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Title 40 —Protection of Environment

Chapter V —Council on Environmental Quality

Subchapter A —National Environmental Policy Act Implementing Regulations

Part 1502 Environmental Impact Statement

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PART 1502—ENVIRONMENTAL IMPACT STATEMENT

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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§ 1502.1 Purpose of environmental impact statement.

- (a) The primary purpose of an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA is to serve as an action-forcing device by ensuring agencies consider the environmental effects of their action in decision making, so that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government.
- (b) Environmental impact statements shall provide full and fair discussion of significant effects and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse effects or enhance the quality of the human environment. Agencies shall focus on important environmental issues and reasonable alternatives and shall reduce paperwork and the accumulation of extraneous background data.
- (c) Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. Federal agencies shall use environmental impact statements in conjunction with other relevant material to plan actions, involve the public, and make decisions.

§ 1502.2 Implementation.

To achieve the purposes set forth in § 1502.1, agencies shall prepare environmental impact statements in the following manner:

- (a) Environmental impact statements shall not be encyclopedic.
- (b) Environmental impact statements shall discuss effects in proportion to their significance. There shall be only brief discussion of other than important issues. As in an environmental assessment and finding of no significant impact, there should be only enough discussion to show why more study is not warranted.
- (c) Environmental impact statements shall be analytical, concise, and no longer than necessary to comply with NEPA and with the regulations in this subchapter. Length should be proportional to potential environmental effects and the scope and complexity of the action.
- (d) Environmental impact statements shall state how alternatives considered in them and decisions based on them will or will not achieve the requirements of sections 101 and 102(1) of NEPA, the regulations in this subchapter, and other environmental laws and policies.
- (e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the decision maker.
- (f) Agencies shall not commit resources prejudicing the selection of alternatives before making a decision (see also § 1506.1 of this subchapter).
- (g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

§ 1502.3 Statutory requirements for environmental impact statements.

As required by section 102(2)(C) of NEPA, environmental impact statements are to be included in every Federal agency recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

§ 1502.4 Scoping.

- (a) **Purpose.** Agencies shall use scoping, an early and open process consistent with § 1501.9 of this subchapter, to determine the scope of issues for analysis in an environmental impact statement, including identifying the important issues and eliminating from further study unimportant issues. Scoping should begin as soon as practicable after the proposal for action is sufficiently developed for agency consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intent (see §§ 1501.3 and 1501.9 of this subchapter).
- (b) **Scoping outreach.** When preparing an environmental impact statement, agencies shall facilitate notification to persons and agencies who may be interested or affected by an agency's proposed action, consistent with § 1501.9 of this subchapter. As part of the scoping process, the lead agency may hold a scoping meeting or meetings, publish scoping information, or use other means to communicate with those persons or agencies who may be interested or affected, which the agency may integrate with any other early planning meeting.
- (c) **Inviting participation.** As part of the scoping process, and consistent with § 1501.9 of this subchapter, the lead agency shall invite the participation of likely affected Federal, State, Tribal, and local agencies and governments as cooperating or participating agencies, as appropriate; any applicant; and other likely affected or interested persons (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.
- (d) **Additional scoping responsibilities.** As part of the scoping process, the lead agency shall:
 - (1) Identify and eliminate from detailed study the issues that are not important or have been covered by prior environmental review(s) (§§ 1501.12 and 1506.3 of this subchapter), narrowing the discussion of these issues in the environmental impact statement to a brief presentation of why they will not be important or providing a reference to their coverage elsewhere.
 - (2) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.
 - (3) Indicate any publicly available environmental assessments and other environmental impact statements that are being or will be prepared and are related to but are not part of the scope of the environmental impact statement under consideration.
 - (4) Identify other environmental review, authorization, and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently and integrated with the environmental impact statement, as provided in § 1502.24.
 - (5) Indicate the relationship between the timing of the preparation of environmental analyses and the agencies' tentative planning and decision-making schedule.
- (e) **Notice of intent.** As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an environmental impact statement, the lead agency shall publish a notice of intent to prepare an environmental impact statement in the FEDERAL REGISTER. In addition to the FEDERAL REGISTER notice, an agency also may publish notification in accordance with § 1501.9 of this subchapter. The notice shall include, as appropriate:
 - (1) The purpose and need for the proposed agency action;
 - (2) A preliminary description of the proposed action and alternatives the environmental impact statement will consider;

