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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 651

[Docket ID: USA-2025-HQ-0003]

RIN 0702-AB02

Environmental Analysis of Army Actions (AR 200-2)

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: Interim final rule.

SUMMARY: This interim final rule rescinds the Department of the Army regulations implementing the National Environmental Policy Act (NEPA), because the Council on Environmental Quality's (CEQ) NEPA regulations, which they were meant to supplement, have been rescinded, and because the DoD is promulgating Department-wide NEPA procedures that will guide the Army's NEPA process. In addition, this interim final rule requests comments on this action and related matters**.**

DATES: This interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received on or before [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number and/or Regulation Identifier Number (RIN) and title, by any of the following methods:

- Federal eRulemaking Portal: *https://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *https://www.regulations.gov* as they are received and without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: David Guldenzopf, Ph.D., Director for Environmental Quality, Office of the Assistant Secretary of the Army for Installations, Energy and Environment, (571) 256-7822, david.b.guldenzopf.civ@army.mil.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public. We post all comments received before the close of the comment period on the following website as soon as possible after the comments have been received: https://www.regulations.gov. Follow the search instructions on that website to view public comments. DoD will not post on https://www.regulations.gov public comments that make threats to individuals or institutions, or that suggest the commenter will take actions to harm an individual.

Plain Language Summary: In accordance with 5 U.S.C. 553(b)(4), a plain language summary of this rule may be found at https://www.regulations.gov.

I. Background

Title 32 CFR part 651 provides guidance for implementing NEPA in the Army. It applies to the Department of the Army, including the Active Army, the Army Reserve, Joint Bases for which the Army is the lead component, the Army's acquisition process, functions of the Army National Guard involving Federal funding, and functions for which the Army is the DoD executive agent. This part does not apply to civil works functions of the U.S. Army Corps of Engineers or to combat or combat-related activities in a combat or hostile-fire zone. Title 32 CFR part 651 was intended to be used as a "supplement[]

… in conjunction with" the regulations of the Council on Environmental Quality (CEQ) at 40 CFR parts 1500 through 1508. 32 CFR 651.1(c).

However, the CEQ's regulations have been repealed, effective April 11. *See Removal of National Environmental Policy Act Implementing Regulations* (90 FR 10610; Feb. 25, 2025). This action was necessitated by and consistent with Executive Order (E.O.) 14154, *Unleashing American Energy* (90 FR 8353; January 20, 2025), in which President Trump rescinded President Carter's E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality* (42 FR 26967; May 24, 1977), which was the basis CEQ had invoked for its authority to make rules to begin with. The Army's regulations, which were a "supplement[] … to be used in conjunction with" those CEQ regulations, thus stand in obvious need of fundamental revision. President Trump in E.O. 14154 further directed agencies to revise their NEPA implementing procedures, consistent with the E.O., including its direction to CEQ to rescind its regulations.

In addition, Congress recently amended NEPA in significant part, in the Fiscal Responsibility Act of 2023 (FRA), Public Law 118-5, signed on June 3, 2023, in which Congress added substantial detail and direction in Title I of NEPA, including in particular on procedural issues that CEQ and individual acting agencies had previously addressed in their own procedures. The Army recognized the need to update its regulations in light of these significant legislative changes. Since the Army's regulations were originally designed as a supplement to CEQ's NEPA regulations, the Army had been awaiting CEQ action before revising its regulations, consistent with CEQ direction. *See* 40 CFR 1507.3(b) (2024); *see also* 86 FR 34154 (June 29, 2021). However, with CEQ's regulations now rescinded, and with the Army's NEPA implementing procedures still unmodified more than two years after this significant legislative overhaul, it is exigent that the Army move quickly to conform its procedures to the statute as amended.

Finally, the Supreme Court on May 29, 2025 issued a landmark decision, *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497 (2025), in which it decried the "transform[ation]" of NEPA from its roots as "a modest procedural requirement," into a significant "substantive roadblock" that "paralyze[s]" "agency decisionmaking." *Id.* at 1507, 1513 (quotations omitted). The Supreme Court explained that part of that problem had been caused by decisions of lower courts, which it rejected, issuing a "course correction" mandating that courts give "substantial deference" to reasonable agency conclusions underlying its NEPA process. *Id.* at 1513-14. But the Court also acknowledged, and through its course correction sought to address, the effect on "litigation-averse agencies" which, in light of judicial "micromanage[ment]," had been "tak[ing] ever more time [] prepar[ing] ever longer EISs for future projects." *Id.* at 1513. The Army, thus, is issuing this IFR to align its actions with the Supreme Court's decision and streamline its process of ensuring reasonable NEPA decisions. This revision has thus been called for, authorized, and directed by all three branches of government at the highest possible levels.

