



## **COUNCIL ON ENVIRONMENTAL QUALITY**

**40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508**

**[CEQ-2025-0002]**

**RIN 0331-AA10**

### **Removal of National Environmental Policy Act Implementing Regulations**

**AGENCY:** Council on Environmental Quality.

**ACTION:** Final Rule.

**SUMMARY:** The Council on Environmental Quality (CEQ) is adopting the interim final rule published on February 25, 2025, as final. In the interim final rule, CEQ provided a 30-day comment period for the public to review and make comments. This final rule addresses public comments and adopts as final the interim final rule, without changes, removing all iterations of CEQ’s regulations implementing the National Environmental Policy Act of 1969 (NEPA) from the Code of Federal Regulations.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

Congress enacted NEPA to declare a national policy “to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and [to] fulfill the social, economic, and other requirements of present and future generations of Americans.” 42 U.S.C. 4331(a).

NEPA, as amended by the Fiscal Responsibility Act of 2023 (FRA), Pub. L. 118-5 (June 3, 2023), furthers this national policy by requiring Federal agencies to prepare a “detailed statement” for proposed “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. 4332(2)(C). NEPA, as amended, also provides that agencies shall prepare “environmental assessments” for proposed major Federal actions which do not have reasonably foreseeable significant environmental effects or for which the significance of their environmental effects is unknown, 42 U.S.C. 4336(b)(2), unless the action is excluded pursuant to a categorical exclusion. The statute defines categorical exclusions as a determination by an agency that a category of actions normally does not have a significant environmental effect. 42 U.S.C. 4336e(1). NEPA includes thresholds for determining whether an environmental document must be prepared and the appropriate level of environmental review. 42 U.S.C. 4336(a)–(b). NEPA further mandates that Federal agencies ensure the professional and scientific integrity of environmental documents; use reliable data and resources when carrying out NEPA; and study, develop, and describe technically and economically feasible alternatives. 42 U.S.C. 4332(2)(D)–(F). NEPA does not mandate particular results or substantive outcomes. Rather, NEPA requires Federal agencies to consider the environmental effects of proposed actions as part of agencies’ decisionmaking processes.

NEPA also established CEQ as an advisory agency within the Executive Office of the President to assist and advise the President on environmental matters and the implementation of NEPA’s national policy. 42 U.S.C. 4342; 42 U.S.C. 4344. Federal agencies must consult with CEQ while identifying and developing methods and procedures to govern environmental analysis of their proposed major Federal actions, 42 U.S.C. 4332(2)(B), and otherwise provide assistance to CEQ, 42 U.S.C. 4332(2)(L).

In 1970, President Nixon issued E.O. 11514, *Protection and Enhancement of Environmental Quality*, which directed CEQ to “[i]ssue guidelines to Federal agencies for

the preparation of detailed statements on proposals for legislation and other Federal actions affecting the environment, as required by [42 U.S.C. 4332(2)(C)].” 35 FR 4247 (March 7, 1970). CEQ issued interim guidelines in 1970, 35 FR 7390 (May 12, 1970), and revised them in 1971, 36 CFR 7724 (April 23, 1971), and 1973. 38 CFR 20550 (August 1, 1973).

In 1977, President Carter issued E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality*. E.O. 11991 amended section 3(h) of E.O. 11514, directing CEQ to “[i]ssue regulations to Federal agencies for the implementation of the procedural provisions of [NEPA] . . . to make the environmental impact statement process more useful to decision[ ]makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives,” and to “require [environmental] impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses.” 42 FR 26967 (May 25, 1977). E.O. 11991 also amended section 2 of E.O. 11514 to require agency compliance with the regulations issued by CEQ. The Executive Order was based on the President’s constitutional and asserted statutory authority, including NEPA, the Environmental Quality Improvement Act, 42 U.S.C. 4371 et seq., and section 309 of the Clean Air Act, 42 U.S.C. 7609. CEQ promulgated its NEPA implementing regulations in 1978. 43 FR 55978 (November 29, 1978). CEQ made typographical amendments to the 1978 implementing regulations in 1979 and amended one provision in 1986. *See* 44 FR 873 (Jan. 3, 1979) and 51 FR 15618 (April 25, 1986).

On August 15, 2017, President Trump issued E.O. 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*, which directed CEQ to establish and lead an interagency working group to identify and propose changes to its NEPA implementing regulations. 82 FR

40463 (Aug. 24, 2017). In response, CEQ issued an advance notice of proposed rulemaking in 2018, 83 FR 28591 (June 20, 2018), and a notice of proposed rulemaking in 2020, 85 FR 1684 (January 10, 2020), proposing broad revisions to revise, update, and modernize the 1978 regulations. CEQ promulgated its final rule on July 16, 2020. 85 FR 43304 (July 16, 2020).

On January 20, 2021, President Biden issued E.O. 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, which revoked E.O. 13807 and directed agencies to take steps to rescind any rules or regulations implementing it. 86 FR 7037 (Jan. 25, 2021). An accompanying White House fact sheet, published on January 20, 2021, specifically identified the 2020 regulations for CEQ's review for consistency with E.O. 13990's policy. Fact Sheet: List of Agency Actions for Review (Jan. 20, 2021), <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>.

After conducting that review, on June 29, 2021, CEQ issued an interim final rule (IFR) extending by two years the 2020 rule's September 14, 2021, deadline for agencies to propose changes to their existing agency-specific NEPA procedures to make those procedures consistent with the 2020 regulations. 86 FR 34154 (June 29, 2021). Next, on October 7, 2021, CEQ issued a "Phase 1" proposed rule to amend the 2020 regulations to restore three discrete portions of the 1978 regulations, 86 FR 55757 (Oct. 7, 2021), which CEQ finalized on April 20, 2022. 87 FR 23453 (April 20, 2022).

On June 3, 2023, President Biden signed into law the FRA, which included amendments to NEPA. On July 31, 2023, CEQ published a "Phase 2" proposed rule. 88 FR 49924 (July 31, 2023). On May 1, 2024, CEQ finalized its Phase 2 rule, which incorporated many of its proposed revisions, including those to implement the FRA's amendments. 89 FR 35442 (May 1, 2024).

On January 20, 2025, President Trump issued E.O. 14154, *Unleashing American Energy*. 90 FR 8353 (Jan. 29, 2025). The Executive Order revoked E.O. 11991, which had directed CEQ to issue NEPA implementing regulations and required Federal agencies to comply with those regulations. E.O. 14154 also directed CEQ to provide guidance on implementing NEPA, propose rescinding CEQ’s NEPA implementing regulations within 30 days of the order, and to convene a working group to coordinate agencies’ revisions of their individual NEPA implementing regulations or guidance for consistency. CEQ issued initial guidance on February 19, 2025.<sup>1</sup>

In response to E.O. 14154, on February 25, 2025, CEQ issued an IFR to remove its existing NEPA implementing regulations, as amended, 42 U.S.C. 4321 et seq. 90 FR 10610 (Feb. 25, 2025). In the IFR, CEQ addressed its authority to issue binding NEPA implementing regulations in the absence of the now-rescinded E.O. 11991. Specifically, CEQ cited E.O. 11991 as authority in 1978 when it first issued its NEPA implementing regulations and in subsequent amendments to those regulations. CEQ determined that, in the absence of E.O. 11991, it was appropriate to remove CEQ’s regulations from the Code of Federal Regulations, stating that, “[i]n the absence of E.O. 11991, the plain text of NEPA itself may not directly grant CEQ the power to issue regulations binding on executive agencies” and that therefore “CEQ has concluded that it may lack authority to issue binding rules on agencies in the absence of now-rescinded E.O. 11991.”<sup>2</sup>

Publication of the IFR initiated a 30-day public comment period that concluded on March 27, 2025. CEQ requested and encouraged public comments on the rationale for

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<sup>1</sup> Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies, Implementation of the National Environmental Policy Act, Feb. 19, 2025, <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf>

<sup>2</sup> See 90 FR at 10613. As CEQ explained in the IFR and as CEQ reaffirms here, none of the other statutory authorities cited in E.O. 11991 furnishes CEQ with independent regulatory authority. Section 309 of the Clean Air Act directs the EPA Administrator to refer environmentally problematic actions to CEQ. 42 U.S.C. 7609. But that provision merely reinforces CEQ’s advisory role; it does not transform CEQ into a regulatory agency. The same is true of the Environmental Quality Improvement Act of 1970, which allows CEQ to “assist” agencies—but not to command them. 42 U.S.C. 4372(d). Neither statute gives CEQ the power to independently issue NEPA implementing regulations and binding on other agencies, much less legislative rules with the force and effect of law.

the IFR that may inform CEQ’s decisionmaking. CEQ issued two corrections during the comment period, one to clarify the comment deadline (90 FR 11221 (March 5, 2025)), and another to add in a citation to the legal authority for rescinding the regulations (90 FR 12690 (March 19, 2025)).

On May 29, 2025, the U.S. Supreme Court 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 1513 (quotations omitted). The Supreme Court accordingly issued a “course correction,” directing lower courts to give “substantial deference” to reasonable agency conclusions underlying its NEPA process. *Id.* at 1513-14. Through the “course correction,” the Court acknowledged, and sought to address the effect of overly prescriptive judicial review of agencies’ NEPA reviews on “litigation-averse agencies,” which had been “tak[ing] ever more time and [] prepar[ing] ever longer EISs [environmental impact statements] for future projects.” *Id.* at 1513.

With this Supreme Court decision, all three branches of government at the highest possible levels—Congress, the President, and the Supreme Court—have called for, authorized, and directed NEPA reform.

Finally, consistent with the directive in E.O. 14154 and guidance from CEQ, numerous agencies have issued updates (either in the form of IFRs, proposed rules, or updated guidance) to their NEPA implementing procedures.<sup>3</sup>

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<sup>3</sup> See Fed. Energy Regulatory Comm’n, *Removal of References to the Council on Environmental Quality’s Rescinded Regulations, Final Rule*, 90 FR 29423 (July 3, 2025) to be codified at 18 CFR pt. 380 and 18 CFR pt. 385); Fed. Energy Regulatory Comm’n, Office of Energy Products, *Staff Guidance Manual on Implementation of the National Environmental Policy Act* (June 2025); Dep’t of Energy, *Revision of National Environmental Policy Act Implementing Procedures, Interim Final Rule*, 90 FR 29676 (July 3, 2025) (to be codified at 10 CFR pt. 205 and 10 CFR pt. 1021); Dep’t of Energy, *National Environmental Policy Act Implementing Procedures* (June 30, 2025); Dep’t of Defense, *National Environmental Policy Act Implementing Procedures* (June 30, 2025); Dep’t of Defense, *National Environmental Policy Act Implementing Procedures: Appendix A Department of Defense Categorical Exclusions* (June 30, 2025);

## II. Comments

CEQ received approximately 108,385 written submissions in response to the IFR.

The overwhelming majority of the comments (approximately 90,123) were campaign form letters sent in response to organized initiatives and identical or very similar in form and content. CEQ received approximately 457 unique public comments.

