

apply the regulations in this subchapter to ongoing activities and environmental documents begun before September 14, 2020.

PART 1507—AGENCY COMPLIANCE

Sec.

1507.1 Compliance.

1507.2 Agency capability to comply.

1507.3 Agency NEPA procedures.

1507.4 Agency NEPA program information.

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 43373, July 16, 2020, unless otherwise noted.

§ 1507.1 Compliance.

All agencies of the Federal Government shall comply with the regulations in this subchapter.

§ 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements of NEPA and the regulations in this subchapter. Such compliance may include use of the resources of other agencies, applicants, and other participants in the NEPA process, but the agency using the resources shall itself have sufficient capability to evaluate what others do for it and account for the contributions of others. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of NEPA to utilize a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making that may have an impact on the human environment. Agencies shall designate a senior agency official to be responsible for overall review of agency NEPA compliance, including resolving implementation issues.

(b) Identify methods and procedures required by section 102(2)(B) of NEPA to ensure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) of NEPA and cooperate on the development of statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources, consistent with section 102(2)(E) of NEPA.

(e) Comply with the requirements of section 102(2)(H) of NEPA that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of NEPA, Executive Order 11514, Protection and Enhancement of Environmental Quality, section 2, as amended by Executive Order 11991, Relating to Protection and Enhancement of Environmental Quality, and Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting for Infrastructure Projects.

§ 1507.3 Agency NEPA procedures.

(a) The Council has determined that the categorical exclusions contained in agency NEPA procedures as of September 14, 2020, are consistent with this subchapter.

(b) No more than 36 months after September 14, 2020, or 9 months after the establishment of an agency, whichever comes later, each agency shall develop or revise, as necessary, proposed procedures to implement the regulations in this subchapter. When the agency is a department, it may be efficient for major subunits (with the consent of the department) to adopt their own procedures.

(1) Each agency shall consult with the Council while developing or revising its proposed procedures and before publishing them in the FEDERAL REGISTER for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants.

Council on Environmental Quality

§ 1507.3

(2) Agencies shall provide an opportunity for public review and review by the Council for conformity with the Act and the regulations in this subchapter before adopting their final procedures. The Council shall complete its review within 30 days of the receipt of the proposed final procedures. Once in effect, the agency shall publish its NEPA procedures and ensure that they are readily available to the public.

(c) Agencies shall adopt, as necessary, agency NEPA procedures to improve agency efficiency and ensure that agencies make decisions in accordance with the Act's procedural requirements. Such procedures shall include:

(1) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process begins at the earliest reasonable time, consistent with §1501.2 of this chapter, and aligns with the corresponding decision points.

(2) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(3) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that decision makers use the statement in making decisions.

(4) Requiring that the alternatives considered by the decision maker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decision maker consider the alternatives described in the environmental documents. If another decision document accompanies the relevant environmental documents to the decision maker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

(5) Requiring the combination of environmental documents with other agency documents. Agencies may designate and rely on one or more procedures or documents under other statutes or Executive orders as satisfying some or all of the requirements in this

subchapter, and substitute such procedures and documentation to reduce duplication. When an agency substitutes one or more procedures or documents for the requirements in this subchapter, the agency shall identify the respective requirements that are satisfied.

(d) Agency procedures should identify those activities or decisions that are not subject to NEPA, including:

(1) Activities or decisions expressly exempt from NEPA under another statute;

(2) Activities or decisions where compliance with NEPA would clearly and fundamentally conflict with the requirements of another statute;

(3) Activities or decisions where compliance with NEPA would be inconsistent with Congressional intent expressed in another statute;

(4) Activities or decisions that are non-major Federal actions;

(5) Activities or decisions that are non-discretionary actions, in whole or in part, for which the agency lacks authority to consider environmental effects as part of its decision-making process; and

(6) Actions where the agency has determined that another statute's requirements serve the function of agency compliance with the Act.

(e) Agency procedures shall comply with the regulations in this subchapter except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by §§1501.2(b)(4) (assistance to applicants) and 1506.6(e) of this chapter (status information).

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment and do not have a significant effect on the human environment (categorical exclusions (§1501.4 of this chapter)). Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect. Agency NEPA

§ 1507.4

40 CFR Ch. V (7–1–23 Edition)

procedures shall identify when documentation of a categorical exclusion determination is required.

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(3) Procedures for introducing a supplement to an environmental assessment or environmental impact statement into its formal administrative record, if such a record exists.

(f) Agency procedures may:

(1) Include specific criteria for providing limited exceptions to the provisions of the regulations in this subchapter for classified proposals. These are proposed actions that are specifically authorized under criteria established by an Executive order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order or statute. Agencies may safeguard and restrict from public dissemination environmental assessments and environmental impact statements that address classified proposals in accordance with agencies' own regulations applicable to classified information. Agencies should organize these documents so that classified portions are included as annexes, so that the agencies can make the unclassified portions available to the public.

(2) Provide for periods of time other than those presented in §1506.11 of this chapter when necessary to comply with other specific statutory requirements, including requirements of lead or co-operating agencies.

(3) Provide that, where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the agency may publish the notice of intent required by §1501.9(d) of this chapter at a reasonable time in advance of preparation of the draft statement. Agency procedures shall provide for publication of supplemental notices to inform the public of a pause in its preparation of an environmental impact statement and for any agency decision to withdraw its notice of intent to prepare an environmental impact statement.

(4) Adopt procedures to combine its environmental assessment process with its scoping process.

(5) Establish a process that allows the agency to use a categorical exclusion listed in another agency's NEPA procedures after consulting with that agency to ensure the use of the categorical exclusion is appropriate. The process should ensure documentation of the consultation and identify to the public those categorical exclusions the agency may use for its proposed actions. Then, the agency may apply the categorical exclusion to its proposed actions.

[85 FR 43373, July 16, 2020, as amended at 87 FR 23469, Apr. 20, 2022]

§ 1507.4 Agency NEPA program information.

(a) To allow agencies and the public to efficiently and effectively access information about NEPA reviews, agencies shall provide for agency websites or other means to make available environmental documents, relevant notices, and other relevant information for use by agencies, applicants, and interested persons. Such means of publication may include:

(1) Agency planning and environmental documents that guide agency management and provide for public involvement in agency planning processes;

(2) A directory of pending and final environmental documents;

(3) Agency policy documents, orders, terminology, and explanatory materials regarding agency decision-making processes;

(4) Agency planning program information, plans, and planning tools; and

(5) A database searchable by geographic information, document status, document type, and project type.

(b) Agencies shall provide for efficient and effective interagency coordination of their environmental program websites, including use of shared databases or application programming interface, in their implementation of NEPA and related authorities.

PART 1508—DEFINITIONS

Sec.

1508.1 Definitions.

1508.2 [Reserved]

AUTHORITY: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR