverse at some points, ~~as appropriate to the specific action~~, the affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act. ~~Significance varies with the setting of the proposed action. For instance, in time and beneficial in others (for example, in assessing the~~ the case of a site-specific action, significance of a habitat restoration action's effect on a species, an agency may consider both any short-term harm to the species during implementation of the action and any benefit to the same species once would usually depend only upon the action is complete). However, agencies shall not offset an action's adverse effects with other beneficial effects to determine significance (for example, an agency may not offset an action's adverse effect on one species with its beneficial effect on another species). ~~effects in the local area.~~

(1) Agencies shall analyze the significance of an action in several contexts. Agencies should consider the characteristics of the geographic area, such as proximity to unique or sensitive resources or communities with environmental justice concerns. Depending on the scope of the action, agencies should consider the potential global, national, regional, and local contexts as well as the duration, including short-and long-term effects.

(2) Agencies shall analyze the intensity of effects considering the following factors, as applicable to the proposed action and in relationship to one another:

~~(i) The degree to which the action may adversely affect~~ (2) In considering the degree of the effects, agencies should consider the following, as appropriate to the specific action:

~~(i) Both short and long term effects.~~

~~(ii) Both beneficial and adverse effects.~~

~~(iii) Effects on public health and safety.~~

(ii) The degree to which the action may adversely affect unique characteristics of the geographic area such as historic or cultural resources, parks, Tribal sacred sites, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

FINAL RULE REGULATORY MARKUP

(iii) Whether the action may~~(iv) Effects that would~~ violate relevant Federal, State, Tribal, or local laws or other requirements or be inconsistent with Federal, State, Tribal, or local policies designed for the protection of ~~law protecting~~ the environment.

(iv) The degree to which the potential effects on the human environment are highly uncertain.

(v) The degree to which the action may adversely affect resources listed or eligible for listing in the National Register of Historic Places.

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

(vii) The degree to which the action may adversely affect communities with environmental justice concerns.

(viii) The degree to which the action may adversely affect rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders.

1501.4 § 1501.4 Categorical exclusions.

(a) For efficiency, ~~agencies shall identify in their agency NEPA procedures (§ 1507.3(e)(2)(ii) of this chapter and consistent with § 1507.3(c)(8)(ii) of this subchapter or paragraph (c), agencies shall establish categorical exclusions for~~ categories of actions that normally do not have a significant effect on the human environment, individually or in the aggregate, and therefore do not require preparation of an environmental assessment or environmental impact statement unless extraordinary circumstances exist that make application of the categorical exclusion inappropriate, consistent with paragraph (b) of this section. Agencies may establish categorical exclusions individually or jointly with other agencies.

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

(1) If an extraordinary circumstance ~~exists~~is present, the agency nevertheless may ~~apply~~apply categorically exclude the ~~categorical exclusion~~proposed action if the agency conducts an analysis and determines that the proposed action does not in fact have the potential to result in ~~there are circumstances that lessen the impacts or other conditions sufficient to avoid~~ significant effects notwithstanding the extraordinary circumstance, or the agency modifies the action to avoid the potential to result in significant effects. In these cases, the agency shall document such determination and should publish it on the agency's website or otherwise make it publicly available.

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

FINAL RULE REGULATORY MARKUP

(c) In addition to the process for establishing categorical exclusions under § 1507.3(c)(8) of this subchapter, agencies may establish categorical exclusions through a land use plan, a decision document supported by a programmatic environmental impact statement or programmatic environmental assessment, or other equivalent planning or programmatic decision for which an environmental document has been prepared, so long as the agency:

(1) Provides the Council an opportunity to review and comment prior to public comment;

(2) Provides notification and an opportunity for public comment;

(3) Substantiates its determination that the category of actions normally does not have significant effects, individually or in the aggregate;

(4) Identifies extraordinary circumstances;

(5) Establishes a process for determining that a categorical exclusion applies to a specific action or actions in the absence of extraordinary circumstances, or, where extraordinary circumstances are present, for determining the agency may apply the categorical exclusion consistent with (b)(1) of this section; and

(6) Publishes a list of all categorical exclusions established through these mechanisms on its website.

(d) Categorical exclusions established consistent with paragraph (c) of this section or § 1507.3(c)(8) of this subchapter may:

(1) Cover specific geographic areas or areas that share common characteristics, e.g., habitat type;

(2) Have a limited duration;

(3) Include mitigation measures that, in the absence of extraordinary circumstances, will ensure that any environmental effects are not significant, so long as a process is established for monitoring and enforcing any required mitigation measures, including through the suspension or revocation of the relevant agency action; or

(4) Provide criteria that would cause the categorical exclusion to expire because the agency's determination that the category of action does not have significant effects, individually or in the aggregate, is no longer applicable, including, as appropriate, because:

(i) The number of individual actions covered by the categorical exclusion exceeds a specific threshold;

(ii) Individual actions covered by the categorical exclusion are too close to one another in proximity or time; or

(iii) Environmental conditions or information upon which the agency's determination was based have changed.

FINAL RULE REGULATORY MARKUP

(e) An agency may adopt and apply a categorical exclusion listed in another agency's NEPA procedures to a proposed action or a category of proposed actions consistent with this paragraph. The agency shall:

(1) Identify the categorical exclusion listed in another agency's NEPA procedures that covers its proposed action or a category of proposed actions;

(2) Consult with the agency that established the categorical exclusion to ensure that the proposed action or category of proposed actions to which the agency intends to apply the categorical exclusion is appropriate;

(3) Provide public notification of the categorical exclusion that the agency is adopting, including a brief description of the proposed action or category of proposed actions to which the agency intends to apply the adopted categorical exclusion, the process the agency will use to evaluate for extraordinary circumstances consistent with paragraph (b) of this section, and a brief description of the agencies' consultation;

(4) In applying the adopted categorical exclusion to a proposed action, evaluate the proposed action for extraordinary circumstances, consistent with paragraph (b) of this section; and

(5) Publish the documentation of the application of the adopted categorical exclusion.

1501.5 Environmental assessments.

§ 1501.5 Environmental assessments.

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

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

(c) An environmental assessment shall:

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

(2) Briefly discuss the:

(i) purpose and need for the proposed agency action;

(ii) alternatives as required by section 102(2)(HE) of NEPA; and

(iii) Environmental effects ~~the environmental impacts~~ of the proposed action and alternatives;

FINAL RULE REGULATORY MARKUP

~~(3) List the Federal, and include a listing of agencies; State, Tribal, and local governments and agencies; or persons consulted; and~~

~~(4) Provide a unique identification number for tracking purposes, which the agency shall reference on all associated environmental review documents prepared for the proposed action and in any database or tracking system for such documents.~~

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

~~(e) If an agency publishes a draft environmental assessment, the agency shall invite public comment and consider those comments in preparing the final environmental assessment.~~

~~(f) Agencies shall involve the public, State, Tribal, and local governments, relevant agencies, and any applicants, to the extent practicable in preparing environmental assessments (see § 1501.9). -~~

~~(g) The text of an environmental assessment shall not exceed be no more than 75 pages, not including any citations or appendices.~~

~~(h) Agencies:~~

~~(1) Should supplement environmental assessments if, unless a major Federal action is incomplete or ongoing, and:~~

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

~~(ii) There are substantial new circumstances or information about the significance of the adverse effects that bear on the analysis to determine whether to prepare a finding of no significant impact or official approves in writing an environmental impact statement.~~

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

~~(i) Agencies may reevaluate an environmental assessment to determine that the agency does not need to prepare a supplemental environmental assessment and a new finding of no significant impact or an environmental impact statement exceed 75 pages and establishes a new page limit.~~

~~(j) Agencies generally should may apply § the following provisions to environmental assessments:~~

~~(1) Section 1502.21 of this subchapter to environmental assessments chapter — Incomplete or unavailable information;~~

~~(k) As appropriate to improve efficiency and effectiveness of environmental assessments, agencies may apply the other provisions of part 1502 and 1503 of this subchapter, including §§ 1502.4, 1502.22, 1502.24, and 1503.4, to environmental assessments.~~

FINAL RULE REGULATORY MARKUP

~~1501.6 (2) Section 1502.23 of this chapter—Methodology and scientific accuracy; and~~

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

§ 1501.6 Findings of no significant impact.

~~(a) After completing an environmental assessment,~~(a) An agency shall prepare:

~~(1) a finding of no significant impact if the agency determines, based on the environmental assessment, that NEPA does not require preparation of~~to prepare an environmental impact statement because the proposed action will not have significant effects;

~~(2) A mitigated finding of no significant impact if the agency determines, based on the environmental assessment, that NEPA does not require preparation of an environmental impact statement because the proposed action will not have significant effects due to mitigation; or~~

~~(3) An environmental impact statement if the agency determines, based on the environmental assessment, that the action will have significant effects.~~

~~(b)(1) The agency shall make the finding of no significant impact available to the affected public as specified in § 1506.6(b) of this chapter~~§ 1501.9(c)(5).

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

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

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

~~(c)~~(b) The finding of no significant impact shall include the environmental assessment or incorporate it by reference and shall note any other environmental documents related to it ~~(§ 1501.9(f)(3)(§ 1502.4(d)(3) of this subchapter).~~ If the environmental assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

~~(d)~~(e) The finding of no significant impact shall state the authority for any mitigation that the agency has adopted and any applicable monitoring or enforcement provisions. If the agency finds no significant ~~effects~~impacts based on mitigation, the mitigated finding of no significant impact shall state ~~the~~any enforceable mitigation requirements or commitments that will be undertaken ~~and the authority to enforce them, such as terms and conditions or other measures in a relevant permit, incidental take statement, or other agreement, and the agency shall prepare a monitoring and compliance plan for that mitigation consistent with § 1505.3(c) of this subchapter. In addition, the agency shall prepare a~~

FINAL RULE REGULATORY MARKUP

monitoring and compliance plan for other mitigation as required by § 1505.3(c) of this subchapter. to avoid significant impacts.

1501.7 § 1501.7 Lead agency/agencies.

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

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

(b) A Federal, State, Tribal, or local ~~agencies, including at least one Federal~~ agency, may ~~serve~~ act as a joint lead ~~agency/agencies~~ to prepare an environmental impact statement or environmental assessment ~~(§ 1506.2 of this chapter)~~ (§ 1506.2 of this subchapter). A joint lead agency shall jointly fulfill the role of a lead agency.

