DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 46

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RIN 1090-AB18

National Environmental Policy Act Implementing Regulations

AGENCY: Office of the Secretary, Interior

ACTION: Final rule

SUMMARY: The Department of the Interior (Department or DOI) is adopting the interim final rule (IFR) published on July 3, 2025, with minor changes, as final. In the IFR, DOI 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 IFR, with certain substantive changes as explained herein. The IFR partially rescinded DOI's regulations implementing the National Environmental Policy Act (NEPA) and made necessary targeted updates to those provisions that were not repealed. DOI will henceforth maintain the majority of its NEPA procedures—which apply only to DOI's internal processes—in a Departmental Handbook separate from the Code of Federal Regulations (CFR).

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

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SUPPLEMENTARY INFORMATION:

I. Background

DOI is issuing this final rule to adopt as final, subject to the revisions made by this final rule, the IFR promulgated on July 3, 2025. The IFR partially rescinded and made other needed,

targeted updates to DOI's regulations, codified at 43 CFR Part 46, implementing the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., as amended (NEPA). DOI's prior NEPA implementing regulations were promulgated in 2008 "as a "supplement[]. . . to be used in conjunction with" the Council on Environmental Quality (CEQ)'s NEPA regulations. 43 CFR 46.20 (2008). DOI provided that the "[p]urpose of this part" was to ensure "compliance with" not only NEPA itself but CEQ's regulations implementing NEPA. 43 CFR 46.10(a)(2) (2008). However, CEQ has now repealed its residual regulations, effective as of April 11, 2025. *See Removal of National Environmental Policy Act Implementing Regulations*, 90 FR 10,610 (February 25, 2025); *Final Rule Removal of National Environmental Policy Act Implementing Regulations,* 91 FR 618 (January 8, 2026).

Since DOI's regulations were originally designed to supplement CEQ's NEPA regulations, DOI awaited CEQ action before revising its own regulations. *See* 40 CFR 1507.3(b) (2024); *see also* 86 FR 34,154 (June 29, 2021). Now that the removal of CEQ's regulations has been finalized through a final rule issued on January 8, 2026, DOI is issuing a final rule concurrently with its updated *Department of the Interior Handbook: National Environmental Policy Act Implementing Procedures.*

DOI's foundation for the updates to its NEPA procedures is NEPA itself. Now that CEQ has rescinded its NEPA implementing regulations, *see* 91 FR 618 (Jan. 8, 2026) (final rule finalizing removal of CEQ's NEPA implementing regulations), DOI is issuing this final rule and NEPA Handbook in compliance with NEPA 102(2)(B), 42 U.S.C. 4332(2)(B), which directs all agencies of the federal government to identify and develop methods and procedures, in consultation with CEQ, to conduct the environmental analysis that NEPA requires.

DOI, in its IFR, rescinded portions of its NEPA implementing regulations at 43 CFR Part 46, while retaining and making targeted updates to certain provisions. Specifically, DOI retained and made limited updates to provisions relating to emergency responses to ensure that DOI can respond timely to any such event and to avoid any confusion regarding the continued validity of

this already-established provision for action in emergency situations (43 CFR 46.150); categorical exclusions and their use to avoid any instability in these vital procedures or uncertainty about the continued validity of its already-established categorical exclusions (43 CFR 46.205, 46.210, 46.215); and applicant and contractor preparation of environmental documents to provide a durable framework for the use of such documents (43 CFR 46.105, 46.107).

In response to public comment on the IFR, DOI adds in this final rule a section on the designation of lead agencies and a section on the selection of cooperating agencies to codify the procedures by which Federal agencies and State, local, and Tribal agencies with special expertise continue to be involved in development of agency NEPA reviews (43 CFR 46.220 and 46.225, respectively). All other provisions were removed from 43 CFR Part 46, consistent with DOI's IFR. Other than these few provisions, DOI's procedures are contained in the *Department of the Interior Handbook: National Environmental Policy Act Implementing Procedures* (referred to as DOI NEPA Handbook hereinafter), which is available in the DOI Electronic Library of the Interior Policies at https://www.doi.gov/document-library (but which will not be codified in the CFR). A section-by-section analysis is provided below highlighting where in the DOI NEPA Handbook concepts originally addressed in 43 CFR Part 46 now appear.

A. National Environmental Policy Act

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, furthers this national policy by requiring Federal agencies to prepare an environmental impact statement—"in essence, a report"—for proposed "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. 4332(2)(C);

Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. 168, 173 (2025). This statement must address: (1) The reasonably foreseeable environmental effects of the proposed agency action; (2) the reasonably foreseeable adverse environmental effects that cannot be avoided; (3) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal; (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action. 42 U.S.C. 4332(2)(C).

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 provides procedures for making threshold determinations about whether an environmental document must be prepared and the appropriate level of environmental review. 42 U.S.C. 4336(a)–(b).

NEPA does not mandate specific results or substantive outcomes. *Seven County Infrastructure Coalition*, 605 U.S. at 173; *see also Department of Transportation v. Public Citizen*, 541 U.S. 752, 756–57 (2004). Rather, NEPA requires Federal agencies to consider the environmental effects of proposed actions as part of agencies' decision-making processes. As amended by the Fiscal Responsibility Act of 2023 (FRA), Public Law 118-5 (June 3, 2023), NEPA provides additional requirements to facilitate timely and unified Federal reviews, including provisions clarifying lead, joint lead, and cooperating agency designations, generally requiring the development of a single environmental document, directing agencies to develop procedures for project sponsors to prepare environmental assessments and environmental impact statements, and prescribing page limits and deadlines. 42 U.S.C. 4336a. NEPA also sets forth the

circumstances under which agencies may rely on programmatic environmental documents, 42 U.S.C. 4336b, and adopt and use another agency's categorical exclusions. 42 U.S.C. 4336c.

Finally, NEPA requires that "copies of such [environmental impact statement] and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes." 42 U.S.C. 4332. That is, NEPA provides that the extent to which a statement is made available to the public is governed by the requirements and standards of the Federal Freedom of Information Act (FOIA).

B. NEPA Regulations

1. Council on Environmental Quality (CEQ) NEPA Regulations

On January 20, 2025, President Trump issued E.O. 14154, *Unleashing American Energy*. 90 FR 8,353 (Jan. 29, 2025). The E.O. revoked E.O. 11991, *Relating to protection and enhancement of environmental quality*, 42 FR 26,967 (May 25, 1977), which directed CEQ to issue regulations implementing NEPA and required Federal agencies to comply with those regulations. E.O. 14154 at sec. 5. E.O. 14154 also directed CEQ to provide guidance on implementing NEPA and propose rescinding CEQ's NEPA regulations within 30 days of the order. *Id.* at sec 5(a). The guidance and any resulting agency implementing regulations must "expedite permitting approvals and meet deadlines established in the [FRA]." *Id.* at sec 5(c). CEQ issued an IFR rescinding CEQ's NEPA implementing regulations (including as they relate to agency NEPA procedures) on February 25, 2025, effective April 11, 2025, 90 FR 10,610, which CEQ adopted as final on January 8, 2026, 91 FR 618. E.O. 14154 also directs the Chairman of CEQ to convene a working group to coordinate the revision of agency-level NEPA implementing regulations for consistency.

