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Title 29 — Labor

Subtitle A — Office of the Secretary of Labor

Part 11 Department of Labor National Environmental Policy Act (NEPA) Compliance Procedures

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PART 11—DEPARTMENT OF LABOR NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE PROCEDURES

Authority: NEPA, (42 U.S.C. 4321 *et seq.*), Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977) and Council on Environmental Quality Regulations (National Environmental Policy Act, Implementation of Procedural Provisions) 40 CFR parts 1500-1508 (43 FR 55978).

Source: 45 FR 51188, Aug. 1, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 11.1 Purpose and scope.

- (a) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) directs that, “to the fullest extent possible, * * * the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth” in the Act for the preservation of the environment. As a means for achieving this objective, Executive Order 11991 of May 24, 1977 (amending E.O. 11514 of March 5, 1970) directed the Council on Environmental Quality (CEQ) to issue uniform regulations for implementation of NEPA by all Federal agencies. These regulations were published in final form on November 29, 1978 (43 FR 55978) as 40 CFR parts 1500-1508. The CEQ’s NEPA regulations require that each Federal agency adopt implementing procedures to supplement their regulations (40 CFR 1507.3). Accordingly, the purpose of this part is to prescribe procedures to be followed by Department of Labor

agencies when such agencies are contemplating actions which may be subject to the requirements of NEPA. These regulations do not replace 40 CFR parts 1500-1508; rather they are to be read together with, and as a supplement to, the CEQ's regulations.

- (b) It is the responsibility of each agency to comply with the policies set forth in NEPA to the fullest extent possible and consistent with its statutory authority. Each agency shall comply with all applicable requirements of this part except where compliance would be inconsistent with other statutory requirements. However, no trivial violation of, or noncompliance with, these procedures shall give rise to an independent cause of action (cf. 40 CFR 1500.3 and 1507.3(b)).

§ 11.2 Applicability.

Although all Department of Labor agencies are subject to NEPA, only three of its agencies routinely propose or consider actions which may require the preparation of environment assessments or environmental impact statements. These are the Occupational Safety and Health Administration (OSHA), which acts pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*); the Mine Safety and Health Administration (MSHA), which acts pursuant to the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801, *et seq.*); and the Office of Job Corps which purchases and leases land and constructs Job Corps centers pursuant to the Workforce Investment Act of 1998 (29 U.S.C. 2801, *et seq.*). Therefore, these procedures have been designed primarily with the duties and rulemaking processes of these agencies in mind. If and when other Department of Labor agencies propose actions requiring environmental impact analyses, they shall use these procedures, to the extent that they are applicable, in performing such analyses.

[45 FR 51188, Aug. 1, 1980, as amended at 72 FR 37098, July 9, 2007]

§ 11.3 Responsible agency officials.

- (a) The Assistant Secretary for Policy shall be responsible for the following:
 - (1) Overall review of Department of Labor agency compliance with the requirements of NEPA, the CEQ's regulations and these Departmental procedures;
 - (2) Maintaining contacts with CEQ and the Environmental Protection Agency (EPA) as the Departmental NEPA liaison; and
 - (3) Preparing and coordinating Departmental comments in response to environmental impact statements prepared by other Federal agencies which have been submitted to the Department for review, as required by 40 CFR 1503.2.
- (b) Assistant Secretaries of Labor and other officials of equivalent rank or responsibility (hereinafter "agency heads") shall be responsible for their agencies' compliance with NEPA.
 - (1) These responsibilities shall include the following:
 - (i) Assuring that the agencies under their control observe the requirements of 40 CFR 1507.2 on compliance capability;
 - (ii) Preparing environmental impact assessments and statements in accordance with the requirements of these regulations and 40 CFR parts 1501 and 1502, and advising private applicants, or other non-Federal entities, of the possible need for information foreseeably required for later Federal action pursuant to 40 CFR 1501.2(d);