DoD has elected to respond to these instructions by promulgating Department-wide NEPA procedures, *Department of Defense National Environmental Policy Act Implementing Procedures*, which will guide the Army's NEPA process henceforth. The Supreme Court could not have been clearer in *Seven County* that NEPA is a procedural statute. *See* 145 S. Ct. at 1507 ("NEPA is a purely procedural statute."); *see also id*. at 1510 ("NEPA is purely procedural…. NEPA does not mandate particular results, but simply prescribes the necessary process' for an agency's environmental review of a project;") (internal quotation omitted); *id*. at 1511 (NEPA is a *purely procedural statute*"); *id.* at 1513 (NEPA is properly understood as "a modest procedural requirement"); *id*. at 1514 ("NEPA's status as a purely procedural statute"); *see also id.* at 1507 ("Simply stated, NEPA is a procedural cross-check, not a substantive roadblock."). Mindful of

this, DoD has decided that the flexibility to respond to new developments in this fast-evolving area of law, afforded by using non-codified procedures, outweighs the public-transparency virtues of codifying its regulations going forward. Notably, DoD can—and will—ensure that accessibility to the public by posting these procedures online, which removes the upside of codification. By contrast, not codifying its procedures will enable it to rapidly update these procedures in response to future court decisions (such as *Seven County*), Presidential directives, or the needs of the services. The use of non-codified procedures is, moreover, consistent with the approach that several other Federal agencies have used for decades.

DoD has, correspondingly, directed all military departments to repeal their respective NEPA implementing regulations by June 30, 2025, per a May 21, 2025, memorandum. Thus, the Army is rescinding its NEPA implementing regulations at 32 CFR part 651. The Army is furthermore taking this action because the CEQ NEPA regulations, which the Army regulations were intended to supplement, have been rescinded and the Army regulations are incomplete on their own. The authority under which the CEQ regulations were promulgated, Executive Order (EO) 11991 (42 FR 26967, May 24, 1977), has been rescinded by EO 14154 (90 FR 8353, Jan. 29, 2025). Therefore, the Army is rescinding 32 CFR part 651 to conform to CEQ's rescission of its regulations. The Army intends to continue to rely on categorical exclusions previously published in appendix B of 32 CFR part 651 or adopted by public notice in the Federal Register, all of which have now been incorporated into the Appendix to *Department of Defense National Environmental Policy Act Implementing Procedures.*

The Army acknowledges that third parties may claim to have reliance interests in the Army's existing NEPA procedures. But revised agency procedures will have no effect on ongoing NEPA reviews, where the Army, following CEQ guidance, has held it will continue to apply existing applications. Moreover, as the Supreme Court has just

explained, NEPA "is a purely procedural statute" that "imposes no substantive environmental obligations or restrictions." *Seven County*, 145 S. Ct. at 1507. Any asserted reliance interests grounded in substantive environmental concerns, such interests are not in accord with the best meaning of the law and are entitled to "no… weight." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1914 (2020).

Because reliance interests are inherently backward-looking, it is unclear how any party could assert reliance interests in *prospective* procedures. To the extent such interests exist, the Army concludes that they are "outweigh[ed]" by "other interests and policy concerns." *Id.* Namely, the complex web of regulations preexisted the 2023 amendments to NEPA and the new Procedures repeatedly "led to more agency analysis of separate projects, more consideration of attenuated effects, more exploration of alternatives to proposed agency action, more speculation and consultation and estimation and litigation," which in turn has meant that "[f]ewer projects make it to the finish line," or even "to the starting line." *Seven County*, 145 S. Ct. at 1513-14. This has increased the cost of projects dramatically, "both for the agency preparing the EIS and for the builder of the project," resulting in systemic harms to America's infrastructure and economy. *Id.* at 1514. Correspondingly, the wholesale revision and simplification of this regime, effectuated by the DoD's new Procedures, is necessary to assure ensure efficient and predictable reviews, with significant upsides for the economy and for projects of all sorts. This set of policy considerations drastically outweighs any claimed reliance interests in the preexisting procedures.

