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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 230

[Docket ID: COE-2025-0007]

RIN 0710-AB28

Procedures for Implementing NEPA; Removal

AGENCY: Army Corps of Engineers, Department of Defense (DoD).

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule rescinds the U.S. Army Corps of Engineers' (Corps) regulations implementing the National Environmental Policy Act (NEPA) for the Army Civil Works program, except for the Categorical Exclusions contained therein, because the Council on Environmental Quality's (CEQ) NEPA regulations, which the Corps' regulations were meant to supplement, have been removed from the Code of Federal Regulations (CFR) and because the DoD is promulgating Department-wide NEPA procedures that will guide the Army Civil Works' NEPA process. In addition, this interim final rule requests comments on this action.

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 COE-2025-0007 and/or 0710-AB28, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: CEHQ-NEPA@usace.army.mil. Include the docket number, COE-2025-0007, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW, 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: If submitting comments through the Federal eRulemaking Portal, direct your comments to docket number COE-2025-0007. All comments received will be included in the public docket without change and may be made available on-line at http://www.regulations.gov, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment. If we cannot read your comment because of technical difficulties and cannot contact you for clarification we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Mr. Milt Boyd, 703-459-6026

SUPPLEMENTARY INFORMATION:

I. Background

A. Title 33 CFR part 230 provides guidance for implementing the procedural provisions of NEPA for the Army Civil Works Program. It "supplements" the CEQ regulations at 40 CFR parts 1500 through 1508 and is intended to be used only in conjunction with the CEQ

regulations. See 33 CFR 230.1. The regulation is applicable to all Corps Headquarters elements and all Field Operating Activities responsible for preparing and processing environmental documents in support of Civil Works functions, except for the processing of permit applications. See 33 CFR 230.2. Section 230.9 provides a list of categorical exclusions (CXs) in current use by the Corps for Civil Works projects and for processing requests for 33 U.S.C. 408 permissions. The regulations at part 230 are not used for processing Department of the Army permits, which are addressed at 33 CFR part 325, appendix B and will be updated in another rule.

The CEQ regulations, however, 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 Corps' regulations, which were a "supplement[]" to 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 Corps recognized the need to update its regulations in light of these significant legislative changes. Since the Corps' regulations were originally designed as a supplement to CEQ's NEPA regulations, the Corps had been awaiting CEQ action before revising its regulations, consistent with CEQ direction. *See* 40 C.F.R. 1507.3(b) (2024); *see also* 86 FR 34154 (June 29, 2021). However, with CEQ's regulations now rescinded, and with the Corps' NEPA implementing

procedures still unmodified more than two years after this significant legislative overhaul, it is exigent that the Corps 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 and [] prepar[ing] ever longer EISs for future projects." *Id.* at 1513. The Army, thus, is issuing this interim final rule (IFR) as part of its and DoD's effort 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.

The 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 NEPA process henceforth for the Corps' civil works program, while the Corps' permitting programs and the 33 U.S.C. 408 request for permission program will remain subject to Corps-level procedures that will be updated in a separate action. 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 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 1514 (NEPA is properly understood as "a

modest procedural requirement"); *id*. ("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 for Army Civil Works at 33 CFR part 230, except §§ 230.2 and 230.9. The Army is also rescinding Engineering Regulation 200-2-2, Procedures for Implementing NEPA (Mar. 4, 1988), which contains the same provisions as Part 230. The Army Civil Works program implemented by the Corps of Engineers, except for the permitting programs and the 33 U.S.C. 408 request for permission program, will follow NEPA implementation guidance issued by the DoD and any applicable guidance issued by the Army in implementing NEPA. Actions that were ongoing as of the effective date of this rule will continue to use the rule in place at the time the action was started. The NEPA implementation procedures for the Army Civil Works permitting programs and the 33 U.S.C. 408 request for permission program will be addressed in a separate action.

