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

Part 1501 NEPA and Agency Planning

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PART 1501—NEPA AND AGENCY PLANNING

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§ 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 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 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 may have an impact on the human environment, as specified by § 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)(H) of NEPA.
 - (4) Provide for actions subject to NEPA that are planned by applicants 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 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 subchapter).

§ 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 NEPA applies, 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 chapter 5 of title 5, United States Code; or
 - (5) Whether the proposed activity or decision is a non-discretionary action with respect to which such agency 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 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 categorically excluded (§ 1501.4);
 - (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); or
 - (3) Is likely to have significant effects and is therefore appropriate for an environmental impact statement (part 1502 of this subchapter).
- (d) **Significance determination –context and intensity.** In considering whether an adverse effect of the proposed action is significant, agencies shall examine both the context of the action and the intensity of the effect. In assessing context and intensity, agencies should consider the duration of the effect. Agencies may also consider the extent to which an effect is adverse at some points in time and beneficial in others (for example, in assessing the 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 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).
- (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 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.
- (iii) Whether the action may 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 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 Categorical exclusions.

- (a) For efficiency 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, the agency nevertheless may apply the categorical exclusion if the agency conducts an analysis and determines that the proposed action does not in fact have the potential to result in 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.
- (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.
- (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.

- (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) is applicable or has decided to prepare an environmental impact statement.
- (b) An agency may prepare an environmental assessment on any action 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;
 - (2) Briefly discuss the:
 - (i) Purpose and need for the proposed agency action;
 - (ii) Alternatives as required by section 102(2)(H) of NEPA; and
 - (iii) Environmental effects of the proposed action and alternatives;
 - (3) List the Federal 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 75 pages, not including any citations or appendices.
- (h) Agencies:
 - (1) Should supplement environmental assessments if a major Federal action is incomplete or ongoing, and:
 - (i) The 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 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.
- (j) Agencies generally should apply § 1502.21 of this subchapter to environmental assessments.
- (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.

§ 1501.6 Findings of no significant impact.

- (a) After completing an environmental assessment, 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 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 § 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 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 subchapter; or
 - (ii) The nature of the proposed action is one without precedent.
- (c) 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 (§ 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) 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 based on mitigation, the mitigated finding of no significant impact shall state the 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 monitoring and compliance plan for other mitigation as required by § 1505.3(c) of this subchapter.

§ 1501.7 Lead agency.

- (a) A lead agency shall supervise the preparation of an environmental impact statement or 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 agency may serve as a joint lead agency to prepare an environmental impact statement or environmental assessment (§ 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) of this section, the participating Federal 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, State, Tribal, or local agency or 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) 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 lead agency. The Council shall transmit a copy of the request 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) of this section.

- (f) Any potential lead agency may file a response no later than 20 days after a request is filed with the Council. As soon as possible, but not later than 40 days after receiving the request, the Council shall designate 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 requires preparation of an environmental impact statement, the lead and cooperating agencies shall evaluate it 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 evaluate the proposal in a single environmental assessment and 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;
 - (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 cooperating agencies;
 - (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 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.
- (b) Each cooperating agency shall:
 - (1) Participate in the NEPA process at the earliest practicable time.
 - (2) Participate in the scoping process (described in § 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 (§ 1501.10), 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.
- (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), or (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.

§ 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.
 - (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 (5 U.S.C. 552), 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).

§ 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 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;
- (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.
 - (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.
- (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.