The Army has taken this action as part of DoD's broader approach to revising its implementation of NEPA, in which DoD and its components have revised their NEPA implementing procedures to conform to the 2023 statutory amendments, to respond to President Trump's direction in E.O. 14154 to, "[c]onsistent with applicable law, prioritize

efficiency and certainty over any other objectives, including those of activist groups, that do not align with the policy goals set forth in section 2 of [that] order or that could otherwise add delays and ambiguity to the permitting process," and to address the pathologies of the NEPA process and NEPA litigation as identified by the Supreme Court. Where DoD and its components have retained an aspect of their preexisting NEPA implementing procedures, it is because that aspect is compatible with these guiding principles; where DoD and its components have revised or removed an aspect, it is because that aspect is not so compatible.

II. Publication as an Interim Final Rule

A. Notice-and-Comment Rulemaking Is Not Required

The Army is repealing its prior procedures and practices for implementing NEPA, a "purely procedural statute" which "'simply prescribes the necessary process' for an agency's environmental review of a project—a review that is, even in its most rigorous form, "only one input into an agency's decision and does not itself require any particular substantive outcome." *Seven County*, 145 S. Ct. at 1507, 1511 (internal quotation omitted). "NEPA imposes no *substantive* constraints on the agency's ultimate decision to build, fund, or approve a proposed project," and "is relevant only to the question of whether an agency's final decision"—i.e., that decision to authorize, fund, or otherwise carry out a particular proposed project or activity—"was reasonably explained." *Id*. at 1511. As such, notice and comment procedures are not required because this revision falls within the Administrative Procedure Act (APA) exception for "rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). The Army's existing regulations do not dictate what outcomes such consideration must produce, nor do they impose binding legal obligations on private citizens. Rather, they prescribe how the Army will conduct its NEPA reviews: detailing the structure of environmental impact statements, specifying submission requirements, and directing the timing of public

comment periods. These are procedural provisions, not ones that impose substantive environmental obligations or restrictions. Thus, because procedural rules do not require notice and comment, they do not require notice and comment to be removed from the Code of Federal Regulations. *See* 5 U.S.C. 553(b)(A).[1]

Moreover, even if (and to the extent that) the Army regulations were not procedural rules, they may be characterized as interpretative rules or general statements of policy under 5 U.S.C. 553(b)(A). An interpretative rule provides an interpretation of a statute, rather than making discretionary policy choices that establish enforceable rights or obligations for regulated parties under delegated congressional authority. Part II of Appendix F to Part 651, for instance, may be classified as such. General statements of policy provide notice of an agency's intentions as to how it will enforce statutory requirements, again without creating enforceable rights or obligations for regulated parties under delegated congressional authority. 32 CFR 651.5 ("Army policies"), for instance, may be classified as general statements of policy. Both of these types of agency action are expressly exempted from notice and comment by statute, 5 U.S.C. 553(b)(A), and do not require notice and comment for removal.

Accordingly, although the Army is voluntarily providing notice and an opportunity to comment on this interim final rule, the agency has determined that notice-and-comment procedures are not required. The fact that the Army previously undertook notice-and-comment rulemaking in promulgating these regulations is immaterial: As the Supreme Court has held, where notice-and-comment procedures are not required, prior

[1] Just so, DoD's new procedures will also be purely procedural, guiding the Department's own compliance with NEPA. Indeed, it is hard to see how they could be otherwise, since the Supreme Court has recently repeatedly emphasized that "NEPA is a purely procedural statute." *Seven County*, 145 S. Ct., *see id*. at 1510 ("NEPA is purely procedural…. NEPA 'does not mandate particular results, but simply prescribes the necessary process' for an agency's environmental review of a project;"); *id*. at 1511 (NEPA is a *purely procedural statute*"); *id.* at 1513 (NEPA is properly understood as "a modest procedural requirement"); *id*. at 1514 ("NEPA's status as a purely procedural statute"); *see also id.* at 1507 ("Simply stated, NEPA is a procedural cross-check, not a substantive roadblock."). Procedures for implementing a purely procedural statute must be, by their nature, procedural rules. Surely cannot be legislative rules; as such, they do not need to be promulgated via notice-and-comment rulemaking. *See* 5 U.S.C. 553(b)(A).

use of them in promulgating a rule does not bind the agency to use such procedures in repealing it. *Perez* v. *Mortg. Bankers Ass'n*, 575 U.S. 92, 101 (2015).

