

**Forest Service Handbook
National Headquarters (WO)
Washington, DC**

Forest Service Handbook 1909.15 – National Environmental Policy Act Handbook

Chapter 20 - Environmental Impact Statements and Related Documents

Amendment: 1909.15-2011-5

Effective date: September 14, 2011

Duration: This amendment is effective until superseded or removed.

Superseded Directive: 1909.15_20, Amendment 1909.15-2011-2, April 1, 2011

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Date approved: September 09, 2011

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Explanation of changes: Following is an explanation of the changes throughout the directive by section.

Posting Instructions: Amendments are numbered consecutively by handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this handbook was 1909.15-2011-4 to 1909.15_zero_code.

22.1: Removes “Distribution” from the section title as it implies a requirement for distribution of notices of intent (NOI) that is not intended. Also, updates the hyperlink to *Field Unit Checklist for Processing Notices*.

22.2: Changes “may” to “should” to encourage issuance of corrected NOIs when there are major changes and removes the unintended implied requirement for distribution of NOIs. Also, removes the requirement to distribute notices of intent.

22.3: Removes the “Exhibit 01” heading and makes minor text edits and paragraph alignment for clarity.

24.1: Adds a reminder that paper copies of environmental impact statements filed with EPA’s Office of Federal Activities must be bound.

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This chapter provides guidance on preparing the environmental impact statement (EIS) when the environmental analysis determines there may be significant environmental effects. Classes of actions that normally require preparation of an EIS are identified and guidance for preparing related documents, such as notices of intent (NOI) and records of decision (ROD), is also provided.

For ease of reference, [Council on Environmental Quality \(CEQ\) regulations](#) for implementing requirements of the [National Environmental Policy Act](#) (NEPA) are set out in boldface type and block-indented and [Forest Service regulations](#), that supplement the CEQ regulations are in boldface type, *italicized*, and block-indented.

21 - Factors to Consider

21.1 - 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 area-wide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental 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 1501.4)

In determining whether to prepare an EIS, consider the significance of effects. Use the criteria in the definition for “significantly,” found in the zero code, section 05, for determining whether the action will have a significant effect on the human environment.

21.2 - Classes of Actions Normally Requiring Environmental Impact Statements

Forest Service NEPA procedures identify the following classes of action which normally require preparation of an environmental impact statement. These classes of actions were identified because they normally result in significant effects. The EIS requirement may be met with a programmatic EIS.

(1) Class 1: Proposals to carry out or to approve aerial application of chemical pesticides on an operational basis. Examples include but are not limited to:

(i) Applying chemical insecticides by helicopter on an area infested with spruce budworm to prevent serious resource loss.

(ii) Authorizing the application of herbicides by helicopter on a major utility corridor to control unwanted vegetation.

(iii) Applying herbicides by fixed-wing aircraft on an area to release trees from competing vegetation.

(2) Class 2: Proposals that would substantially alter the undeveloped character of an inventoried roadless area or potential wilderness area. Examples include but are not limited to:

(i) Constructing roads and harvesting timber in an inventoried roadless area where the proposed road and harvest units impact a substantial part of the inventoried roadless area.

(ii) Constructing or reconstructing water reservoir facilities in a potential wilderness area where flow regimens may be substantially altered.

(iii) Approving a plan of operations for a mine that would cause considerable surface disturbance in a potential wilderness area. (36 CFR 220.5(a))

The pesticides in Class 1 are conventional chemical pesticides, not those classified as [biopesticides by the US Environmental Protection Agency](#) (EPA). Operational applications do not include those applications regulated as Emergency Exemptions ([40 CFR part 166](#)) or Experimental Use Permits ([40 CFR part 172](#)).

If an action in one of these classes does not have significant effects, follow the CEQ regulations above ([40 CFR 1501.4](#)) and make the FONSI available for public review before the determination is made to not prepare an EIS.

22 - Notices of Intent

22.1 - Preparation of Notices of Intent (NOI)

Normally a notice of intent to prepare an EIS shall be published in the Federal Register as soon as practicable after deciding that an EIS will be prepared. Where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent may be published at a reasonable time in advance of preparation of the draft statement. (36 CFR 220.5(b))

The NOI begins the formal scoping process, but is not intended to be the sole method of scoping. Policy on scoping is provided in chapter 10, section 11.