2. DOI NEPA Regulations

Until 2008, DOI provided procedures for implementing NEPA in chapters of part 516 of the Department Manual. DOI periodically revised the Departmental Manual chapters containing NEPA procedures through a notice-and-comment process required by CEQ NEPA regulations at the time that involved publication of proposed and final revisions in the *Federal Register* (FR), *see* 40 CFR 1507.3(a) (1978) (rescinded), but did not promulgate as regulations the procedures contained in the Department Manual. In 2008, DOI promulgated regulations codifying DOI's NEPA procedures at 43 CFR Part 46, pursuant to direction in CEQ NEPA regulations that "[t]hey shall confine themselves to implementing procedures" and through a notice-and-comment process. 40 CFR 1507.3(a) (2005). DOI explained in the IFR its reasons for transitioning away from regulations and toward internal procedures, namely to allow DOI and its bureaus to implement changes in policy more quickly than would be possible while retaining the NEPA implementing regulations. DOI is affirming that approach and finalizing its internal procedures in parallel with issuing this final rule.

DOI's new NEPA implementing procedures more closely align to the current iteration of the statute than its old procedures. The new procedures implement major structural features of the 2023 amendments, such as deadlines and page limits for environmental assessments and environmental impact statements, as directed at Section 107(g) of NEPA, and provide that DOI will complete preparation of these documents within the maximum timeline that Congress intends. They incorporate Congress's definition of "major Federal action" and the exclusions thereto, as codified at Section 111(10) of NEPA. They incorporate Congress's mandated procedure for determining the appropriate level of review under NEPA, as codified in Section 106 of NEPA. And they incorporate Congress's revision to the requirements for what an agency must address in its environmental impact statements, as codified at Section 102(2)(C) of NEPA, and Congress's requirement that public notice and solicitation of comment be provided when issuing a notice of intent to prepare an environmental impact statement, as directed at Section

107(c) of NEPA. These are all crucial features of Congress's policy design and its purpose in enacting the 2023 amendments that NEPA review be more efficient and certain.

These procedures, therefore, attempt to align NEPA with its Congressionally mandated dimensions, Presidential directives, and Supreme Court precedent, making review faster, more flexible, and more efficient.

No third parties have cognizable reliance interests in DOI's existing NEPA procedures. Revised agency procedures will have no effect on ongoing NEPA reviews, where DOI, following CEQ guidance, will continue to apply the preexisting procedures to applications that are sufficiently advanced. Moreover, as the Supreme Court has long held, and just reaffirmed, NEPA "is a purely procedural statute" that "imposes no substantive environmental obligations or restrictions." *Seven County Infrastructure Coalition*, 605 U.S. at 173; *Public Citizen*, 541 U.S. at 756; *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 558 (1978). To the extent any asserted reliance interests are grounded in substantive environmental concerns, such interests are not entitled to any weight as to this rulemaking, given that DOI's procedures simply provide the process by which a bureau accounts for environmental considerations, rather than determining the substantive policy or decision on an individual application or project. *See, e.g.*, *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 32 (2020).

DOI provided an opportunity to comment on its IFR and considered comments in issuing its final rule and DOI NEPA Handbook. Comments were considered and addressed, which included revising DOI NEPA procedures. A summary of comments and responses on the rulemaking are addressed in section III below.

As explained in the IFR, DOI has revised its NEPA implementing procedures to conform to the 2023 statutory amendments, to respond to President Trump's direction in E.O. 14154, and to address the difficulties associated with the NEPA process and NEPA litigation identified by the Supreme Court in *Seven County Infrastructure Coalition*. Where DOI has retained an aspect of its preexisting NEPA implementing procedures, it is because that aspect is compatible with

these guiding principles; where DOI has revised or removed an aspect, it is because that aspect is not compatible. After considering public comments, DOI has adopted the IFR in this final rule, subject to the revisions explained below.

II. Discussion of Regulatory Changes

A. Removing NEPA Procedures from Regulation

NEPA requires that all Federal agencies identify and develop methods and procedures, in consultation with CEQ, that will ensure that unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations. *See* 42 U.S.C. 4332(2)(B). Federal agencies have developed varying forms of NEPA implementing procedures, some in regulation and some in other forms of procedural documents. DOI's revised NEPA procedures, developed in consultation with CEQ and in coordination with other Federal agencies for consistency across the Federal Government, will facilitate compliance with the statutory obligations of NEPA.

B. Retaining and Revising Certain Provisions

The IFR removed most of the existing DOI NEPA regulations in favor of relying on Departmental guidance for the reasons discussed in the IFR and summarized above, but the rule retained and made targeted updates to its regulations that authorize four tools that DOI bureaus rely on, when appropriate, to expedite NEPA reviews and ensure that compliance with NEPA is achieved in an efficient manner. The final rule reaffirms this approach and reserves for Departmental guidance most of the substance of the provisions from the regulations previously in place.

1. Emergency Responses

First, DOI retained 43 CFR 46.150, which allows bureaus to respond to emergencies while either forgoing NEPA analysis so as to allow the bureau to take actions "urgently needed to mitigate harm to life, property, or important natural, cultural, or historic resources" or relying on alternative arrangements for NEPA compliance to take other actions beyond those

immediately necessary to protect life, property, and resources in response to emergencies. The IFR made minor clarifying adjustments to the text that reflect DOI's experience implementing these provisions. The final rule revises 43 CFR 46.150 to clarify that NEPA's analysis and documentation requirements should not impede timely execution of actions needed to address imminent threats to life, property, or important natural, cultural, or historic resources. For such actions, the responsible official may take such actions without conducting a NEPA review. The responsible official is directed to take into account the probable environmental consequences of the action and consider taking steps to mitigate reasonably foreseeable adverse environmental effects to the extent practical and consistent with agency authority.

2. Categorical Exclusions

DOI retained 43 CFR 46.205, 46.210, and 46.215, which establish Departmental categorical exclusions and lay out the procedures for relying on a categorical exclusion to comply with NEPA. Categorical exclusions represent those categories of actions that DOI has determined normally do not significantly affect the environment. Categorical exclusions provide important efficiency by ensuring that many agency actions are not subjected to the lengthier environmental assessment or environmental impact statement process and can proceed using the shorter process identified in the DOI NEPA regulations for determining that a categorical exclusion applies and ensuring that no "extraordinary circumstances" are present that would preclude reliance on the categorical exclusion. Section 46.210 will continue to identify Departmental categorical exclusions while additional, bureau-specific categorical exclusions are identified in guidance documents.

Although DOI is largely retaining these provisions in regulation, the IFR revised them to refine the description of, or, in some cases, remove certain extraordinary circumstances that, when present, would preclude reliance on a categorical exclusion. Section 46.205 of the IFR, meanwhile, included new paragraphs (e) through (j), which provide that DOI bureaus may rely on categorical exclusion determinations made by other agencies, may apply multiple categorical

exclusions to a proposed action that is a composite of multiple smaller actions or action elements, and may rely on a categorical exclusion administratively established or adopted by another DOI bureau; establish procedures to govern the establishment, modification, or removal of categorical exclusions from NEPA procedures; and clarify that any such establishment, modification, or removal does not itself have any environmental effects for purposes of NEPA. (The IFR also eliminated certain categorical exclusions from Section 46.210 on the basis that they were not used across the Department; as noted below, the final rule restores those categorical exclusions to the regulation to ensure continuity in reference and citation.)