B. The Army Has Good Cause for Proceeding with an Interim Final Rule.

Moreover, the Army also finds that, to the extent that prior notice and solicitation of public comment would otherwise be required or this action could not immediately take effect, the need to expeditiously replace its existing rules satisfies the "good cause" exceptions in 5 U.S.C. 553(b)(B) and (d). The APA authorizes agencies to issue regulations without notice and public comment when an agency finds, for good cause, that notice and comment is "impracticable, unnecessary, or contrary to the public interest," 5 U.S.C. 553(b)(B), and to make the rule effective immediately for good cause. 5 U.S.C. 553(d)(3). As discussed in Section I, above, the Army's prior rules were promulgated to supplement CEQ's NEPA regulations. Following the rescission of CEQ's regulations, the Army's current rules are left hanging in air, supplementing a NEPA regime that no longer exists. The Army, thus far and as a temporary, emergency measure, has been continuing to operate under its prior procedures *as if* the CEQ NEPA regime still existed. This is not, however, tenable in the long term. As soon as proper procedures are available—which they now are, in the form of DoD's Department-wide procedures—this makeshift regime needs to be rescinded immediately. Because of this need for speed and certainty, notice-and-comment is, to the extent it was required at all, impracticable and contrary to the public interest.

For the same reasons stated in the present section, above, the Army finds that "good cause" exists under 5 U.S.C. 553(d)(3) to waive the 30-day delay of the effective date that would otherwise be required. This IFR will accordingly be effective immediately.

C. The Army Solicits Comment.

As explained above, notice and comment is not required prior to issuing this rule because the Army's NEPA procedures were procedural and because, even if comment were required under the APA, good cause exists to forego it. Nevertheless, the Army has elected voluntarily to solicit comment on this action. The Army is soliciting comment on this interim final rule, and may make further revisions to this action, if the Army's review of any comments submitted suggests that further revisions are warranted. Commenters have 30 days from the date of publication of this interim final rule to submit comments.

III. EO 12866, "Regulatory Planning and Review," and E.O. 13563, "Improving Regulation and Regulatory Review"

EOs 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distribution of impacts, and equity). The Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) has determined that this rulemaking, while not "economically significant," is "significant" under section 3(f)(4) of EO 12866.

IV. EO 14192, "Unleashing Prosperity Through Deregulation"

EO 14192 was issued on January 31, 2025, and requires that "any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations." This rule is expected to be an EO 14192 deregulatory action. Rescinding this part will enable the Army to update its internal Army procedures, ensuring consistent and streamlined implementation of NEPA responsibilities across all Army operations. This action will allow the Army to finalize the establishment of previously-proposed and publicly-reviewed categorical exclusions (CXs) that will reduce government spending on

environmental compliance and will shorten project timelines for those activities that do not need a detailed analysis. The Army currently prepares approximately 10,000 CXs annually. The Army expects the new and revised CXs to increase use of CXs and to shorten project-approval timelines. Application of each new and revised CX will reduce the need to complete environmental assessments. Each environmental assessment costs approximately $500,000 and takes six months to one year to complete. The new and revised CX list will greatly reduce government spending on environmental site assessments.

V. Congressional Review Act (5 U.S.C. 801 et seq.)

OIRA has determined that this rulemaking does not meet the criteria set forth in 5 U.S.C. 804(2) under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act). This action, in any event, is not a “rule” at all under 5 U.S.C. 804(3)(C). Therefore, this rule is not major under the Congressional Review Act.

VI. Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This interim final rule does not contain any information-collection provisions that require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

VII. Public Law 96-354, Regulatory Flexibility Act (5 U.S.C. 601)

The Senior Official Performing the Duties of Under Secretary of the Army certified that this interim final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it will not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require the Army to prepare a regulatory flexibility analysis. *See* 5 USC 603(a), 604(a).

VIII. Sec. 202, Public Law 104-4, Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule that mandates

spending in any one year of $100 million in 1995 dollars, updated annually for inflation. This rulemaking will not result in an expenditure by State, local, or Tribal Governments, in the aggregate, or by the private sector, in excess of the above threshold. Thus, no written assessment of unfunded mandates is required.

IX. EO 13132, "Federalism"

This interim final rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with EO 13132, the Senior Official Performing the Duties of Under Secretary of the Army has determined that this rulemaking does not have sufficient federalism implications to warrant preparation of a federalism assessment.

X. EO 13175, "Consultation and Coordination with Indian Tribal Governments"

EO 13175 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on one or more Indian Tribes, preempts Tribal law, or affects the distribution of power and responsibilities between the Federal Government and Indian Tribes. This interim final rule will not have a substantial effect on Indian Tribal Governments.

List of Subjects in 32 CFR Part 651

Environmental impact statements, Environmental protection, and Foreign relations.

PART 651—[REMOVED]

Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 651 is removed.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer

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