

SUBCHAPTER A—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING REGULATIONS

PART 1500—PURPOSE AND POLICY

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SOURCE: 85 FR 43357, July 16, 2020, unless otherwise noted.

§ 1500.1 Purpose and policy.

(a) The National Environmental Policy Act (NEPA) is a procedural statute intended to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process. Section 101 of NEPA establishes the national environmental policy of the Federal Government to use all practicable means and measures to foster and promote the general welfare, create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. Section 102(2) of NEPA establishes the procedural requirements to carry out the policy stated in section 101 of NEPA. In particular, it requires Federal agencies to provide a detailed statement on proposals for major Federal actions significantly affecting the quality of the human environment. The purpose and function of NEPA is satisfied if Federal agencies have considered relevant environmental information, and the public has been informed regarding the decision-making process. NEPA does not mandate particular results or substantive outcomes. NEPA's purpose is not to generate paperwork or litigation, but to provide for informed decision making and foster excellent action.

(b) The regulations in this subchapter implement section 102(2) of

NEPA. They provide direction to Federal agencies to determine what actions are subject to NEPA's procedural requirements and the level of NEPA review where applicable. The regulations in this subchapter are intended to ensure that relevant environmental information is identified and considered early in the process in order to ensure informed decision making by Federal agencies. The regulations in this subchapter are also intended to ensure that Federal agencies conduct environmental reviews in a coordinated, consistent, predictable and timely manner, and to reduce unnecessary burdens and delays. Finally, the regulations in this subchapter promote concurrent environmental reviews to ensure timely and efficient decision making.

§ 1500.2 [Reserved]

§ 1500.3 NEPA compliance.

(a) *Mandate.* This subchapter is applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 *et seq.*) (NEPA or the Act), except where compliance would be inconsistent with other statutory requirements. The regulations in this subchapter are issued pursuant to NEPA; the Environmental Quality Improvement Act of 1970, as amended (Pub. L. 91-224, 42 U.S.C. 4371 *et seq.*); section 309 of the Clean Air Act, as amended (42 U.S.C. 7609); Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970), as amended by Executive Order 11991, Relating to the Protection and Enhancement of Environmental Quality (May 24, 1977); and Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (August 15, 2017). The regulations in this subchapter apply to the whole of section 102(2) of NEPA. The provisions of the Act and the regulations in this subchapter must be read

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together as a whole to comply with the law.

(b) *Exhaustion.* (1) To ensure informed decision making and reduce delays, agencies shall include a request for comments on potential alternatives and impacts, and identification of any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment in the notice of intent to prepare an environmental impact statement (§1501.9(d)(7) of this chapter).

(2) The draft and final environmental impact statements shall include a summary of all alternatives, information, and analyses submitted by State, Tribal, and local governments and other public commenters for consideration by the lead and cooperating agencies in developing the draft and final environmental impact statements (§1502.17 of this chapter).

(3) For consideration by the lead and cooperating agencies, State, Tribal, and local governments and other public commenters must submit comments within the comment periods provided, and comments shall be as specific as possible (§§1503.1 and 1503.3 of this chapter). Comments or objections of any kind not submitted, including those based on submitted alternatives, information, and analyses, shall be forfeited as unexhausted.

(4) Informed by the submitted alternatives, information, and analyses, including the summary in the final environmental impact statement (§1502.17 of this chapter) and the agency's response to comments in the final environmental impact statement (§1503.4 of this chapter), together with any other material in the record that he or she determines relevant, the decision maker shall certify in the record of decision that the agency considered all of the alternatives, information, and analyses, and objections submitted by States, Tribal, and local governments and other public commenters for consideration by the lead and cooperating agencies in developing the environmental impact statement (§1505.2(b) of this chapter).

(c) *Review of NEPA compliance.* It is the Council's intention that judicial review of agency compliance with the regulations in this subchapter not

occur before an agency has issued the record of decision or taken other final agency action. It is the Council's intention that any allegation of noncompliance with NEPA and the regulations in this subchapter should be resolved as expeditiously as possible. Consistent with their organic statutes, and as part of implementing the exhaustion provisions in paragraph (b) of this section, agencies may structure their procedures to include an appropriate bond or other security requirement.

(d) *Remedies.* Harm from the failure to comply with NEPA can be remedied by compliance with NEPA's procedural requirements as interpreted in the regulations in this subchapter. It is the Council's intention that the regulations in this subchapter create no presumption that violation of NEPA is a basis for injunctive relief or for a finding of irreparable harm. The regulations in this subchapter do not create a cause of action or right of action for violation of NEPA, which contains no such cause of action or right of action. It is the Council's intention that any actions to review, enjoin, stay, vacate, or otherwise alter an agency decision on the basis of an alleged NEPA violation be raised as soon as practicable after final agency action to avoid or minimize any costs to agencies, applicants, or any affected third parties. It is also the Council's intention that minor, non-substantive errors that have no effect on agency decision making shall be considered harmless and shall not invalidate an agency action.

(e) *Severability.* The sections of this subchapter are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is the Council's intention that the validity of the remainder of those parts shall not be affected, with the remaining sections to continue in effect.

§ 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Using categorical exclusions to define categories of actions that normally do not have a significant effect

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on the human environment and therefore do not require preparation of an environmental impact statement (§1501.4 of this chapter).

