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Title 40 —Protection of Environment
Chapter V —Council on Environmental Quality
Subchapter A —National Environmental Policy Act Implementing Regulations

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.

PART 1505—NEPA AND AGENCY DECISION MAKING

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 43369, July 16, 2020, as amended at 89 FR 35554, May 1, 2024, unless otherwise noted.

§ 1505.1 [Reserved]

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

At the time of its decision (§ 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:

- (a) State the decision.
- (b) Identify alternatives considered by the agency in reaching its decision. The agency also shall specify the environmentally preferable alternative or alternatives (§ 1502.14(f) of this subchapter). The agency may discuss preferences among alternatives based on relevant factors, including environmental, economic, and technical considerations and agency statutory missions. The 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.
- (c) State whether the agency has adopted all practicable means to mitigate environmental harm from the alternative selected, and if not, why the agency did not. Mitigation shall be enforceable when the record of decision incorporates mitigation and the analysis of the reasonably foreseeable effects of the proposed action is based on implementation of 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(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 agency shall:
 - (1) Include appropriate conditions in grants, permits, or other approvals; and
 - (2) Condition funding of actions on mitigation.
- (b) The lead or cooperating agency should, where relevant and appropriate, incorporate into its decision mitigation measures that address or ameliorate significant human health and environmental effects of 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 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 the mitigation into a record of decision, finding of no significant impact, or separate decision document.
- (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;
 - (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.