- (3) A brief summary of expected effects;
 - (4) Anticipated permits and other authorizations;
 - (5) A schedule for the decision-making process;
 - (6) A description of the public scoping process, including any scoping meeting(s);
 - (7) A request for comment on alternatives and effects, as well as on relevant information, studies, or analyses with respect to the proposed action;
 - (8) Contact information for a person within the agency who can answer questions about the proposed action and the environmental impact statement;
 - (9) Identification of any cooperating and participating agencies, and any information that such agencies require in the notice to facilitate their decisions or authorizations that will rely upon the resulting environmental impact statement; and
 - (10) A unique identification number for tracking purposes, which the agency shall reference on all environmental documents prepared for the proposed action and in any database or tracking system for such documents.
- (f) **Notices of withdrawal or cancellation.** If an agency withdraws, cancels, or otherwise ceases the consideration of a proposed action before completing a final environmental impact statement, the agency shall publish a notice in the FEDERAL REGISTER.
- (g) **Revisions.** An agency shall revise the determinations made under paragraphs (b), (c), and (d) of this section if substantial changes are made later in the proposed action, or if important new circumstances or information arise that bear on the proposal or its effects.

§ 1502.5 Timing.

An agency should commence preparation of an environmental impact statement as close as practicable to the time the agency is developing or receives a proposal so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve as an important practical contribution to the decision-making process and will not be used to rationalize or justify decisions already made (§§ 1501.2 of this subchapter and 1502.2). For instance:

- (a) For projects directly undertaken by Federal agencies, the agency shall prepare the environmental impact statement at the feasibility analysis or equivalent stage evaluating whether to proceed with the project and may supplement it at a later stage, if necessary.
- (b) For applications to the agency requiring an environmental impact statement, the agency shall commence the statement as soon as practicable after receiving the complete application. Federal agencies should work together and with potential applicants and applicable State, Tribal, and local agencies and governments prior to receipt of the application.
- (c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances, the statement may follow preliminary hearings designed to gather information for use in the statement.
- (d) For informal rulemaking, the draft environmental impact statement shall normally accompany the proposed rule.

§ 1502.6 Interdisciplinary preparation.

Agencies shall prepare environmental impact statements using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of NEPA). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1502.4 of this subchapter).

§ 1502.7 Page limits.

The text of final environmental impact statements, not including citations or appendices, shall not exceed 150 pages except for proposals of extraordinary complexity, which shall not exceed 300 pages.

§ 1502.8 Writing.

Agencies shall write environmental impact statements in plain language and should use, as relevant, appropriate visual aids or charts so that decision makers and the public can readily understand such statements. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which shall be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

§ 1502.9 Draft, final, and supplemental statements.

- (a) **Generally.** Except for proposals for legislation as provided in § 1506.8 of this subchapter, agencies shall prepare environmental impact statements in two stages and, where necessary, supplement them as provided in paragraph (d)(1) of this section.
- (b) **Draft environmental impact statements.** Agencies shall prepare draft environmental impact statements in accordance with the scope decided upon in the scoping process (§ 1502.4 of this subchapter). The lead agency shall work with the cooperating agencies and shall obtain comments as required in part 1503 of this subchapter. To the fullest extent practicable, the draft statement must meet the requirements established for final statements in section 102(2)(C) of NEPA and in the regulations in this subchapter. If the agency determines that a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and publish a supplemental draft of the appropriate portion. At appropriate points in the draft statement, the agency shall discuss all major points of view on the environmental effects of the alternatives, including the proposed action.
- (c) **Final environmental impact statements.** Final environmental impact statements shall consider and respond to comments as required in part 1503 of this subchapter. At appropriate points in the final statement, the agency shall discuss any responsible opposing view that was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.
- (d) **Supplemental environmental impact statements.** Agencies:
 - (1) Shall prepare supplements to either draft or final environmental impact statements 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 adverse effects that bear on the analysis.