(b) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and therefore does not require preparation of an environmental impact statement (§1501.6 of this chapter).

(c) Reducing the length of environmental documents by means such as meeting appropriate page limits (§§1501.5(f) and 1502.7 of this chapter).

(d) Preparing analytic and concise environmental impact statements (§1502.2 of this chapter).

(e) Discussing only briefly issues other than significant ones (§1502.2(b) of this chapter).

(f) Writing environmental impact statements in plain language (§1502.8 of this chapter).

(g) Following a clear format for environmental impact statements (§1502.10 of this chapter).

(h) Emphasizing the portions of the environmental impact statement that are useful to decision makers and the public (*e.g.*, §§1502.14 and 1502.15 of this chapter) and reducing emphasis on background material (§1502.1 of this chapter).

(i) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§1501.9 of this chapter).

(j) Summarizing the environmental impact statement (§1502.12 of this chapter).

(k) Using programmatic, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§1501.11 and 1502.4 of this chapter).

(l) Incorporating by reference (§1501.12 of this chapter).

(m) Integrating NEPA requirements with other environmental review and consultation requirements (§1502.24 of this chapter).

(n) Requiring comments to be as specific as possible (§1503.3 of this chapter).

(o) Attaching and publishing only changes to the draft environmental impact statement, rather than rewriting and publishing the entire statement when changes are minor (§1503.4(c) of this chapter).

(p) Eliminating duplication with State, Tribal, and local procedures, by providing for joint preparation of environmental documents where practicable (§1506.2 of this chapter), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§1506.3 of this chapter).

(q) Combining environmental documents with other documents (§1506.4 of this chapter).

§ 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Using categorical exclusions to define categories of actions that normally do not have a significant effect on the human environment (§1501.4 of this chapter) and therefore do not require preparation of an environmental impact statement.

(b) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§1501.6 of this chapter) and therefore does not require preparation of an environmental impact statement.

(c) Integrating the NEPA process into early planning (§1501.2 of this chapter).

(d) Engaging in interagency cooperation before or as the environmental assessment or environmental impact statement is prepared, rather than awaiting submission of comments on a completed document (§§1501.7 and 1501.8 of this chapter).

(e) Ensuring the swift and fair resolution of lead agency disputes (§1501.7 of this chapter).

(f) Using the scoping process for an early identification of what are and what are not the real issues (§1501.9 of this chapter).

(g) Meeting appropriate time limits for the environmental assessment and

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environmental impact statement processes (§1501.10 of this chapter).

(h) Preparing environmental impact statements early in the process (§1502.5 of this chapter).

(i) Integrating NEPA requirements with other environmental review and consultation requirements (§1502.24 of this chapter).

(j) Eliminating duplication with State, Tribal, and local procedures by providing for joint preparation of environmental documents where practicable (§1506.2 of this chapter) and with other Federal procedures by providing that agencies may jointly prepare or adopt appropriate environmental documents prepared by another agency (§1506.3 of this chapter).

(k) Combining environmental documents with other documents (§1506.4 of this chapter).

(l) Using accelerated procedures for proposals for legislation (§1506.8 of this chapter).

§ 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view policies and missions in the light of the Act's national environmental objectives, to the extent consistent with its existing authority. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to ensure full compliance with the purposes and provisions of the Act as interpreted by the regulations in this subchapter. The phrase "to the fullest extent possible" in section 102 of NEPA means that each agency of the Federal Government shall comply with that section, consistent with §1501.1 of this chapter. Nothing contained in the regulations in this subchapter is intended or should be construed to limit an agency's other authorities or legal responsibilities.

PART 1501—NEPA AND AGENCY PLANNING

Sec.

1501.1 NEPA thresholds.

1501.2 Apply NEPA early in the process.

1501.3 Determine the appropriate level of NEPA review.

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1501.4 Categorical exclusions.

1501.5 Environmental assessments.

1501.6 Findings of no significant impact.

1501.7 Lead agencies.

1501.8 Cooperating agencies.

1501.9 Scoping.

1501.10 Time limits.

1501.11 Tiering.

1501.12 Incorporation by reference.

AUTHORITY: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 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; and E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

SOURCE: 85 FR 43359, July 16, 2020, unless otherwise noted.

§ 1501.1 NEPA thresholds.

(a) In assessing whether NEPA applies or is otherwise fulfilled, Federal agencies should determine:

(1) Whether the proposed activity or decision is expressly exempt from NEPA under another statute;

(2) Whether compliance with NEPA would clearly and fundamentally conflict with the requirements of another statute;

(3) Whether compliance with NEPA would be inconsistent with Congressional intent expressed in another statute;

(4) Whether the proposed activity or decision is a major Federal action;

(5) Whether the proposed activity or decision, in whole or in part, is a non-discretionary action for which the agency lacks authority to consider environmental effects as part of its decision-making process; and

(6) Whether the proposed action is an action for which another statute's requirements serve the function of agency compliance with the Act.

(b) Federal agencies may make determinations under this section in their agency NEPA procedures (§1507.3(d) of this chapter) or on an individual basis, as appropriate.

(1) Federal agencies may seek the Council's assistance in making an individual determination under this section.

(2) An agency shall consult with other Federal agencies concerning their concurrence in statutory determinations made under this section where more than one Federal agency administers the statute.