Army Civil Works is retaining its CXs and related requirements in regulation (33 CFR §§ 230.2 and 230.9) to avoid any uncertainty about the continuation of its already-established CXs or the procedural mechanism through which the Corps established them. The 2023 revisions to NEPA and the 2025 repeal of CEQ's NEPA procedures do not require reconsideration or repeal

of the Corps' previous determinations as to which of its actions normally do not significantly affect the quality of the human environment, which is the basis for an agency's establishment of a CX, *see* NEPA § 111(1).

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 the Corps' 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. "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 Corps' existing regulations do not dictate what outcomes such consideration must produce, nor do they impose binding legal obligations on private citizens. The Corps' NEPA implementing regulations for the Civil Works program at 33 CFR part 230 are procedural, outlining how District Engineers conduct NEPA reviews for Army Civil Works projects. These regulations describe the structure of environmental documents, specify procedures, and guide District Engineer decision-making, rather than establishing substantive requirements binding the public. These are procedural provisions, not substantive environmental ones. As such, they do not require notice and comment for removal. *See* 5 U.S.C. 553(b)(A).[1]

Moreover, even if (and to the extent that) the Corps' 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. 33 CFR §§ 230.2 & 230.3, 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. 33 CFR § 230.1 ("Purpose"), for instance, may be classified as general statements of policy. Both of these types of agency actions 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 Corps is voluntarily providing notice and an opportunity to comment on this interim final rule, the agency has determined that

[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. at 1507, *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).

notice-and-comment procedures are not required. The fact that the Corps 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 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), (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 Corps' prior rules were promulgated to supplement CEQ's NEPA regulations. Following the rescission of CEQ's regulations, the Corps' 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, comment is not required because the Corps' NEPA procedures were procedural and because, even if comment were required under the APA, good cause exists to forego it. Nevertheless, the Corps has elected voluntarily to solicit comment. 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. Regulatory Compliance Analysis

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

This interim final rule is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, "Regulatory Planning and Review," dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

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

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule, because it is a rule of agency procedure or under the "good cause" exemption in 5 U.S.C. 553(b)(A), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

C. Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. 3501 et seq.)

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

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

The Office of Information and Regulatory Affairs 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), and, 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.

E. E.O. 14192, "Unleashing Prosperity Through Deregulation"

E.O. 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 E.O. 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 Civil Works program to finalize the establishment of previously-proposed and publicly-reviewed 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 Civil Works program currently prepares approximately 10,000 CXs annually. The Army Civil Works program expects the new and revised CXs to increase use of CXs and to shorten project-approval timelines.

F. 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.

G. E.O. 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 Acting Assistant Secretary of the Army for Civil Works has determined that this rulemaking does not have sufficient federalism implications to warrant preparation of a federalism assessment.

H. E.O. 13175, "Consultation and Coordination with Indian Tribal Governments"

E.O. 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.

I. E.O. 14192, "Unleashing Prosperity Through Deregulation"

E.O. 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 not subject to E.O. 14192, because this rule is not a significant regulatory action under E.O. 12866.

List of Subjects in 33 CFR Part 230

Administrative practice and procedure, Environmental impact statements, Environmental protection

For the reasons state in the preamble, the Army Corps of Engineers amends 33 CFR part 230 as follows:

PART 230–PROCEDURES FOR IMPLEMENTING NEPA

1. The authority citation for part 230 is revised to read as follows:

Authority: National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.); 5 U.S.C. 301

§ 230.1 [Removed and reserved]

2. Remove and reserve § 230.1.

3. Revise § 230.2 to read as follows:

§ 230.2 Applicability.

This regulation is applicable to the U.S. Army Corps of Engineers Civil Works program, except the permitting programs and the 33 U.S.C. 408 request for permission program covered in 33 CFR part 333.

§§ 230.3 through 230.8 [Removed and reserved]

4. Remove and reserve §§ 230.3 through 230.8.

§§ 230.10 through 230.26 [Removed]

5. Remove §§ 230.10 through 230.26.

Appendix A to Part 230 through Appendix C to Part 230 [Removed]

6. Remove Appendix A to Part 230 through Appendix C to Part 230.

Approved by:

D. Lee Forsgren

Acting Assistant Secretary of the Army

(Civil Works)

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