40 CFR 1501 - NEPA AND AGENCY PLANNING

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Source: 43 FR 55992, Nov. 29, 1978, unless otherwise noted.

40 CFR 1501.1 - Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA’s policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

40 CFR 1501.2 - Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to “utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man’s environment,” as specified by § 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of...
available resources as provided by section 102(2)(E) of the Act.
(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:
(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.
(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.
(3) The Federal agency commences its NEPA process at the earliest possible time.

40 CFR 1501.3 - When to prepare an environmental assessment.
(a) Agencies shall prepare an environmental assessment (§ 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in § 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.
(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

40 CFR 1501.4 - Whether to prepare an environmental impact statement.
In determining whether to prepare an environmental impact statement the Federal agency shall:
(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:
(1) Normally requires an environmental impact statement, or
(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).
(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).
(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.
(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.
(e) Prepare a finding of no significant impact (§ 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.
(1) The agency shall make the finding of no significant impact available to the affected public as specified in § 1506.6.
(2) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental assessment.
impact statement and before the action may begin. The circumstances are:
(i) The proposed action is, or is closely similar to, one which normally
requires the preparation of an environmental impact statement under the procedures
adopted by the agency pursuant to § 1507.3, or
(ii) The nature of the proposed action is one without precedent.

40 CFR 1501.5 - Lead agencies.
(a) A lead agency shall supervise the preparation of an environmental impact statement
if
more than one Federal agency either:
(1) Proposes or is involved in the same action; or
(2) Is involved in a group of actions directly related to each other because of their
functional interdependence or geographical proximity.
(b) Federal, State, or local agencies, including at least one Federal agency, may act as
joint lead agencies to prepare an environmental impact statement (§ 1506.2).
(c) If an action falls within the provisions of paragraph (a) of this section the potential
lead agencies shall determine by letter or memorandum which agency shall be the lead
agency and which shall be cooperating agencies. The agencies shall resolve the lead
agency question so as not to cause delay. If there is disagreement among the agencies,
the
following factors (which are listed in order of descending importance) shall determine
lead agency designation:
(1) Magnitude of agency's involvement.
(2) Project approval/disapproval authority.
(3) Expertise concerning the action's environmental effects.
(4) Duration of agency's involvement.
(5) Sequence of agency's involvement.
(d) Any Federal agency, or any State or local agency or private person substantially
affected by the absence of lead agency designation, may make a written request to the
potential lead agencies that a lead agency be designated.
(e) If Federal agencies are unable to agree on which agency will be the lead agency or
if
the procedure described in paragraph (c) of this section has not resulted within 45 days
in
a lead agency designation, any of the agencies or persons concerned may file a request
with the Council asking it to determine which Federal agency shall be the lead agency.
A copy of the request shall be transmitted to each potential lead agency. The request
shall
consist of:
(1) A precise description of the nature and extent of the proposed action.
(2) A detailed statement of why each potential lead agency should or should not
be the lead agency under the criteria specified in paragraph (c) of this section.
(f) A response may be filed by any potential lead agency concerned within 20 days after
a
request is filed with the Council. The Council shall determine as soon as possible but
not
later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

40 CFR 1501.6 - Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency.

An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:
(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.
(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.
(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:
(1) Participate in the NEPA process at the earliest possible time.
(2) Participate in the scoping process (described below in § 1501.7).
(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.
(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.
(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

40 CFR 1501.7 - Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§ 1508.22) in the Federal Register except as provided in § 1507.3(e).

(a) As part of the scoping process the lead agency shall:
(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under §1507.3(c). An agency may give notice in accordance with §1506.6.

(2) Determine the scope (§1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in §1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency’s tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§1502.7).

(2) Set time limits (§1501.8).

(3) Adopt procedures under §1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

40 CFR 1501.8 - Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by §1506.10). When multiple agencies are involved the reference to agency below means lead
agency.
(a) The agency shall set time limits if an applicant for the proposed action requests them:
Provided, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.
(b) The agency may:
(1) Consider the following factors in determining time limits:
   (i) Potential for environmental harm.
   (ii) Size of the proposed action.
   (iii) State of the art of analytic techniques.
   (iv) Degree of public need for the proposed action, including the consequences of delay.
   (v) Number of persons and agencies affected.
   (vi) Degree to which relevant information is known and if not known the time required for obtaining it.
   (vii) Degree to which the action is controversial.
   (viii) Other time limits imposed on the agency by law, regulations, or executive order.
(2) Set overall time limits or limits for each constituent part of the NEPA process, which may include:
   (i) Decision on whether to prepare an environmental impact statement (if not already decided).
   (ii) Determination of the scope of the environmental impact statement.
   (iii) Preparation of the draft environmental impact statement.
   (iv) Review of any comments on the draft environmental impact statement from the public and agencies.
   (v) Preparation of the final environmental impact statement.
   (vi) Review of any comments on the final environmental impact statement.
   (vii) Decision on the action based in part on the environmental impact statement.
(3) Designate a person (such as the project manager or a person in the agency’s office with NEPA responsibilities) to expedite the NEPA process.
(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