(c) If an action falls within the provisions of ~~paragraph (a)~~ paragraph (a) of this section, the ~~participating Federal~~ potential lead agencies shall determine, by letter or memorandum, which agency will be the lead agency, considering the factors in paragraphs (c)(1) through (c)(5) of this section, and the lead agency shall determine which ~~agencies~~ will be joint lead or cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

- (1) Magnitude of agency's involvement;~~;~~
- (2) Project approval or disapproval authority;~~;~~
- (3) Expertise concerning the action's environmental effects;~~;~~
- (4) Duration of agency's involvement; and;
- (5) Sequence of agency's involvement.

(d) Any Federal ~~agency, or any~~ State, Tribal, or local agency or ~~private~~ person substantially affected by the absence of a lead agency designation, may make a written request to the senior agency officials of the potential lead agencies that a lead agency be designated. An agency that receives a request under this paragraph shall transmit such request to each participating Federal agency and to the Council.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in ~~paragraph (c)~~ paragraph (c) of this section has not resulted in a lead agency designation within 45 days of the written request to the senior agency officials, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the

FINAL RULE REGULATORY MARKUP

lead agency. ~~The Council shall transmit~~ A copy of the request ~~shall be transmitted~~ to each potential lead agency. The request shall consist of:

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

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

(f) Any potential lead agency may file a response ~~no later than~~ within 20 days after a request is filed with the Council. As soon as possible, but not later than ~~4020~~ days after receiving the request ~~and all responses to it~~, the Council shall ~~designate~~ determine which Federal agency will be the lead agency and which other Federal agencies will be cooperating agencies.

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

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

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

(2) Consider any analysis or proposal created by a cooperating agency and, to the maximum extent practicable, Use the environmental analysis, proposal, and information provided by proposals of cooperating agencies; ~~with jurisdiction by law or special expertise, to the maximum extent practicable.~~

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

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

1501.8 (i) The lead agency shall develop a schedule, setting milestones for all environmental reviews and authorizations required for implementation of the action, in consultation with any applicant and all joint lead, cooperating, and participating agencies, as soon as practicable.

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

FINAL RULE REGULATORY MARKUP

§ 1501.8 Cooperating agencies.

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

(b) Each cooperating agency shall:

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

(2) Participate in the scoping process (described in § 1501.9§ 1502.4).

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

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

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

(6) Consult with the lead agency in developing and updating the schedule ~~{§ 1501.7(i)(§ 1501.10)}~~, meet the schedule, and elevate, as soon as practicable, to the senior agency official of the lead agency any issues relating to purpose and need, alternatives, or other issues that may affect any agencies' ability to meet the schedule.

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

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

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

FINAL RULE REGULATORY MARKUP

1501.9 Public and governmental engagement.

(a) Purpose and responsibility. The purpose of public engagement is to inform the public of an agency's proposed action, allow for meaningful engagement during the NEPA process, and ensure decision makers are informed by the views of the public. The purpose of governmental engagement is to identify the potentially affected Federal, State, Tribal, and local governments, invite them to serve as cooperating agencies, as appropriate, and ensure that participating agencies have opportunities to engage in the environmental review process, as appropriate. This section sets forth agencies' responsibilities and best practices to conduct public and governmental engagement. Agencies shall determine the appropriate methods of public and governmental engagement for their proposed actions.

(b) Determination of scope. Agencies shall use public and governmental engagement, as appropriate, to inform the level of review for and scope of analysis of a proposed action, consistent with § 1501.3 of this subchapter. For environmental impact statements, in addition to the requirements of this section, agencies also shall comply with the requirements for scoping set forth in § 1502.4 of this subchapter. For environmental assessments, in addition to the requirements of this section, agencies should consider applying the requirements for scoping set forth in § 1502.4 of this subchapter, as appropriate.

(c) Outreach and notification. Agencies shall:

(1) Invite the participation of any likely affected Federal, State, Tribal, and local agencies and governments, as early as practicable, including, as appropriate, as cooperating agencies under § 1501.8 of this subchapter;

(2) Conduct, as appropriate, early engagement with likely affected or interested members of the public (including those who might not be in accord with the action), unless there is a limited exception under § 1507.3(d)(3) of this subchapter; and

(3) Consider what methods of outreach and notification are necessary and appropriate based on the likely affected entities and persons; the scope, scale, and complexity of the proposed action and alternatives; the degree of public interest; and other relevant factors. When selecting appropriate methods for providing public notification, agencies shall consider the ability of affected persons and agencies to access electronic media and the primary languages of affected persons.

(4) Publish notification of proposed actions they are analyzing through an environmental impact statement, including through a notice of intent consistent with § 1502.4 of this subchapter.

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

(i) The agency shall notify those entities and persons who have requested notification on a particular action and those who have requested regular notification from the agency on its actions.

FINAL RULE REGULATORY MARKUP

(ii) In the case of an action with effects of national concern, notification shall also include publication of a notice in the **Federal Register** .

(iii) In the case of an action with effects primarily of local concern, the notification may include distribution to or through:

(A) State, Tribal, and local governments and agencies that may be interested or affected by the proposed action.

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

(C) Publication in local newspapers having general circulation.

(D) Other local media.

(E) Potentially interested community organizations, including small business associations.

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

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

(H) Posting of notification on- and off-site in the area where the action is to be located.

(I) Electronic media (e.g., a project or agency website, dashboard, email list, or social media). Agencies should establish email notification lists or similar methods for the public to easily request electronic notifications for a proposed action.

(6) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act, as amended (), and without charge to the extent practicable.

(d) *Public meetings and hearings.* Agencies shall hold or sponsor public hearings, public meetings, or other opportunities for public engagement whenever appropriate or in accordance with statutory or regulatory requirements or applicable agency NEPA procedures. Agencies may conduct public hearings and public meetings by means of electronic communication except where another format is required by law. When determining the format for a public hearing or public meeting, such as whether an in-person or virtual meeting, or formal hearing or listening session is most appropriate, agencies shall consider the needs of affected communities. When accepting comments for electronic or virtual public hearings or meetings, agencies shall allow the public to submit comments electronically, by regular mail, or by other appropriate methods. Agencies should make a draft environmental document available to the public at least 15 days in advance when it is the subject of a public hearing or meeting unless the purpose of such hearing or meeting is to provide information for the development of the document.

(e) *Agency procedures.* Agencies shall make diligent efforts to engage the public in preparing and implementing their NEPA procedures (§ 1507.3 of this subchapter).

FINAL RULE REGULATORY MARKUP

1501. 10 Deadlines and schedule for the NEPA process.

(a) To ensure that agencies conduct sound NEPA reviews as efficiently and expeditiously as practicable, Federal agencies shall set deadlines and schedules appropriate to individual actions or types of actions consistent with this section and the time intervals required by § 1506.10 of this subchapter. Where applicable, the lead agency shall establish the schedule for a proposed action and make any necessary updates to the schedule in consultation with and seek the concurrence of any joint lead, cooperating, and participating agencies, and in consultation with any applicants.

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

(1) Environmental assessments within 1 year, unless the lead agency extends the deadline in writing and, as applicable, in consultation with any applicant, and establishes a new deadline that provides only so much additional time as is necessary to complete the environmental assessment.

(2) Environmental impact statements within 2 years, unless the lead agency extends the deadline in writing and, as applicable, in consultation with any applicant and establishes a new deadline that provides only so much additional time as is necessary to complete the environmental impact statement.

(3) The deadlines in paragraphs (b)(1) and (2) of this section are measured from the sooner of, as applicable:

(i) the date on which the agency determines that NEPA requires an environmental impact statement or environmental assessment for the proposed action;

(ii) the date on which the agency notifies an applicant that the application to establish a right-of-way for the proposed action is complete; or

(iii) the date on which the agency issues a notice of intent for the proposed action.

(4) The deadlines in paragraphs (b)(1) and (2) of this section are measured to, as applicable:

(i) For environmental assessments, the date on which the agency:

(A) Publishes an environmental assessment;

(B) Where applicable, makes the environmental assessment available pursuant to an agency's pre-decisional administrative review process; or

(C) Issues a notice of intent to prepare an environmental impact statement; and

(ii) For environmental impact statements, the date on which the Environmental Protection Agency publishes a notice of availability of the final environmental impact statement or, where applicable, the date on which the agency makes the final environmental impact statement available pursuant to an

FINAL RULE REGULATORY MARKUP

agency's pre-decisional administrative review process, consistent with § 1506.10(c)(1) of this subchapter.

(5) Each lead agency shall annually submit the report to Congress on any missed deadlines for environmental assessments and environmental impact statements required by section 107(h) of NEPA.

(c) To facilitate predictability, the lead agency shall develop a schedule for completion of environmental impact statements and environmental assessments as well as any authorizations required to carry out the action. The lead agency shall set milestones for all environmental reviews, permits, and authorizations required for implementation of the action, in consultation with any applicant and in consultation with and seek the concurrence of all joint lead, cooperating, and participating agencies, as soon as practicable. Schedules may vary depending on the type of action and in consideration of other factors in paragraph (d) of this section. The lead agency should develop a schedule that is based on its expertise reviewing similar types of actions under NEPA. All agencies with milestones, including those for a review, permit, or authorization, in the schedule shall take appropriate measures to meet the schedule. If a participating agency anticipates that a milestone will be missed, the agency shall notify, as applicable, the agency responsible for the milestone and the lead agency, and request that they take appropriate measures to comply with the schedule. As soon as practicable, the lead and any other agency affected by a potentially missed milestone shall elevate any unresolved disputes contributing to the potentially missed milestone to the appropriate officials of the agencies responsible for the potentially missed milestone, to ensure timely resolution within the deadlines for the individual action.

(d) The lead agency may consider the following factors in determining the schedule and deadlines:

(1) Potential for environmental harm.

(2) Size of the proposed action.

(3) State of the art of analytic techniques.

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

(5) Number of persons and agencies affected.

(6) Availability of relevant information.

(7) Degree to which a substantial dispute exists as to the size, location, nature, or consequences of the proposed action and its effects.

(8) Time limits imposed on the agency by law, regulation, Executive order, or court ordered deadlines.

(9) Time necessary to conduct government-to-government Tribal consultation.

(e) The schedule for environmental impact statements shall include the following milestones:

(1) The publication of the notice of intent;

FINAL RULE REGULATORY MARKUP

(2) The issuance of the draft environmental impact statement;

(3) The public comment period on the draft environmental impact statement, consistent with § 1506.10 of this subchapter;

(4) The issuance of the final environmental impact statement; and

(5) The issuance of the record of decision.