CEQ considered and is responding to substantive comments in this final rule.

CEQ is providing summaries of and responses to these comments in the following section of this final rule. Both general support and opposition to the IFR were expressed by

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Dep't of the Air Force, *Removal of Environmental Impact Analysis Process (EIAP) Regulation, Interim Final Rule*, 90 FR 28021 (July 1, 2025) (to be codified at 32 CFR pt. 989); Dep't of the Army, *Environmental Analysis of Army Actions (AR 200-2), Interim Final Rule*, 90 FR 29450 (July 3, 2025) (to be codified at 32 CFR pt. 61); Dep't of the Navy, *Recission of Procedures for Implementing the National Environmental Policy Act (NEPA), Interim Final Rule*, 90 FR 29453 (July 3, 2025) (to be codified at 32 CFR pt. 75); Dep't of the Army, Corps of Engineers, *Procedures for Implementing NEPA; Removal, Interim Final Rule*, 90 FR 29461 (July 3, 2025) (to be codified at 33 CFR pt. 230); Dep't of the Army, Corps of Engineers, *Procedures for Implementing NEPA; Processing of Department of the Army Permits, Interim Final Rule*, 90 FR 29465 (July 3, 2025) (to be codified at 33 CFR pts. 320, 325, 333); Dep't of the Interior, Office of the Sec'y, *National Environmental Policy Act Implementing Regulations, Interim Final Rule*, 90 FR 29498 (July 3, 2025) (to be codified at 43 CFR pt. 46); Dep't of the Interior, Dep't Manual, 516 DM 1 – *U.S. Department of the Interior Handbook of National Environmental Policy Act Implementing Procedures* (June 2025); Dep't of the Interior, Dep't Manual, 516 DM 1 – *U.S. Department of the Interior Handbook of National Environmental Policy Act Implementing Procedures, Appendix 1: Actions Normally Requiring an Environmental Assessment or Environmental Impact Statement* (June 2025); Dep't of the Interior, Dep't Manual, 516 DM 1 – *U.S. Department of the Interior Handbook of National Environmental Policy Act Implementing Procedures, Appendix 2: Bureau Categorical Exclusions* (June 2025); Dep't of the Interior, Dep't Manual, 516 DM 1 – *U.S. Department of the Interior Handbook of National Environmental Policy Act Implementing Procedures, Appendix 3: Implementation Guidance to Bureaus* (June 2025); Dep't of Agriculture, *National Environmental Policy Act, Interim Final Rule*, 90 FR 29632 (July 3, 2025) (to be codified at 7 CFR pt. 1 and 36 CFR pt. 220); Dep't of Commerce, Econ. Dev. Admin., *Amendment to Environment Regulation, Final Rule*, 90 FR 29417 (to be codified at 13 CFR pt. 302) (July 3, 2025); Dep't of Commerce, Econ. Dev. Admin., *EDA National Environmental Policy Act Implementing Directive 17.02-2* (revised June 30, 2025); Dep't of Commerce, Nat'l Oceanic and Atmospheric Admin., *Companion Manual for NOAA Administrative Order 216-6A, Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities* (June 30, 2025); Dep't of Commerce, Nat'l Telecommunications and Info. Admin., *Guidance on NTIA National Environmental Policy Act Compliance* (June 2025); Dep't of Commerce, Nat'l Inst. of Standards and Tech., *National Environmental Policy Act Procedures* (June 30, 2025); Dep't of Commerce, First Responder Network Authority, *Procedures for Implementing the National Environmental Policy Act* (June 2025); Dep't of Transportation, *Procedures for Considering Environmental Impacts, Notice*, 90 FR. 29621 (July 3, 2025); Dep't of Transportation, *DOT Order 5610.1D, DOT's Procedures for Considering Environmental Impacts* (June 30, 2025); Dep't of Transportation, Fed. Aviation Admin., *Notice of Rescission of FAA Order 1050.1F, Availability of FAA Order 1050.1G, Request for Comments, Notice*, 90 FR 29615 (July 3, 2025); Dep't of Transportation, Fed. Aviation Admin., *Order 1050.1G - FAA National Environmental Policy Act Implementing Procedures* (June 30, 2025); Dep't of Transportation, Fed. Highway Admin., Fed. Railroad Admin., Fed. Transit Admin., *Revision of National Environmental Policy Act Regulations, Interim Final Rule*, 90 FR 29426 (July 3, 2025) (to be codified at 23 CFR pt. 771, 49 CFR pt. 264, and 49 CFR pt. 622); and Dep't of Transportation, Nat'l Highway Traffic Safety Admin., *Recission of NHTSA's 1975 Procedures for Considering Environmental Impacts*, 90 FR 29507 (July 3, 2025) (to be codified at 49 CFR pt. 520).

unique comments received. None of the comments received altered CEQ's conclusion that, absent E.O. 11991, CEQ lacks authority to issue regulations binding on other agencies. CEQ therefore adopts as final the interim rule without changes.

### **General Comments on the Interim Final Rule**

*Comment:* Several commenters expressed support for the IFR. These commenters asserted that the IFR is required by E.O. 14154 and the district court decision in *Iowa v. CEQ*,<sup>4</sup> and is supported by the D.C. Circuit's decision in *Marin Audubon Society v. FAA*. In particular, they expressed support for a consistent, efficient, effective, and balanced NEPA process that will allow for a clear focus on achieving NEPA's central goal of improving agency decisionmaking.

Commenters also stated that CEQ's role under the statute is consultative and that the President, in rescinding E.O. 11991 and directing CEQ to rescind its regulations, returns CEQ to its statutory origins and purpose. Specifically, a commenter noted that Congress narrowly tasked CEQ with promulgating regulations for operation of the Office of Environmental Quality Management Fund. The commenter stated that this narrow grant of internal rulemaking authority to administer the Fund confirms that Congress did not delegate to CEQ the power to issue binding NEPA implementing regulations.

Commenters also stated that agencies, not CEQ, are in the best position to establish NEPA implementing procedures and regulations that fit their programs and authorities. These commenters explained that without CEQ's rules, agencies will better be able to tailor the NEPA process to their programs and authorities and will not be bound by a one-size-fits-all process. These commenters stated that additional agency flexibility will improve the efficiency and effectiveness of NEPA reviews and expressed

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<sup>4</sup> On July 29, 2025, the U.S. Court of Appeals for the Eighth Circuit issued an order vacating the district court's decision pursuant to the *Munsingwear* doctrine. Given the IFR's prior removal of 40 CFR Part 1500 from the Code of Federal Regulations, this order has no legal effect on the status of CEQ's NEPA implementing regulations; CEQ's removal preceded the Eighth Circuit's order.



the desire that CEQ help agencies achieve the goals for the reforms passed in the FRA, to continue transparency in the NEPA process, and to conduct effective engagement with State, local, and Tribal entities, and the public.

A commenter expressed general support for CEQ's NEPA reforms. The commenter asserted that changes to NEPA in recent years have contributed to regulatory uncertainty and resulting hesitancy among project proponents and commended CEQ's efforts to modernize, simplify, and accelerate NEPA reviews and support responsible development. Several commenters stated that the Trump Administration should seek lasting and durable change to modernize and improve the NEPA process.

Another commenter stated that NEPA has been used by opponents of development to needlessly stifle many important infrastructure projects. This commenter outlined examples of projects that the commenter asserts have been delayed through the NEPA process and specifically pointed to CEQ's regulations as unduly burdensome. This commenter was supportive of NEPA reform efforts, including the IFR.

*Response:* CEQ acknowledges these supportive comments.

### **Comments Requesting Extension of the IFR Comment Period**

*Comment:* Various commenters requested that CEQ extend the comment period for the IFR. A commenter stated that CEQ's NEPA implementing regulations have served to protect the human environment through a coordinated Federal approach since 1978, and therefore asked CEQ to extend its comment period by "at least 90 additional days" to allow for additional analysis of the effects of the IFR and ability to comment on the proposed course of action. Commenters stated that the IFR changes the relationship between CEQ and Federal agencies and leads to considerable uncertainty and harm. For these reasons, they asserted that CEQ should provide the public with additional time for review and comment. Commenters also stated that the provided opportunity to comment is meaningless as the IFR was effective 15 days after the close of the comment period.

One commenter noted that the two clarifications issued by CEQ during the comment period further limited the time the public has to comment on the IFR. One commenter requested that CEQ hold public hearings, as has been its past practice, during the comment period. One commenter stated that guidance from the Office of Management and Budget indicates that agencies should provide a 60-day comment period for significant rules like this one.

*Response:* As described in the IFR, CEQ maintains that notice and comment was not required because the rulemaking fell within various exceptions to notice-and-comment rulemaking. *See* 5 U.S.C. 553(b). Regardless, CEQ did provide notice and an opportunity to comment on the IFR for a 30-day period before the IFR took effect. CEQ determined that 30 days was adequate because the scope of the IFR was limited to rescinding the CEQ regulations. The IFR explicitly does not reconsider the substance of CEQ's prior NEPA rulemakings, including the 2020 rule, the Phase 1 rule, or the Phase 2 rule. The rescission action is not a highly technical or complex issue that warrants a longer comment period. Contrary to the assertion from commenters, OMB guidance does not require a 60-day notice and comment period for significant rulemakings. CEQ received more than 100,000 comments on its IFR, and the volume and substantive content of the comments received indicate that the public had an adequate opportunity to comment on the limited, non-technical rescission action.

#### **Comments Requesting an Extension of the IFR Effective Date**

*Comment:* Several commenters stated that CEQ should extend the effective date of the IFR for an additional period of time, ranging from 30 to 90 additional days. These commenters suggested that the IFR should not take effect until CEQ has fully considered comments on the IFR and complied with additional requirements, including under NEPA itself, the Endangered Species Act (ESA), and Executive Orders regarding State and Tribal consultation. Some commenters requested that CEQ suspend the effective date at

least until coordinated agency-specific NEPA implementing regulations have been adopted. Other commenters stated that extending the effective date is consistent with the President's direction to CEQ to "propose rescinding" its regulations in E.O. 14154. Commenters also stated that setting an effective date for the IFR 45 days after publication constrained CEQ's ability to take a different course based on public comment.

*Response:* As explained in the IFR, CEQ determined that the most appropriate means to accommodate both the President's direction and the principles of public participation in regulatory action was to issue an IFR with an opportunity for comment for 30 days and an effective date 45 days after publication. *See* 90 FR 10,614. These periods served to provide fair notice to interested persons before the rule took effect, while also allowing 30 days for public comment. Consistent with that determination, CEQ is providing a response herein to comments received on the IFR. Throughout this response to comments, CEQ explains why no comments received alter its determination that it lacks authority to issue NEPA implementing regulations binding agencies in the absence of the now-rescinded E.O. 11991.