40 CFR 1502--ENVIRONMENTAL IMPACT STATEMENT

Sec. 1502.1 Purpose.
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1502.3 Statutory requirements for statements.
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1502.25 Environmental review and consultation requirements.

Source: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

Sec. 1502.1 Purpose.
The primary purpose of an environmental impact statement is to serve as an actionforcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. 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. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

Sec. 1502.2 Implementation.
To achieve the purposes set forth in Sec. 1502.1 agencies shall prepare environmental impact statements in the following manner:
(a) Environmental impact statements shall be analytic rather than encyclopedic.
(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a 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 kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.
(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.
(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.
(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (Sec. 1506.1).
(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

Sec. 1502.3 Statutory requirements for statements.
As required by sec. 102(2)(C) of NEPA environmental impact statements (Sec. 1508.11) are to be included in every recommendation or report. On proposals (Sec. 1508.23). For legislation and (Sec. 1508.17). Other major Federal actions (Sec. 1508.18). Significantly (Sec. 1508.27). Affecting (Secs. 1508.3, 1508.8). The quality of the human environment (Sec. 1508.14).

Sec. 1502.4 Major Federal actions requiring the preparation of environmental impact statements.
(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (Sec. 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.
(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (Sec. 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.
(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:
1. Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.
2. Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject
matter.
3. By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (Sec. 1501.7), tiering (Sec. 1502.20), and other methods listed in Secs. 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

**Sec. 1502.5 Timing.**
An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (Sec. 1508.23) 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 practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (Secs. 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(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 statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

**Sec. 1502.6 Interdisciplinary preparation.**
Environmental impact statements shall be prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (Sec. 1501.7).

**Sec. 1502.7 Page limits.**
The text of final environmental impact statements (e.g., paragraphs (d) through (g) of
Sec. 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

Sec. 1502.8 Writing.
Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them.

Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

Sec. 1502.9 Draft, final, and supplemental statements.
Except for proposals for legislation as provided in Sec. 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.
(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.
(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency’s response to the issues raised.
(c) Agencies:
1. Shall prepare supplements to either draft or final environmental impact statements if:
   (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
   (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.
2. May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.
3. Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.
4. Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

Sec. 1502.10 Recommended format.
Agencies shall use a format for environmental impact statements which will encourage
good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.
(b) Summary.
(c) Table of contents.
(d) Purpose of and need for action.
(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).
(f) Affected environment.
(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).
(h) List of preparers.
(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.
(j) Index.
(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in Secs. 1502.11 through 1502.18, in any appropriate format.

Sec. 1502.11 Cover sheet.
The cover sheet shall not exceed one page. It shall include:
(a) A list of the responsible agencies including the lead agency and 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 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 comments must be received (computed in cooperation with EPA under Sec. 1506.10).

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

Sec. 1502.12 Summary.
Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues
to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

**Sec. 1502.13 Purpose and need.**
The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

**Sec. 1502.14 Alternatives including the proposed action.**
This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (Sec. 1502.15) and the Environmental Consequences (Sec. 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:
(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
(c) Include reasonable alternatives not within the jurisdiction of the lead agency.
(d) Include the alternative of no action.
(e) 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.
(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

**Sec. 1502.15 Affected environment.**
The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, 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.

**Sec. 1502.16 Environmental consequences.**
This section forms the scientific and analytic basis for the comparisons under Sec. 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the
proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in Sec. 1502.14. It shall include discussions of:
(a) Direct effects and their significance (Sec. 1508.8).
(b) Indirect effects and their significance (Sec. 1508.8).
(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See Sec. 1506.2(d).)
(d) The environmental effects of alternatives including the proposed action. The comparisons under Sec. 1502.14 will be based on this discussion.
(e) Energy requirements and conservation potential of various alternatives and mitigation measures.
(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.
(g) 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.
(h) Means to mitigate adverse environmental impacts (if not fully covered under Sec. 1502.14(f)).

