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Title 40 —Protection of Environment

Chapter V —Council on Environmental Quality

Subchapter A —National Environmental Policy Act Implementing Regulations

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.

PART 1504—DISPUTE RESOLUTION AND PRE-DECISIONAL REFERRALS

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 43367, July 16, 2020, as amended at 89 FR 35554, May 1, 2024, 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.
- (c) Under section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)), other Federal agencies may prepare reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These agencies must make these reviews 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 referrals and response.

- (a) Federal agencies should make environmental referrals 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, considering:
 - (1) Possible violation of national environmental standards or policies;
 - (2) Severity;
 - (3) Geographical scope;
 - (4) Duration;
 - (5) Importance as precedents;
 - (6) Availability of environmentally preferable alternatives;
 - (7) Economic and technical considerations, including the economic costs of delaying or impeding the decision making of the agencies involved in the action; and
 - (8) Other appropriate considerations.
- (b) 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
 - (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.
- (e) 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.
- (f) Applicants or other interested persons may provide views in writing to the Council no later than the response.
- (g) 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.
- (h) The Council shall take no longer than 60 days to complete the actions specified in paragraph (g)(2), (3), or (5) of this section.
- (i) The referral process is not intended to create any private rights of action or to be judicially reviewable because any voluntary resolutions by the agency parties do not represent final agency action and instead are only provisional and dependent on later consistent action by the action agencies.