In E.O. 14154, the President revoked E.O. 11991 and directed CEQ to "propose rescinding" the CEQ NEPA implementing regulations. Together, these directions necessitated that CEQ undertake a process to implement a rescission of its regulations. Nonetheless, CEQ provided an opportunity to comment on the rescission and delayed the effective date of the rule until after the comment period closed, thus providing the agency with the opportunity to determine if any comments altered its position that it lacks authority to issue NEPA implementing regulations binding agencies in the absence of the now-rescinded E.O. 11991. After reviewing the comments, CEQ is issuing this final rule replacing the IFR and confirming the rationale for its rescission. CEQ's actions are, therefore, consistent with the E.O., and CEQ disagrees that the E.O. requires CEQ to extend the effective date.

Furthermore, because CEQ has determined that the rescission was non-discretionary, CEQ was not required to conduct a NEPA review, engage in ESA consultation, or consult with States or Tribes. Finally, the rescission of CEQ's NEPA regulations did not effectuate any changes to agency-specific NEPA implementing procedures. In its February 19, 2025, guidance, CEQ explained that agencies should continue to follow their existing NEPA implementing procedures to the extent consistent with the current statutory text and E.O. 14154. Moreover, as CEQ explained in the IFR, while agencies update their procedures, they may voluntarily continue to look to the version of CEQ's regulations that was in effect at the time the agency action was completed when defending against specific challenges to project-specific NEPA reviews. As the E.O. directed, and consistent with 42 U.S.C. 4332(2)(B), CEQ is coordinating with the agencies to establish or revise their NEPA implementing procedures, but, given the continuing validity of the agency-level NEPA implementing procedures in the interim, no purpose would have been served in delaying the effective date of the IFR until any revisions of those agency-level procedures were completed.

### **Comments Requesting Presidential or Congressional Action**

*Comment:* Various commenters urged the President to reinstate CEQ's rulemaking authority and the regulations revoked by the IFR. Absent reinstatement of CEQ's authority to issue regulations binding on other agencies, these commenters expressed a desire that Congress would intervene and enact legislation expressly authorizing CEQ to issue binding regulations.

Another commenter encouraged the Administration to work with Congress to amend NEPA to provide clarity and consistency among agency procedures to avoid uncertainty that comes with regulatory whiplash, such as with other environmental rulemakings.

*Response:* CEQ acknowledges the comments and notes that any actions that the President or Congress may take in the future are outside the scope of the IFR and this rulemaking.

### **Comments on CEQ's Rationale for Removing its NEPA Implementing Regulations**

*Comment:* Several commenters stated that CEQ failed to provide a reasoned explanation for the reversal in its position that it has authority to issue binding regulations. Other commenters stated, on the other hand, that CEQ lacks legal authority to promulgate binding regulations due to: (a) the lack of statutory authority to do so; and (b) President Trump's rescission of E.O. 11991.

*Response:* As explained in detail throughout this rulemaking process, in the absence of an executive order delegating rulemaking authority to CEQ, the agency lacks independent statutory authority to maintain its NEPA implementing regulations and binding agencies in their implementation of NEPA.

NEPA itself provides only that CEQ has a consultative role. For example, the statute instructs CEQ to "consult[]" with agencies on the "develop[ment] of methods and procedures" to "ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations." 42 U.S.C. 4332(2)(B). And CEQ is directed to "develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation." 42 U.S.C. 4344(4). Absent from those provisions is any delegation of rulemaking authority by Congress to CEQ related to agencies' implementation of NEPA.

Consistent with that statutory framework, in 1970, President Nixon issued E.O. 11514, which, among other things, instructed CEQ to "[i]ssue guidelines to Federal agencies for the preparation of detailed statements on proposals for legislation and other

Federal actions affecting the requirement, as required by section 102(2) of NEPA. 35 FR 4247, 4248 (Mar. 7, 1970). Then, in 1977, President Carter issued E.O. 11991, which directed that CEQ “[i]ssue regulations to Federal agencies for the implementation of the procedural provisions” of NEPA and instructed agencies to “comply with the regulations issued by” CEQ unless otherwise inconsistent with their statutory requirements. 42 FR 26967, 26967-68 (May 25, 1977).

However, E.O. 14154 rescinded E.O. 11991 in its entirety. 90 FR 8353, 8355 (Jan. 29, 2025). That Order instructed CEQ to: (1) “provide guidance on implementing” NEPA; and (2) “propose rescinding CEQ’s NEPA implementing regulations found at 40 CFR 1500 *et seq.*” *Id.* Sec. 5(b). It also instructed CEQ to work with agencies as they revised their own, agency-specific NEPA implementing procedures to ensure consistency and conformity to the statute as amended in 2023 and, consistent with applicable law, the policies of E.O. 14154. Sec. 5(c). In other words, E.O. 14154 removed any Presidential delegation of rulemaking authority, and returned CEQ to its Congressionally directed role of consultation with agencies as they develop and maintain their own methods to govern their environmental analysis under NEPA. *See* 42 U.S.C. 4332(2)(B); *see also* E.O. 11514, 35 FR 4247 (Mar. 7, 1970) (an instruction contemporaneous with the passage of the statute).

Thus, while commenters are correct that CEQ promulgated regulations in 1978, subject to repeated regulatory amendment thereafter, each iteration of those regulations was based on the Presidential authority and direction to promulgate regulations provided by Executive Order 11991. Without that E.O., CEQ has determined that it lacks authority to promulgate regulations or to maintain the regulations that it had historically promulgated.

Many commenters addressed the issue of whether President Carter had authority to issue E.O. 11991 and delegate rulemaking authority to CEQ in the first instance. That

issue is beyond the scope of this rulemaking. Irrespective of whether the President has the authority to delegate rulemaking authority to CEQ to govern agencies' implementation of NEPA, the President has rescinded that delegation of authority. Thus, the agency determined it lacks authority to maintain its regulations and must repeal them. CEQ adopts as final that action in this rulemaking.

*Comment:* Several commenters stated that neither the D.C. Circuit Court's opinion in *Marin Audubon Society v. FAA* nor the North Dakota District Court's opinion in *Iowa v. CEQ* amount to a final or binding judicial ruling that CEQ lacks rulemaking authority, and therefore that CEQ did not need to rescind its regulations in view of these authorities.

*Response:* As described above, CEQ's rescission of its NEPA implementing regulations is based on the President's rescission of E.O. 11991 and consistent with his direction to CEQ to undertake a process to rescind CEQ's NEPA implementing regulations. E.O. 14154, 90 FR 8353 (Jan. 29, 2025). Thus, commenters' views regarding *Marin Audubon* and *Iowa v. CEQ* are unrelated to the agency's discretion or action to rescind its regulations here. CEQ therefore disagrees that the binding or nonbinding nature of these cases affects its decision to rescind its regulations.

*Comment:* Several commenters stated that CEQ has authority to issue regulations binding on other agencies based on NEPA's mandate that CEQ develop and recommend national policies to foster and promote the improvement of environmental quality in 42 U.S.C. 4342 and 4344(4). These commenters also pointed to CEQ's responsibility, set forth in 42 U.S.C. 4344(3), for overseeing the various programs and activities of the Federal Government in light of the policy set forth in NEPA and CEQ's responsibility to consult with agencies to identify methods and procedures for complying with NEPA in 42 U.S.C. 4332(2)(B) as provisions that confer rulemaking authority on CEQ. Commenters asserted that Congress entrusted CEQ with flexibility to chart its

implementation of NEPA and that it would be up to the White House to determine how best to proceed, whether through developing policies, guidance, or regulations.

Commenters asserted that, at the time of NEPA's passage, there was little discussion of regulations because the doctrine of rulemaking authority had not been fully articulated when NEPA was originally enacted.

*Response:* None of the provisions of NEPA the commenters identify grants regulatory authority to CEQ. Instead, those provisions are consistent with CEQ's consultative role. CEQ's duty to "recommend" policies for the improvement of environmental quality, as in 42 U.S.C. 4342 and 4344(4), points to an advisory function rather than the power to bind other agencies through the issuance of regulations. Likewise, the directive to CEQ to "review and appraise" Federal Government activities and "make recommendations to the President with respect thereto," in 42 U.S.C. 4344(3), exemplifies a consultative role in support of the President's role in coordinating Executive functions. And the statement in 42 U.S.C. 4332(2)(B) that "all agencies of the Federal Government shall . . . identify and develop methods and procedures, in consultation with the Council on Environmental Quality" to ensure appropriate consideration of environmental concerns gives agencies, not CEQ, primary responsibility for implementing NEPA, with CEQ functioning as an advisory body. Thus, the statutory language commenters have identified does not contain language sufficient for CEQ to find that it has independent regulatory authority via direct statutory delegation. CEQ agrees with the commenters to the extent they express that the President had authority to rescind E.O. 11991 and chose to exercise that authority in E.O. 14154. CEQ, as a result, views this action to rescind all iterations of its NEPA implementing regulations as non-discretionary in the absence of that delegation of Presidential authority.

*Comment:* Several commenters asserted that Congress has ratified CEQ's authority to issue binding regulations by codifying certain elements of CEQ's regulations



in the NEPA amendments that were enacted as part of the FRA. One commenter stated that congressional activities since NEPA's passage constitute both ratification and acquiescence to CEQ's exercise of rulemaking authority. The commenter points to a Senate Committee on Environment and Public Works oversight hearing a year after the regulations took effect. The commenter also pointed to an oversight hearing on the regulation's impact on Rural Electric Cooperatives, and asserted that Congress has in various other statutes employed or otherwise relied on the existence of CEQ's regulations.

*Response:* In the FRA, Congress codified into statute certain provisions from aspects of CEQ's regulations. Congress did not, however, address the question of CEQ's authority to promulgate binding regulations, even though it was indisputably aware of CEQ's past practices.<sup>5</sup> In fact, when Congress intended to grant rulemaking authority to CEQ, it did so explicitly and in limited fashion; the 1984 amendments to the Environmental Quality Improvement Act established the Office of Environmental Quality Management Fund and authorized CEQ, serving as the Director of the Office of Environmental Quality, to promulgate regulations and procedures for operation.<sup>6</sup> This Congressional practice demonstrates that, when Congress chooses to confer regulatory authority to CEQ, it does so explicitly, which undermines any argument that Congress implicitly granted CEQ regulatory authority elsewhere in NEPA.

Nor did Congress tacitly ratify CEQ's rulemaking authority. The most that can be said is that Congress legislated against the backdrop created by E.O. 11991's

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<sup>5</sup> Congress has long been aware of this issue. Before the Senate Environment and Public Works Subcommittee on Superfund, Ocean, and Water Pollution in 1989, then-CEQ Chairman Alan Hill urged Congress to provide CEQ with clear statutory authority to regulate. *Amending the National Environmental Policy Act*, Hearing before Subcomm. on Superfund, Ocean, and Water Protection, S. Hrg. 101-132 (June 1, 1989) ("I think the first thing—and the legislation does touch on this—is granting statutory authority to the Council to promulgate regulations. Now, the regulations guiding the NEPA process for our Government are solely based on an authorization from executive order, and those are always subject to challenge."); *see also id.* (Testimony of Michael McCloskey, Chairman of Sierra Club) (urging Congress to empower CEQ by codifying E.O. 11991 in law, which would in turn "provide a statutory basis for [the 1978 regulations]").