- (2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.
- (3) Shall prepare, publish, and file a supplement to an environmental impact statement (exclusive of scoping (§ 1502.4 of this subchapter)) as a draft and final environmental impact statement, as is appropriate to the stage of the environmental impact statement involved, unless the Council approves alternative arrangements (§ 1506.11 of this subchapter).
- (e) **Reevaluation.** An agency may reevaluate an environmental impact statement to determine that the agency does need to prepare a supplement under paragraph (d) of this section. The agency should document its finding consistent with its agency NEPA procedures (§ 1507.3 of this subchapter), or, if necessary, prepare a supplemental environmental assessment and finding of no significant impact.

§ 1502.10 Recommended format.

- (a) Agencies shall use a format for environmental impact statements that will encourage good analysis and clear presentation of the alternatives, including the proposed action. Agencies should use the following standard format for environmental impact statements unless the agency determines that there is a more effective format for communication:
 - (1) Cover (§ 1502.11);
 - (2) Summary (§ 1502.12);
 - (3) Table of contents;
 - (4) Purpose of and need for action (§ 1502.13);
 - (5) Alternatives including the proposed action (sections 102(2)(C)(iii) and 102(2)(H) of NEPA) (§ 1502.14);
 - (6) Affected environment and environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA) (§§ 1502.15 and 1502.16); and
 - (7) Appendices (§ 1502.19), including the summary of scoping information (§ 1502.17) and the list of preparers (§ 1502.18).
- (b) If an agency uses a different format, it shall include paragraph (a) of this section, as further described in §§ 1502.11 through 1502.19, in any appropriate format.

§ 1502.11 Cover.

The environmental impact statement cover shall not exceed one page and shall include:

- (a) A list of the lead, joint lead, and, to the extent feasible, any cooperating agencies;
- (b) The title of the proposed action that is the subject of the statement (and, if appropriate, the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction(s), if applicable) where the action is located;
- (c) The name, address, and telephone number of the person at the agency who can supply further information;
- (d) A designation of the statement as a draft, final, or draft or final supplement;
- (e) A one-paragraph abstract of the statement;

- (f) The date by which the agency must receive comments (computed in cooperation with the Environmental Protection Agency under § 1506.10 of this subchapter); and
- (g) The identification number included in the notice of intent (§ 1502.4(e)(10)).

§ 1502.12 Summary.

Each environmental impact statement shall contain a summary that adequately and accurately summarizes the statement. The summary shall include the major conclusions and summarize any disputed issues raised by agencies and the public, any issues to be resolved, and key differences among alternatives, and identify the environmentally preferable alternative or alternatives. Agencies shall write the summary in plain language and should use, as relevant, appropriate visual aids and charts. The summary normally should not exceed 15 pages.

§ 1502.13 Purpose and need.

The environmental impact statement shall include a statement that briefly summarizes the underlying purpose and need for the proposed agency action.

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§ 1502.14 Alternatives including the proposed action.

