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Agencies shall make use of reliable existing data and resources. Agencies may make use of any reliable data sources, such as remotely gathered information or statistical models. They shall identify any methodologies used and shall make explicit reference to the scientific and other sources relied upon for conclusions in the statement. Agencies may place discussion of methodology in an appendix. Agencies are not required to undertake new scientific and technical research to inform their analyses. Nothing in this section is intended to prohibit agencies from compliance with the requirements of other statutes pertaining to scientific and technical research.

§ 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.

PART 1503—COMMENTING ON ENVIRONMENTAL IMPACT STATEMENTS

Sec.

1503.1 Inviting comments and requesting information and analyses.

1503.2 Duty to comment.

1503.3 Specificity of comments and information.

1503.4 Response to comments.

AUTHORITY: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as

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amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123; E.O. 13807, 82 FR 40463, 3 CFR, 2017, Comp., p. 369.

SOURCE: 85 FR 43367, July 16, 2020, unless otherwise noted.

§ 1503.1 Inviting comments and requesting information and analyses.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards;

(ii) State, Tribal, or local governments that may be affected by the proposed action;

(iii) Any agency that has requested it receive statements on actions of the kind proposed;

(iv) The applicant, if any; and

(v) The public, affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action.

(3) Invite comment specifically on the submitted alternatives, information, and analyses and the summary thereof (§ 1502.17 of this chapter).

(b) An agency may request comments on a final environmental impact statement before the final decision and set a deadline for providing such comments. Other agencies or persons may make comments consistent with the time periods under § 1506.11 of this chapter.

(c) An agency shall provide for electronic submission of public comments, with reasonable measures to ensure the comment process is accessible to affected persons.

§ 1503.2 Duty to comment.

Cooperating agencies and agencies that are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority within the time period specified for

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comment in §1506.11 of this chapter. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that the environmental impact statement adequately reflects its views, it should reply that it has no comment.

§ 1503.3 Specificity of comments and information.

(a) To promote informed decision making, comments on an environmental impact statement or on a proposed action shall be as specific as possible, may address either the adequacy of the statement or the merits of the alternatives discussed or both, and shall provide as much detail as necessary to meaningfully participate and fully inform the agency of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and alternatives to the proposed action, as well as economic and employment impacts, and other impacts affecting the quality of the human environment. Comments should reference the corresponding section or page number of the draft environmental impact statement, propose specific changes to those parts of the statement, where possible, and include or describe the data sources and methodologies supporting the proposed changes.

(b) Comments on the submitted alternatives, information, and analyses and summary thereof (§1502.17 of this chapter) should be as specific as possible. Comments and objections of any kind shall be raised within the comment period on the draft environmental impact statement provided by the agency, consistent with §1506.11 of this chapter. If the agency requests comments on the final environmental impact statement before the final decision, consistent with §1503.1(b), comments and objections of any kind shall be raised within the comment period provided by the agency. Comments and objections of any kind not provided within the comment period(s) shall be considered unexhausted and forfeited, consistent with §1500.3(b) of this chapter.

(c) When a participating agency criticizes a lead agency's predictive methodology, the participating agency

should describe the alternative methodology that it prefers and why.

(d) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or authorizations.

(e) When a cooperating agency with jurisdiction by law specifies mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences, the cooperating agency shall cite to its applicable statutory authority.

§ 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall consider substantive comments timely submitted during the public comment period. The agency may respond to individual comments or groups of comments. In the final environmental impact statement, the agency may respond by:

(1) Modifying alternatives including the proposed action.

(2) Developing and evaluating alternatives not previously given serious consideration by the agency.

(3) Supplementing, improving, or modifying its analyses.

(4) Making factual corrections.

(5) Explaining why the comments do not warrant further agency response, recognizing that agencies are not required to respond to each comment.

(b) An agency shall append or otherwise publish all substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous).

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, an agency may write any changes on errata sheets and attach the responses to the statement instead of rewriting the

draft statement. In such cases, only the comments, the responses, and the changes and not the final statement need be published (§1502.20 of this chapter). The agency shall file the entire document with a new cover sheet with the Environmental Protection Agency as the final statement (§1506.10 of this chapter).

PART 1504—PRE-DECISIONAL REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec.

1504.1 Purpose.

1504.2 Criteria for referral.

1504.3 Procedure for referrals and response.

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

SOURCE: 85 FR 43367, July 16, 2020, unless otherwise noted.

§ 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Section 309 of the Clean Air Act (42 U.S.C. 7609) directs the Administrator of the Environmental Protection Agency to review and comment publicly on the environmental impacts of Federal activities, including actions for which agencies prepare environmental impact statements. If, after this review, the Administrator determines that the matter is “unsatisfactory from the standpoint of public health or welfare or environmental quality,” section 309 directs that the matter be referred to the Council (hereafter “environmental referrals”).

(c) Under section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)), other Federal agencies may prepare similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made

available to the President, the Council, and the public.

§ 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as practicable in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

- (a) Possible violation of national environmental standards or policies;
- (b) Severity;
- (c) Geographical scope;
- (d) Duration;
- (e) Importance as precedents;
- (f) Availability of environmentally preferable alternatives; and

(g) Economic and technical considerations, including the economic costs of delaying or impeding the decision making of the agencies involved in the action.

§ 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Notify the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached;

(2) Include such a notification whenever practicable in the referring agency’s comments on the environmental assessment or draft environmental impact statement;

(3) Identify any essential information that is lacking and request that the lead agency make it available at the earliest possible time; and

(4) Send copies of the referring agency’s views to the Council.

(b) The referring agency shall deliver its referral to the Council no later than 25 days after the lead agency has made the final environmental impact statement available to the Environmental Protection Agency, participating agencies, and the public, and in the case of an environmental assessment, no later than 25 days after the lead agency makes it available. Except when the lead agency grants an extension of this