In the final rule, DOI adds cross references to paragraphs (d) and (e) in paragraph (a) of Section 46.205 for additional clarity. Public comment on the IFR requested this clarification. In addition, DOI is revising paragraph (f) with non-substantive and clarifying editorial changes. Finally, DOI is removing errant paragraph topic headings in paragraph (f) and (i) for consistency with the rest of the section, which does not use this organizational format.

In Section 46.210, the final rule reinstates paragraphs (k) and (*l*) which had been removed in the IFR, and which describe categorical exclusions for hazardous fuels reduction activities using prescribed fire and post-fire rehabilitation activities, respectively. Although they are not properly considered Department-wide categorical exclusions, bureaus have relied on this regulatory citation since the 2008 DOI NEPA rule, and DOI reorganized the bureau-specific categorical exclusion list in the DOI NEPA Handbook to consolidate the list in a more user-friendly format to facilitate use. DOI also identifies limitations in this final rule on use of the hazardous fuels reduction activities categorical exclusion in paragraph (k), revising the regulatory text to add a limitation on its use in States under the jurisdiction of the Ninth Circuit Court of Appeals. In addition, DOI is revising the introductory paragraph in this section to provide that reliance on either of the two categorical exclusions described in paragraphs (k) and (*l*) requires documentation, consistent with the 2008 DOI NEPA regulation, and revising text to provide that reliance on any of the other categorical exclusions in paragraph (a) through (j) does

not require documentation, again consistent with the 2008 DOI NEPA regulation. 43 CFR 46.20(c) (2008).

In Section 46.215, which lists the "extraordinary circumstances" that, if present, preclude use of a categorical exclusion, the IFR removed legacy paragraphs (c), (i), and (j), and then renumbered the remaining paragraphs.

Legacy paragraph (c) had provided that an extraordinary circumstance is present if an action may "[h]ave highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources." 43 CFR 46.215(c) (2008). This provision caused confusion as it was frequently misunderstood to mean that any controversy surrounding the substance of the action—as opposed to controversy about the nature or magnitude of the environmental effects, which was the appropriate, limited focus of the provision—itself constitutes an extraordinary circumstance. In any event, the concept is sufficiently addressed in legacy paragraph (d) (which the IFR renumbered as paragraph (c)), which addresses proposed actions that have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks. DOI makes no changes to this paragraph in the final rule.

Legacy paragraph (i) had provided that an extraordinary circumstance is present if an action may "[v]iolate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment." 43 CFR 46.215(i) (2008). Whether a proposed Federal action may violate a law imposed for the protection of the environment is a question that goes beyond the procedural requirements of NEPA and may be better considered and appropriately addressed by the Responsible Official when making the decision on the proposed action. While a proposed action's inconsistency with such a law should be appropriately considered in the agency decision-making process—and may suggest that that the proposed action should not be approved—it is not relevant to the determination of whether the proposed action may have significant environmental effects or the analysis of what those effects are. DOI makes no

changes to this paragraph in the final rule.

Legacy paragraph (j) had been promulgated in response to E.O. 12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations* (Feb. 11, 1994). That E.O. was rescinded by E.O. 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, 90 FR 8,633 (Jan. 31, 2025). Therefore, it was appropriate to remove the associated provision in Section 46.215, and DOI makes no changes to this paragraph in the final rule.

In addition, all references to E.O.s in the DOI list of extraordinary circumstances were removed. These E.O.s could change over time or could unduly limit the review of the resources listed, not allowing for more relevant information to be considered in the extraordinary circumstances review for a proposed action. Further, the E.O.s in force when an agency proposes action are, if relevant, authoritative in their own right, regardless of whether they are set forth in these regulations.

3. Applicant- and Contractor-Prepared Environmental Documents

In the IFR, DOI also retained Section 46.105, with some revisions, and added Section 46.107. These sections set standards and procedures that apply when DOI bureaus hire contractors to prepare environmental assessments, environmental impact statements, or other environmental information; or rely on applicants to prepare environmental information, including environmental assessments or environmental impact statements. Section 107(f) of NEPA, enacted through the FRA, requires agencies to develop procedures to allow for the preparation of environmental assessments and environmental impact statements by applicants for Federal approvals. DOI already had a regulation allowing for bureaus to rely on applicant-prepared environmental assessments. The revisions made by the IFR extended that allowance to applicant-prepared environmental impact statements while also adding standards and procedures to ensure that the process for using applicant-prepared environmental assessments and environmental impact statements is both efficient and legally defensible. For similar reasons,

additional standards and procedures were added to the regulation governing bureau use of environmental information or documents prepared by contractors engaged directly by the bureaus.

The final rule affirms the IFR by retaining Section 46.105 with a minor revision that adds references to NEPA and a DOI Secretarial Order. In paragraph (c) of Section 46.107, DOI removes the last phrase "if potential significance of an effect or issue is not clear," which described when another agency may be used to verify analyses in an environmental assessment or environmental impact statement. DOI determined that this phrase was unnecessary and could be unduly limiting when in-house expertise is not available and DOI seeks to rely on another agency's expertise regarding the scientific quality and integrity of an impact assessment.

4. How to Designate Lead Agencies

In the final rule, DOI reinstates Section 46.220, *How to designate lead agencies*, as modified from legacy paragraph 1.7(a) from the DOI NEPA Handbook, *How to designate lead agencies*, and makes formatting changes to align with the format for rules. In response to public comment and to keep the roles of those agencies in the NEPA process together in the DOI NEPA implementing procedures, DOI elects to re-codify this section and the next section, 46.225, in the final rule.

5. How to Select Cooperating Agencies

In the final rule, DOI reinstates Section 46.225, *How to select cooperating agencies*, as modified from legacy paragraph 1.7(b) from the DOI NEPA Handbook, *How to select cooperating agencies*. In doing so, DOI amends the term "eligible governmental entity" to "agency" to align with NEPA and CEQ guidance in memorandum, *Implementation of the National Environmental Policy Act*, *Appendix 1 – Agency NEPA Procedures Template*, and makes editing and formatting changes to align with the format for rules. In addition, DOI corrected "must" to "may" in the provision regarding inviting cooperating agencies when preparing an environmental assessment, which corresponds to DOI's previous NEPA procedures

and the text of NEPA. Finally, DOI added a clarifying phrase regarding documentation with cooperating agencies on their roles to explicitly note the potential limitations of laws on the confidentiality of pre-publication environmental documents. In response to numerous public comments requesting that DOI retain the procedures for including cooperating agencies in NEPA reviews in regulation, DOI elects to re-codify this section in the final rule to ensure that the agency's procedures effectively describe the process for selecting cooperating agencies and to promote maximum efficiency and cross-agency work in service of timely environmental reviews.