CEQ regulations require that:

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 meetings 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. (40 CFR 1508.22)**

Forest Service regulations further require that:

A notice must meet the requirements of 40 CFR 1508.22, and in addition, include the following:

(1) Title of the responsible official(s);

(2) Any permits or licenses required to implement the proposed action and the issuing authority;

(3) Lead, joint lead, or cooperating agencies if identified; and

(4) Address(es) to which comments may be sent. (36 CFR 220.5(b))

Follow the [Federal Register Document Drafting Handbook](#) direction for preparing a NOI or use the [notice of intent template](#) found on the Forest Service [NEPA website](#). See also the Office of Regulatory and Management Services [Field Unit Checklist for Processing Notices](#). When the Chief or the Secretary is the responsible official, the appropriate field unit or Washington Office staff prepares the NOI and sends it to the Washington Office Director of Ecosystem Management Coordination for review and submission.

The title of the EIS used in the NOI should be used on the cover of the draft and final EIS.

The following paragraph is recommended for inclusion in an NOI:

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

22.2 - Correction of Notices of Intent

A corrected NOI should be published in the *Federal Register* (sec. 22.1) if there are major changes.

Examples of major changes include:

1. A delay of more than a year in filing either the draft or final EIS.
2. Dramatic changes in the proposed action or the decision to be made.
3. Designation of a different responsible official by title.

A corrected NOI refers to the date and page number of all prior notices relevant to the proposed action that were published in the *Federal Register*. Prepare a corrected NOI in the same way as the original (sec. 22.1).

22.3 - Withdrawal of a Notice of Intent

A withdrawal notice must be published in the Federal Register if, after publication of the notice of intent or notice of availability, an EIS is no longer necessary. A withdrawal notice must refer to the date and Federal Register page number of the previously published notice(s). (36 CFR 220.5(c))

Prepare and distribute a withdrawal notice in the same way as the NOI (sec. 22.1). In addition, send a copy of the withdrawal notice to the Environmental Protection Agency's Office of Federal Activities (sec. 25.2).

When the Chief or the Secretary is the responsible official, the appropriate field unit or Washington Office staff prepares the withdrawal notice as soon as there is a decision to terminate the process. Then the notice is sent to the Director of Ecosystem Management Coordination for review and submission to Office of Regulatory and Management Services (ORMS) and the Environmental Protection Agency's Office of Federal Activities.

23 - Requirements for Environmental Impact Statements

As required by [section 102\(2\)\(C\) of NEPA](#), EISs are to be included in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment ([40 CFR 1502.3](#)). For guidance on classes of actions normally requiring an EIS, refer to section 21 and [36 CFR 220.5\(a\)](#).

23.1 - Page Limits

The text of final environmental impact statements (paragraphs (d) through (g) of § 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages. (40 CFR 1502.7)

23.2 - Writing

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decision makers and the public can readily understand them. (40 CFR 1502.8)

The form and style of writing in an EIS should follow the [U.S. Government Printing Office Style Manual](#). [NEPA document templates](#) can be useful to get started. A variety of clear writing resources are also available through the [plain language in government](#) website.

23.3 - Content and Format

The responsible official may use any EIS format and design as long as the statement is in accordance with 40 CFR 1502.10. (36 CFR 220.5(d))

The recommended format found in the CEQ regulations is outlined below.

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 §§ 1502.11 through 1502.188, in any appropriate format. (40 CFR 1502.10)

A variety of [formatting resources for an EIS including templates, references and examples](#) for each of the paragraphs listed above is available on line.

1. **Cover Sheet.** The cover sheet details the agencies involved in the development of the statement, contact information, and a brief abstract describing the contents of the document. The CEQ requires the following form and content for a cover sheet. (40 CFR 1502.10).

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. (40 CFR 1502.11)

(f) The date by which comments must be received (computed in cooperation with EPA under § 1506.10). (40 CFR 1502.11)

The abstract of the EIS should include the alternatives considered and identification of the preferred alternative(s), if one or more exists.

In addition, the cover sheet should include the name, title, and address of the responsible official.