(f) The schedule for environmental assessments shall include the following milestones:

(1) Decision to prepare an environmental assessment;

(2) Issuance of the draft environmental assessment, where applicable;

(3) The public comment period on the draft environmental assessment, consistent with § 1501.5 of this subchapter, where applicable; and

(4) Issuance of the final environmental assessment and decision on whether to issue a finding of no significant impact or issue a notice of intent to prepare an environmental impact statement.

(g) An agency may designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(h) For environmental impact statements, agencies shall make schedules for completing the NEPA process publicly available, such as on their website or another publicly accessible platform. If agencies make subsequent changes to the schedule, agencies shall publish revisions to the schedule and explain the basis for substantial changes.

1501.11 Programmatic environmental documents and tiering.

(a) *Programmatic environmental documents.* Agencies may prepare programmatic environmental documents, which may be either environmental impact statements or environmental assessments, to evaluate the environmental effects of policies, programs, plans, or groups of related activities. When agencies prepare such documents, they should be relevant to the agency decisions and timed to coincide with meaningful points in agency planning and decision making. Agencies may use programmatic environmental documents to conduct a broad or holistic evaluation of effects or policy alternatives; evaluate widely applicable measures; or avoid duplicative analysis for individual actions by first considering relevant issues at a broad or programmatic level.

(1) When preparing programmatic environmental documents (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

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

FINAL RULE REGULATORY MARKUP

(ii) Thematically or by sector, including actions that have relevant similarities, such as common timing, effects, alternatives, methods of implementation, technology, media, or subject matter.

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

(2) Agency actions that may be appropriate for programmatic environmental documents include:

(i) Programs, policies, or plans, including land use or resource management plans;

(ii) Regulations;

(iii) National or regional actions;

(iv) Actions that have multiple stages or phases, and are part of an overall plan or program; or

(v) A group of projects or related types of projects.

(3) Agencies should, as appropriate, employ scoping (§ 1502.4 of this subchapter), tiering (paragraph (b) of this section), and other methods listed in §§ 1500.4 and 1500.5 of this subchapter, to describe the relationship between the programmatic environmental document and related individual actions and to avoid duplication and delay. The programmatic environmental document shall identify any decisions or categories of decisions that the agency anticipates making in reliance on it.

(b) Tiering. Where an existing environmental impact statement, environmental assessment, or programmatic environmental document is relevant to a later proposed action, agencies may employ tiering. Tiering allows subsequent tiered environmental analysis to avoid duplication and focus on issues, effects, or alternatives not fully addressed in a programmatic environmental document, environmental impact statement, or environmental assessment prepared at an earlier phase or stage. Agencies generally should tier their environmental impact statements and environmental assessments when it would eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided.

(1) When an agency has prepared an environmental impact statement, environmental assessment or programmatic environmental document for a program or policy and then prepares a subsequent statement or assessment on an action included within the program or policy (such as a project- or site-specific action), the tiered document shall discuss the relationship between the tiered document and the previous review, and summarize and incorporate by reference the issues discussed in the broader document. The tiered document shall concentrate on the issues specific to the subsequent action, analyzing site-, phase-, or stage-specific conditions and reasonably foreseeable effects. The agency shall provide for public engagement opportunities consistent with the type of environmental document prepared and appropriate for the location, phase, or stage. The tiered document shall state where the earlier document is publicly available.

FINAL RULE REGULATORY MARKUP

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

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

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

(c) *Reevaluation.* When an agency prepares a programmatic environmental document for which judicial review was available, the agency may rely on the analysis included in the programmatic environmental document in a subsequent environmental document for related actions as follows:

(1) Within 5 years and without additional review of the analysis in the programmatic environmental document, unless there are substantial new circumstances or information about the significance of adverse effects that bear on the analysis; or

(2) After 5 years, so long as the agency reevaluates the analysis in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid. The agency shall briefly document its reevaluation and explain why the analysis remains valid considering any new and substantial information or circumstances.

1501.12 Incorporation by reference into environmental documents.

Agencies shall incorporate material, such as planning studies, analyses, or other relevant information, into environmental documents by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. Agencies shall cite the incorporated material in the document, briefly describe its content, and briefly explain the relevance of the incorporated material to the environmental document. Agencies shall not incorporate material by reference unless it is reasonably available for review, such as on a publicly accessible website, by potentially interested persons throughout the time allowed for comment or public review. Agencies should provide digital references, such as hyperlinks, to the incorporated material or otherwise indicate how the public can access the material for review. Agencies shall not incorporate by reference material based on proprietary data that is not available for review and comment.

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

1502.1 Purpose of environmental impact statement.

1502.2 Implementation.

FINAL RULE REGULATORY MARKUP

- 1502.3 Statutory requirements for environmental impact statements.
- 1502.4 Scoping.
- 1502.5 Timing.
- 1502.6 Interdisciplinary preparation.
- 1502.7 Page limits.
- 1502.8 Writing.
- 1502.9 Draft, final, and supplemental statements.
- 1502. 10 Recommended format.
- 1502. 11 Cover.
- 1502. 12 Summary.
- 1502. 13 Purpose and need.
- 1502. 14 Alternatives including the proposed action.
- 1502. 15 Affected environment.
- 1502. 16 Environmental consequences.
- 1502. 17 Summary of scoping information.
- 1502. 18 List of preparers.
- 1502. 19 Appendix.
- 1502. 20 Publication of the environmental impact statement.
- 1502. 21 Incomplete or unavailable information.
- 1502. 22 Cost-benefit analysis.
- 1502. 23 [Reserved]
- 1502. 24 Environmental review and consultation requirements.

1502. 1 Purpose of environmental impact statement.

FINAL RULE REGULATORY MARKUP

(a) The primary purpose of an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA is to serve as an action-forcing device by ensuring agencies consider the environmental effects of their action in decision making, so that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government.

(b) Environmental impact statements shall provide full and fair discussion of significant effects and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse effects or enhance the quality of the human environment. Agencies shall focus on important environmental issues and reasonable alternatives and shall reduce paperwork and the accumulation of extraneous background data.

(c) Environmental impact 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. Federal agencies shall use environmental impact statements in conjunction with other relevant material to plan actions, involve the public, and make decisions.

1502.2 Implementation.

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

(a) Environmental impact statements shall not be encyclopedic.

(b) Environmental impact statements shall discuss effects in proportion to their significance. There shall be only brief discussion of other than important issues. As in an environmental assessment and 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 analytical, concise, and no longer than necessary to comply with NEPA and with the regulations in this subchapter. Length should be proportional to potential environmental effects and the scope and complexity of the action.

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

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

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

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

FINAL RULE REGULATORY MARKUP

1502. 3 Statutory requirements for environmental impact statements.

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

1502. 4 Scoping.

(a) Purpose. Agencies shall use scoping, an early and open process consistent with § 1501.9 of this subchapter, § 1501.9 Scoping.

~~(a) **Generally.** Agencies shall use an early and open process~~ to determine the scope of issues for analysis in an environmental impact statement, including identifying the ~~important~~ significant issues and eliminating from further study ~~unimportant~~ non-significant issues. Scoping ~~should~~ may begin as soon as practicable after the proposal for action is sufficiently developed for agency consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intent (see §§ 1501.3 and 1501.9 of this subchapter). -

~~(b) **Invite cooperating and participating agencies.** As part of the scoping process, the lead agency shall invite the participation of likely affected Federal, State, Tribal, and local agencies and governments, the proponent of the action, and other likely affected or interested persons (including those who might not be in accord with the action), unless there is a limited exception under § 1507.3(f)(1) of this chapter~~ (b) Scoping outreach. When preparing an environmental impact statement, agencies shall facilitate notification to persons and agencies who may be interested or affected by an agency's proposed action, consistent with § 1501.9 of this subchapter. As part of the scoping process,-

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

(c) Inviting participation. As part of the scoping process, and consistent with § 1501.9 of this subchapter, the lead agency shall invite the participation of likely affected Federal, State, Tribal, and local agencies and governments as cooperating or participating agencies, as appropriate; any applicant; and other likely affected or interested persons (including those who might not be in accord with the action), unless there is a limited exception under § 1507.3(d)(3) of this subchapter.

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

(1) Identify and eliminate from detailed study the issues that are not important or have been covered by prior environmental review(s) (§§ 1501.12 and 1506.3 of this subchapter), narrowing the discussion of these issues in the environmental impact statement to a brief presentation of why they will not be important or providing a reference to their coverage elsewhere.

FINAL RULE REGULATORY MARKUP

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

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

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

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

(e) ~~Notice of intent.~~ (d) ~~Notice of intent.~~ As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an environmental impact statement, the lead agency shall publish a notice of intent to prepare an environmental impact statement in the Federal Register ~~, except as provided in § 1507.3(f)(3) of this chapter. In addition to the Federal Register notice,~~ An agency also may publish ~~notification notice~~ in accordance with ~~§ 1506.6 of this chapter~~ § 1501.9 of this subchapter. The notice shall include, as appropriate:

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

(9) Identification) ~~Determination~~ of any cooperating and participating agencies, and any information that such agencies require in the notice to facilitate their decisions or authorizations that will rely upon ~~scope.~~ As part of the scoping process, the ~~resulting lead agency shall determine the scope and the significant issues to be analyzed in depth in the~~ environmental impact statement; and

FINAL RULE REGULATORY MARKUP

(10) A unique identification number for tracking purposes, which the agency shall reference on all environmental documents prepared for the proposed action and in any database or tracking system for such documents.

(f) *Notices of withdrawal or cancellation.* If an agency withdraws, cancels, or otherwise ceases the consideration of a proposed action before completing a final environmental impact statement, ~~To determine the agency scope of environmental impact statements, agencies shall~~ publish a notice in the Federal Register . consider:

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

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

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

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

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

~~(3) Impacts.~~

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

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

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

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

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

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

FINAL RULE REGULATORY MARKUP

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

~~§ 1501.10 Time limits.~~

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

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

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

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

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

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

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

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

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

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

~~(6) Availability of relevant information.~~

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

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

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

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

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

FINAL RULE REGULATORY MARKUP

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

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

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

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

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

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

~~§ 1501.11 Tiering.~~

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

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

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

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

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

~~§ 1501.12 Incorporation by reference.~~

~~Agencies shall incorporate material, such as planning studies, analyses, or other relevant information, into environmental documents by reference when the effect will be to cut down on bulk without~~

FINAL RULE REGULATORY MARKUP

~~impeding agency and public review of the action. Agencies shall cite the incorporated material in the document and briefly describe its content. Agencies may not incorporate material by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Agencies shall not incorporate by reference material based on proprietary data that is not available for review and comment.~~

~~1502.1 Purpose of environmental impact statement.~~

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

~~§ 1502.2 Implementation.~~

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

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

~~(c) Environmental impact statements shall be analytic, concise, and no longer than necessary to comply with NEPA and with the regulations in this subchapter. Length should be proportional to potential environmental effects, and project size.~~

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

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

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

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

FINAL RULE REGULATORY MARKUP

~~§ 1502.3 Statutory requirements for statements.~~

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

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

~~(a) Agencies shall define the proposal that is the subject of an environmental impact statement based on the statutory authorities for the proposed action. Agencies shall use the criteria for scope (§ 1501.9(e) of this chapter) to determine which proposal(s) shall be the subject of a particular statement. Agencies shall evaluate in a single environmental impact statement proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action.~~

~~(b) Environmental impact statements may be prepared for programmatic Federal actions, such as the adoption of new agency programs. When agencies prepare such statements, they should be relevant to the program decision and timed to coincide with meaningful points in agency planning and decision making.~~

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

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

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

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

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

~~§ 1502.5-1502.5 Timing.~~

An agency should commence preparation of an environmental impact statement as close as practicable to the time the agency is developing or receives a proposal so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve as an important practical contribution to the

FINAL RULE REGULATORY MARKUP

decision-making process and will not be used to rationalize or justify decisions already made (~~§§ 1501.2 of this subchapter~~ (§§ 1501.2 of this chapter and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies, the agency shall prepare the environmental impact statement at the feasibility analysis or equivalent stage evaluating whether to proceed with the project ~~(go/no-go) stage~~ and may supplement it at a later stage, if necessary.

(b) For applications to the agency requiring an environmental impact statement, the agency shall commence the statement as soon as practicable after receiving the complete application. Federal agencies should work together and with potential applicants and applicable State, Tribal, and local agencies and governments prior to receipt of the application.

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

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

1502.6 Interdisciplinary preparation.

Agencies shall prepare environmental impact statements using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of NEPA). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (~~§ 1501.9 of this chapter~~ § 1502.4 of this subchapter).

§ 1502.7 Page limits.

The text of final environmental impact statements ~~(paragraphs (a)(4) through (6) of § 1502.10, not including citations or appendices,)~~ shall not exceed 150 pages ~~exceptor fewer and,~~ for proposals of extraordinary unusual scope or complexity, which shall not exceed 300 pages ~~or fewer unless a senior agency official of the lead agency approves in writing a statement to exceed 300 pages and establishes a new page limit.~~

§ 1502.8 Writing.

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

FINAL RULE REGULATORY MARKUP

§ 1502.9 Draft, final, and supplemental statements.

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

(b) *Draft environmental impact statements.* Agencies shall prepare draft environmental impact statements in accordance with the scope decided upon in the scoping process (~~§ 1501.9 of this chapter~~[§ 1502.4 of this subchapter](#)).~~)-~~ The lead agency shall work with the cooperating agencies and shall obtain comments as required in [part 1503 of this chapter](#)~~part 1503 of this subchapter.~~ To the fullest extent practicable, the draft statement must meet the requirements established for final statements in section 102(2)(C) of NEPA ~~and as interpreted~~ in the regulations in this subchapter. ~~If the agency determines that~~[If the agency determines that](#) a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and publish a supplemental draft of the appropriate portion. At appropriate points in the draft statement, the agency shall discuss all major points of view on the environmental ~~effects~~[impacts](#) of the alternatives~~,~~ including the proposed action.

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

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

(1) Shall prepare supplements to either draft or final environmental impact statements if a major Federal action ~~is incomplete or ongoing~~[remains to occur](#), and:

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

(ii) There are ~~substantial~~[significant](#) new circumstances or information [about the significance of adverse effects that bear](#)~~relevant to environmental concerns and bearing~~ on the ~~analysis~~[proposed action or its impacts](#).

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

(3) Shall prepare, publish, and file a supplement to ~~an environmental impact~~[a](#) statement (exclusive of scoping (~~§ 1501.9 of this chapter~~[§ 1502.4 of this subchapter](#)))~~))~~ as a draft and final ~~environmental impact~~[environmental](#) statement, as is appropriate to the stage of the ~~environmental impact~~[environmental impact](#) statement involved, unless the Council approves alternative ~~procedures~~ (~~§ 1506.12 of this chapter~~[arrangements](#) [§ 1506.11 of this subchapter](#)).~~)-~~

(e) *Reevaluation.* ~~An agency may reevaluate an environmental impact statement to determine~~[4\) May find](#) that ~~changes to the~~[agency does need](#)~~proposed action or new circumstances~~

FINAL RULE REGULATORY MARKUP

~~or information relevant to prepare environmental concerns are not significant and therefore do not require a supplement under paragraph (d) of this section.~~ The agency should document ~~its~~the finding consistent with its agency NEPA procedures ~~{§ 1507.3 of this chapter(§ 1507.3 of this subchapter),}~~ or, if necessary, prepare a supplemental environmental assessment and in a finding of no significant impact. ~~supported by an environmental assessment.~~

§ 1502.10 Recommended format.

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

(1) Cover (§ 1502.11); ~~;~~

(2) Summary (§ 1502.12); ~~;~~

(3) Table of contents; ~~;~~

(4) Purpose of and need for action (§ 1502.13); ~~;~~

(5) Alternatives including the proposed action (sections 102(2)(C)(iii) and 102(2)(~~HE~~) of NEPA) (§ 1502.14); ~~;~~

(6) Affected environment and environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA) (§§ 1502.15 and 1502.16); and ~~;~~

(7) Appendices (§ 1502.19), including the summary of scopingSubmitted alternatives, information (§ 1502.17); and the analyses.

~~(8)~~ List of preparers (§ 1502.18); ~~;~~

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

(b) If an agency uses a different format, it shall include paragraphs (a)(1)paragraph (a) through (8) of this section, as further described in §§ 1502.11§ 1502.11 through 1502.191502.19; in any appropriate format.

§ 1502.11 Cover.

The environmental impact statement cover shall not exceed one page and shall include:

(a) A list of the ~~responsible agencies, including the lead, joint lead, agency and, to the extent feasible,~~ any cooperating agencies; ~~;~~

FINAL RULE REGULATORY MARKUP

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

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

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

(e) A one-paragraph abstract of the statement;~~;~~

(f) The date by which the agency must receive comments (computed in cooperation with the Environmental Protection Agency~~EPA~~ under § 1506.11 of this chapter~~§ 1506.10 of this subchapter~~); and~~;~~

(g) The identification number included in the notice of intent (§ 1502.4(e)(10)).

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

§ 1502.12 Summary.

Each environmental impact statement shall contain a summary that adequately and accurately summarizes the statement. The summary shall include~~stress~~ the major conclusions and summarize any~~areas of~~ disputed issues raised by agencies and the public, any~~and the~~ issues to be resolved, and key differences~~(including the choice among alternatives, and identify the environmentally preferable alternative or alternatives. Agencies shall write the summary in plain language and should use, as relevant, appropriate visual aids and charts.)~~. The summary normally should~~will~~ not exceed 15 pages.

§ 1502.13 Purpose and need.

The environmental impact statement shall include a statement that briefly summarizes~~specify~~ the underlying purpose and need for~~to which~~ the proposed agency action~~is responding in proposing the alternatives including the proposed action~~.

~~{~~87 FR 23469, Apr. 20, 2022]

§ 1502.14 Alternatives including the proposed action.

The alternatives section is the heart of the environmental impact statement. The alternatives section should identify~~present~~ the reasonably foreseeable environmental effects~~impacts~~ of the proposed action and the alternatives in comparative form based on the information and analysis presented in the sections on the affected environment ~~{~~ § 1502.15~~(§ 1502.15)~~ and the environmental consequences ~~{~~ §

FINAL RULE REGULATORY MARKUP

1502.16(§ 1502.16). In doing so, the analysis should sharply define the issues for the decision maker and the public and provide a clear basis for choice among options.) In this section, agencies shall:

(a) Rigorously explore and objectively~~(a)~~ Evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination. The agency need not consider every conceivable alternative to a proposed action; rather, it shall consider a reasonable range of alternatives that will foster informed decision making. Agencies also may include reasonable alternatives not within the jurisdiction of the lead agency.

(b) Discuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits.

(c) Include the no action alternative.

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

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

(f) Identify the environmentally preferable alternative or alternatives amongst the alternatives considered in the environmental impact statement. The environmentally preferable alternative will best promote the national environmental policy expressed in section 101 of NEPA by maximizing environmental benefits, such as addressing climate change-related effects or disproportionate and adverse effects on communities with environmental justice concerns; protecting, preserving, or enhancing historic, cultural, Tribal, and natural resources, including rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders; or causing the least damage to the biological and physical environment. The environmentally preferable alternative may be the proposed action, the no action alternative, or a reasonable alternative.

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

§ 1502.15 Affected environment.

(a) The environmental impact statement shall succinctly describe the environment of the area(s) to be affected ~~or created~~ by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area(s).

(b) Agencies shall use high-quality information, including reliable data and resources, models, and Indigenous Knowledge, to describe reasonably foreseeable environmental trends, including anticipated climate-related changes to the environment, and when such information is incomplete or unavailable, provide relevant information consistent with § 1502.21. This description of the affected environment, including existing environmental conditions, reasonably foreseeable trends, and planned actions in the area, should inform the agency's analysis of environmental consequences and mitigation measures (§ 1502.16).

FINAL RULE REGULATORY MARKUP

(c) The environmental impact statement may combine the description of the affected environment with evaluation of the environmental consequences ~~(§ 1502.16)(§ 1502.16). The description should }, and it shall~~ be no longer than is necessary to understand the relevant affected environment and the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the ~~effect~~impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§ 1502.16 Environmental consequences.