C. Establishing DOI's NEPA Handbook.

In this section, DOI provides a section-by-section summary of the provisions of DOI's NEPA Handbook. Though the Handbook is not part of the rulemaking, DOI is electing to provide this summary to assist the public in understanding the relationship between DOI's rulemaking and other updates to its NEPA procedures. In DOI's 2025 IFR, DOI explained that it was moving much of the material previously contained within its NEPA procedures in the CFR to a non-regulatory handbook. When publishing its IFR, DOI solicited comment on its revision of its NEPA procedures, including this step of transferring much of the procedures into the handbook. This section and the response to comments in section III below explain the contents of the handbook and respond to comments.

1. Section 0.1 – Purpose and Policy.

Section 0.1 of the DOI NEPA Handbook describes the purpose of the document and makes clear that the Handbook, together with the handful of provisions retained in regulation, constitute DOI's NEPA procedures. This section was revised from the version of the Handbook released in July 2025 with the IFR to provide explicitly that "environmental information" relevant to a decision-maker may include "economic information" and clarify that the Handbook is meant only to guide bureaus in their efforts to comply with NEPA and not with other legal obligations that may apply to a proposed action.

2. Section 0.2 – Applicability.

Section 0.2 of the DOI NEPA Handbook describes the extent of the applicability of the guidance document and provides that it applies to all DOI bureaus.

3. Section 1.1 – Determining when NEPA applies.

Section 1.1 of the DOI NEPA Handbook guides DOI bureaus on the standards for when the bureau must comply with NEPA, including what constitutes a "major Federal action[]" within the meaning of the statute. 42 U.S.C. 4332(C). Some commenters took exception to the statement in that discussion that "[t]he terms 'major' and 'Federal action[]' each have independent force." DOI NEPA Handbook 1.1(a)(6)(i). Each word of the statute should be given weight. In this instance, Congress has itself defined the phrase, excluding certain kinds of proposed actions from its ambit, and in so doing repeated its two component terms first introduced in 1969. This interpretation that each term has a distinct meaning is also consistent with the interpretation of the statutory language in the period soon after NEPA's enactment, before the first CEQ NEPA regulations.

This section was revised from the version of the Handbook released in July 2025 with the IFR to remove references to an appendix listing examples of classes of actions that normally require an environmental assessment or environmental impact statement, which has been eliminated, and to clarify that the reason that the activities identified in Section 1.1(a)(6)(iii) do not usually require preparation of an environmental document is that they usually do not result in significant environmental effects and not necessarily that they are not "major Federal actions."

4. Section 1.2 – Determining the appropriate level of NEPA review.

Section 1.2 of the DOI NEPA Handbook presents the standards for determining, once it is established that NEPA applies, whether the bureau may use a categorical exclusion, prepare an environmental assessment, or prepare an environmental impact statement. Bureaus will prepare an environmental impact statement if the bureau anticipates that "the reasonably foreseeable effects of the proposed action or action alternatives would be significant." DOI NEPA Handbook

1.2(b).

Some commenters took issue with the provision allowing that, "[i]f the proposed action warrants the establishment of a new categorical exclusion, or the revision of an existing categorical exclusion, pursuant to section 1.4(b), the bureau will consider whether to so establish or revise, and then may apply the categorical exclusion to the proposed action," DOI NEPA Handbook 1.2(a)(3), and perceived it as a means of circumventing the usual process for establishing new or revising existing categorical exclusions.

DOI has revised this particular provision from the version of the Handbook released in July 2025 to make explicit that any establishment or revision of a categorical exclusion will follow the standard procedures. It is wholly appropriate for DOI bureaus to consider establishing a new categorical exclusion when confronted with an action of a type it has found normally does not significantly affect the quality of the human environment but for which no categorical exclusion has already been established.

Some commenters took issue with the criteria listed in this section, comparing those criteria to the treatment of "significance" under the 2024 CEQ regulations and objecting to the inclusion of "[e]conomic effects" and "[e]ffects on the quality of life of the American people" among those criteria to the exclusion of others.

The criteria identified in Section 1.2(b)(2) are necessarily defined at a high level of generality—e.g., "short- and long-term effects," DOI NEPA Handbook 1.2(b)(2)(i), and the inclusion of references generally to economic and other quality of life impacts does not, as commenters suppose, prioritize those concepts above impacts to other environmental resources encompassed within but not explicitly listed among the broad criteria included in the Handbook. DOI has determined that this higher level of generality better reflects the broad understanding of "significance" under the statute than would an attempt to define the concept with more particularity, as CEQ did in 2024 and as some commenters appear to prefer.

Moreover, 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). Given the statutory language as it relates to fulfilling the social and economic requirements of present and future generations, and DOI's longstanding practice in integrating its consideration of social impacts into its environmental analysis under NEPA, DOI finds it appropriate to continue to consider social effects, including economic effects, when evaluating environmental effects under NEPA.

This section was revised to make explicit that a bureau may, in determining whether an action will have significant effects, consider beneficial effects that directly offset adverse effects to a given resource value. DOI NEPA Handbook 1.2(b)(2).

5. Section 1.3 – NEPA and agency decision-making.

Section 1.3 of the DOI NEPA Handbook describes the relationship between the NEPA process and other DOI and bureau processes and decisions. It includes direction to integrate the NEPA process with other processes as soon as practicable and articulates the limitations on bureau decision-making while the NEPA process is underway. DOI NEPA Handbook 1.3(a)-(b). This direction is consistent with long-standing CEQ and DOI NEPA guidance. *See* 40 CFR 1500.4(k); 40 CFR 1502.25(a) (1978) (rescinded); 43 CFR 46.430 (2008) (rescinded in part). It identifies important (largely practical) considerations in cases where the bureau action will be in response to a third-party application and where it will be a bureau rulemaking. DOI NEPA Handbook 1.3.(c)-(d). DOI revised these paragraphs (c) and (d), relative to the version of the Handbook released in July 2025, to provide additional detail.

Finally, section 1.3(e) provides standards for evaluating mitigation measures within the range of alternatives, with the important caveat that NEPA itself does not provide authority for a bureau to require or implement mitigation measures. DOI NEPA Handbook 1.3(e). The

provisions in the DOI NEPA Handbook are consistent with the long-standing provisions in both the original CEQ and DOI NEPA regulations, including the definition of "mitigation." *See* 40 CFR 1500.3 (describing the mandate of the regulations as "applicable to…implementing the procedural provisions of NEPA") (1978) (rescinded); 40 CFR 1502.14(f) (1978) (rescinded), 1508.20 (1978) (setting forth the types of "mitigation"; rescinded); 43 CFR 46.130 (2008) (rescinded in part). Some commenters suggested that DOI should provide more detail in its procedures as to how to consider mitigation in NEPA reviews, even as those comments acknowledged that the procedures do address the topic. This section articulates the proposition that "NEPA requires bureaus to consider reasonable mitigation measures," and it and other provisions within the Handbook provide appropriate standards for Responsible Officials to fulfill that obligation. DOI acknowledges that CEQ took a more granular approach in its 2024 Rule, but DOI has determined that the higher level of generality expressed in the DOI NEPA Handbook will provide Responsible Officials with the flexibility and reasonable discretion needed to efficiently carry out their duties consistent with NEPA's requirements. DOI NEPA Handbook 1.3(e); *see also* DOI NEPA Handbook 1.6(a)(3), 2.3(a)(6).