If the EIS is a draft, the cover sheet must include the deadline by which comments must be received. Subject to [40 CFR 1506.10\(d\)](#), agencies must allow a minimum of 45 days from the date the EPA notice of availability is published in the *Federal Register* for comments on draft EISs. See sec. 24.2 for calculation of comment period closing date.

The cover sheet for a draft EIS should also include the following two standard paragraphs about the reviewer's obligation to comment during the review period and the public nature of comments. If space is not available on the cover sheet, these statements may be included in the cover letter soliciting comments on the draft EIS.

- a. It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative review or judicial review.
- b. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action.

Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

2. 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. (40 CFR 1502.12)

3. Table of Contents. The table of contents should list major chapters and sections of the EIS, as well as a list of tables and exhibits. The table of contents should provide a mechanism for locating these sections by page number. The complexity of the table of contents will depend on the length and complexity of the EIS.

4. 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. (40 CFR 1502.13)

The purpose and need statement defines the scope and objectives of the proposal. A well-defined purpose and need statement narrows the range of alternatives that may need to be developed in the "alternatives" section. It describes in detail why action is being proposed at that location and at that time. In this way, the purpose and need reflects the difference between the existing condition and the desired condition.

The analysis may be tiered to other EISs that influence the scope of the analysis or support the rationale for the need for action (40 CFR 1502.20). If a forest plan amendment is included, it should also describe why there is a need for this project to vary from the forest plan to move toward the desired condition.

Other information that is useful to have early in the document, but is not directly purpose and need, includes any Federal permits or licenses necessary to implement the project (40 CFR 1502.25) and a location map.

5. 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 (§1502.15) and the Environmental Consequences (§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. (40 CFR 1502.14)**

Forest Service regulations specify the following in developing and analyzing alternatives.

The EIS shall document the examination of reasonable alternatives to the proposed action. An alternative should meet the purpose and need and address one or more significant issues related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed. The following procedures are available to the responsible official to develop and analyze alternatives. (36 CFR 220.5(e))

For additional guidance on the development of alternatives, see chapter 10, section 14 and questions 1-7 of “NEPA’s [40 Most Asked Questions](#)”.

6. 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.
(40 CFR 1502.15)

The affected environment section can be organized by resource topic or by issue. In either case, discussions of the affected environment should describe the physical, biological, social and economic components for each potentially affected resource. It is important to limit the discussion of affected environment to topics relevant to the significant issues and to the decision being made. See chapter 10, section 15.1, for additional guidance on the consideration of past actions.

The affected environment and environmental consequences sections may be combined for efficiency and clarity. Combining the sections focuses the documentation on what is relevant and reduces redundancies and inconsistencies.

7. Environmental Consequences.

This section forms the scientific and analytic basis for the comparisons under §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 §1502.14. It shall include discussions of:

(a) Direct effects and their significance (§1508.8).

(b) Indirect effects and their significance (§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 §1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under §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 §1502.14(f)). (40 CFR 1502.16)

This section also discloses cumulative effects germane to each issue. For guidance on cumulative effects analysis see chapter 10, section 15.1.

In the case that the EIS includes an adaptive management strategy, the following Forest Service regulations would apply.

...The EIS must disclose not only the effect of the action but also the effect of the adjustment. Such proposal or alternative must also describe the monitoring that would take place to inform the responsible official whether the action is having its intended effect. (36 CFR 220.5(e))

8. 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 (§1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. . . (40 CFR 1502.17)

This section also lists all Federal, State, and local agencies, tribes, and non-Forest Service persons who helped prepare or contribute to the development of the EIS.

9. List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent. The list should include names only and not addresses of those to whom a statement was sent. In addition, the EIS may note the total number of individuals and

groups that were notified of the availability of the EIS in a library, on the World-Wide Web, or at other locations.

10. Index. An index is required in all EISs by the CEQ regulations (see sec. 23.3, [40 CFR 1502.10](#)). The purpose of an index is to make the information in the EIS fully available to the reader without delay. See chapter 60, section 62, for preparation of indexes.

11. 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 (§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. (40 CFR 1502.18)

For a final EIS, the response to comments is often included as an appendix.

23.31 - Incomplete or Unavailable Information

Refer to chapter 10, section 13, for guidance on addressing incomplete or unavailable information.