- (iii) Assuring public participation in the NEPA process in accordance with 40 CFR parts 1503 and 1506;
 - (iv) Commenting on environmental impact statements prepared by other agencies, when their agencies have jurisdiction by law or special expertise with respect to any environmental impacts connected with a proposed action, as required by 40 CFR part 1503;
 - (v) Assuring that environmental documents prepared by their agencies accompany proposed actions through existing agency review processes, and that, along with other relevant materials, and consistent with 40 CFR 1505.1(e), the full range of alternatives discussed in these documents are considered in the planning of agency actions and in the making of decisions and that the alternatives considered are encompassed by those discussed in the documents; and
 - (vi) Assuring, where possible, the mitigation of adverse environmental effects of agency actions.
- (2) In accordance with 40 CFR 1506.5(c), agency heads will also be responsible for assuring the quality of environmental impact statements prepared by their agencies. Where environmental impact statements will be prepared by a contractor, the agency heads will assure that their agencies furnish guidance to the contractor, participate in the document's preparation, independently evaluate the statement prior to approval and take responsibility for the scope and contents.
- (c) Agency heads may designate program offices or individuals as NEPA contacts for their agencies. The name and address of the NEPA contact shall be included on the cover sheet of each environmental document published by the agency, or if no cover sheet is provided, the name and address of this office or individual shall be included with any instructions to the public on obtaining further information or submitting comments on the document.
- (1) It shall be the duty of an agency's NEPA contact to know the status of all environmental documents being prepared by the agency or in cooperation with another agency.
 - (2) The NEPA contact shall receive and respond to inquiries concerning the status of all environmental documents being prepared within the agency or in cooperation with another agency.

[45 FR 51188, Aug. 1, 1980, as amended at 71 FR 16665, Apr. 3, 2006]

Subpart B—Administrative Procedures

§ 11.10 Identification of agency actions.

Pursuant to the CEQ definition of “major Federal action” (40 CFR 1508.18) and 40 CFR 1507.3(b)(2), the following paragraphs identify and classify Department of Labor actions which: normally will not require preparation of an environmental document (i.e. an environmental assessment or an environmental impact statement); or usually will require preparation of an environmental document.

- (a) **OSHA/MSHA actions.** Actions of the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) are classified as follows:
 - (1) **Categorically excluded actions.** OSHA/MSHA actions listed in the following Table will normally qualify for categorical exclusion from NEPA requirements: i.e., such actions do not require preparation of either an environmental assessment or an environmental impact statement, because they do not have a significant impact on the quality of the human environment. Classification as a categorical

exclusion, however, does not prohibit OSHA or MSHA from preparing an environmental assessment or environmental impact statement on any of the following actions when OSHA or MSHA determines it to be appropriate. Also, in extraordinary circumstances where a normally excluded action is found to have a potentially significant environmental effect, OSHA or MSHA shall prepare an environmental assessment and/or an environmental impact statement as required.

OSHA/MSHA CATEGORICAL EXCLUSIONS

Type of action	Reason for exclusion
(i) Promulgation, modification or revocation of any safety standard. Examples of these actions are: Machine guarding requirements, safety lines, warning signals, etc	Safety standards promote injury avoidance by means of mechanical applications or work practices, the effects of which do not impact on air, water or soil quality, plant or animal life, the use of land or other aspects of the human environment.
(ii) Approval of petitions for variances from MSHA/OSHA safety standards or OSHA health standards	Variances are taken from existing standards. Thus environmental documents, as appropriate, will already have been prepared. In terms of worker health and safety, any variance must be at least as effective as the original standard.
(iii) Agency legislative requests for appropriations	Exempted by 40 CFR 1508.17.
(iv) Recordkeeping and reporting requirements	No possibility of significant environmental impact.
(v) Routine agency personnel actions	Such actions typically involve small numbers of individuals and have no possibility of significant environmental impact.
(vi) Training of employers, employees, agency personnel and others in the recognition, avoidance or abatement of occupational hazards. Providing consultative services to industry	These actions involve educational activities which have no possibility of significant environmental impact.
(vii) Enforcement proceedings	Exempted by 40 CFR 1508.18.
(viii) Equipment approvals	No possibility of significant environmental impact.
(ix) State grants under Sec. 503 of the Federal Mine Safety and Health Act	These grants assist States in developing and implementing laws to improve mine safety and health and to promote coordination between State and Federal governments. They have no possibility of significant environmental impact.
(x) Certification or qualification	No possibility of significant environmental impact.