6. Section 1.4 – Categorical exclusions.

Section 1.4 of the DOI NEPA Handbook concerns categorical exclusions. Because the DOI NEPA procedures for categorical exclusions have been maintained as regulations, this section consists largely of cross-references to the appropriate regulatory section for the establishment, adoption, application, and documentation of categorical exclusions. *See* Section II.B.2, *supra*.

This section was revised from the version of the Handbook released in July 2025 with the IFR to provide additional details for considering whether a categorical exclusion applies to a proposed action that has been modified.

7. Section 1.5 – Environmental assessments.

Section 1.5 of the DOI NEPA Handbook identifies and describes the considerations

relevant to the preparation of an environmental assessment. It addresses both the character of environmental assessments as set forth in the statute, and is consistent with long-standing provisions in both the original CEQ and DOI NEPA regulations (*see* 40 CFR 1508.9) (1978) (rescinded); 43 CFR 46.300, 310 (2008) (rescinded), including the elements they include and their appropriate scope, as well as more technical details, including page limits, timeframes for preparation, and certification. This section was revised from the version of the Handbook released in July 2025 with the IFR to add discussion of Section 112 of NEPA, enacted after the Handbook was first released, and to eliminate references to the appendix listing examples of classes of actions that normally require an environmental assessment (but not an environmental impact statement). DOI has determined that this appendix was not useful because the amendments to the statute and DOI's NEPA implementing procedures as adopted in the 2025 IFR, this final rule, and elsewhere in its NEPA Handbook provide sufficient guidance as to when DOI is required to develop an environmental assessment, and it is not included in the revised version of the Handbook.

8. Section 1.6 – Findings of no significant impact.

Section 1.6 of the DOI NEPA Handbook details the procedures that bureaus follow when making and documenting a finding of no significant impact. As noted above in the discussion of section 1.3(e), this section provides that a finding of no significant impact will "identify the mitigation measures that will be undertaken to avoid significant effects and the mechanisms to ensure their implementation." DOI NEPA Handbook 1.6(a)(3). No changes have been made to this section relative to the version released with the IFR in July 2025.

9. Section 1.7 – Lead and cooperating agencies.

Section 1.7 of the DOI NEPA Handbook concerns identification of a lead agency in cases where more than one agency will participate in a NEPA process and procedures for engaging with the broader set of cooperating agencies. The substance that appeared in the July 2025 version of the Handbook that accompanied the IFR has been moved to the regulations at 43 CFR

46.220 and 46.225; therefore, this section now consists primarily of cross-references to those provisions. *See also* Section II.B.4-5, *supra*.

10. Section 1.8 – Notices of intent and scoping.

Section 1.8 of the DOI NEPA Handbook describes DOI's procedures for the scoping process that precedes development of an environmental document, including the process for issuing a notice of intent to prepare an environmental impact statement. Paragraph (b) of this section provides that when a bureau intends to prepare an environmental impact statement to evaluate a proposed action, the bureau must publish a notice of intent in the *Federal Register*. The notice of intent process includes an opportunity for public comment, as is required by statute. 42 U.S.C. 4336a(c). Paragraph (c) of this Handbook section includes examples of other steps bureaus might take as part of the scoping process. Paragraph (a) has been revised from what appeared in the July 2025 version of the Handbook for clarity.

11. Section 2.1 – Preparation of environmental impact statements.

Section 2.1 reiterates the standard for when an environmental impact statement is required, as well as the expectations and procedures for soliciting comments from Federal agencies; State, Tribal, and local governments and agencies; and the public. This section was revised from the version of the Handbook released in July 2025 with the IFR to eliminate references to the appendix listing examples of actions that normally require an environmental impact statement. DOI has determined that this appendix was not useful, and it is not included in the revised version of the Handbook.

Many comments addressed DOI's approach to public participation in the IFR and Handbook. Those comments are relevant to this section of the Handbook but generally address the question of public participation more broadly. For a consolidated response to those comments, *see* Section III.E, *infra*.

12. Section 2.2 – Purpose and need.

Section 2.2 provides guidance on developing the statement of purpose and need that is

included in all environmental impact statements, including the particular considerations that are present when a bureau's proposed action responds to an application from a third party. Some commenters took issue with the provision that, in such circumstances, "the purpose and need for the proposed action will also be informed by the goals of the applicant," claiming that it would limit consideration of appropriate alternatives to the proposed action. DOI disagrees because while the provision requires Responsible Officials to consider the applicant's goals when reasonably defining the purpose and need for a proposed action, it does not *require* those officials to adopt the applicant's goals as the bureau's purpose and need or exclude from consideration otherwise reasonable alternatives to the proposed action. DOI also notes that DOI's 2008 NEPA regulations included the directive that when considering such applications, "the bureau should consider the needs and goals of the parties involved in the application or permit as well as the public interest," *see* 43 CFR 46.420(a)(2) (rescinded), and that this concept is merely carried into this section of the DOI NEPA Handbook. No changes have been made to this section relative to the version released with the IFR in July 2025.

13. Section 2.3 – Analysis within the environmental impact statement.

Section 2.3 outlines the content of an environmental impact statement, providing guidance on what should be included, which closely tracks the statutory requirements at 42 U.S.C. 4332(C); and provides guidance about how to determine the appropriate scope of the analysis, including by incorporating concepts and language from the Supreme Court's recent consideration of that issue in *Seven County Infrastructure Coalition*. *Compare* DOI NEPA Handbook 2.3(b)(3) ("To the extent it assists in reasoned decision-making, the bureau may, but is not required to by NEPA, analyze environmental effects from other projects separate in time, or separate in place, or that fall outside of the bureau's regulatory authority, or that would have to be initiated by a third party."), *with Seven County Infrastructure Coalition*, 605 U.S. at 182 ("So long as the EIS addresses environmental effects from the project at issue, courts should defer to agencies' decisions about where to draw the line—including (i) how far to go in

considering indirect environmental effects from the project at hand and (ii) whether to analyze environmental effects from other projects separate in time or place from the project at hand.").

Section 2.3(a)(3) directs bureaus to identify and evaluate the environmental effects of "a reasonable range of alternatives to the proposed action." DOI NEPA Handbook 2.3(a)(3); *see also* 42 U.S.C. 4332(C)(iii). Some commenters suggested that DOI should or must incorporate into its guidance additional direction concerning the development and selection of alternatives from CEQ's rescinded regulations. The guidance concerning the identification and consideration of alternatives in DOI's Handbook substantially aligns with the content of CEQ's now-rescinded regulations and CEQ guidance, including that bureaus must consider a reasonable range of alternatives, *see* 40 CFR 1502.14(a) (1978) (rescinded); *see also Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, Question and Answer 1b ("When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS."), 46 FR 18,026 (March 23, 1981).