The alternatives section is the heart of the environmental impact statement. The alternatives section should identify the reasonably foreseeable environmental effects of the proposed action and the alternatives in comparative form based on the information and analysis presented in the sections on the affected environment (§ 1502.15) and the environmental consequences (§ 1502.16). In doing so, the analysis should sharply define the issues for the decision maker and the public and provide a clear basis for choice among options. In this section, agencies shall:

- (a) Rigorously explore and objectively evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination. The agency need not consider every conceivable alternative to a proposed action; rather, it shall consider a reasonable range of alternatives that will foster informed decision making. Agencies also may include reasonable alternatives not within the jurisdiction of the lead agency.
- (b) Discuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits.
- (c) Include the no action alternative.
- (d) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
- (e) Include appropriate mitigation measures not already included in the proposed action or alternatives.
- (f) Identify the environmentally preferable alternative or alternatives amongst the alternatives considered in the environmental impact statement. The environmentally preferable alternative will best promote the national environmental policy expressed in section 101 of NEPA by maximizing environmental benefits, such as addressing climate change-related effects or disproportionate and adverse effects on communities with environmental justice concerns; protecting, preserving, or enhancing historic, cultural, Tribal, and natural resources, including rights of Tribal Nations that have been reserved through treaties,

statutes, or Executive Orders; or causing the least damage to the biological and physical environment. The environmentally preferable alternative may be the proposed action, the no action alternative, or a reasonable alternative.

§ 1502.15 Affected environment.

- (a) The environmental impact statement shall succinctly describe the environment of the area(s) to be affected by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area(s).
- (b) Agencies shall use high-quality information, including reliable data and resources, models, and Indigenous Knowledge, to describe reasonably foreseeable environmental trends, including anticipated climate-related changes to the environment, and when such information is incomplete or unavailable, provide relevant information consistent with § 1502.21. This description of the affected environment, including existing environmental conditions, reasonably foreseeable trends, and planned actions in the area, should inform the agency's analysis of environmental consequences and mitigation measures (§ 1502.16).
- (c) The environmental impact statement may combine the description of the affected environment with evaluation of the environmental consequences (§ 1502.16). The description should be no longer than necessary to understand the relevant affected environment and the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the effect, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§ 1502.16 Environmental consequences.

- (a) The environmental consequences section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA that are within the scope of the environmental impact statement and as much of section 102(2)(C)(iii) of NEPA as is necessary to support the comparisons. The comparison of the proposed action and reasonable alternatives shall be based on the discussion of their reasonably foreseeable effects and the significance of those effects (§ 1501.3 of this subchapter), focusing on the significant or important effects. The no action alternative should serve as the baseline against which the proposed action and other alternatives are compared. This section should not duplicate discussions required by § 1502.14 and shall include an analysis of:
 - (1) Any adverse environmental effects that cannot be avoided should the proposal be implemented.
 - (2) The effects of the no action alternative, including any adverse environmental effects;
 - (3) The relationship between short-term uses of the human environment and the maintenance and enhancement of long-term productivity;
 - (4) Any irreversible or irretrievable commitments of Federal resources that would be involved in the proposal should it be implemented;
 - (5) Where applicable, possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local plans, policies, and controls for the area concerned, including those addressing climate change (§ 1506.2(d) of this subchapter);

- (6) Where applicable, climate change-related effects, including, where feasible, quantification of greenhouse gas emissions, from the proposed action and alternatives and the effects of climate change on the proposed action and alternatives;
 - (7) Where applicable, energy requirements and conservation potential of various alternatives and mitigation measures;
 - (8) Where applicable, natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures;
 - (9) Where applicable, relevant risk reduction, resiliency, or adaptation measures incorporated into the proposed action or alternatives, informed by relevant science and data on the affected environment and expected future conditions;
 - (10) Where applicable, urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures;
 - (11) Means to mitigate adverse environmental effects (if not fully covered under § 1502.14(e));
 - (12) Where applicable, economic and technical considerations, including the economic benefits of the proposed action; and
 - (13) Where applicable, disproportionate and adverse human health and environmental effects on communities with environmental justice concerns.
- (b) Economic or social effects by themselves do not require preparation of an environmental impact statement. However, when the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss these effects on the human environment.

§ 1502.17 Summary of scoping information.