Type of action	Reason for exclusion
proceedings	

- (2) **Actions requiring environmental assessment.** Several classes of OSHA/MSHA actions normally require the preparation of an environmental assessment prior to determining whether either a finding of no significant impact or an environmental impact statement must be prepared. (However, OSHA or MSHA may proceed to prepare an environmental impact statement, without first preparing an environmental assessment, if it determines such action to be appropriate or necessary, as provided by 40 CFR 1501.3(a)). Actions in this classification include:
- (i) Promulgation, modification or revocation of a health standard; and
 - (ii) Approval or revocation of State plans for the enforcement of safety and health standards (not applicable to MSHA).
- (3) **Actions requiring preparation of an environmental impact statement.** Preparation of an environmental impact statement will always be required for proposals for promulgation, modification or revocation of health standards which will significantly affect air, water or soil quality, plant or animal life, the use of land or other aspects of the human environment.
- (4) **Emergency temporary standards.** Situations requiring the issuance of emergency temporary standards (issued for a period of up to six months, pursuant to section 6(c) of the Occupational Safety and Health Act of 1970, and for a period of up to nine months, pursuant to section 101(b) of the Federal Mine Safety and Health Act of 1977) are of such nature that the provisions of 40 CFR parts 1500 *et seq.* may not be strictly observable. Pursuant to 40 CFR 1506.11, however, OSHA and MSHA will consult with the Council on Environmental Quality in connection with such situations, and will, in any event, prepare environmental assessments or environmental impact statements, as appropriate, on any proposed permanent regulation to be promulgated for the purpose of replacing the temporary action.
- (b) **Real property actions.** Actions that will involve construction, or the purchase or lease of property, in connection with the establishment or substantial alteration of a Job Corps center, of any similar Job Corps facility, or other property actions of a similar character by another agency, will normally require the preparation of an environmental assessment prior to determining whether either a finding of no significant impact or an environmental impact statement must be prepared.
- (c) **Other Departmental actions.** Certain actions taken to implement other Department of Labor programs will normally qualify for categorical exclusion from NEPA requirements. These matters are excluded because the possibility of environmental impact is remote. However, classification as a categorical exclusion does not prohibit or release an agency from preparing an environmental assessment or environmental impact statement when the agency determines it to be appropriate. These actions include:
- (1) Office of Workforce Investment activities and related placement, counseling, recruitment, information, testing, certification and associated actions;
 - (2) Apprenticeship activities and related certification and technical assistance actions;

- (3) Training activities, other than Job Corps, including work experience, classroom training and public service employment;
- (4) Unemployment insurance, trade adjustment assistance, workers' compensation programs, retirement programs, employee protection programs, and related employees benefit programs or activities involving the replacement or regulation of employee wages;
- (5) Wage and hour programs to protect low-income workers, eliminate discriminatory employment practices, prevent curtailment of employment and earnings for certain groups of workers, minimize loss of income due to indebtedness, protect farm and migrant labor and related activities;
- (6) Contract compliance programs to ensure equal employment opportunity and related actions;
- (7) Labor-management relations activities and activities of labor organizations, employers and their officers or representatives;
- (8) Research, evaluation, development and information collection projects related to any of the aforementioned activities;
- (9) Labor statistics programs; and
- (10) Matters involving personnel policy, procurement policy, freedom of information and privacy policy, and related matters of Departmental management.

[45 FR 51188, Aug. 1, 1980, as amended at 72 FR 37098, July 9, 2007]

§ 11.11 Development of environmental analyses and documents.

- (a) Potential environmental effects of agency actions shall begin to be examined at the time a topic for potential action is submitted to the agency staff for research, proposal development, or other consideration. During this stage the agency shall determine whether the type of action which may be proposed may be categorically excluded from NEPA environmental analysis requirements pursuant to § 11.10. If the type of action being considered is not categorically excluded, or is an extraordinary case of a normally excluded action which may have significant environmental impacts, development of the information needed to make an environmental assessment shall begin. Actions described in § 11.10(b) shall be submitted to the Assistant Secretary for Administration and Management at this point, pursuant to applicable Departmental procedures, for appropriate review, including a determination with respect to whether or not the action is located in or near a floodplain or wetlands area in connection with the requirements of Executive Orders 11988 and 11990.
- (b) When information gathered during the early stages of proposal development indicates that preparation of an environmental impact statement will be required, the agency shall begin preparation of such a document by initiating the scoping process in accordance with 40 CFR 1501.7. However, if the information is not clearly indicative of the need for preparation of an environmental impact statement, an environmental assessment shall be prepared.
- (c) Agencies are encouraged, in developing environmental assessments, to explore all factors which it may become necessary to examine should it be determined that preparation of an environmental impact statement is necessary, even though some of those factors, such as economic and social effects, "are not intended by themselves to require preparation of an environmental impact statement" (40 CFR 1508.14). Thus in making environmental assessments of real property actions described in § 11.10(b), agencies are encouraged to consider the following factors, among others:

- (1) The nature and degree of any former use of a proposed facility and the number of individuals the facility formerly served, as compared with its use and population to be served under the new proposal;
 - (2) The population of the area (numbers, density and makeup);
 - (3) Community facilities and services, taking into consideration capacity and present and former use, including: Health services (hospitals, physicians), business and community development policy, recreational facilities (parks, theaters), fire and police protection, schools, energy resources, waste disposal, water, traffic and roadway systems, sewage systems, communications, and public transportation;
 - (4) The proximity of the facility to residential areas;
 - (5) The potential impact on the quality of drinking water, air quality, noise levels, designated scenic areas, land use, soil quality (including drainage or erosion problems), buildings valued for their design or which are otherwise locally significant, the listing or eligibility for listing of a site in the National Register for Historic places, consistent with the requirements of 20 CFR 684.24a where applicable, neighborhood character, and health and safety of residents;
 - (6) The potential impact on natural systems and resources including rivers and streams, forests, wetlands, floodplains, wilderness areas or places, and species designated for preservation, including species of plants and animals and their critical habitats as identified in regulations published by the Secretary of the Interior (50 CFR chapter I, part 17), and by the Secretary of Commerce (50 CFR chapter II, parts 217, 222.23, 223, and 227.4); and
 - (7) Other considerations appropriate in light of the nature and size of the project.
- (d) If an agency determines, on the basis of an environmental assessment, that preparation of an environmental impact statement is not required, notice of a finding of no significant impact and the availability of the environmental assessment shall be prepared and published in the FEDERAL REGISTER. In the case of proposed rulemaking, the notice of a finding of no significant impact may be published in the FEDERAL REGISTER at any time prior to the publication of the proposed action, or it may be included in the FEDERAL REGISTER notice of proposed rulemaking. Issuance of a finding of no significant impact at the proposal stage of rulemaking shall not foreclose further consideration of environmental issues during the rulemaking proceedings. Therefore the Department of Labor notes that, consistent with 40 CFR 1500.3, the finding shall not be considered final until promulgation of the rule involved (the action affecting the environment).
- (1) If it is determined that preparation of an environmental impact statement is not required for an action, but that action is one which would normally require the preparation of an environmental impact statement, an action closely similar to one which would normally require the preparation of an environmental impact statement, or an action without precedent in this regard, the agency shall make a preliminary finding of no significant impact available for public review and comment. In accordance with 40 CFR 1501.4(e)(2), this finding shall be made available for at least 30 days before a final determination is made as to whether an environmental impact statement will be prepared, and before any public record may be closed and the proposed action may become effective.
 - (2) Although not required by 40 CFR 1501.4(e)(2), an agency may use the procedure described in § 11.11(d)(1) whenever the agency determines it to be appropriate.