But, as noted above, DOI's Handbook is not simply a subsequent iteration of the policies previously contained in CEQ's now-rescinded regulations, or a direct successor to them, but rather draws upon and implements the requirements of NEPA itself. Based on its experience and judgment, DOI believes that the guidance it is providing in Section 2.3(a)(3) better hews to the statutory language and better guides bureaus in developing alternatives to a given proposed action than would reconstituting the particular approach taken by the now-rescinded CEQ regulations. For example, one commenter noted while the version of the Handbook released in July 2025 expressly provides that environmental assessments do not need to include a "no action alternative," the Handbook is not clear whether environmental impact statements must include a "no action alternative." DOI agrees. The DOI Handbook, Appendix 1, has now been revised to encourage, but not require, DOI bureaus to include a "no action alternative" in both environmental assessments and environmental impact statements. While including a "no action

alternative" is often useful to compare the effects of the proposed action to the future without the Federal action, it is not always necessary; no specific invocation of a "no action alternative" is necessary as the effects of the proposed action and any reasonable alternatives thereto would necessarily be described in terms of change to the prevailing circumstances or "Affected Environment."

No other changes have been made to this section relative to the version released with the IFR in July 2025.

14. Section 2.4 – Page limits.

Section 2.4 provides that environmental impact statements must be no more than 150 pages or, where the proposed action is of extraordinary complexity, 300 pages, consistent with statutory limits enacted in the 2023 amendments to NEPA. *See* 42 U.S.C. 4336a(e). The section also provides that the Responsible Official will certify that the environmental impact statement appropriately prioritizes the most important considerations for the analysis in light of both the page limitation and the factors that the bureau must consider under NEPA. The section has been revised from the version of the Handbook released in July 2025 with the IFR to clarify that citations and appendices are not counted toward the page limit.

15. Section 2.5 – Deadlines.

Section 2.5 provides guidance and direction on compliance with NEPA's deadlines for completing an environmental impact statement under both Section 107 and Section 112 of the statute. It also directs the Responsible Official to certify that the environmental impact statement has thoroughly considered the factors that the bureau must consider under NEPA while making a good-faith effort to fulfill NEPA's requirements within the statutory deadlines. This section was revised from the version of the Handbook released in July 2025 with the IFR to add discussion of Section 112 of NEPA, enacted after the Handbook was first released.

16. Section 2.6 – Publication of the environmental impact statement.

Section 2.6 directs bureaus to make environmental impact statements available to the

public. No changes have been made to this section relative to the version released with the IFR in July 2025.

17. Section 3.1 – Reliance on existing environmental documents.

Section 3.1 provides guidance for bureaus when they seek to use a previously prepared environmental document to satisfy their NEPA compliance obligations with respect to a new proposed action. The section identifies the standards for making a Determination of NEPA Adequacy or similar finding, including by providing detail on what constitutes "substantial similarity." Some commenters objected to the allowance that bureaus should provide for public comment when they plan to rely on a previously prepared environmental document only "to the extent that solicitation of comment will assist the bureau in expeditiously adapting the relied-upon statement or assessment so that it is fit for the bureau's purposes." *See* DOI NEPA Handbook 3.1(b)(2). While those comments are specific to this section of the Handbook, they join many other comments addressed to DOI's approach to public participation in general. For a consolidated response to those comments, *see* Section III.E, *infra*.

No changes, beyond one technical correction, have been made to this section relative to the version released with the IFR in July 2025.

18. Section 3.2 – Programmatic environmental impact statements or environmental assessments and tiering.

Section 3.2 articulates guidance and details the procedures for preparing programmatic environmental assessments and environmental impact statements. The section tracks the statutory provisions for programmatic environmental documents at Section 108 to describe the circumstances under which a bureau may rely on a programmatic environmental document, without further NEPA review as well as when a bureau may, in the course of additional NEPA review, tier to an existing programmatic environmental assessment or environmental impact statement so as to truncate additional review. Finally, the section provides that a bureau may prepare an environmental assessment and reach a finding of no *additional* significant impacts

when it tiers to a programmatic environmental impact statement that has already fully analyzed any significant effects the proposed action would have. This provision carries forward a clarification in tiering practice introduced in DOI's 2008 NEPA regulations. *See* 43 CFR 46.140 (rescinded). No changes have been made to this section relative to the version released with the IFR in July 2025.

19. Section 3.3 – Publishing pre-decisional environmental documents.

Section 3.3 provides allowance for a bureau to release drafts of environmental documents and other pre-decisional materials when doing so "may assist in fulfilling its responsibilities under NEPA." No changes have been made to this section relative to the version released with the IFR in July 2025.

20. Section 3.4 – Combining documents.

Section 3.4 directs bureaus to combine environmental documents prepared to comply with NEPA with other bureau documents prepared in the course of making a decision to pursue the proposed action to the fullest extent practicable. This provision is designed to increase efficiency and decrease the extent of the materials to support agency decision-making. No changes have been made to this section relative to the version released with the IFR in July 2025.

21. Section 3.5 – Incorporation by reference.

Section 3.5 describes the allowance for bureaus to incorporate other materials by reference, to reduce the length of environmental documents. When incorporating by reference, bureaus must describe the content briefly and provide relevant citation to the material being incorporated. This is consistent with a provision in the 2008 DOI NEPA regulations. *See* 43 CFR 46.135 (rescinded). With respect to cost-benefit analysis specifically, although NEPA itself does not require preparation of a cost-benefit analysis, these procedures direct bureaus to incorporate any cost-benefit analysis they do prepare by reference in the associated environmental document. This provision is consistent with long-standing guidance in the CEQ regulations. *See* 40 CFR 1502.23 (1978) (rescinded). In DOI's judgment, retaining it is compatible with the statute, will

enhance DOI's ability to comply with the statutory page limits and deadlines , and will otherwise further the policies of EO 14154. No changes, beyond one technical correction, have been made to this section relative to the version released with the IFR in July 2025.

22. Section 3.6 – Supplements to environmental impact statements.

Section 3.6 concerns when a bureau must supplement an environmental impact statement. A supplement is required when "a major Federal action remains to occur" and the bureau makes substantial changes to the action or the bureau determines there are significant changed circumstances, in either case implicating environmental effects. DOI NEPA Handbook 3.6(a). Some comments took issue with the Handbook's use of the phrase "remains to occur," preferring the phrase "incomplete and ongoing," used in the CEQ's since-rescinded regulations. DOI disagrees with any suggestion that "remains to occur" is vague. Bureaus should have no trouble determining whether in the course of implementing a bureau action any "major Federal action remains to occur." This approach is also consistent with long-standing provisions in the original CEQ regulations that required supplements only for "proposed actions"—that is, for actions that have not yet occurred but remain "proposals" or "that stage in the development of an action when an agency subject to [NEPA] has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated." *See* 40 CFR 1502.9(c) (1978) (rescinded); 40 CFR 1508.23 (1978, defining "proposal") (rescinded).

Some comments also took issue with the Handbook's treatment of public participation on supplements to an environmental impact statement. The Handbook provides that the Responsible Official may, but is not obliged to, circulate a supplement for public input "as appropriate to the scope of the supplement and the proposed action." DOI NEPA Handbook 3.6(b). While those comments are specific to this section of the Handbook, they join many other comments addressed to DOI's approach to public participation in general. For a consolidated response to

those comments, *see* Section III.E, *infra*.

No changes have been made to this section relative to the version released with the IFR in July 2025.