- (a) The draft environmental impact statement or appendix shall include a summary of information, including alternatives and analyses, submitted by commenters during the scoping process for consideration by the lead and cooperating agencies in their development of the environmental impact statement.
- (b) The agency shall append to the draft environmental impact statement or publish all comments (or summaries thereof where the response has been exceptionally voluminous) received during the scoping process.

§ 1502.18 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or important background papers, including basic components of the statement. Where possible, the environmental impact statement shall identify the persons who are responsible for a particular analysis, including analyses in background papers. Normally the list will not exceed two pages.

§ 1502.19 Appendix.

If an agency prepares an appendix, the agency shall publish it with the environmental impact statement, and it shall consist of, as appropriate:

- (a) Material prepared in connection with an environmental impact statement (as distinct from material that is not so prepared and is incorporated by reference (§ 1501.12 of this subchapter)).
- (b) Material substantiating any analysis fundamental to the impact statement.
- (c) Material relevant to the decision to be made.
- (d) For draft environmental impact statements, all comments (or summaries thereof where the response has been exceptionally voluminous) received during the scoping process that identified information for the agency's consideration.
- (e) For final environmental impact statements, the comment summaries and responses consistent with § 1503.4 of this chapter.

§ 1502.20 Publication of the environmental impact statement.

Agencies shall publish the entire draft and final environmental impact statements and unchanged statements as provided in § 1503.4(c) of this subchapter. The agency shall transmit the entire statement electronically (or in paper copy, if requested due to economic or other hardship) to:

- (a) Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State, Tribal, or local agency authorized to develop and enforce environmental standards.
- (b) The applicant, if any.
- (c) Any person, organization, or agency requesting the entire environmental impact statement.
- (d) In the case of a final environmental impact statement, any person, organization, or agency that submitted substantive comments on the draft.

§ 1502.21 Incomplete or unavailable information.

- (a) When an agency is evaluating reasonably foreseeable significant effects on the human environment in an environmental impact statement, and there is incomplete or unavailable information, the agency shall make clear that such information is lacking.
- (b) If the incomplete information relevant to reasonably foreseeable significant effects is essential to a reasoned choice among alternatives, and the overall costs of obtaining it are not unreasonable, the agency shall include the information in the environmental impact statement.
- (c) If the information relevant to reasonably foreseeable significant effects cannot be obtained because the overall costs of obtaining it are unreasonable or the means to obtain it are not known, the agency shall include within the environmental impact statement:
 - (1) A statement that such information is incomplete or unavailable;
 - (2) A statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant effects on the human environment;
 - (3) A summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant effects on the human environment; and
 - (4) The agency's evaluation of such effects based upon theoretical approaches or research methods generally accepted in the scientific community.

- (d) For the purposes of this section, “reasonably foreseeable” includes effects that have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the effects is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

§ 1502.22 Cost-benefit analysis.

If an agency is considering a cost-benefit analysis for the proposed action relevant to the choice among alternatives with different environmental effects, the agency shall incorporate the cost-benefit analysis by reference or append it to the statement as an aid in evaluating the environmental consequences. In such cases, to assess the adequacy of compliance with section 102(2)(B) of NEPA (ensuring appropriate consideration of unquantified environmental amenities and values in decision making, along with economical and technical considerations), the statement shall discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, agencies need not display the weighing of the merits and drawbacks of the various alternatives in a monetary cost-benefit analysis and should not do so when there are important qualitative considerations. However, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, that are likely to be relevant and important to a decision.

§ 1502.23 [Reserved]

§ 1502.24 Environmental review and consultation requirements.

- (a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrent and integrated with environmental impact analyses and related surveys and studies required by all other Federal environmental review laws and Executive orders applicable to the proposed action, including the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*), and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).
- (b) The draft environmental impact statement shall list all Federal permits, licenses, and other authorizations that must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other authorization is necessary, the draft environmental impact statement shall so indicate.