<sup>6</sup> *See* 42 U.S.C. 4375(c).

authorization and direction to CEQ to promulgate NEPA implementing regulations, and that in the FRA in 2023, Congress chose not to disturb that backdrop. Moreover, in passing the FRA, Congress could not have ratified CEQ's authority to issue binding regulations based on NEPA *alone*, given that E.O. 11991 was in effect when that law was enacted. Since then, however, the President has chosen to rescind E.O. 11991.

*Comment:* Several commenters assert that by cross-referencing portions of CEQ's regulations in appropriations, infrastructure, and other legislation (such as the Fixing America's Surface Transportation Act of 2015 or the Water Infrastructure Improvements for the Nation Act of 2016), Congress ratified CEQ's authority to issue binding regulations.

*Response:* CEQ notes that, as commenters point out, various pieces of legislation cross-reference portions of CEQ's regulations. For example, the Fixing America's Surface Transportation Act of 2015 uses the term "environmental assessment," and defines it by reference to CEQ's now-rescinded regulations. 42 U.S.C. 4370m(8). The Water Infrastructure Improvements for the Nation Act of 2016 references CEQ's

rescinded NEPA implementing regulations as setting the standard for environmental review by the Army Corps of Engineers. 33 U.S.C. 408(b).<sup>7</sup>

However, none of these laws ratifies CEQ's authority to issue binding regulations. Instead, these cross-references—at most—define statutory terms or identify statutorily required processes by importing those terms or processes from CEQ's regulations as they existed at the time the legislation in question was enacted. Indeed, many simply refer agencies to follow processes set forth in the NEPA implementing regulations, like the use of categorical exclusions and different tiers of environmental review. Notably, Congress chose to codify provisions addressing precisely these NEPA procedural issues, among others, in the 2023 amendments—again, without amending the statute to delegate rulemaking authority to CEQ. Further, each of these statutes came into force while E.O. 11991 was in effect. Congress was therefore legislating against the backdrop created by President Carter's authorization and direction to CEQ to promulgate NEPA implementing

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<sup>7</sup> Other statutes commenters have cited to this effect include the FAA Reauthorization Act of 2024, Pub. L. 118-63, Section 230 (2024); the Building Chips in America Act of 2023, Pub. L. 118-105, Section 2 (2024); the Hazard Eligibility and Local Projects Act of 2022, Pub. L. 117-332, Section 2 (2023); the NDAA for FY 2023, Pub. L. 117-263, Section 8134 (2022); the Infrastructure Investment and Jobs Act, Pub. L. 117-58, Section 11301, 11312, 11318, 40106 (2021); the Consolidated Appropriations Act of 2021, Pub. L. 116-260, Section 102 (2020); the Additional Supplemental Appropriations for Disaster Relief Act of 2019, Pub. L. 116-20 Title XI (2019); the Consolidated Appropriations Act of 2019, Pub. L. 115-245, Section 8141 (2018); the Bipartisan Budget Act of 2018, Pub. L. 115-123, Section 21101 (2018); the Agriculture Improvement Act of 2018, Pub. L. 115-334, Section 8611 (2018); the FAA Reauthorization Act of 2018, Pub. L. 115-254, Section 1220 (2018); the Consolidated Appropriations Act of 2018, Pub. L. 115-141, Section 121 (2018); the Reinforcing Education Accountability in Development Act of 2017, Pub. L. 115-56, Section 7 (2017); the NDAA of 2017, Pub. L. 114-328, Section 341 (2016); the Consolidated Appropriations Act of 2016, Pub. L. 114-113, Section 420 (2016); the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act of 2017, Pub. L. 114-223, Section 145 (2016); the Water Resources Reform and Development Act of 2014, Pub. L. No. 113-121, Section 1005 (2014); the Supplemental Appropriations Act of 2013, Pub. L. 113-2 Title VIII (2013); the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act, Pub. L. 113-24, Section 2 (2013); the Moving Ahead for Progress in the 21st Century Act of 2012, Pub. L. 112-141, Sections 1315-18 (2012); the FAA Modernization and Reform Act of 2012, Pub. L. 112-95, Section 213 (2012); the Omnibus Appropriations Act of 2009, Pub. L. 111-8, Section 423 (2009); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005, Pub. L. 109-59, Section 6001 (2005); the Energy Policy Act of 2005, Pub. L. 109-58, Section 390 (2005); the Amendment of Federal Food, Drug, and Cosmetic Act of 2004, Pub. L. 108-282, Section 102 (2004); the Healthy Forest Restoration Act of 2003, Pub. L. 108-148, Section 404 (2003); the Consolidated Appropriations Resolution of 2003, Pub. L. 108-7, Section 403 (2003); the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century Act of 2000, Pub. L. 106-181, Section 803 (2000); the NDAA of 1996, Pub. L. 104-106, Section 2897 (1996); the National Highway System Designation Act of 1995, Pub. L. 104-59, Section 316 (1995); and the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, Section 5041 (1987). None of these expressly ratify CEQ's authority to issue binding regulations.

regulations. Therefore, at most, Congress acquiesced to the President's authority to direct CEQ to promulgate NEPA implementing regulations.

*Comment:* Some commenters stated that while CEQ and the Executive do have the authority to propose amendments and changes to rulemaking, they do not have the authority to remove 40 CFR parts 1500 to 1508 in their entirety. The commenters opined that by rescinding the regulations CEQ fails to meet its responsibilities as established in 42 U.S.C. 4321 to 4327 (“[p]romote efforts that will prevent and eliminate damage to the environment and promote public health”); 42 U.S.C. 4371 to 4375 (“[p]revent and control environmental pollution”); and E.O. 11514 (“[e]valuate environmental and public health impacts of proposed policies by the Federal Government; [r]ecommend to the President policies that achieve more effective protection and enhancement of environmental quality; [d]etermine the need for new policies and programs for dealing with environmental problems not being adequately addressed; [i]ssue guidelines to federal agencies on how policies and other federal projects affect the environment; [f]oster investigations, studies, surveys, research, and analyses related to ecological systems and environmental quality, the impact of new and changing technologies thereon, and means of preventing or reducing adverse effects from such technologies”). Another commenter stated that CEQ could not claim both that it may not have the authority under the NEPA statute to issue such regulations and that very same statute gives them the authority to issue this IFR. The commenter stated that the E.O. 11991 could have been used to promulgate the IFR before it was rescinded.

*Response:* Nothing in the provisions cited by the commenters requires CEQ or any agency to issue or have regulations to effectuate the mandates listed above. The authority CEQ cited when first establishing its NEPA implementing regulations was the statute in combination with E.O. 11991; the authority for repealing those regulations is likewise the statute in combination with E.O. 14154.

*Comment:* One commenter stated that the President could not unilaterally revoke an agency's authority to issue regulations binding on other agencies under a particular statute. The commenter states that a President cannot unilaterally revoke an authority given to an agency by way of legislation and that CEQ itself admits it is unsure if Congress has or has not done so in NEPA.

*Response:* In the absence of an executive order delegating rulemaking authority to CEQ, the agency lacks authority to maintain its NEPA implementing regulations and binding agencies in their implementation of NEPA. Congress has not delegated, whether by ratification or otherwise, any rulemaking authority to CEQ.

*Comment:* Several commenters asserted that the Supreme Court, as well as lower courts, have affirmed CEQ's authority to promulgate binding regulations. As one example, commenters noted that the Supreme Court has stated that CEQ was "established by NEPA with authority to issue regulations interpreting it, [and] has promulgated regulations to guide Federal agencies in determining what actions are subject to that statutory requirement." *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 757 (2004).

*Response:* None of the court decisions commenters reference holds that NEPA empowers CEQ to promulgate regulations binding on agencies. Instead, the decisions variously state that CEQ's NEPA implementing regulations are entitled to deference or bind agencies—but do not examine the underlying source of CEQ's authority to issue regulations. None of these court decisions therefore supports the proposition that CEQ has authority to maintain those regulations after the rescission of E.O. 11991, and none changes CEQ's view that it lacks rulemaking authority after that rescission. First, the statement in *Public Citizen* is likely dictum. Second, to the extent that the Supreme Court in *Public Citizen* was observing that Congress intended CEQ to issue what the Administrative Procedure Act refers to as "interpretative rules," those are not equivalent to binding, "legislative" regulations. Congress has not delegated authority to CEQ to

issue legislative regulations and the Supreme Court has not held otherwise. Third, the Supreme Court in *Public Citizen* spoke of CEQ “guid[ing]” other agencies. That role of issuing guidance is grounded in NEPA’s text, 42 U.S.C. 4332(2)(B), requiring all agencies to “consult” with CEQ as the agencies “identify and develop methods and procedures” to conduct NEPA analyses. But that, again, is not a delegation by Congress of regulatory authority to CEQ to bind agencies in their implementation of NEPA.

*Comment:* Several commenters questioned whether rescission of CEQ’s NEPA implementing regulations appropriately recognizes and accounts for their asserted reliance interests in a regulatory system that has been in place since 1978. Some commenters asserted that States’ interests are specially implicated because they participate in the environmental review process. The commenters opined that States have significant resources devoted to NEPA implementation and the change would require them to invest more resources in environmental review processes because staff assigned in each State must familiarize themselves with the regulations of the individual Federal agencies involved in each project.

*Response:* CEQ acknowledges commenters’ concerns. However, CEQ does not have the authority to maintain its NEPA implementing regulations and binding agencies in their implementation of NEPA in the absence of a delegation of authority from the President under the now-rescinded E.O. 11991. As described elsewhere in this rulemaking, CEQ has determined that, without delegated authority from the President, the agency lacks authority to promulgate or maintain regulations implementing NEPA and binding agencies in their implementation of NEPA. The question of the validity of that now-rescinded delegation of authority from the President is beyond the scope of this final rule, because CEQ’s conclusion is that, whatever its validity, its rescission leaves CEQ without authority to maintain its NEPA implementing regulations and binding agencies in their implementation of NEPA.

CEQ has considered whether any reliance interests constitute an independent basis for CEQ to take a different action. In brief, CEQ has concluded that they do not.

As an initial matter, CEQ's NEPA implementing regulations established procedures that only bind and direct Federal agencies. They do not impose fines or liability, confer discretionary benefits, or alter third parties' substantive statutory rights. Nor could CEQ's regulations have done so given that, as the Supreme Court emphasized in *Seven County*, "NEPA is a purely procedural statute." 145 S. Ct. at 1507. "NEPA 'does not mandate particular results, but simply prescribes the necessary process' for an agency's environmental review of a project[.]" *id.* at 1510 (citations omitted). Thus, to the extent that non-Federal entities have any reliance interests, those interests relate to the environmental review accompanying a specific agency action, and any pertinent agency specific processes concerning that environmental review, rather than to CEQ's overarching regulatory framework governing agencies' reviews. And, as discussed further below, CEQ has taken steps to ensure that at the agency level, environmental reviews remain predictable and efficient.