23. Section 3.7 – Integrity and completeness of information.

Section 3.7 expresses a preference for reliance on existing data and other information resources, directing bureaus to undertake new scientific or technical research only when "the bureau anticipates that the results of that research will be essential to a reasoned choice among alternatives and the overall costs and time frame of such undertaking are not unreasonable." DOI NEPA Handbook 3.7(a). This approach is consistent with the original CEQ regulations, Congress codified this approach in the 2023 statutory amendments. *See* 40 CFR 1502.22(a) (1978); 42 U.S.C. 4336(b)(3). New research can be costly and time-consuming, and to make the NEPA process more efficient, bureaus should rely on existing sources of information wherever possible.

Paragraph (b) of this section provides guidance to bureaus in situations where existing data or information is incomplete but cannot be reasonably obtained or developed at a reasonable cost. In such cases, again for efficiency's sake, the bureau should document the data or information gap and proceed with preparation of the environmental document. Some comments suggested that DOI should incorporate a provision akin to one in the CEQ regulations that agencies apply accepted scientific methods to resolve data gaps. As an initial matter, and as noted above, in developing its Handbook, DOI is implementing the statute, not simply standing in for CEQ's now-rescinded regulations, which are no longer in force. Section 3.7(b) is consistent with NEPA, and because the Handbook is designed to promote efficiency and certainty, DOI declines to make the change suggested by those comments.

No changes, beyond one technical correction, have been made to this section relative to the version released with the IFR in July 2025.

24. Section 3.8 – Integrating NEPA with other environmental requirements.

Section 3.8 directs bureaus to combine NEPA analysis and environmental documents with other analysis processes and documentation associated with the proposed action at issue and provides guidance on how to do so. No changes, beyond one edit for clarity, have been made to this section relative to the version released with the IFR in July 2025.

25. Section 3.9 – Elimination of duplication with State, Tribal, and local procedures.

Section 3.9 directs bureaus to coordinate NEPA analysis and the preparation of environmental documents with State, Tribal, and local agencies engaged in similar processes and provides guidance on how to do so. This section implements Congress's design in Section 107 as added by the 2023 statutory amendments. *See, e.g.*, 42 U.S.C. 4336a(a), (b). No changes have been made to this section relative to the version released with the IFR in July 2025.

26. Section 3.10 – Proposals for regulations.

Section 3.10 directs bureaus to consider whether documents prepared in the course of rulemaking also may be used to satisfy NEPA with respect to that rulemaking and to rely on such documents when they are able. No changes have been made to this section relative to the version released with the IFR in July 2025.

27. Section 3.11 – Unique identification numbers.

Section 3.11 addresses the practical concern of establishing a system by which relevant information and documents can be tracked in conjunction with one another. The requirement to coordinate use of identification numbers with CEQ is intended to support cross-agency coordination across multiple Federal agencies and navigation by the public of documents that support decisions made.

28. Section 3.12 – Emergencies.

DOI elected to retain the provisions addressing NEPA compliance as related to emergencies in its NEPA regulations at 43 CFR 46.150; therefore, this section now consists primarily of cross-references to those provisions. *See* Section II.B.1, *supra*, for discussion of the

relevant regulation.

29. Section 4.1 – Decision documents.

Section 4.1 provides direction to bureaus as to how and when to document and make public their decisions, in particular how the mode of complying with NEPA affects Department expectations and requirements for how decisions are documented. The section reiterates the bureaus' discretion to select any one or a blend of the alternatives considered in the course of the NEPA process. DOI has revised this section from the version released with the IFR in July 2025 to better clarify when a decision should be documented and when a decision should be published.

30. Section 4.2 – Filing requirements.

Section 4.2 provides guidance for filing environmental impact statements with the Environmental Protection Agency for publication and notification of availability. No changes, beyond one edit for clarity, have been made to this section relative to the version released with the IFR in July 2025.

31. Section 5.1 – Procedures for applicant-prepared environmental impact statements and environmental assessments.

Because procedures for applicant-prepared environmental documents are retained in regulation, this section of the Handbook consists only of a cross-reference. *See* Section II.B.3, *supra*, for discussion of the relevant regulation.

32. Section 5.2 – Using a bureau-directed contractor to prepare environmental documents.

Because procedures for preparation of environmental documents by a bureau-directed contractor are retained in regulation, this section of the Handbook consists only of a cross-reference. *See* Section II.B.3, *supra*, for discussion of the relevant regulation.

33. Section 6.1 – Definitions.

Section 6.1 defines the terms of art used throughout the Handbook. DOI has added definitions of the terms *design features* and *environmental document* to the definitions section

since the Handbook was first published in July 2025 alongside the IFR. Other definitions have been revised for clarity in this updated version of the Handbook.

34. Section 7.1 – Severability.

Section 7.1 consists of a statement of severability in the event one or more of the DOI NEPA procedures contained in the Handbook are found to be invalid.

III. Comments

DOI received approximately 6,601 written submissions in response to the interim final rule. The overwhelming majority of comments (approximately 6,122) were in the form of two different letters that were identical or very similar in form and content. From among the 6,601 comments, DOI received approximately 458 unique public comments, including from non-governmental organizations, State agencies, local and regional governments, Tribes, industry groups, members of the U.S. House of Representatives, and members of the public.

DOI is providing summaries of and responses to those unique and substantive comments it received on the IFR in the following section of this final rule. The DOI received comments expressing general support for the IFR and comments expressing opposition to the IFR. None of the comments changed DOI's conclusion that it is appropriate to partially rescind and otherwise revise the previous regulations, though DOI made minor edits to those regulations upon further review. In addition, DOI made various edits to the *Department of the Interior Handbook: National Environmental Policy Act Implementing Procedures* (hereinafter, DOI NEPA Handbook) to correct or clarify procedural issues, or address internal or external comments. Responses to comments on the DOI NEPA Handbook are not addressed specifically in this section as revision and publication of the DOI NEPA Handbook is not part of the rulemaking. However, DOI considered comments on the DOI NEPA Handbook when making revisions to that document, which is being reissued concurrently with this final rule, and as appropriate provides responses in the interest of clarity and ensuring public understanding of DOI's rationales. Further, the section-by-section discussion the DOI NEPA Handbook herein addresses,

with particular focus, how concepts previously addressed in 43 CFR Part 46 now appear in the DOI NEPA Handbook. For example, defined terms used in this rule are found in the DOI NEPA Handbook, Section 6.1 Definitions and, in several instances, are consistent with how they appeared in 43 CFR Part 46, often, with more helpful detail. *See*, *e.g.*, 43 CFR 46.30 (definitions of "Proposed Action" and "Responsible Official"; rescinded).

A. General Comments on the IFR

Comment: Several commenters expressed support for the IFR. Letters of support commended the Department for updating its NEPA procedures to be consistent with E.O. 14154, aligning the NEPA implementing procedures with the FRA and the Supreme Court's decision in *Seven County Infrastructure Coalition*, and simplifying permitting procedures and the NEPA process.

Response: DOI acknowledges these supportive comments.

Comment: Many commenters expressed opposition to the IFR. Letters of opposition urged the Department to reverse course.

Response: DOI acknowledges these opposing comments.