- (e) If it is determined on the basis of an environmental assessment, prepared in connection with an action described in § 11.10(b), that preparation of an environmental impact statement is required, or that public review is required in connection with actions in floodplains or wetlands that do not require environmental impact statements under E.O. 11988 or E.O. 11990, the agency shall consider altering the proposed action or changing the site of the proposed project, and shall proceed with preparation of an environmental impact statement or appropriate public review actions only after obtaining written authorization from the Assistant Secretary for Administration and Management.
- (f) Filing of any draft environmental impact statement with the Environmental Protection Agency (EPA), pursuant to 40 CFR 1506.9, and circulation to the public, will ordinarily coincide with publication of the proposed agency action, which is the subject of that document, in the FEDERAL REGISTER. In any event, the statement will be made available for public comment for at least a 45-day period.
- (g) The final decision on the proposed action shall be made not earlier than 90 days following publication of EPA's notice of the filing of the draft environmental impact statement, and, except as provided below, not earlier than 30 days following publication of EPA's notice of the filing of the final environmental impact statement.
 - (1) In accordance with 40 CFR 1506.10, 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 30-day time period noted above and publish a decision on a final rule simultaneously with publication of the notice of the availability of the final environmental impact statement. Therefore, Departmental agencies (such as OSHA and MSHA) meeting these requirements, may file and circulate the final environmental impact statement at the same time a notice of decision is being published, provided that the final rule or action may not become effective for at least 30 days from the date of publication of the EPA's notice of filing of the final environmental impact statement.
 - (2) If a supplement to a final environmental impact statement is prepared, it shall be incorporated into the rulemaking record. If the supplement is prepared following the close of the rulemaking record and is based on, or introduces, new data or major new alternatives or analyses, the rulemaking record will be reopened for at least 30 days to receive public comments. The final action may not become effective for at least 30 days following EPA publication of the filing of the supplemental statement.
- (h) In accordance with 40 CFR 1505.2, when an agency prepares a final environmental impact statement, the agency shall prepare a concise public record of decision detailing what the decision was, what alternatives were considered (specifying the environmentally preferable alternative), how those considerations entered into the decision, and whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, the reason they were not. This record may be contained in, or integrated with, the preamble to the FEDERAL REGISTER notice of final action or in any other public document considered appropriate by the agency.

§ 11.12 Content and format of environmental documents.

- (a) An environmental assessment may be prepared in any format considered effective by the agency involved. When such a document is prepared in connection with a proposed action, it must be made readily available to the public either by placement into the public record (with public notice provided in accordance with 40 CFR part 1506) or by publication in the FEDERAL REGISTER. The preamble to the FEDERAL REGISTER notice of proposed rulemaking may be considered the environmental assessment provided that the document contains the elements required by 40 CFR 1508.9(b).

- (b) A finding of no significant impact (40 CFR 1508.13) may be prepared in any format considered to be effective or necessary by the agency involved in the proposed action.
- (c) The finding of no significant impact, and the environmental assessment on which it was based, as well as any comments received in response to these documents shall be included in the public record of the proposed action.
- (d) Department of Labor agencies shall comply with the format requirements for environmental impact statements as set forth at 40 CFR 1502.10, except when an agency determines that there is a compelling reason to do otherwise, such as more effective communication or reduced duplication of effort and paperwork (40 CFR 1506.4). For example, in OSHA/MSHA informal rulemaking proceedings, environmental documents may be combined with the FEDERAL REGISTER notice of proposed or final rulemaking. Filing and circulation of the combined preamble/environmental document shall be in accordance with the requirements of 40 CFR 1506.9.
- (e) The final environmental impact statement shall contain any changes in information or supplemental information received since the filing and circulation of the draft environmental impact statement, as well as a summary, or copies of the substantive comments received in response to the draft environmental impact statement. If such changes and comments are minor, an agency may circulate only the changes and comments, including responses to the comments, rather than the entire impact statement, to the extent permitted by 40 CFR 1502.19. However, the entire document, with a new cover sheet, shall be filed with EPA and placed in the rulemaking record.

§ 11.13 Public participation.

- (a) When an agency has determined that preparation of an environmental impact statement is required, the agency shall publish a notice of intent to prepare an environmental impact statement in the FEDERAL REGISTER and shall invite public participation in the agency's scoping process as required by 40 CFR 1501.7.
- (b) When the draft environmental impact statement has been prepared and filed with the EPA pursuant to § 11.11(f), comments on the document shall be solicited from appropriate Federal, State and local agencies, Indian tribes, and other persons or organizations who may be interested or affected, as required by 40 CFR 1503.1.
- (c) In the case of an action with effects primarily of local concern, agencies shall consider the use of clearinghouses, newspapers and other public media likely to generate local participation in the agency process as ways of supplementing the notices otherwise specified in this part. The use of such public media does not, however, require or authorized the use of paid advertising.

§ 11.14 Legislation.

Notwithstanding any provisions of this part, environmental assessments or impact statements prepared in connection with requests for new legislation or modification of existing statutes shall be handled in accordance with applicable OMB and Department of Labor procedures on the preparation and submission of legislative proposals and the requirements of 40 CFR 1506.8.