Moreover, rescission of CEQ's regulations does not alter an agency's duty to comply with the statute. As discussed in the preamble to the IFR, agencies maintain procedures that govern their implementation of NEPA. CEQ's rescission did not effectuate the revision or rescission of any agency's NEPA implementing procedures. Indeed, in coordination with CEQ, some agencies have already updated or replaced their procedures to incorporate the FRA amendments to NEPA, the policies set forth in E.O. 14154 (as informed by CEQ's February 19, 2025 guidance), CEQ's rescission of its NEPA implementing regulations, and the Supreme Court's decision in *Seven County*.<sup>8</sup>

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<sup>8</sup> As of the date of this filing, over a dozen departments and agencies have published new or revised NEPA implementing procedures since CEQ's rescission became effective on April 11, 2025. For a list of recently completed updated procedures, please see footnote 4.

Through their individual implementing procedures, agencies tailor NEPA implementation to their particular statutory authorities, policies, and programs, resulting in improved efficiency. In addition, CEQ ensures consistency across the Federal Government by consulting with agencies on their NEPA implementing procedures, consistent with section 102(2)(B) of NEPA, 42 U.S.C. 4332(2)(B), and section 5 of E.O. 14154.

While some commenters asserted reliance interests in the predictable and efficient implementation of environmental reviews, those interests are ultimately implicated by agencies' project-specific NEPA reviews, not CEQ's rescission of its NEPA implementing regulations. As CEQ explained in the IFR, while agencies update their procedures, they may voluntarily continue to look for guidance in the version of CEQ's regulations that was in effect at the time an agency action was completed when defending against specific challenges to NEPA reviews. And as the February 19 guidance makes clear, an agency may use its existing procedures—with any adjustments necessary for consistency with the FRA amendments, the guidance, and E.O. 14154—to complete ongoing environmental reviews while that agency is undertaking the process of revising its own NEPA implementing procedures or regulations. This approach is consistent with CEQ's longstanding practice to direct agencies to rely on the CEQ regulations and agency NEPA



procedures that were in effect when an ongoing environmental review was initiated, prior to changes in regulations or agency NEPA procedures taking effect.<sup>9</sup>

Moreover, CEQ has taken steps to ensure consistency and efficiency across agency implementation of NEPA in the absence of CEQ's regulations. CEQ first issued its February 19, 2025 guidance to provide agencies with initial direction during the interim period before agencies are able to update their procedures. CEQ also convened a working group of select agencies and CEQ is continuing to work with agencies consistent with its statutory role and the President's direction in E.O. 14154 to coordinate the revision of agency-level implementing procedures for consistency. CEQ is in the process of publishing revised guidance informed by the discussions with the working group and CEQ's consultation with agencies that have already revised their NEPA implementing procedures. The revised guidance includes a template for agency NEPA implementing procedures, providing CEQ's view of an appropriate framework for agencies to use in revising their procedures to ensure conformity to the statute as amended, to the President's policies, and to the Supreme Court's *Seven County* opinion, and to reflect the rescission of CEQ's NEPA implementing regulations; agencies may further tailor this template to their particular programs and authorities.<sup>10</sup> These measures further ensure the continuation of predictable and efficient implementation of environmental reviews.

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<sup>9</sup> See 40 CFR 1506.12(a) (1978) ("These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations."); 40 CFR 1506.13 (2020); 85 FR 43304, 43339 (July 16, 2020) ("Finally, CEQ proposed to modify 1506.13, 'Effective date,' to clarify that these regulations would apply to all NEPA processes begun after the effective date, but agencies have the discretion to apply them to ongoing NEPA processes"); 40 CFR 1506.12 (2024); 89 FR 35442, 35530 (May 1, 2024) ("Section 1506.12 requires agencies to comply with the regulations for proposed actions begun after the effective date of the final rule. Agencies are in the best position to determine on a case-by-case basis whether applying provisions of the revised regulations to ongoing reviews will facilitate a more effective and efficient process, and CEQ declines to limit agency flexibility in this regard. Regarding potential conflict with existing agency procedures, an agency's existing NEPA procedures remain in effect until the agency revises its procedures consistent with 1507.3. . . . Additionally, CEQ notes that the Fiscal Responsibility Act's amendments to NEPA were effective upon enactment, so to the extent the regulations implement provisions of the NEPA amendments, these are applicable to ongoing reviews.").

<sup>10</sup> See 90 FR 47734 (Oct. 2, 2025) and <https://ceq.doe.gov/guidance/guidance.html>.

Finally, with respect to State interests in maintaining CEQ's NEPA implementing regulations, the rescission does not change the statutory mandate for agencies to ensure a coordinated environmental review process with the States. *See* 42 U.S.C. 4332(2)(C), 4332(2)(G), 4332(2)(J), 4334, and 4336a. In addition, any States that implement NEPA's requirements pursuant to other Federal law must continue to adhere to the relevant Federal agency NEPA implementing procedures, as applicable. Consistent with the statute, Federal agencies have maintained their own individual NEPA procedures to address their unique missions and programs. *See* 42 U.S.C. 4332(2)(B). The need for States, stakeholders, and the public to become familiar with them for the particular projects or actions at hand does not change with CEQ's rule rescission.

*Comment:* Several commenters asserted that some States maintain environmental review legislation or regulations that rely on CEQ's NEPA implementing regulations to ensure a coordinated State and Federal review process. The commenters opined that removing CEQ's NEPA implementing regulations would make it more difficult for States to rely on NEPA analyses for joint analyses under State and Federal law. Another commenter, however, stated that CEQ's NEPA implementing regulations are not needed because States already have comprehensive environmental review procedures that are well-developed and closely aligned with NEPA's core objectives, facilitating informed decisionmaking, engaging the public, and identifying environmental impacts and alternatives.

*Response:* CEQ will continue to work with agencies consistent with the President's direction in E.O. 14154 and its statutory role to ensure that the NEPA review process is efficient and, to the extent possible, avoids duplication with other environmental review processes. Moreover, rescission of CEQ's regulations has no effect on States' ability to regulate State-level actions. While commenters did not explain how these States relied upon CEQ's regulations specifically—rather than on statutory

requirements or agency-specific implementing procedures—Federal agencies will continue to implement NEPA in an orderly and efficient manner pursuant to their own NEPA implementing procedures in a manner that takes into account other review processes and avoids duplication.

*Comment:* Numerous commenters raised concerns about or offered suggestions regarding the topics included in CEQ’s February 19, 2025 guidance and potential future guidance, as well as suggestions for processes to be included in individual agency procedures.

*Response:* While CEQ acknowledges the commenters’ suggestions, the content of individual agency procedures and any future CEQ guidance is beyond the scope of this rulemaking.

*Comment:* A commenter stated that the IFR creates uncertainty. A commenter stated that the removal of CEQ’s implementing regulations is inconsistent with what the commenter described as Congress’ vision of standardized, comprehensive procedures for environmental review with meaningful public engagement. Another commenter stated that Congress, federal courts, and the public have shared the understanding that CEQ’s NEPA implementing regulations bind agencies and ensure that agencies adequately evaluate, consider, and share with the public the environmental effects of projects and their alternatives. The commenter stated that the removal of CEQ’s regulations is counter to what the commenter describes as this longstanding shared understanding and to NEPA’s text and purpose. More specifically, a commenter stated that CEQ’s rescission of its NEPA implementing regulations strips away critical regulatory guardrails and undermines the very purpose of NEPA. Another commenter stated that NEPA has saved taxpayers countless dollars, protected wildlife, and ensured responsible Federal decisionmaking.

*Response:* While these commenters described their own interpretations of NEPA, none of them have substantiated the position that Congress provided the authority to CEQ to establish binding regulations for environmental reviews under NEPA in the absence of an executive order. Rather, NEPA requires that agencies consult with CEQ on their methods and procedures for implementing the statute. *See* 42 U.S.C. 4332(2)(B). As explained above, through this consultative role and the provision of guidance, CEQ is working to ensure consistency across the Federal Government regarding NEPA implementation.

Regardless of these asserted harms, CEQ has determined that it lacks the discretion to alter its action. CEQ first promulgated its NEPA implementing regulations in response to and citing as authority, E.O. 11991, and consistently cited that E.O. as authority when revising its implementing regulations. The President removed this authority when he rescinded the E.O. and at the same time, directed CEQ to begin the process of rescinding its NEPA implementing regulations. CEQ is issuing this final rule to respond to comments and explain to the public that it is reaffirming its decision to rescind its NEPA implementing regulations as CEQ lacks the authority to maintain those regulations after the revocation of E.O. 11991. Neither the IFR nor this rulemaking alter agency obligations under the NEPA statute or remove any of the benefits that environmental review may provide.

### **Comments on the Interim Final Rule Process**

*Comment:* Several commenters disagreed that CEQ had good cause to waive the Administrative Procedure Act (APA) notice and comment requirements at 5 U.S.C. 553(b). These commenters stated that CEQ's IFR did not establish that notice and comment is unnecessary, impracticable, or contrary to the public interest. More specifically, these commenters disagreed that CEQ had good cause to proceed with an IFR to meet the 30-day deadline in E.O. 14154, and instead stated that the President

merely directed CEQ to “propose rescinding” its regulations within 30 days. Commenters also stated that self-imposed deadlines do not create good cause. Commenters also disagreed that CEQ needed to act swiftly to reduce confusion stemming from recent judicial decisions from the D.C. Circuit and district court in North Dakota discussing CEQ’s authority to promulgate regulations. These commenters asserted that, rather than reducing confusion and supporting the public interest, the IFR creates more confusion about how agencies will undertake their NEPA review processes.

In addition, several commenters disagreed that CEQ’s rule to rescind the NEPA implementing regulations is an interpretative rule or a rule of agency procedure that does not require notice and comment, and stated that CEQ’s underlying NEPA implementing regulations were not and could not be so categorized.

*Response:* As CEQ explained in the IFR, CEQ proceeded via IFR in response to E.O. 14154, which, among other things, revoked E.O. 11991, the E.O. that provided CEQ with delegated authority to promulgate its NEPA implementing regulations. Without E.O. 11991 and its delegation of Presidential authority, CEQ was obligated to rescind its NEPA implementing regulations. Regardless, the process by which CEQ rescinded its NEPA implementing regulations is not procedurally invalid because CEQ’s IFR contained all of the elements of a notice of proposed rulemaking as required by the APA.<sup>11</sup> CEQ explained its position with sufficient detail to put the public on notice that it was rescinding its NEPA implementing regulations and provided its rationale along with an opportunity to comment before the IFR’s effective date.<sup>12</sup> The public understood the action CEQ was taking and took advantage of the opportunity to comment; CEQ received more than 100,000 comments on its IFR. Thus, while CEQ maintains that its IFR is subject to the exceptions set forth in 5 U.S.C. 553(b), this final rule represents the

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<sup>11</sup> 5 U.S.C. 553(b); *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657 (2020).