23.32 - Documentation of 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. (40 CFR 1502.23)

23.33 - Identification of 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. (40 CFR 1502.24)

23.34 - Identification of Permits Necessary to Implement the Proposal

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 1502.25(b))

This information should be included in chapter 1 of the EIS.

24 - Requirement Specific to Draft Environmental Impact Statements

24.1 - Circulating and Filing a Draft Environmental Impact Statement

Circulate a draft EIS to agencies and to the public prior to or at the same time of transmittal to the Environmental Protection Agency (EPA) in Washington, DC. If a statement is unusually long, the summary may be circulated instead, except that the entire statement must be circulated as required by the CEQ regulations:

... 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. (40 CFR 1502.19)

In addition, Forest Service regulations specify that:

(1) The draft and final EISs shall be filed with the Environmental Protection Agency's Office of Federal Activities in Washington, DC (40 CFR 1506.9).

(2) Requirements at 40 CFR 1506.9 "Filing requirements", 40 CFR 1506.10 "Timing of agency action" and 40 CFR 1502.19 "Circulation of the environmental impact statement" shall only apply to the last draft and final EIS and not apply to material produced prior to the draft EIS or between the draft and final EIS which are filed with EPA. (36 CFR 220.5(f))

File four copies of a draft EIS with the EPA. At least one copy must be a paper copy; the remaining three copies may be on appropriate electronic storage devices, such as compact discs (CDs), USB flash drives, or memory cards. The EPA requires paper copies to be "bound." (If documents are 3-hole punched and shrink-wrapped, they need to be placed in a 3-ring binder.) Addresses, phone numbers and instructions are on [the EPA website](#). EPA will then publish the notice of availability in the *Federal Register*.

Distribute EISs prepared for the Forest Service to Federal agencies as instructed on the [current EIS distribution list](#).

Calculate the review period from the day after EPA's notice of availability appears in the *Federal Register* as per the appeal regulation [\(36 CFR 215.6\(a\)\(1\)\(ii\)\)](#).

(a) The Environmental Protection Agency shall publish a notice in the FEDERAL REGISTER each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice. (40 CFR 1506.10)

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency (Also see § 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. (40 CFR 1506.10)

Allow a minimum of 45 days for comments on a draft EIS unless a different time period is required by law or regulation. If the prescribed period must be reduced for compelling reasons of national policy, contact the Washington Office Director of Ecosystem Management Coordination prior to issuing a draft EIS.

Determine the comment period closing date by adding 45 days to the date that EPA's notice of availability is expected to be published. Use an express delivery service or hand deliver the draft EIS to ensure when EPA receives the document. The notice of availability will be published in the *Federal Register* on Friday of the week following EPA's receipt of the draft EIS. If the Friday is a Federal holiday the publication will be on Thursday. Add 45 days to the expected date of the notice of availability, with the day after the notice (Saturday) being day 1. Since notices of availability are normally published on Fridays, 45-day comment periods will normally close on a Monday. If the closing date is a holiday, the comment period is extended to the next business day.

Agency notice and comment regulations also require that a legal notice be published in the newspaper of record ([36 CFR 215](#)) (See FSH 1509.12, sec. 06, ex. 02).

24.2 - Solicit Comments on a Draft Environmental Impact Statement

The CEQ regulations require the following:

Inviting comments.

(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 which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

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

(ii) Indian tribes, when the effects may be on a reservation; and

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

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected. (40 CFR 1503.1)

The following items are appropriate to include in your solicitation of comments on a draft EIS:

1. The availability of the draft EIS and timing for comments.
2. The date, time, and location of public meetings, if any.

3. How to obtain any additional information.
4. How and to whom to submit your comments. Include e-mail and street addresses and FAX and telephone numbers.
5. Refer to section 23.3, exhibit 01, for language regarding how to instruct reviewers on their duties relative to commenting.
6. Where and how to review comments submitted on the draft EIS.

24.3 - Extending the Comment Period on a Draft Environmental Impact Statement

When the responsible official determines that an extension of the review period on a draft EIS is appropriate, notice shall be given in the same manner used for inviting comments on the draft. (36 CFR 220.5(f)(3))

Forward one copy of the notice to EPA's Management Information Unit, [Office of Federal Activities](#). EPA will publish the notice of the extension of the comment period in the Federal Register on the Friday following the week the notice is received.