(a) The environmental consequences section forms the scientific and analytic basis for the comparisons under ~~§ 1502.14~~§ 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA that are within the scope of the environmental impact statement and as much of section 102(2)(C)(iii) of NEPA as is necessary to support the comparisons. ~~This section should not duplicate discussions in § 1502.14~~The comparison of the proposed action and reasonable alternatives shall be based on the discussion of their reasonably foreseeable effects and the significance of those effects (§ 1501.3 of this subchapter), focusing on the significant or important effects. The no action alternative should serve as the baseline against which the proposed action and other alternatives are compared. This section should not duplicate discussions required by § 1502.14 and shall include an analysis of: ~~The discussion shall include:~~

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

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

(2) The effects of the no action alternative, including any adverse environmental effects;

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

(4) Any irreversible or irretrievable commitments of Federal resources that would be involved in the proposal should it be implemented;

(5) Where applicable, Possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local ~~land use~~ plans, policies, and controls for the area concerned ~~(§ 1506.2(d) of this chapter, including those addressing climate change (§ 1506.2(d) of this subchapter);~~

(6) Where applicable, climate change-related effects, including, where feasible, quantification of greenhouse gas emissions, from the proposed action and alternatives and the effects of climate change on the proposed action and alternatives;

FINAL RULE REGULATORY MARKUP

(7) Where applicable,~~(6)~~ Energy requirements and conservation potential of various alternatives and mitigation measures;~~;~~

(8) Where applicable,~~(7)~~ Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures;~~;~~

(9) Where applicable, relevant risk reduction, resiliency, or adaptation measures incorporated into the proposed action or alternatives, informed by relevant science and data on the affected environment and expected future conditions;

(10) Where applicable,~~(8)~~ Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures;~~;~~

(11)~~9~~ Means to mitigate adverse environmental ~~effects~~impacts (if not fully covered under § 1502.14(e)~~§ 1502.14(e)~~);~~;~~

(12)~~10~~ Where applicable, economic and technical considerations, including the economic benefits of the proposed action; and~~;~~

(13) Where applicable, disproportionate and adverse human health and environmental effects on communities with environmental justice concerns.

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

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

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

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

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

(b) The final environmental impact statement shall include a summary that identifies all alternatives, information, and analyses submitted by State, Tribal, and local governments and other public

FINAL RULE REGULATORY MARKUP

commenters for consideration by the lead and cooperating agencies in developing the final environmental impact statement.

§ 1502.18 List of preparers.

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

§ 1502.19 Appendix.

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

- (a) Material prepared in connection with an environmental impact statement (as distinct from material that is not so prepared and is incorporated by reference ~~(§ 1501.12 of this chapter~~(§ 1501.12 of this subchapter))).~~)-~~
- (b) Material substantiating any analysis fundamental to the impact statement.
- (c) Material relevant to the decision to be made.
- (d) For draft environmental impact statements, all comments (or summaries thereof where the response has been exceptionally voluminous) received during the scoping process that identified ~~alternatives,~~information,~~and analyses~~ for the agency's consideration.
- (e) For final environmental impact statements, the comment summaries and responses consistent with ~~§ 1503.4 of this chapter~~§ 1503.4 of this chapter.-

§ 1502.20 Publication of the environmental impact statement.

Agencies shall publish the entire draft and final environmental impact statements and unchanged statements as provided in ~~§ 1503.4(c) of this chapter~~§ 1503.4(c) of this subchapter.- The agency shall transmit the entire statement electronically (or in paper copy, if ~~so~~ requested due to economic or other hardship) to:

- (a) Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State, Tribal, or local agency authorized to develop and enforce environmental standards.
- (b) The applicant, if any.
- (c) Any person, organization, or agency requesting the entire environmental impact statement.

FINAL RULE REGULATORY MARKUP

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

§ 1502.21 Incomplete or unavailable information.

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

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

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

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

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

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

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

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

§ 1502.22 Cost-benefit analysis.

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

FINAL RULE REGULATORY MARKUP

should at least indicate those considerations, including factors not related to environmental quality, that are likely to be relevant and important to a decision.

[Reserved]

§ 1502.23 Methodology and scientific accuracy.

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

§ 1502.24 Environmental review and consultation requirements.

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

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

PART 1503—COMMENTING ON ENVIRONMENTAL IMPACT STATEMENTS

1503.1 [Inviting comments and requesting information and analyses.](#)

1503.2 [Duty to comment.](#)

1503.3 [Specificity of comments and information.](#)

1503.4 [Response to comments.](#)

1503.1 Inviting comments and requesting information and analyses.

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

FINAL RULE REGULATORY MARKUP

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

(2) Request the comments of:

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

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

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

(iv) The applicant, if any; and

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

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

(b) An agency may request comments on a final environmental impact statement before the final decision and set a deadline for providing such comments. Other agencies or persons may make comments consistent with the time periods under [§ 1506.11 of this chapter](#) ~~§ 1506.10 of this subchapter.~~

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

§ 1503.2 Duty to comment.

Cooperating agencies and agencies that are authorized to develop and enforce environmental standards shall comment on [environmental impact](#) statements within their jurisdiction, expertise, or authority within the time period specified for comment in [§ 1506.11 of this chapter](#) ~~§ 1506.10 of this subchapter.~~ A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that the environmental impact statement adequately reflects its views, it should reply that it has no comment.

§ 1503.3 Specificity of comments and information.

(a) To promote informed decision making, comments on an environmental impact statement or on a proposed action shall be as specific as possible, [and](#) may address either the adequacy of the statement or the merits of the alternatives discussed or both, ~~and shall provide as much detail as necessary to meaningfully participate and fully inform the agency of the commenter's position.~~ Comments should explain why the issues raised are important to the consideration of potential environmental ~~effects~~[impacts](#) and alternatives to the proposed action. ~~Where possible, as well as economic and employment impacts, and other impacts affecting the quality of the human environment.~~ Comments

FINAL RULE REGULATORY MARKUP

should reference the corresponding section or page number of the draft environmental impact statement, propose specific changes to those parts of the statement, ~~where possible,~~ and ~~include or~~ describe ~~any~~ the data, sources, ~~or and~~ methodologies ~~that support~~ supporting the proposed changes.

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

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

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental ~~review~~ reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant ~~site-specific~~ effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or authorizations.

~~(d)e) When~~ a cooperating agency with jurisdiction by law ~~shall specify~~ specifies mitigation measures it considers necessary to allow the agency to grant or approve applicable ~~authorizations~~ permit, license, or related requirements or concurrences ~~and, the cooperating agency shall~~ cite to its applicable statutory authority.

§ 1503.4 Response to comments.

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

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

FINAL RULE REGULATORY MARKUP

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

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

PART 1504—DISPUTE RESOLUTION AND PRE-DECISIONAL REFERRALS

1504.1 Purpose.

1504.2 Early dispute resolution.

1504.3 Criteria and procedure for referrals and response.

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

Source: 85 FR 43367, July 16, 2020, unless otherwise noted.

§ 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, and encourages Federal agencies to engage with each other as early as practicable to resolve interagency disagreements concerning proposed major Federal actions before referring disputes to the Council. This part also establishes procedures for Federal agencies to submit a request to the Council to provide informal dispute resolution on NEPA issues.

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

(c) Under section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)), other Federal agencies may prepare similar reviews of environmental impact statements, including judgments on the acceptability of anticipated

FINAL RULE REGULATORY MARKUP

environmental impacts. These agencies must make These reviews ~~must be made~~ available to the President, the Council, and the public.

1504.2 Early dispute resolution.

(a) Federal agencies should engage in interagency coordination and collaboration in their planning and decision-making processes and should identify and resolve disputes concerning proposed major Federal actions early in the NEPA process. To the extent practicable, agencies should elevate issues to appropriate agency officials or the Council in a timely manner that will accommodate schedules consistent with § 1501.10 of this subchapter.

(b) A Federal agency may request that the Council engage in informal dispute resolution to provide recommendations on how to resolve an interagency dispute concerning an environmental review. In making the request, the agency shall provide the Council with a summary of the proposed action, information on the disputed issues, and agency points of contact.

(c) In response to a request for informal dispute resolution, the Council may request additional information, provide non-binding recommendations, convene meetings of those agency decision makers necessary to resolve disputes, or determine that informal dispute resolution is unhelpful or inappropriate.

1504.3 Criteria and procedure for ~~referral.~~

Environmental referrals and response.

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

(1~~a~~) Possible violation of national environmental standards or policies;

(2~~b~~) Severity;

(3~~e~~) Geographical scope;

(4~~d~~) Duration;

(5~~e~~) Importance as precedents;

(6~~f~~) Availability of environmentally preferable alternatives; ~~and~~

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

FINAL RULE REGULATORY MARKUP

(8) Other appropriate considerations.

(b) 1504.3 Procedure for referrals and response:

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

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

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

~~(d)~~ The referral shall consist of:

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

FINAL RULE REGULATORY MARKUP

(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.

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

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

(fe) Applicants or other interested persons may provide views in writing to the Council no later than the response.

(gf) No later than 25 days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

- (1) Conclude that the process of referral and response has successfully resolved the problem.
- (2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.
- (3) Obtain additional views and information, including through public meetings or hearings.
- (4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.
- (5) Determine that the referring and lead agencies should further negotiate the issue, and the issue is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.
- (6) Publish its findings and recommendations (including, where appropriate, a finding that the submitted evidence does not support the position of an agency).
- (7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

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

(ih) The referral process is not intended to create any private rights of action or to be judicially reviewable because any voluntary resolutions by the agency parties do not represent final agency

FINAL RULE REGULATORY MARKUP

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

PART 1505—NEPA AND AGENCY DECISION MAKING

1505.1 [Reserved]

1505.2 Record of decision in cases requiring environmental impact statements.

1505.3 Implementing the decision.

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

Source: 85 FR 43369, July 16, 2020, unless otherwise noted.

§ 1505.1 [Reserved]

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

~~(a)~~ At the time of its decision ~~(§ 1506.11 of this chapter~~(§ 1506.10 of this subchapter) or, if appropriate, its recommendation to Congress, each agency shall prepare and timely publish a concise public record of decision or joint record of decision. The record, which each agency may integrate into any other record it prepares, shall:

~~(a1)~~ State the decision.

~~(b2)~~ Identify alternatives considered by the agency in reaching its decision. The agency also shall specify, specifying the environmentally preferable alternative or alternatives (§ 1502.14(f) of this subchapter). The considered environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors, including environmental, economic, and technical considerations and agency statutory missions. The An agency shall identify and discuss all such factors, including any essential considerations of national policy, that the agency balanced in making its decision and state how those considerations entered into its decision.

~~(c3)~~ State whether the agency has adopted all practicable means to mitigate avoid or minimize environmental harm from the alternative selected, and if not, why the agency did not. Mitigation shall be The agency shall adopt and summarize, where applicable, a monitoring and enforcement program for any enforceable mitigation requirements or commitments.