<sup>12</sup> 5 U.S.C. 553(c) & (d).

culmination of notice-and-comment rulemaking regardless of the initial procedural basis for the IFR.

As explained in the response to other comments, *no commenter* has identified any authority sufficient for CEQ to maintain its NEPA implementing regulations now that E.O. 11991 has been rescinded. Thus, CEQ is issuing this final rule to respond to comments and explain that it is reaffirming its decision to rescind its NEPA implementing regulations. This final rule therefore supersedes the IFR. As such, even if CEQ were incorrect in initially proceeding via IFR with an opportunity to comment, publication of this final rule has rectified any earlier error given that the public had the opportunity to comment prior to issuance of this final rule, thus rendering comments objecting to the IFR process moot.

*Comment:* Several commenters stated that since CEQ promulgated its NEPA implementing regulations by notice and comment rulemaking, CEQ was legally obligated to follow the same process when rescinding those regulations. These commenters stated that the President's direction in E.O. 14154 also requires notice-and-comment rulemaking.

*Response:* CEQ disagrees that it was foreclosed from employing an IFR because it previously promulgated its NEPA implementing regulations through another process. As CEQ explained in its IFR, CEQ proceeded via IFR in response to revocation of E.O. 11991. Without that E.O. and its delegation of Presidential authority, CEQ was obligated to rescind its NEPA implementing regulations. Moreover, CEQ disagrees that revocation of its regulations required notice and comment simply because those regulations were promulgated via notice and comment; CEQ's implementing regulations were promulgated when E.O. 11991 was effective and the agency took different procedural steps to carry out the Presidential directives in place at the time the regulations were issued.

*Comment:* Several commenters stated that CEQ did not have good cause to waive the 30-day period between issuing the IFR and the rule taking effect.

*Response:* CEQ provided 45 days between publishing the IFR and the effective date of the IFR. As CEQ explained in the prior comment responses, CEQ offered an opportunity for public comment. This final rule, including its response to comments submitted, now replaces the IFR and is effective immediately.

### **Comments on the Consequences of the Interim Final Rule**

*Comment:* Some commenters stated that the IFR, by removing CEQ's NEPA implementing regulations, will result in increased litigation concerning NEPA's requirements, potentially delaying projects and increasing costs. Commenters also asserted that increased litigation over NEPA's requirements will raise the potential for conflicting judicial opinions, which will further complicate environmental review processes.

*Response:* The asserted harm that commenters raise is speculative. It is unclear whether or how the rescission will increase NEPA litigation. Agencies will continue to implement NEPA, consistent with their agency-specific NEPA implementing procedures, established in consultation with CEQ.<sup>13</sup> As agencies revise their NEPA implementing procedures, CEQ will review them for consistency across the Government and with NEPA's requirements, as required by E.O. 14154 and consistent with CEQ's statutory role. Moreover, even if there were a risk of increased litigation, any such increased risk would not justify retaining the regulation because CEQ has determined that it lacks discretion over the decision to rescind its NEPA implementing regulations. E.O. 14154 rescinded E.O. 11991, which delegated CEQ the authority to issue its regulations, and directed CEQ to propose rescinding its regulations. CEQ is issuing this final rule to respond to comments and explain to the public that it is reaffirming its decision to rescind

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<sup>13</sup> See 42 U.S.C. 4332(2)(B).

its NEPA implementing regulations as CEQ lacks the authority to maintain those regulations. Finally, these asserted harms, if they materialize, would stem from future agency action or would be addressed by the content of agency implementing procedures. As explained above, some agencies have recently revised their NEPA implementing procedures consistent with E.O. 14154, while others are currently under review or in development. However, the contents of such agency procedures are beyond the scope of the IFR and this rulemaking.

*Comment:* Multiple commenters stated that the IFR's repeal of CEQ's NEPA implementing regulations will create confusion for Federal agencies and States applying CEQ's NEPA implementing regulations or incorporating them into other law. A commenter stated that the IFR undoes the 40-year history of stability and public review. Commenters stated that removal of CEQ's regulations will impede environmental reviews across the government, complicate coordination among agencies conducting joint environmental reviews of activities requiring multiple agency actions, and likely slow environmental review and permitting timelines. These commenters also stated that the loss of CEQ's NEPA implementing regulations will create uncertainty for Federal agencies in how they carry out streamlining mechanisms (e.g., establishment of categorical exclusions, tiered reviews, emergency reviews) in their agency-specific NEPA processes.

*Response:* The asserted harm that commenters raise is speculative. It is unclear whether or how the rescission will increase confusion. Agencies will continue to implement NEPA, consistent with their agency-specific NEPA implementing procedures, established in consultation with CEQ.<sup>14</sup> As agencies revise their NEPA implementing procedures, CEQ will review them for consistency across the Government and with

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<sup>14</sup> *Id.*



NEPA's requirements, as required by E.O. 14154 and consistent with CEQ's statutory role. Moreover, any confusion would not require a different result. CEQ has determined that it lacks discretion over the decision to rescind its NEPA implementing regulations. E.O. 14154 rescinded E.O. 11991, which delegated CEQ the authority to issue its regulations, and directed CEQ to propose rescinding its regulations. CEQ is issuing this final rule to respond to comments and explain to the public that it is reaffirming its decision to rescind its NEPA implementing regulations as CEQ lacks the authority to maintain those regulations. Furthermore, CEQ notes that Congress's 2023 amendments to NEPA provided direction to agencies on many of the issues raised here, specifically categorical exclusions and programmatic reviews.

As directed in E.O. 14154 and consistent with its statutory role, CEQ is working directly with agencies as they revise their NEPA procedures. Nothing in the IFR or this rulemaking abrogates the statutory requirement that agencies consult with CEQ when revising or developing their NEPA implementing procedures.

Accordingly, CEQ is working, to coordinate the revision of agency-level implementing regulations for consistency, as directed by Congress in section 102(2)(B) of NEPA, 42 U.S.C. 4332(2)(B), and the President in E.O. 14154, and several agencies have taken action to revise their NEPA implementing procedures. Therefore, commenters' concerns that future NEPA reviews may be deficient absent the CEQ NEPA implementing regulations are premature and speculative. Further, agencies can rely on their existing NEPA implementing procedures while revising their procedures, minimizing any uncertainty or inefficiency during that process.

*Comment:* Multiple commenters asserted that agencies, States, and stakeholders would experience increased delays and costs resulting from the IFR and the confusion they assert that it creates over NEPA's requirements, including confusion over how CEQ

will fulfill its consultative role under the statute. One commenter stated that the IFR placed increased regulatory strain on States to evaluate impacts of Federal action.

*Response:* CEQ's rescission did not constitute the revision or rescission of any agency's NEPA implementing procedures. Many NEPA implementing procedures had not been updated following the 2023 Fiscal Responsibility Act's amendments to NEPA. This, as well as other circumstances that may be unique to agencies' missions and programs, was also a factor in agencies revising their NEPA implementing procedures.

In its February 19, 2025, guidance, CEQ explained that agencies should continue to follow their NEPA implementing procedures to the extent consistent with the current statutory text and E.O. 14154. Moreover, as CEQ explained in the IFR, while agencies update their procedures, they may voluntarily continue to look for guidance to the version of CEQ's regulations that was in effect at the time the agency action was completed when defending against specific challenges to NEPA reviews. Any States that implement NEPA's requirements pursuant to other Federal law will continue to adhere to the relevant Federal agency NEPA implementing procedures as they always have. As directed in E.O. 14154 and consistent with its statutory role, CEQ is working with agencies as they revise their NEPA procedures, consistent with its statutory role under section 102(2)(B) of NEPA. 42 U.S.C. 4332(2)(B). In addition, as noted earlier in the response to comments, concurrent with this Final Rule, CEQ is publishing revised guidance informed by the working group and CEQ's consultation with agencies that have already revised their NEPA implementing procedures.<sup>15</sup> These measures further ensure the continuation of predictable and efficient implementation of environmental reviews.

*Comment:* Many commenters stated that the rescission of the CEQ regulations will have negative public health and environmental consequences, including by curtailing public participation. Commenters specifically expressed concerns that the IFR would

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<sup>15</sup> See 90 FR 47734 (Oct. 2, 2025) and <https://ceq.doe.gov/guidance/guidance.html>.

decrease government transparency and lead to less resilient infrastructure. Several commenters also stated that some communities will disproportionately face harm from the absence of CEQ's uniform NEPA implementing regulations. Some State government commenters indicated that States in particular have a vital interest in environmental protection and in ensuring that Federal agencies take a "hard look" at the environmental and public health consequences of their actions. These commenters stated that they would experience negative environmental outcomes without uniform NEPA implementing regulations.

Some commenters expressed concern about the effect on Tribal engagement, asserting that Tribes rely on CEQ's regulations to ensure that Federal agencies engage with Tribes on a government-to-government basis during NEPA reviews. These commenters asserted that the rescission of CEQ's NEPA implementing regulations raises the possibility that Federal agencies will fail to satisfy statutory, treaty, and constitutional obligations to Tribes when implementing NEPA.

*Response:* The harm that commenters assert is speculative. It is unclear whether or how the rescission will result in negative public health and environmental consequences confusion. Agencies will continue to establish NEPA implementing procedures in consultation with CEQ.<sup>16</sup> CEQ will review agency procedures for consistency as required by E.O. 14154. CEQ has determined that it lacks discretion over the decision to rescind its regulations; E.O. 14154 rescinded E.O. 11991, which delegated CEQ the authority to issue its regulations, and directed CEQ to propose rescinding its regulations. CEQ is issuing this final rule to respond to comments and explain to the public that it is reaffirming its decision to rescind its NEPA implementing regulations as CEQ lacks the authority to maintain those regulations.

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<sup>16</sup> See 42 U.S.C. 4332(2)(B).

In addition, as explained in the IFR, “the removal of CEQ’s regulations does not strip agencies of discretion to continue following” their existing NEPA implementing procedures, which generally conform to the preexisting CEQ regulations. E.O. 14154 directs agencies to revise their NEPA implementing procedures consistent with the E.O. and CEQ guidance. Neither the IFR nor this rulemaking effectuates those revisions. Thus, commenters’ concerns that future NEPA reviews may be deficient absent the CEQ NEPA implementing regulations are premature and speculative. Further, agencies can rely on their existing NEPA implementing procedures while revising those procedures, minimizing any uncertainty or inefficiency during that process. Nothing in the IFR or this rulemaking abrogates the statutory requirement that agencies consult with CEQ when revising or developing their NEPA implementing procedures, as agencies have been doing.