25 - Requirements Specific to a Final Environmental Impact Statement

25.1 - Use of Comments on a Draft Environmental Impact Statement in a Final Environmental Impact Statement

Review, analyze, evaluate, and respond to substantive comments on the draft EIS.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(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, agencies may write them on errata sheets and attach them 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 circulated (§1502.19). The entire document with a new cover sheet shall be filed as the final statement (§1506.9). (40 CFR 1503.4)

When the responsible official determines that a summary of responses is appropriate, the summary should reflect accurately all substantive comments received on the draft EIS. Comments that are pertinent to the same subject may be aggregated by categories. As a minimum, include in an appendix of a final EIS copies of all comments received on the draft EIS from Federal, State, and local agencies and elected officials. This will satisfy the requirement in Section 102 (c) of NEPA, which states, "...comments and views of the appropriate Federal, State and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public..."

25.2 - Circulating and Filing a Final Environmental Impact Statement

Distribute a final EIS to other agencies and to the public prior to or at the same time of filing it with EPA ([40 CFR 1506.9](#)). If the statement is unusually long, a summary may be circulated instead ([40 CFR 1502.19](#)). However, the responsible official shall file the entire document, including appendices, with EPA as well as other persons or agencies specified in section 24.1. In addition to the persons or agencies specified in section 24.1, the entire final EIS must also be circulated to "any person, organization, or agency which submitted substantive comments on the draft EIS" ([40 CFR 1502.19\(d\)](#)).

If changes resulting from comments to a draft EIS are minor, they may be written on an errata sheet and attached to the draft EIS. In this case only the comments, the responses, and the changes need to be circulated. However, file the entire document with a new cover sheet as the final EIS ([40 CFR 1503.4\(c\)](#)).

File a final EIS with the EPA as shown in section 24.1 along with all substantive comments or a summary of the comments on the draft EIS. The Washington Office Director of Ecosystem Management Coordination files with EPA the statements for which the Chief or the Secretary is the responsible official.

Refer to [40 CFR 1506.10\(b\)\(2\)](#) for the timing of publishing a final EIS and issuing a ROD (see sec. 26.1). Because the Forest Service has formally established appeal processes which allow other

agencies or the public to appeal a decision after publication of the final EIS, an exception to the timing rules at [40 CFR 1506.10\(b\)\(2\)](#) is made for the Forest Service. This means that a decision can be made and recorded at the same time the final EIS is published. In this case, the final EIS must explain the timing and the public's right to appeal [\(40 CFR 1506.10\(b\)\)](#). In addition, at the time of filing the final EIS, EPA should be informed of this exception so that the notice of availability accurately reflects this information. Additional decision timing requirements follow in section 26.1.

After filing a final EIS with the EPA, ensure that a reasonable number of copies of the statement are available free of charge.

26 - Documenting Decisions

26.1 - Decision Timing

The following time limits apply to decisions supported by an EIS.

Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under §1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. ... In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. (40 CFR 1506.10)

Because the Forest Service has formally established appeal processes, the 30-day delay provision at [40 CFR 1506.10\(b\)\(2\)](#) seldom applies unless a decision is not subject to appeal or unless implementation will be allowed to proceed during an appeal filing period. Occasionally, an EIS on a fast-track bumps up against the requirement that a decision cannot be made until 90 days after the notice of availability of the draft EIS is published by EPA, as shown in (1) above.

26.2 - Record of Decision

If an EIS has been prepared, the responsible official documents the decision in a ROD (sec. 11.6, ex. 01). CEQ requirements for a ROD are as follows:

At the time of its decision (§1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation. (40 CFR 1505.2)

Forest Service requirements for decisionmaking are as follows:

Responsible Official. The Agency employee who has the authority to make and implement a decision on a proposed action. (36 CFR 220.3)

For each Forest Service proposal (§ 220.4(a)), the responsible official shall coordinate and integrate NEPA review and relevant environmental documents with Agency decisionmaking by:

(1) Completing the environmental document review before making a decision on the proposal;

(2) Considering environmental documents, public and agency comments (if any) on those documents, and agency responses to those comments;

(3) Including environmental documents, comments, and responses in the administrative record;

(4) Considering the alternatives analyzed in environmental document(s) before rendering a decision on the proposal; and

(5) Making a decision encompassed within the range of alternatives analyzed in the environmental documents. (36 CFR 220.4(c)).