~~(b)~~ Informed by the summary of the submitted alternatives, information, and analyses in the final environmental impact statement (§ 1502.17(b) of this chapter when), together with any other material in the record of that he or she determines to be relevant, the decision incorporates mitigation and the analysis of the reasonably foreseeable effects maker shall certify in the record of the proposed action is based on implementation decision that the agency has considered all of the alternatives, information, analyses, and objections submitted by State, Tribal, and local governments and public commenters for consideration by the lead and cooperating agencies in developing the environmental

FINAL RULE REGULATORY MARKUP

~~impact statement. Agency environmental impact statements certified in accordance with this section are entitled to a presumption that the agency has considered the submitted alternatives, information, and analyses, including the summary thereof, in the final environmental impact statement (§ 1502.17(b)) that mitigation. The agency shall identify the authority for enforceable mitigation, such as through permit conditions, agreements, or other measures, and prepare a monitoring and compliance plan consistent with }.~~

§ 1505.3 (c).

1505.3 Implementing the decision.

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

~~(1a)~~ Include appropriate conditions in grants, permits, or other approvals; ~~and-~~

~~(2b)~~ Condition funding of actions on mitigation.

~~(b) The lead or (c) Upon request, inform cooperating agency should, where relevant and appropriate, incorporate into its decision or participating agencies on progress in carrying out mitigation measures that address or ameliorate significant human health and environmental effects of they have proposed Federal actions that disproportionately and adversely affect communities with environmental justice concerns.~~

~~(c) The lead or cooperating agency shall prepare and publish a monitoring and compliance plan for mitigation when:~~

~~(1) The analysis of and were adopted by the reasonably foreseeable effects of a proposed action in an environmental assessment or environmental impact statement is based on implementation of mitigation; and~~

~~(2) The agency incorporates making the mitigation into a record of decision, finding of no significant impact, or separate decision document decision.~~

~~(d) The agency should tailor the contents of a monitoring and compliance plan required by paragraph (c) of this section to the complexity of the mitigation committed to and include:~~

~~(1) A basic description of the mitigation measure or measures;~~

~~(2) The parties responsible for monitoring and implementing the mitigation;~~

~~(3) If appropriate, how monitoring information will be made publicly available;~~

FINAL RULE REGULATORY MARKUP

(4) The anticipated timeframe for implementing and completing mitigation;

(5) The standards for determining compliance with the mitigation and the consequences of non-compliance; and

(6) How the mitigation will be funded.

(e) If an action is incomplete or ongoing, an agency does not need to supplement its environmental impact statement (§ 1502.9(d) of this subchapter) or environmental assessment (§ 1501.5 of this subchapter) or revise its record of decision or finding of no significant impact or separate decision document based solely on new information developed through a monitoring and compliance plan required by paragraph (c) of this section. The ongoing implementation of a monitoring and compliance plan shall not be considered an incomplete or ongoing Federal action.

PART 1506—OTHER REQUIREMENTS OF NEPA

1506.1 Limitations on actions during NEPA process.

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

1506.3 Adoption.

1506.4 Combining documents.

1506.5 Agency responsibility for environmental documents.

1506.6 Methodology and scientific accuracy.

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.

~~(d) Upon request, publish the results of relevant monitoring.~~

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

FINAL RULE REGULATORY MARKUP

Source: [85 FR 43370](#), July 16, 2020, unless otherwise noted.

§ 1506.1 Limitations on actions during NEPA process.

(a) Except as provided in ~~paragraphs (b)~~[paragraphs \(b\)](#) and ~~(c)~~[\(c\)](#) of this section, until an agency issues a finding of no significant impact, as provided in ~~§ 1501.6 of this chapter~~[§ 1501.6 of this subchapter](#), or record of decision, as provided in ~~§ 1505.2 of this chapter~~[§ 1505.2 of this subchapter](#), no action concerning the proposal may be taken that would:

- (1) Have an adverse environmental ~~effect~~[impact](#); or
- (2) Limit the choice of reasonable alternatives.

(b) If ~~any~~[an](#) agency is considering an application from ~~an applicant a non-Federal entity~~[an applicant a non-Federal entity](#) and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in ~~paragraph (a)~~[paragraph \(a\)](#) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. This section does not preclude development by applicants of plans or designs or performance of other activities necessary to support an application for Federal, State, Tribal, or local permits or assistance. An agency considering a proposed action for Federal funding may authorize such activities, including, but not limited to, acquisition of interests in land (*e.g.*, fee simple, rights-of-way, and conservation easements), purchase of long lead-time equipment, and purchase options made by applicants, ~~if the agency determines that such activities would not limit the choice of reasonable alternatives and notifies the applicant that the agency retains discretion to select any reasonable alternative or the no action alternative regardless of any activity taken by the applicant prior to the conclusion of the NEPA process.~~[if the agency determines that such activities would not limit the choice of reasonable alternatives and notifies the applicant that the agency retains discretion to select any reasonable alternative or the no action alternative regardless of any activity taken by the applicant prior to the conclusion of the NEPA process.](#)

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

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

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

(a) Federal agencies are authorized to cooperate with State, Tribal, and local agencies that are responsible for preparing environmental documents, including those prepared pursuant to section 102(2)(~~G~~) of NEPA.

FINAL RULE REGULATORY MARKUP

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

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

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

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

§ 1506.3 Adoption.

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

(b) *Environmental impact statements.* An agency may adopt another agency's draft or final environmental impact statement, or portion thereof, provided that the adopting agency conducts an independent review of the statement and concludes that it meets the standards for an adequate statement, pursuant to the regulations in this subchapter and the adopting agency's NEPA procedures.

~~(b) *Environmental impact statements.*~~

FINAL RULE REGULATORY MARKUP

(1) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the adopting agency shall republish and file it as a final statement consistent with § 1506.10§ 1506.9.- If the actions are not substantially the same or the adopting agency determines that the statement may require supplementation consistent with § 1502.9 of this subchapter, the adopting agency shall treat the statement as a draft, supplement or reevaluate it as necessary, and republish and file it, consistent with § 1506.10§ 1506.9.-

(2) Notwithstanding paragraph (b)(1)paragraph (b)(1) of this section, if a cooperating agency does not issue a record of decision jointly or concurrently consistent with § 1505.2 of this subchapter, a cooperating agency may issue aadopt in its record of decision adoptingwithout republishing the environmental impact statement of a lead agency without republicationwhen, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(c) *Environmental assessments.* An agency may adopt another agency's environmental assessment, or portion thereof, if the actions covered by the original environmental assessment and the proposed action are substantially the same, and the assessment meets the standards for an adequate environmental assessment under the regulations in this subchapter and the adopting agency's NEPA procedures. If the actions are not substantially the same or the adopting agency determines that the environmental assessment may require supplementation consistent with § 1501.5(h) of this subchapter, ~~the~~ adopting agency may adopt and supplement or reevaluate the environmental assessment as necessary, issuein its finding of no significant impact, and provide notice consistent with § 1501.6 of this chapter§ 1501.6 of this subchapter.-

(d) *Categorical exclusion determinations.exclusions.* An agency may adopt another agency's determination that a categorical exclusion applies to a particular proposed action if the action covered by ~~thatthe original categorical exclusion~~ determination and the adopting agency's proposed action are substantially the same. In such circumstances, the adoptingThe agency shall:

(1) Document its -document the adoption, including the determination that its proposed action is substantially the same as the action covered by the original categorical exclusion determination and that there are no extraordinary circumstances present that require the preparation of an environmental assessment or environmental impact statement; and

(2) Publish its adoption determination on an agency website or otherwise make it publicly available.

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

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

(2) The action assessed in the environmental assessment or environmental impact statement is the subject of a referral under part 1504 of this chapterpart 1504 of this subchapter.-

FINAL RULE REGULATORY MARKUP

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

§ 1506.4 Combining documents.

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

§ 1506.5 Agency responsibility for environmental documents.

(a) Agency Responsibility. The agency is responsible for the accuracy, scope ~~(§ 1501.9(e) of this chapter(§ 1501.3(b) of this subchapter),)~~, and content of environmental documents and shall ensure they are prepared with professional and scientific integrity, using reliable data and resources, regardless of whether they are prepared by the agency or ~~by an applicant or~~ contractor under the supervision and direction of the agency or by the applicant under procedures the agency adopts pursuant to section 107(f) of NEPA and § 1507.3(c)(12) of this subchapter. The agency shall exercise its independent judgment and briefly document its determination that an environmental document meets the standards under NEPA, the regulations in this subchapter, and the agency's NEPA procedures. ~~of the agency.~~

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

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

(2) The agency shall independently evaluate the information submitted by the applicant and, to the extent it is integrated into ~~or~~ the environmental document, ~~and~~ shall be responsible for its accuracy, scope, and contents.

(3) An agency may allow an applicant to prepare environmental assessments and environmental impact statements pursuant to its agency procedures, consistent with section 107(f) of NEPA and § 1507.3(c)(12) of this subchapter.

(c) Agency-directed contractor. An agency may authorize a contractor to prepare an environmental document under the supervision and direction of the agency.

(1) The agency shall provide guidance to the contractor and participate in and supervise the environmental document's preparation.

(2) The agency shall independently evaluate the environmental document prepared by the agency-directed contractor, shall be responsible for its accuracy, scope, and contents, and document the agency's evaluation in the environmental document.

FINAL RULE REGULATORY MARKUP

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

(4) ~~The lead agency Contractors or, where appropriate, a cooperating agency applicants preparing environmental assessments or environmental impact statements~~ shall ~~preparesubmit~~ a disclosure statement ~~for~~ the ~~contractor's execution specifying lead agency~~ that ~~the contractor has no~~specifies any financial or other interest in the outcome of the action. Such statement need not include privileged or confidential trade secrets or other confidential business information.

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

1506.6 Methodology and scientific accuracy.

(a) § 1506.6 Public involvement.

Agencies shall ensure:

~~(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures (~~§ 1507.3 of this chapter~~professional integrity, including scientific integrity, of)~~.

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

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

~~(2) In the case of an action with effects of national concern, notice shall include publication in the Federal Register. An agency may notify organizations that have requested regular notice.~~

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

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

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

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

FINAL RULE REGULATORY MARKUP

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

~~(v) Notice through other local media.~~

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

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

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

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

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

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

~~(d) Solicit appropriate information from the public.~~

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

~~(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act, as amended (5 U.S.C. 552) (b) In preparing environmental documents, agencies shall use high-quality information, including reliable data and resources, models, and Indigenous Knowledge. Agencies may rely on existing information as well as information obtained to inform the analysis. Agencies may use any reliable data sources, such as remotely gathered information or statistical models. Agencies shall explain any relevant assumptions or limitations of the information or the particular model or methodology selected for use.~~

~~(c) Agencies shall identify any methodologies used and shall make explicit reference to the scientific and other sources relied upon for conclusions in the environmental document. Agencies may place discussion of methodology in an appendix.~~

~~(d) Where appropriate, agencies shall use projections when evaluating the reasonably foreseeable effects, including climate change-related effects. Such projections may employ mathematical or other models that project a range of possible future outcomes, so long as agencies disclose the relevant assumptions or limitations.~~

FINAL RULE REGULATORY MARKUP

§ 1506.7 Further guidance.