Similarly, neither the IFR nor this rulemaking alters agencies’ duties towards Tribes. Regarding community impact, commenters’ concerns appear to stem from separate Presidential actions revoking<sup>17</sup> E.O. 14096<sup>18</sup> and E.O. 12898.<sup>19</sup> As explained elsewhere in this rule, the IFR and this rulemaking explicitly do not reconsider the substance of CEQ’s prior NEPA rulemakings, including the 2020 rule, the Phase 1 rule, or the Phase 2 rule, and comments related to the substance of those prior rulemakings are outside the scope of this action to rescind CEQ’s NEPA implementing regulations.

*Comment:* An individual commenter stated that the rescission of the CEQ’s NEPA implementing regulations will place significant burdens on the 86 Federal agencies that it asserts maintain NEPA implementing procedures. The commenter

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<sup>17</sup> E.O. 14148, *Initial Rescissions of Harmful Executive Orders and Actions*, 90 FR 8237 (Jan. 28, 2025); E.O. 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, 90 FR 8633 (Jan. 31, 2025).

<sup>18</sup> E.O. 14096, *Revitalizing Our Nation’s Commitment to Environmental Justice for All*, 88 FR 25251 (Apr. 26, 2023).

<sup>19</sup> E.O. 12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 FR 7629 (Feb. 16, 1994).

indicated that revising these procedures will require notice and comment rulemaking under the APA as well as interagency review under E.O. 12866. According to the commenter, this “demanding” process will slow government decisionmaking, causing projects to languish, with negative economic consequences.

*Response:*

As explained in the IFR, “the removal of CEQ’s regulations does not strip agencies of discretion to continue following” their existing NEPA implementing procedures, which generally conform to the preexisting CEQ regulations. E.O. 14154 directs agencies to revise their NEPA implementing procedures consistent with the E.O. and CEQ guidance, but ongoing reviews should continue apace. Indeed, CEQ’s February 19, 2025, guidance indicates that “[a]gencies should not delay pending or ongoing NEPA analyses while undertaking these revisions,” and encourages agencies to apply their current NEPA implementing procedures, updated as necessary to reflect the statute, until revisions are complete.

**Comments on Agency-specific NEPA Procedures**

*Comment:* Several commenters suggested topics or processes for agencies to include in agency-specific NEPA procedures to be developed or revised in light of the IFR and rescission of CEQ’s NEPA implementing regulations.

Among other things, commenters suggested agency-specific or sector-specific provisions and requested that agency procedures: include and expand on NEPA efficiencies such as programmatic environmental reviews, tiering, and categorical exclusions; limit alternatives analysis; prescribe mechanisms for public engagement and scoping; clarify the meaning of “major Federal action;” and fully implement the amendments to NEPA from the FRA.

Some commenters also requested that agencies provide notice and comment on agency procedures, pursuant to the APA, or that agencies consider agency-specific

factors when determining if notice and comment is appropriate and reference the part of the APA that the agency used to determine whether notice and comment is required.

*Response:* Comments about revisions to agency-specific NEPA procedures are outside of the scope of this rulemaking. CEQ notes, however, that consistent with its statutory role, E.O. 14154 directed CEQ to issue guidance on implementing NEPA, which CEQ issued on February 19, 2025. This guidance included multiple issues agencies should consider when developing or revising agency procedures. In addition, as noted earlier in the response to comments, CEQ is in the process of publishing revised guidance, which includes a template for agency NEPA implementing procedures, providing CEQ's view of an appropriate framework for agencies to use in revising their procedures to ensure conformity to the statute as amended, to the President's policies, and to the Supreme Court's *Seven County* opinion, and to reflect the rescission of CEQ's NEPA implementing regulations; the agencies may tailor this template to their particular programs and authorities. CEQ encourages commenters to direct their comments on agency-specific procedures to the appropriate department and agency, as applicable.

### **Comments on CEQ's Ongoing Role and Guidance**

*Comment:* Multiple commenters provided suggestions regarding CEQ's ongoing role in the NEPA process, including requests for CEQ to issue guidance on particular topics of interest. These commenters stated that CEQ has an important statutorily authorized advisory role within the executive branch, including as a resource for Federal agencies in their implementation of NEPA. These commenters stated that CEQ should continue to ensure that agencies adopt practices and procedures to implement NEPA that are consistent with NEPA, and requested that CEQ continue to ensure that agency NEPA practices are consistent across the Federal Government. A few commenters also requested that CEQ develop resources to help the public and project sponsors understand

the status of agency NEPA procedures and ongoing projects, such as a dashboard or website.

*Response:* Comments concerning CEQ's ongoing role in the NEPA process are outside of the scope of this rulemaking. CEQ notes, however, that consistent with its statutory role, E.O. 14154 directed CEQ to issue guidance on implementing NEPA, which CEQ issued on February 19, 2025. The E.O. also directed CEQ to convene a working group to coordinate the revision of agency-level procedures for consistency. Consistent with the E.O. and NEPA, CEQ will continue to work with agencies to assist them in developing or revising their procedures and to ensure consistent NEPA application across the Federal Government. For example, as noted earlier in the response to comments, concurrent with this Final Rule, CEQ is publishing revised guidance on implementing NEPA. In addition, the President has directed CEQ to establish a Permitting Innovation Center and, in consultation with the National Energy Dominance Council and relevant permitting agencies, to issue a Permitting Technology Action Plan for modernizing the technology used for Federal permitting and environmental review processes for infrastructure projects, including data-driven tools for providing transparency and reducing timeline uncertainty for environmental reviews.<sup>20</sup> On June 5, CEQ's Permitting Innovation Center launched the Categorical Exclusion Explorer (CE Explorer), a technology tool that will increase transparency and streamline environmental review and permitting processes by providing a digitized public database of each Federal agency's existing categorical exclusions established under NEPA.<sup>21</sup>

*Comment:* Numerous commenters generally supported the direction that CEQ provided in its February 19, 2025, memorandum to agencies on NEPA implementation, including the direction to agencies to revise their agency procedures within 12 months

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<sup>20</sup> Council on Environmental Quality, Permitting Technology Action Plan, May 30, 2025. [https://permitting.innovation.gov/CEQ\\_Permitting\\_Technology\\_Action\\_Plan.pdf](https://permitting.innovation.gov/CEQ_Permitting_Technology_Action_Plan.pdf)

<sup>21</sup> The CE Explorer is available at: <https://ce.permitting.innovation.gov/>

and regarding NEPA compliance prior to finalizing revisions to agency NEPA procedures. Several commenters also supported the direction that agencies use the 2020 rule as the basis for updates to agency procedures, while multiple other comments disagreed with this direction, noting their prior concerns with the 2020 rule. A few commenters also specifically disagreed with certain elements in the guidance, including the direction not to consider cumulative effects or community effects.

Many commenters suggested topics for future detailed CEQ guidance regarding NEPA implementation and agency procedures. Some commenters requested that CEQ issue detailed guidance and model or template regulations for agencies to follow in revising their NEPA implementing procedures. Other commenters requested that CEQ issue guidance on topics ranging from conducting effects analyses, including direct, indirect, and cumulative effects; appropriate consideration of community impact and greenhouse gas emissions; the scope of reasonable alternatives; the appropriate level of NEPA review; the meaning of “extraordinary complexity” as applied to page limits; functional equivalence; narrowly tailoring the purpose and need statement; effective communication with stakeholders; improved interagency coordination and collaboration; role of cooperating agencies; mitigation; and the definition of major Federal action, with a focus on “sufficient control and responsibility,” among others. Several of these commenters also requested that CEQ provide an opportunity for public comment on any future guidance.

Some commenters requested that CEQ provide guidance to address specific Tribal concerns and interests and expressed concern regarding CEQ’s direction in the February 19 memorandum that agencies “prioritize efficiency and certainty over any other policy objectives that could add delays and ambiguity to the permitting process.” These commenters urged CEQ to clarify in guidance and in the final rule that efficiency and certainty do not supersede the Federal Government’s trust responsibility and legal



obligations to Tribal Nations. One commenter listed several specific elements for CEQ to consider for guidance related to Tribal interests.

*Response:* Comments on CEQ’s February 19, 2025 guidance are outside the scope of this rulemaking, as are comments on potential future CEQ guidance. However, CEQ notes that it will continue to work with agencies as they revise their agency NEPA implementing procedures and will share additional guidance as necessary and appropriate.

*Comment:* Some commenters requested that CEQ provide detail on the formation of the interagency working group established under Section 5(c) of E.O. 14154. Some commenters suggested that this working group include liaisons from the U.S. House of Representatives and the U.S. Senate Committees involved in NEPA reforms as well as non-Federal NEPA representatives.

*Response:* These comments are outside of the scope of this rulemaking. CEQ notes, however, that, consistent with its statutory role and as directed by the President through E.O. 14154, CEQ is convening a working group to coordinate the revision of agency-level implementing procedures for consistency.

### **Comments Regarding Compliance with E.O. 12866**

*Comment:* One commenter indicated that the IFR constituted a “significant regulatory action” that required CEQ to prepare a cost-benefit analysis. The commenter stated that due to OMB’s determination that the IFR qualifies as a “significant regulatory action,” CEQ must prepare either a rigorous cost-benefit analysis as required by E.O. 12866 section 6(a)(3)(C) or, at a minimum, the cost-benefit analysis required by section 6(a)(3)(B). The commenter requested CEQ to provide a rationale for its decision not to prepare the cost-benefit analysis.

*Response:* The assessments required by E.O. 12866 section 6(a)(3)(C) apply to actions that OIRA designates “economically significant” under E.O. 12866 section

3(f)(1). OMB determined that this action rescinding CEQ's regulations is not "economically significant," absent subsequent actions by agencies. As such, an E.O. 12866 section 6(a)(3)(C) assessment is not required for this rescission.

**Comments Related to Regulatory Flexibility Act, E.O. 13272, and the Small Business Jobs Act of 2010**

*Comment:* The Small Business Administration (SBA) submitted comments on the IFR, which it indicated reflect discussions with small businesses from multiple sectors of the economy. SBA stated that the small businesses generally supported the IFR, but noted some small businesses were apprehensive about how individual agencies may fill the void left by removing CEQ's NEPA implementing regulations. SBA recommended that CEQ focus on reducing unnecessary confusion and prioritizing consistency while agencies revise their NEPA procedures and provided recommendations and examples from small businesses for how CEQ could achieve this goal.

*Response:* CEQ acknowledges the input from SBA on behalf of small businesses. As directed by the President through E.O. 14154, and consistent with its statutory role under NEPA, CEQ is coordinating with agencies as they review and revise their NEPA implementing procedures, as appropriate, to ensure consistency. However, that process is beyond the scope of the IFR and this rulemaking.

**Comments on the Applicability of NEPA to the IFR**

*Comment:* Several commenters indicated that CEQ should have undertaken a NEPA review for its rulemaking action. The commenters stated that the rulemaking is a major Federal action that may have significant environmental effects. Specifically, commenters stated that Federal agencies rely on CEQ's NEPA implementing regulations and that repealing them will likely lead agencies to establish NEPA implementing procedures with weaker, less environmentally protective requirements. Commenters claimed these were effects of CEQ's action that the agency should have considered under NEPA.

