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

Part 1508 Definitions

§ 1508.1 Definitions.

§ 1508.2 [Reserved]

PART 1508—DEFINITIONS

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.

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§ 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) **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 agency has determined, in its agency NEPA procedures (§ 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.
- (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, State, Tribal, or local agency with jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal that has been designated by the lead agency.

- (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 effects 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 adverse effects, even if on balance the agency believes that the effects will be beneficial.
- (j) **Environmental assessment** means a concise public document, for which 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 an agency's determination of whether to prepare an environmental impact statement (part 1502 of this subchapter) or a finding of no significant impact (§ 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.
- (l) **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 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 with that environment. (See also the definition of "effects" in paragraph (i) of this section.)
- (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 the agency action or is designated pursuant to § 1501.7(c) for preparing or having 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 subject to substantial Federal control and responsibility.
 - (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, 5 U.S.C. 551 *et seq.*, or other statutes; implementation of treaties and international conventions or agreements, including those implemented pursuant to statute or regulation; formal documents establishing an agency's policies 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 not include the following:

- (i) Non-Federal actions:
 - (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 (15 U.S.C. 636(a) and (b)), or title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 through 697g);
- (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 in trust or restricted status by the United States for the benefit of that Tribal Nation or by the Tribal Nation when such activities or decisions involve no or minimal Federal funding or other Federal involvement.

(x) **Matter** means for purposes of 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.
- (y) **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 to those adverse effects. Mitigation includes, in general order of priority:
 - (1) Avoiding the adverse effect altogether by not taking a certain action or parts of an action.
 - (2) Minimizing the adverse effect by limiting the degree or magnitude of the action and its implementation.
 - (3) Rectifying the adverse effect by repairing, rehabilitating, or restoring the affected environment.
 - (4) Reducing or eliminating the adverse effect over time by preservation and maintenance operations during the life of the action.
 - (5) Compensating for the adverse effect 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) **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 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) **Reasonably foreseeable** means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.
- (jj) **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.

- (kk) **Scope** consists of the range and breadth of actions, alternatives, and effects to be considered in an environmental impact statement or environmental assessment.
- (ll) **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.
- (mm) **Significant effects** means adverse effects that an agency has identified as significant based on the criteria in § 1501.3(d) of this subchapter.
- (nn) **Special expertise** means statutory responsibility, agency mission, or related program experience.
- (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.

[85 FR 43378, July 16, 2020, as amended at 87 FR 23469, Apr. 20, 2022]

§ 1508.2 [Reserved]