[43 FR 55994, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1502.17 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 significant background papers, including basic components of the statement (Secs. 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

Sec. 1502.18 Appendix.
If an agency prepares an appendix to an environmental impact statement the appendix shall:
(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (Sec. 1502.21)).
(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.
(c) Normally be analytic and relevant to the decision to be made.
(d) Be circulated with the environmental impact statement or be readily available on request.

**Sec. 1502.19 Circulation of the environmental impact statement.**

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in Sec. 1502.18(d) and unchanged statements as provided in Sec. 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, **State 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 which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

**Sec. 1502.20 Tiering.**

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (Sec. 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

**Sec. 1502.21 Incorporation by reference.**

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

**Sec. 1502.22 Incomplete or unavailable information.**

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or
unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant 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 adverse impacts on the human environment;
3. a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and
4. the agency’s evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, “reasonably foreseeable” includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the Federal Register on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

**Sec. 1502.23 Cost-benefit analysis.**

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

**Sec. 1502.24 Methodology and scientific accuracy.**

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place
discussion of methodology in an appendix.

Sec. 1502.25 Environmental review and consultation requirements.
(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

40 CFR 1506 et seq.

40 CFR 1506.1 - Limitations on actions during NEPA process.
(a) Until an agency issues a record of decision as provided in § 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:
(1) Have an adverse environmental impact; or
(2) Limit the choice of reasonable alternatives.
(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.
(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:
(1) Is justified independently of the program;
(2) Is itself accompanied by an adequate environmental impact statement; and
(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.
(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g. long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

40 CFR 1506.2 (USFS 25.2) - Elimination of Duplication With State and Local Procedures.
(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

1. Joint planning processes.
2. Joint environmental research and studies.
3. Joint public hearings (except where otherwise provided by statute).
4. Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law. (40 CFR 1506.2)

40 CFR 1506.3 - Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).
(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.
(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

Section 1508.4 Categorical exclusion.
“Categorical exclusion” means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Sec. 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Section 1508.5 Cooperating agency.
“Cooperating agency” means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in Sec. 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Section 1508.7 Cumulative impact.
“Cumulative impact” is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Section 1508.8 Effects.
“Effects” include:
(a) Direct effects, which are caused by the action and occur at the same time and place.
(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other
natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous.

Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

**Section 1508.9 Environmental assessment.**

“Environmental assessment”:

(a) Means a concise public document for which a Federal agency is responsible that serves to:

1. Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
2. Aid an agency’s compliance with the Act when no environmental impact statement is necessary.
3. Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2) (E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

**Section 1508.11 Environmental impact statement.**

“Environmental impact statement” means a detailed written statement as required by section 102(2)(C) of the Act.

**Section 1508.12 Federal agency.**

“Federal agency” means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian Tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

**Section 1508.13 Finding of no significant impact.**

“Finding of no significant impact” means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

**Section 1508.14 Human environment.**

“Human environment” shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of “effects” (Sec. 1508.8).) This means that economic or social effects are not
intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Section 1508.16 Lead agency.
“Lead agency” means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

Section 1508.18 Major federal action.
“Major federal action” includes actions with effects that may be major and which are potentially subject to federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:
1. Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency’s policies which will result in or substantially alter agency programs.
2. Adoption of formal plans, such as official documents prepared or approved by Federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.
3. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.
4. Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Section 1508.20 Mitigation.
“Mitigation” includes:
(a) Avoiding the impact altogether by not taking a certain action or parts of an action.
(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected
environment.
(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
(e) Compensating for the impact by replacing or providing substitute resources or environments.

**Section 1508.22 Notice of intent.**
“Notice of intent” means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:
(a) Describe the proposed action and possible alternatives.
(b) Describe the agency’s proposed scoping process including whether, when, and where any scoping meeting will be held.
(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

**Section 1508.23 Proposal.**
“Proposal” exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

**Section 1508.25 Scope.**
“Scope” consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs. 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:
(a) Actions (other than unconnected single actions) which may be:
(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:
   (i) Automatically trigger other actions which may require environmental impact statements.
   (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
   (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.
(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.
(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:
(1) No action alternative.
(2) Other reasonable courses of actions.
(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be:
(1) Direct;
(2) indirect;
(3) cumulative.

**Section 1508.27 Significantly.**
“Significantly” as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:
(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
(2) The degree to which the proposed action affects public health or safety.
(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.
(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Section 1508.28 Tiering.

“Tiering” refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.