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

(b) To the extent that Council guidance issued prior to ~~July 1, 2024~~~~September 14, 2020~~ is in conflict with this subchapter, the provisions of this subchapter apply.

§ 1506.8 Proposals for legislation.

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

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

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

(1) There need not be a scoping process.

(2) Agencies shall prepare the legislative statement in the same manner as a draft environmental impact statement and need not prepare a final statement unless any of the following conditions exist. In such cases, the agency shall prepare and publish the statements consistent with ~~§§ 1503.1 of this chapter~~~~§§ 1503.1 of this subchapter~~ and 1506.~~1044~~:

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

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

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects that the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services

FINAL RULE REGULATORY MARKUP

Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

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

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

~~§ 1506.9 Proposals for regulations.~~

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

~~§ 1506.10~~ **1506. 9 Filing requirements.**

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

(b) Agencies shall file statements with the Environmental Protection Agency ~~EPA~~ no earlier than they are also transmitted to participating agencies and made available to the public. The Environmental Protection Agency ~~EPA~~ may issue guidelines to agencies to implement its responsibilities under this section and § 1506.11 ~~§ 1506.10~~.

~~(c) Agencies shall file an adoption of an environmental impact statement with the Environmental Protection Agency (see § 1506.3(b)(1)).~~

~~§ 1506.11~~ **1506. 10 Timing of agency action.**

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

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

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

FINAL RULE REGULATORY MARKUP

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

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

(1) Some agencies have ~~a~~ formally established [administrative review processes \(e.g., appeals, objections, protests\), which may be initiated prior to or appeal process](#) after [filing and](#) publication of the final environmental impact statement [with the Environmental Protection Agency](#), that ~~allow~~~~allows~~ other agencies or the public to [raise issues about](#)~~take appeals on~~ a decision and make their views known. In such cases where a real opportunity exists to alter the decision, the agency may make and record the decision at the same time it publishes the environmental impact statement. This means that the period for [administrative review](#)~~appeal~~ of the decision and the 30-day period set forth in [paragraph \(b\)\(2\)](#)~~paragraph (b)(2)~~ of this section may run concurrently. In such cases, the environmental impact statement shall explain the timing and the public's right of [administrative review](#)~~appeal~~ and provide notification consistent with [§ 1506.10](#)~~§ 1506.9~~; or

(2) An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety may waive the time period in [paragraph \(b\)\(2\)](#)~~paragraph (b)(2)~~ of this section, publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement, and provide notification consistent with [§ 1506.10](#)~~§ 1506.9~~, as described in [paragraph \(a\)](#)~~paragraph (a)~~ of this section.

(d) If an agency files the final environmental impact statement within 90 days of the filing of the draft environmental impact statement with the Environmental Protection Agency, the [minimum 30-day decision-making period](#) and ~~the~~ 90-day [period](#)~~period~~ may run concurrently. However, subject to [paragraph \(e\)](#)~~paragraph (e)~~ of this section, agencies shall allow at least 45 days for comments on draft statements.

(e) The lead agency may extend the minimum periods in [paragraph \(b\)](#)~~paragraph (b)~~ of this section and provide notification consistent with [§ 1506.10](#)~~§ 1506.9~~. Upon a showing by the lead agency of compelling reasons of national policy, the Environmental Protection Agency may reduce the minimum periods and, upon a showing by any other Federal agency of compelling reasons of national policy, also may extend the minimum periods, but only after consultation with the lead agency. The lead agency may modify the minimum periods when necessary to comply with other specific statutory requirements ~~-(§ 1507.3(f)(2) of this chapter (§ 1507.3(d)(4) of this subchapter).)~~ Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, [the Environmental Protection Agency](#)~~EPA~~ may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period ~~of time~~ it shall notify the Council.

~~§ 1506.12~~ **1506. 11 Emergencies.**

Where emergency circumstances make it necessary to take an action with significant [effects](#)~~environmental impact~~ without observing the provisions of the regulations in this subchapter, the

FINAL RULE REGULATORY MARKUP

Federal agency taking the action ~~shall~~should consult with the Council about alternative arrangements for compliance with section 102(2)(C) of NEPA. Agencies and the Council ~~shall~~will limit such arrangements to actions necessary to control the immediate impacts of the emergency; ~~Other actions remain subject to NEPA review~~ consistent with this subchapter. Alternative arrangements do not waive the requirement to comply with the statute, but establish an alternative means for NEPA compliance.

§ 1506.13-1506. 12 Effective date.

The regulations in this subchapter apply to any NEPA process begun after July 1, 2024~~September 14, 2020~~. An agency may apply the regulations in this subchapter to ongoing activities and environmental documents begun before July 1, 2024~~September 14, 2020~~.

PART 1507—AGENCY COMPLIANCE

1507. 1 Compliance.

1507.2 Agency capability to comply.

1507. 3 Agency NEPA procedures.

1507.4 Agency NEPA program information.

Authority: ~~42 U.S.C. 4321-4347; 42 U.S.C. 4371-4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.~~
Source: 85 FR 43373, July 16, 2020, unless otherwise noted.

§ 1507.1 Compliance.

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

§ 1507.2 Agency capability to comply.

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

(a) Designate a senior agency official to be responsible for overall review of agency NEPA compliance, including resolving implementation issues, and a Chief Public Engagement Officer to be responsible for facilitating community engagement in environmental reviews across the agency and, where appropriate, the provision of technical assistance to communities. When the agency is a department, it may be efficient for major subunits (with the consent of the department) to identify senior agency officials or

FINAL RULE REGULATORY MARKUP

Chief Public Engagement Officers within those subunits, whom the department-level official or Officer oversees.

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

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

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

(e) Ensure environmental documents are prepared with professional integrity, including scientific integrity, consistent with section 102(2)(D) of NEPA.

(f) Make use of reliable data and resources in carrying out their responsibilities under NEPA, consistent with section 102(2)(E) of NEPA.

(g) Study, develop, and describe technically and economically feasible alternatives, consistent with section 102(2)(F) of NEPA.

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

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

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

§ 1507.3 Agency NEPA procedures.

(a) The Council has determined that the revisions to this subchapter as of July 1, 2024 do not affect the validity of categorical exclusions contained in agency NEPA procedures as of this date~~September 14, 2020, are consistent with this subchapter.~~

FINAL RULE REGULATORY MARKUP

(b) No more than ~~1236~~ months after ~~July 1, 2024~~~~September 14, 2020~~, or 9 months after the establishment of an agency, whichever comes later, each agency shall develop or revise, as necessary, proposed procedures to implement the regulations in this subchapter, facilitate efficient decision making, and ensure that the agency makes decisions in accordance with the policies and requirements of the Act. When the agency is a department, it may be efficient for major subunits (with the consent of the department) to adopt their own procedures.

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

(2) Agencies shall provide an opportunity for public review and review by the Council for conformity with the Act and the regulations in this subchapter before ~~issuing~~~~adopting~~ their final procedures. The Council shall complete its review within 30 days of the receipt of the proposed final procedures. Once in effect, ~~agencies~~~~the agency~~ shall publish ~~their~~~~its~~ NEPA procedures and ensure that they are readily available to the public. Agencies shall continue to review their policies and procedures, in consultation with the Council, and revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(3) The issuance or update of~~(c) Agencies shall adopt, as necessary,~~ agency NEPA procedures is not subject to NEPA review under this subchapter.

(c) Agency~~improve agency efficiency and ensure that agencies make decisions in accordance with the Act's procedural requirements. Such~~ procedures shall ~~include~~:

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

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

(3) Integrate the environmental review into the decision-making process by~~(3) Requiring~~ that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that decision makers use them~~the statement~~ in making decisions~~;~~

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

FINAL RULE REGULATORY MARKUP

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

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

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

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

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

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

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

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

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

~~(6) Include the¹ Those procedures required by §§ 1501.2(b)(4)§ 1501.2(b)(4) of this subchapter (assistance to applicants);; and 1506.6(e) of this chapter (status information).~~

~~(7) Include² Specific criteria for and identification of those typical classes of action that:~~

~~(i) Which normally;~~

~~(i) ~~do~~ require environmental impact statements; and.~~

~~(ii) Which normally do not require either an environmental impact statement or an environmental assessment and do not have a significant effect on the human environment (categorical exclusions (§ 1501.4 of this chapter(ii))). Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect. Agency NEPA procedures shall identify when documentation of a categorical exclusion determination is required.~~

FINAL RULE REGULATORY MARKUP

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

(8) Establish categorical exclusions and identify extraordinary circumstances. When establishing new or revising existing categorical exclusions, agencies shall:

(i) Identify when documentation of ~~3) Procedures for introducing~~ a determination that a categorical exclusion applies ~~supplement~~ to a proposed action is required;

(ii) Substantiate the proposed new or revised categorical exclusion with sufficient information to conclude that the category of actions does not have a significant effect, individually or in the aggregate, on the human environment and provide this substantiation in a written record that is made publicly available as part of the notice and comment process (§ 1507.3(b)(1) and (2)); and

(iii) Describe how the agency will consider extraordinary circumstances consistent with § 1501.4(b) of this subchapter;

(9) Include a process for reviewing the agency's categorical exclusions at least every 10 years, which the agency may conduct on a rolling basis, starting with its oldest categorical exclusions;

(10) Include processes for reevaluating and supplementing environmental assessments and environmental impact statements, as appropriate;

(11) Explain where interested persons can get information or status reports on environmental impact statements, environmental assessments, and other elements of the NEPA process; and

(12) Where an agency has applicants that seek its action, include procedures to allow an applicant (including an applicant-directed contractor) to prepare environmental assessments and environmental impact statements under the agency's supervision. Such procedures shall not apply to applicants when they serve as joint lead agencies. Such procedures shall be consistent with § 1506.5(a) and (c) of this subchapter, and at a minimum shall include the following:

(i) Requirements that the agency review and approve the purpose and need (§§ 1501.5(c)(2)(i) or 1502.13 of this subchapter) and reasonable alternatives (§§ 1501.5(c)(2)(ii) or 1502.14 of this subchapter);

(ii) A process for the agency to independently evaluate the applicant-prepared ~~an~~ environmental assessment or environmental impact statement; take responsibility for its accuracy, scope, and contents; and document the agency's evaluation in the document; and

(iii) A prohibition on the preparation of a finding of no significant impact or ~~into its formal administrative record, if such a record~~ of decision by applicant exists.

(df) Agency procedures also may:

(1) Identify activities or decisions that are not subject to NEPA;

FINAL RULE REGULATORY MARKUP

(2) Include processes for consideration of emergency actions that would not result in significant effects;

~~(3)~~ (4) Include specific criteria for providing limited exceptions to the provisions of the regulations in this subchapter for classified proposals. These are proposed actions that are specifically authorized under criteria established by an Executive order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order or statute. Agencies may safeguard and restrict from public dissemination environmental assessments and environmental impact statements that address classified proposals in accordance with agencies' own regulations applicable to classified information. Agencies should organize these documents so that classified portions are included as annexes, so that the agencies can make the unclassified portions available to the public; and-

~~(4)~~ Provide for periods of time other than those presented in § 1506.11 of this chapter § 1506.10 of this subchapter when necessary to comply with other specific statutory requirements, including requirements of lead or cooperating agencies.

~~(3) Provide that, where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the agency may publish the notice of intent required by § 1501.9(d) of this chapter at a reasonable time in advance of preparation of the draft statement. Agency procedures shall provide for publication of supplemental notices to inform the public of a pause in its preparation of an environmental impact statement and for any agency decision to withdraw its notice of intent to prepare an environmental impact statement.~~

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

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

~~[85 FR 43373, July 16, 2020, as amended at 87 FR 23469, Apr. 20, 2022]~~

§ 1507.4 Agency NEPA program information.

(a) To allow agencies and the public to efficiently and effectively access information about NEPA reviews, agencies shall provide for agency websites or other information technology tools means to make available ~~environmental~~ documents, relevant notices, and other relevant information for use by agencies, applicants, and interested persons. The website or other Such means of publication shall include the agency's NEPA procedures, including those of subunits, and a list of environmental assessments and environmental impact statements that are in development and complete. As appropriate, agencies also should ~~may~~ include:

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

FINAL RULE REGULATORY MARKUP

- (2) ~~A directory of pending and final~~ environmental documents;
 - (3) Agency policy documents, orders, terminology, and explanatory materials regarding agency decision-making processes;
 - (4) Agency planning program information, plans, and planning tools; and
 - (5) A database searchable by geographic information, document status, document type, and project type.
- (b) Agencies shall provide for efficient and effective interagency coordination of their environmental program websites ~~and other information technology tools, such as, including~~ use of shared databases or application programming ~~interfaces~~~~interface~~, in their implementation of NEPA and related authorities.

PART 1508—DEFINITIONS

1508.1 Definitions.

1508.2 [Reserved]

Authority: ~~42 U.S.C. 4321-4347; 42 U.S.C. 4371-4375; 42 U.S.C. 7609;~~ and E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

Source: 85 FR 43374, July 16, 2020, unless otherwise noted.

§ 1508.1 Definitions.

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

- (a) **Act or NEPA** means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.).
- (b) **Affecting** means will or may have an effect on.

(c) **Applicant** means a non-Federal entity, including a project sponsor, that seeks an action by a Federal agency such as granting a permit, license, or financial assistance.

(d)(e) **Authorization** means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to implement a proposed action.

(e) **Categorical exclusion** means a category of actions that ~~an~~~~the~~ agency has determined, in its agency NEPA procedures ~~{§ 1507.3 of this chapter}~~~~(§ 1507.3 of this subchapter) or pursuant to § 1501.4(c) of this subchapter,~~ normally ~~does~~ not have a significant effect on the human environment.

FINAL RULE REGULATORY MARKUP

(f) *Communities with environmental justice concerns* means those communities that may not experience environmental justice as defined in paragraph (m) of this section. To assist in identifying communities with environmental justice concerns, agencies may use available screening tools, such as the Climate and Economic Justice Screening Tool and the EJScreen Tool, as appropriate to their activities and programs. Agencies also may develop procedures for the identification of such communities in their agency NEPA procedures.

(g) *Cooperating agency* means any Federal, ~~agency (and a State, Tribal, or local agency with agreement of the lead agency) other than a lead agency that has~~ jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal that has been designated by the lead agency. (or a reasonable alternative) for legislation or other major Federal action that may significantly affect the quality of the human environment.

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

(i) *Effects or impacts* means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and include the following:

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

(2) 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.

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

(4) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, such as disproportionate and adverse effects on communities with environmental justice concerns, whether direct, indirect, or cumulative. Effects also include effects on Tribal resources and climate change-related effects, including the contribution of a proposed action and its alternatives to climate change, and the reasonably foreseeable effects of climate change on the proposed action and its alternatives. Effects may also include those resulting from actions which may have both beneficial and adversedetrimental effects, even if on balance the agency believes that the effects will be beneficial.

(j) *Environmental assessment* means a concise public document, for which prepared by a Federal agency is responsible, for an action that is not likely to have a significant effect or for which the significance of the effects is unknown (§ 1501.5 of this subchapter), that is used to support aid an agency's compliance with the Act and support its determination of whether to prepare an

FINAL RULE REGULATORY MARKUP

environmental impact statement (part 1502 of this subchapter) or a finding of no significant impact, ~~as provided in § 1501.6 of this chapter (§ 1501.6 of this subchapter).~~

~~(k)~~ **Environmental document** means an environmental assessment, environmental impact statement, documented categorical exclusion determination, finding of no significant impact, record of decision, or notice of intent.

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

(m) Environmental justice means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision making and other Federal activities that affect human health and the environment so that people:

(1) Are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and

(2) Have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

(n) Environmentally preferable alternative means the alternative or alternatives that will best promote the national environmental policy as expressed in section 101 of NEPA.

(o) Extraordinary circumstances means factors or circumstances that indicate a normally categorically excluded action may have a significant effect. Examples of extraordinary circumstances include potential substantial effects on sensitive environmental resources; potential substantial disproportionate and adverse effects on communities with environmental justice concerns; potential substantial effects associated with climate change; and potential substantial effects on historic properties or cultural resources.

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

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

~~(r)~~ **Human environment or environment** means comprehensively the natural and physical environment and the relationship of present and future generations ~~of Americans~~ with that environment. (See also the definition of "effects" in paragraph (g) paragraph (i) of this section.)

FINAL RULE REGULATORY MARKUP

(s) *Joint lead agency* means a Federal, State, Tribal, or local agency designated pursuant to § 1501.7(c) that shares the responsibilities of the lead agency for preparing the environmental impact statement or environmental assessment.

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

(u) *Lead agency* means the Federal agency that proposes or agencies, in the agency action or is designated pursuant to § 1501.7(c) ~~for case of joint lead agencies,~~ preparing or having taken primary responsibility for preparing the environmental impact statement or environmental assessment.

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

(w) *Major Federal action or action* means an action that the agency carrying out such action determines is activity or decision subject to substantial Federal control and responsibility. ~~subject to the following:~~

(1) Examples of Major Federal actions generally include:

(i) Granting authorizations, including permits, licenses, rights-of-way, or other authorizations.

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

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

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

(v) Approval of or carrying out specific agency projects, such as construction or management activities.

(vi) Providing more than a minimal amount of financial assistance, including through grants, cooperative agreements, loans, loan guarantees, or other forms of financial assistance, where the agency has the authority to deny in whole or in part the assistance due to environmental effects, has authority to impose conditions on the receipt of the financial assistance to address environmental effects, or otherwise has sufficient control and responsibility over the subsequent use of the financial assistance or the effects of the activity for which the agency is providing the financial assistance.

(2) Major Federal actions do action does not include the following activities or decisions:

(i) Non-Federal actions:

FINAL RULE REGULATORY MARKUP

(A) With no or minimal Federal funding; or

(B) With no or minimal Federal involvement where the Federal agency cannot control the outcome of the project;

(ii) Funding assistance solely in the form of general revenue sharing funds that do not provide Federal agency compliance or enforcement responsibility over the subsequent use of such funds;

(iii) Loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effects of the action;

(iv) Business loan guarantees provided by the Small Business Administration pursuant to section 7(a) or (b) and of the Small Business Act (and), or title V of the Small Business Investment Act of 1958 (through);

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

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

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

(viii) Activities or decisions for projects approved by a Tribal Nation that occur on or involve land held ~~do not result in trust or restricted status by final agency action under the United States for Administrative Procedure Act or other statute that also includes a finality requirement;~~

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

(v) Funding assistance solely in the benefit form of that Tribal Nation or by general revenue sharing funds with no Federal agency control over the Tribal Nation when subsequent use of such activities or decisions involve no or funds;

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

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

(2) Major Federal actions may include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal

FINAL RULE REGULATORY MARKUP

agencies; ~~new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§ 1506.8 of this chapter).~~

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

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

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

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

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

~~(r) **Matter** means ~~includes~~ for purposes of part 1504 of this chapter part 1504 of this subchapter: ÷~~

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

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

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

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

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

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

FINAL RULE REGULATORY MARKUP

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

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

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

~~(aa)~~ **Notice of intent** means a public notice that an agency will prepare and consider an environmental impact statement or, as applicable, an environmental assessment. -

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

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

~~(dd)~~ Participating Federal agency means a Federal agency participating in an environmental review or authorization of an action.

~~(ee)~~ Programmatic environmental document means an environmental impact statement or environmental assessment analyzing all or some of the environmental effects of a policy, program, plan, or group of related actions.

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

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

~~(hh)~~ **Reasonable alternatives** means a reasonable range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action.

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

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

FINAL RULE REGULATORY MARKUP

(~~k~~~~ee~~) **Scope** consists of the range and breadth of actions, alternatives, and effects~~impacts~~ to be considered in an environmental impact statement. ~~The scope of an individual statement may depend on its relationships to other statements (§ 1501.11 of this chapter or environmental assessment.)~~

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

(~~m~~) **Significant effects** means adverse effects that an agency has identified as significant based on the criteria in § 1501.3(d) of this subchapter.

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

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

~~[85 FR 43378, July 16, 2020, as amended at 87 FR 23469]~~ (~~oo~~) **Tiering** refers to the process described in § 1501.11 of this subchapter by which an environmental document may rely on an existing and broader or more general environmental document.

, Apr. 20, 2022]

§ 1508.2 [Reserved]