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Title 40 —Protection of Environment

Chapter V —Council on Environmental Quality

Subchapter A —National Environmental Policy Act Implementing Regulations

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PART 1506—OTHER REQUIREMENTS OF NEPA

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 43370, July 16, 2020, as amended at 89 FR 35554, May 1, 2024, unless otherwise noted.

§ 1506.1 Limitations on actions during NEPA process.

- (a) Except as provided in paragraphs (b) and (c) of this section, until an agency issues a finding of no significant impact, as provided in § 1501.6 of this subchapter, or record of decision, as provided in § 1505.2 of this subchapter, no action concerning the proposal may be taken that would:
 - (1) Have an adverse environmental effect; or
 - (2) Limit the choice of reasonable alternatives.
- (b) If an agency is considering an application from an applicant 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) 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.

- (c) While work on a required environmental review for a program is in progress and an action is not covered by an existing environmental document, 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.
- (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, and decisions developed by State, Tribal, or local agencies. Except for cases covered by 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 draft or final environmental impact statement, environmental assessment, or portion thereof, or categorical exclusion determination, consistent with this section.
- (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.
 - (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 § 1506.9. 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 § 1506.9.
 - (2) Notwithstanding 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 a record of decision adopting the environmental impact statement of a lead agency without republication.
- (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, issue its finding of no significant impact, and provide notice consistent with § 1501.6 of this subchapter.
- (d) **Categorical exclusion determinations.** An agency may adopt another agency's determination that a categorical exclusion applies to a particular proposed action if the action covered by that determination and the adopting agency's proposed action are substantially the same. In such circumstances, the adopting agency shall:
 - (1) Document its 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 subchapter.

- (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 (§ 1501.3(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 a 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.
- (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.
 - (1) The agency should assist the applicant by outlining the types of information required for the preparation of environmental documents.
 - (2) The agency shall independently evaluate the information submitted by the applicant and, to the extent it is integrated into the environmental document, 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.
 - (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 a contractor, such as in the list of preparers for environmental impact statements (§ 1502.18 of this subchapter). It is the intent of this paragraph (c)(3) that acceptable work not be redone, but that it be verified by the agency.
 - (4) The lead agency or, where appropriate, a cooperating agency shall prepare a disclosure statement for the contractor's execution specifying that the contractor has no 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.** Nothing in this section is intended to prohibit an agency from requesting any person, including the applicant, to submit information to it or to prohibit any person from submitting information to an agency for use in preparing environmental documents.

§ 1506.6 Methodology and scientific accuracy.

- (a) Agencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents.
- (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.

§ 1506.7 Further guidance.

- (a) The Council may provide further guidance concerning NEPA and its procedures.
- (b) To the extent that Council guidance issued prior to July 1, 2024 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 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 subchapter and 1506.10:
- (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 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 Filing requirements.

- (a) Agencies shall file environmental impact statements together with comments and responses with the Environmental Protection Agency, Office of Federal Activities, consistent with the Environmental Protection Agency's procedures.
- (b) Agencies shall file statements with the Environmental Protection Agency no earlier than they are also transmitted to participating agencies and made available to the public. The Environmental Protection Agency may issue guidelines to agencies to implement its responsibilities under this section and § 1506.10.
- (c) Agencies shall file an adoption of an environmental impact statement with the Environmental Protection Agency (see § 1506.3(b)(1)).

§ 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 not make or issue a record of decision under § 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) of this section for a draft environmental impact statement.
 - (2) 30 days after publication of the notice described in 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) of this section for a proposed action in the following circumstances:

- (1) Some agencies have formally established administrative review processes (e.g., appeals, objections, protests), which may be initiated prior to or after filing and publication of the final environmental impact statement with the Environmental Protection Agency, that allow other agencies or the public to raise issues about 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 of the decision and the 30-day period set forth in 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 and provide notification consistent with § 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) 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 § 1506.9, as described in 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 and 90-day periods may run concurrently. However, subject to 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) of this section and provide notification consistent with § 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(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 may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period it shall notify the Council.

§ 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant effects without observing the provisions of the regulations in this subchapter, the Federal agency taking the action shall consult with the Council about alternative arrangements for compliance with section 102(2)(C) of NEPA. Agencies and the Council shall 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.

§ 1506.12 Effective date.

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