26.21 - Format and Content

Records of decision should generally conform to the following format. Sections of the format may be combined or rearranged in the interest of clarity and brevity. Records of decision should reflect the analysis documented in the EIS and contain the following elements.

1. Heading. The heading identifies:
 - a. Agency.
 - b. Type of decision document, that is, ROD.
 - c. The title of the proposed action.
 - d. The location of the proposed action, including administrative unit, county, and State.
2. Decision and Reasons for the Decision. Describe the decision being made, including the permits, licenses, grants, or authorizations needed to implement the decision. Identify the specific location of the alternative selected, including the legal land subdivision if pertinent. Refer to or include any mitigation and monitoring program related to the decision. This section also identifies:
 - a. Applicable laws, regulations, and policies;
 - b. How the selected alternative best meets the purpose and need;
 - c. How environmental issues were considered and addressed;
 - d. Factors other than environmental consequences considered in making the decision; and
 - e. Identification of environmental document(s) considered in making the decision.
3. Public involvement conducted. Identify the issues which determined the scope of the analysis. Provide a brief summary of the public participation that relates to the decision. Agencies, organizations, or persons raising issues or asserting opposing viewpoints may be identified and their positions discussed.
4. Alternatives considered. All alternatives considered (including the no-action) should be briefly discussed with specific references to the EIS. Mitigation measures, management requirements, and monitoring provisions that are pertinent to environmental concerns should be discussed with specific citations to pages of the EIS.

5. Findings required by other laws. Include any findings required by any other laws. For example, findings of consistency with the forest plan, suitability, and vegetation management required by the National Forest Management Act.

6. Identify the Environmentally Preferable Alternative. Based on the definition in 36 CFR 220.3, state which alternative(s) is environmentally preferable.

7. State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program must be adopted and summarized where applicable for any mitigation 40 CFR 1505.

8. Implementation date. Identify the date when the responsible official intends to implement the decision (ch. 50, sec. 51).

9. Administrative review or appeal opportunities. Clearly state whether the decision is subject to review or appeal (citing the applicable regulations), and identify when and where to file a request for review or appeal.

10. Contact Person. Identify the name, address, and phone number of a contact person who can supply further information.

11. Signature and Date. The responsible official signs and dates the ROD on the date the decision is made.

a. For decisions subject to review under Forest Service appeal regulations, the responsible official may sign and date the ROD on the date that it is transmitted with the final EIS to the EPA and made available to the public.

b. For decisions not subject to review, the responsible official may not sign and date the ROD sooner than 30 days after EPA's notice of availability of the final EIS is published in the *Federal Register* (see sec. 25.2).

When an EIS identifies joint lead agencies (ch. 10, sec. 11.31a) or cooperating agencies with jurisdiction by law, the responsible official from each agency shall sign and date a ROD for those actions within the authority of each agency.

When the Chief or Secretary is the responsible official, the appropriate field unit or Washington Office staff prepares the record of decision with assistance from the Washington Office Ecosystem Management Coordination staff. The Washington Office Director of Ecosystem Management Coordination coordinates the review and signing of the ROD, involving the appropriate Washington Office staff(s), deputy chief, Chief, or Secretary, as necessary. The signed original is then filed in Washington Office Ecosystem Management Coordination staff office files and the Washington Office Ecosystem Management Coordination staff forwards a copy to the appropriate field unit or Washington Office staff for necessary distribution.

27 - Notice of the Record of Decision

The responsible official shall notify interested or affected parties of the availability of the record of decision as soon as practical after signing. (36 CFR 220.5(g))

Appeal and objections regulations require specific notifications. The responsible official may provide additional forms of notice appropriate to the importance of the decision such as sending paper or electronic copies of the ROD or notifying interested or affected parties by paper or electronic means of a website containing the ROD. Remember to enter the date of the ROD as soon as practical in the Planning, Appeals and Litigation System (PALS). In addition to the decision itself, the ability of the decision to be implemented is also tracked in the PALS. The voluntary withdrawal of a decision, the reversal of a decision in appeal, or a court case directing constraint of a decision all require notation (action) in PALS.