*Response:* In rescinding E.O. 11991, the President removed CEQ's authority to promulgate NEPA implementing regulations and directed CEQ to rescind its regulations. As a result, CEQ has determined that it lacks the discretion to retain its regulations, and NEPA does not apply to such nondiscretionary actions. *See* 42 U.S.C. 4336e(10)(B)(vii). Moreover, even assuming that CEQ retained some discretion, the rescission action did not require a NEPA analysis because it does not have independent environmental effects. The IFR does not authorize any specific agency activity or commit resources to any further agency action. For this reason, CEQ has consistently taken the position that a NEPA analysis is not required when agencies establish or update their NEPA procedures to apply to future Federal actions.<sup>22</sup>

### **Comments Related to Federalism**

*Comment:* A group of commenters representing State and local jurisdictions stated that CEQ did not follow the State consultation process mandated by E.O. 13132, *Federalism*. These comments state that direct application of CEQ's regulations to Federal agencies has federalism implications as does the rescission of CEQ's regulations. For example, some State government commenters asserted that the rescission of CEQ's NEPA implementing regulations would increase burdens on States that have their own environmental review statutes. These commenters speculate that the rescission of CEQ's uniform NEPA implementing regulations would require the States to prepare more documents under State environmental review laws because future federal NEPA documents under the patchwork of agency NEPA implementing regulations would be insufficient to satisfy State requirements.

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<sup>22</sup> CEQ's position here is longstanding as evidenced by 40 CFR 1507.3(b)(3) (2024); 85 FR 43304, 43353-43354 (July 16, 2020); 88 FR 49924, 49965 (July 31, 2023); 89 FR 35442, 35532 and 35552 (May 1, 2024). *See also, Heartwood v. U.S. Forest Serv.*, 230 F.3d 947, 954-55 (7th Cir. 2000) (finding that neither NEPA or the CEQ regulations required the Forest Service to conduct an EA or an EIS prior to the promulgation of its procedures creating a CE). Nonetheless, CEQ voluntarily prepared a Special EA for its most recent revisions to its NEPA implementing regulations.

*Response:* CEQ has determined that neither the IFR nor this rulemaking has federalism implications as these rulemakings concern Federal agency implementation of NEPA. The decision to rescind CEQ's NEPA implementing regulations does not impose specific requirements on States or require States to change their behavior. In addition, speculation regarding the inadequacy of future Federal environmental documents under agency-specific procedures is outside of CEQ's authority in this rulemaking as CEQ has determined that it lacks discretion over the decision to rescind its NEPA implementing regulations. Further, any concerns about the effect of the rescission on State environmental review laws and processes are likewise outside of scope; they are grounded first and foremost in the independent actions of State legislatures and State administrative agencies.

#### **Comments Related to Tribal Consultation**

*Comment:* Various Tribes and organizations representing Tribal interests requested formal government-to-government consultation regarding the IFR before the IFR took effect. The commenters noted that there was no communication or notification of the IFR before publication. Another Tribal commenter disagreed with CEQ's statement that the IFR does not require consultation with Tribal governments. The commenter stated that the IFR incorrectly states that it is not a regulatory policy with Tribal implications. This commenter and other commenters indicated that the rescission of the CEQ regulations would negatively affect how Federal agencies engage with Tribes through the NEPA process. The commenters requested that CEQ pause the effective date of the IFR until CEQ has completed government-to-government consultation the Tribes.

*Response:* Pursuant to E.O. 13175, *Consultation and Coordination with Indian Tribal Governments* (Nov. 6, 2000), agencies must consult with Tribes before promulgating regulations with Tribal implications in certain instances, none of which are triggered here. Any harms the Tribes assert are speculative. Agencies will continue to

implement NEPA, consistent with their agency-specific NEPA implementing procedures. As agencies revise their NEPA implementing procedures, CEQ will review them for consistency across the Government and with NEPA's requirements, as required by E.O. 14154 and consistent with CEQ's statutory role. CEQ encourages agency coordination with Tribes on actions that may affect Tribe resources. Although CEQ is not conducting government-to-government consultation, it has considered the input from Tribal governments and organizations representing Tribal interests provided during the public comment period on the IFR, as reflected in this rulemaking.

### **Comments Related to Endangered Species Act Applicability to the IFR**

*Comment:* One commenter stated that CEQ was required to engage in consultation with the National Marine Fisheries Service and the Fish and Wildlife Service, as appropriate, under Section 7 of the ESA, which requires each Federal agency to "insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of" any designated critical habitat. The commenter stated that the IFR threatens significant harm to endangered and threatened species throughout the United States. The commenter stated that CEQ did not identify, quantify, or consider the adverse impacts of repealing the NEPA implementing regulations on a programmatic basis nor its impacts to any specific threatened or endangered species or designated critical habitat. The commenter stated that CEQ failed to even make a "no effect" determination, noting that CEQ had done so with regard to prior regulatory actions.

*Response:* CEQ has determined that Section 7 of ESA does not apply to the IFR or this rulemaking. Neither the CEQ NEPA implementing regulations themselves nor the action to rescind them would result in adverse impacts on endangered or threatened species or critical habitat. Rather, NEPA and its regulations provide procedures to ensure

that agencies account for the environmental impacts of their actions. The commenter's alleged harm to species is speculative. To the extent any harm occurs, it would result from future agency actions, not from this rescission action, which only removes requirements applicable to Federal agencies regarding compliance with NEPA, which is a purely procedural requirement. Moreover, CEQ has determined that its rescission of its NEPA implementing regulations was non-discretionary, and the ESA does not apply to non-discretionary actions.

### **III. Regulatory Analyses and Notices**

#### **A. Regulatory Procedures**

Under the APA, notice and comment procedures are not required if an action is an interpretative rule, a general statement of policy, or a rule of agency organization, procedure, or practice. See 5 U.S.C. 553(b)(A). CEQ has determined that the CEQ rules were rules of "agency organization, procedure, or practice" or, alternatively, interpretive rules. Therefore, CEQ was not required to engage in a notice and comment rulemaking process to remove them. Even if notice and comment rulemaking were required, as explained in the IFR and elsewhere in this final rule, CEQ has good cause to waive notice and comment because such procedures are impracticable, unnecessary, and contrary to the public interest. 5 U.S.C. 553(b)(B). Moreover, the public understood the action CEQ was taking and took advantage of the opportunity to comment. CEQ received more than 100,000 comments on its IFR. Thus, while CEQ maintains that the IFR was subject to the exceptions set forth in 5 U.S.C. 553(b), this final rule represents the culmination of a traditional notice-and-comment rulemaking regardless of the initial procedural basis for the IFR.

**B. E.O. 12866, Regulatory Planning and Review, and E.O. 13563, Improving Regulation and Regulatory Review**

E.O. 12866 provides that OIRA will review all significant rules. E.O. 13563 reaffirms the principles of E.O. 12866, calling for improvements in the Federal Government's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory objectives. OMB determined that this final rule is a significant regulatory action under E.O. 12866, as supplemented by E.O. 13563.

**C. Regulatory Flexibility Act**

The Regulatory Flexibility Act, as amended, (RFA), 5 U.S.C. 601 et seq., and E.O. 13272 require agencies to assess the impacts of proposed and final rules on small entities. Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). This final rule does not directly regulate small entities. Rather, the focus of CEQ's NEPA implementing regulations and, consequently, of this rescission rule, is on Federal agencies compliance with NEPA. Accordingly, CEQ hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

**D. Environmental Analysis**

Section 111(10)(B)(vii) of NEPA excludes from the definition of major Federal actions activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority. CEQ has determined that, absent E.O. 11991, its rescission is non-discretionary and, therefore, not subject to NEPA. Moreover, the rescinded CEQ regulations did not require agencies to prepare a NEPA analysis before establishing or updating agency NEPA implementing procedures. While CEQ prepared environmental

assessments for its promulgation of the CEQ regulations in 1978, its amendments to 40 CFR 1502.22 in 1986, and its Phase 1 and Phase 2 regulations, in the development of this final rule, CEQ has determined that the rule, standing on its own, will not have a significant effect on the environment because it will not authorize any specific agency activity or commit resources to a project that may affect the environment. Therefore, CEQ has not conducted a NEPA analysis of this rulemaking.

**E. Executive Order 13132, Federalism**

E.O. 13132 requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Policies that have federalism implications include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule is not a regulatory policy that has federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

**F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments**

E.O. 13175 requires agencies to have a process to ensure meaningful and timely input by Tribal officials in the development of policies that have Tribal implications. Such policies include regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This final rule is not a regulatory policy that has Tribal implications because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of



power and responsibilities between the Federal Government and Indian tribes. This rulemaking rescinds CEQ's regulations binding Federal agencies on their implementation of NEPA. Federal agencies will continue to have responsibility for implementing NEPA, pursuant to their own internal procedures, as applicable. Agencies will also continue to have responsibility for upholding government-to-government relations with Tribes, pursuant to their own procedures, including coordination on future actions, as applicable. CEQ encourages agency coordination with Tribes on actions and associated NEPA reviews that may affect resources of importance to Tribal Nations. Although CEQ is not conducting government-to-government consultation, it has considered the input from Tribal governments and organizations representing Tribal interests provided during the public comment period on the IFR, as reflected in this rulemaking.

**G. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use**

Agencies must prepare a Statement of Energy Effects for significant energy actions under E.O. 13211. This final rule is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**H. Executive Order 12988, Civil Justice Reform**

Under section 3(a) E.O. 12988, agencies must review their proposed regulations to eliminate drafting errors and ambiguities, draft them to minimize litigation, and provide a clear legal standard for affected conduct. Section 3(b) provides a list of specific issues for review to conduct the reviews required by section 3(a). CEQ has conducted this review and determined that this final rule complies with the requirements of E.O. 12988.

**I. Unfunded Mandates Assessment**

Section 201 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments, and the private sector to the extent that such regulations incorporate requirements specifically set forth in law. Before promulgating a rule that

may result in the expenditure by a State, Tribal, or local government, in the aggregate, or by the private sector of \$100 million, adjusted annually for inflation, in any 1 year, an agency must prepare a written statement that assesses the effects on State, Tribal, and local governments and the private sector. 2 U.S.C. 1532. This final rule applies to Federal agencies and would not result in expenditures of \$100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any 1 year. This action also does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of 2 U.S.C. 1531–1538.

**J. Paperwork Reduction Act**

This final rule does not impose any new information collection burden that would require additional review or approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

**List of Subjects**

Administrative practice and procedure; Environmental impact statements; Environmental protection; Natural resources.

**Katherine R. Scarlett,**

Chairman.

For the reasons stated in the preamble, and under the authority of 42 U.S.C. 4321-4347; E.O. 14154, 90 FR 8353 (Jan. 29, 2025), the Council on Environmental Quality’s amendments to subchapter A of chapter V in title 40 of the Code of Federal Regulations as published February 25, 2025, at 90 FR 10610 are adopted as final.