Comment: One commenter expressed support for the new DOI NEPA Procedures and stated that it is imperative that DOI leadership ensure that bureaus implement these procedures and adapt their practices to conform to them.

Response: The DOI NEPA procedures are part of a coordinated effort to reduce the burdens associated with NEPA compliance across the Federal Government and ensure that DOI bureaus comply with NEPA and DOI NEPA regulations. DOI acknowledges that additional guidance or training may be necessary to appropriately implement these revised DOI NEPA procedures.

B. Comments Regarding the Rulemaking Process

Comment: Several commenters requested that DOI extend the comment period for the IFR.

Response: DOI determined that 30 days was adequate because the scope of the IFR was limited to partial removal and minimal additions or revisions to the DOI regulations. While DOI made a greater number of revisions to the procedural provisions related to compliance with NEPA now present in the DOI NEPA Handbook, these changes, which are not part of this rulemaking, largely aligned DOI procedures with recent amendments to NEPA or developments in case law, such as the renewed focus in *Seven County Infrastructure Coalition* on limiting the scope of analysis to the reasonably foreseeable environmental effects of the agency's proposed action and reasonable alternatives. Moreover, DOI received more than 6,600 comments on its IFR, and the volume and substantive content of the comments indicates that the public had an adequate opportunity to comment.

Comment: Several commenters requested that the IFR be published as a proposed rule with a period for public comment prior to the IFR's effective date.

Response: The Administrative Procedure Act (APA) authorizes agencies to issue regulations without notice and public comment when the rule is an "interpretative rule[], general statement[] of policy, or rule[] of agency . . . procedure[] or practice," 5 U.S.C. 553(b)(A), or when an agency finds, for good cause, that notice and comment is "impracticable, unnecessary, or contrary to the public interest," *id.* 553(b)(B). The APA did not require DOI to publish a notice of proposed rulemaking and consider public comments before the effective date of the rule because three separate exceptions to the APA's general requirement apply here: (1) the legacy DOI NEPA regulations were procedural only and did not dictate or preclude any DOI actions; rather, the legacy DOI NEPA regulations prescribed *processes* for DOI and its bureaus to follow when complying with NEPA; (2) the legacy DOI NEPA regulations merely provided an interpretation of a statute rather than making discretionary policy choices establishing enforceable rights or obligations for regulated parties; and (3) good cause exists to forgo notice-and-comment procedures and put the rule into immediate effect because public comment on the rule was and is unnecessary and impracticable. The legacy DOI NEPA regulations were

expressly promulgated to supplement CEQ's NEPA regulations; following the vacatur and rescission of CEQ's NEPA regulations, DOI was left with vestigial NEPA regulations that "supplemented" a CEQ regulatory regime that no longer existed. 5 U.S.C. 553 (b)(A)-(B).

C. Comments on the IFR Process

Comment: Several commenters disagreed that DOI had good cause to waive the APA notice-and-comment requirements imposed by 5 U.S.C. 553(b). These commenters stated that DOI's IFR did not establish that notice and an opportunity to comment were unnecessary, impracticable, or contrary to the public interest. These commenters asserted that, rather than reducing confusion and supporting public interest, the IFR creates more confusion about how DOI will undertake its NEPA reviews. In addition, several commenters disagreed with DOI's conclusion that its rule to partially remove and revise its NEPA implementing regulations is an interpretative rule or, in the alternative, a rule of agency procedure that does not, in either case, require notice and comment.

Response: DOI proceeded via IFR in response to E.O. 14154, which, among other things, revoked E.O. 11991, the E.O. in which President Carter had delegated authority to CEQ to promulgate regulations implementing NEPA and binding agencies in their implementation of NEPA; DOI's NEPA implementing regulations supplemented those CEQ regulations. Without E.O. 11991 and its Presidential delegation of authority, CEQ was obligated to rescind its NEPA implementing regulations and thus it was imperative for DOI to address supplementary regulations that were no longer consistent with CEQ direction. The APA did not require the Department to publish a notice of proposed rulemaking and consider public comments before the effective date of the rule because three separate exceptions to that requirement apply: (1) the legacy DOI NEPA regulations were procedural only and did not dictate or preclude any DOI actions; rather, the legacy DOI NEPA regulations prescribed *processes* for the Department and its bureaus to follow when complying with NEPA; (2) the legacy DOI NEPA regulations merely provided an interpretation of a statute rather than making discretionary policy choices

establishing enforceable rights or obligations for regulated parties; and (3) good cause exists to forgo notice-and-comment procedures and put the rule into immediate effect because the legacy DOI NEPA regulations were expressly promulgated to supplement CEQ's NEPA regulations; following the vacatur and rescission of CEQ's NEPA regulations, the Department was left with vestigial NEPA regulations that "supplemented" a CEQ regulatory regime that no longer existed. 5 U.S.C. 553 (b)(A)-(B).

Moreover, DOI's IFR contained all the elements of a notice of proposed rulemaking as required by the APA. 5 U.S.C. 553(b); *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657 (2020). DOI explained its position with sufficient detail to put the public on notice that it was partially rescinding and otherwise revising its NEPA implementing regulations and provided its rationale along with an opportunity to comment. The public understood the action DOI was taking and took advantage of the opportunity to comment; DOI received more than 6,600 comments on its IFR. Thus, while DOI maintains for the reasons noted above that its IFR is subject to the exceptions set forth in 5 U.S.C. 553(b), this final rule represents the culmination of a process functionally equivalent to a traditional notice-and-comment rulemaking regardless of the initial procedural basis for the IFR.

DOI is issuing this final rule to respond to comments on the IFR and explain that it is reaffirming its decision to partially remove and otherwise revise its NEPA implementing regulations, subject to the additional revisions made by this final rule. This final rule therefore supersedes the IFR. The public had the opportunity to comment prior to issuance of this final rule, thereby rendering comments objecting to the IFR process moot.

Comment: Some Tribes and organizations representing Tribal interests requested formal government-to-government consultation regarding the IFR before it took effect. Commenters noted that there was no communication or notification of the IFR before publication. Some commenters disagreed with DOI's statement that the IFR does not require consultation with Tribal governments. Some commenters stated that the IFR incorrectly states that it is not a

regulatory policy with Tribal implications. Several commenters note that the Federal Government has a duty to consult with Tribal Nations on Federal actions that may have Tribal implications, as expressed in E.O. 13175.

Response: Changes to Federal agency NEPA compliance procedures do not implicate Tribal interests that would be the subject of government-to-government consultation but pertain only to internal procedures for agencies to comply with NEPA, including their analysis of environmental impacts. The way in which agencies conduct analysis of the environmental impacts of proposed actions is independent of the way agencies engage in government-to-government consultation about proposed actions of interest to Tribes, and independent of the way agencies must comply with other laws and policies. Members of Tribes may always provide input into agency decision-making. 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. Although DOI 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. Neither the IFR nor this rulemaking alters DOI's duties towards Tribes.

Comment: Several commenters stated that the IFR is not supported by adequate reasoning, particularly given the magnitude of change in DOI NEPA implementing procedures, and that E.O. 14154 does not justify the move from codified regulations to a handbook.

Response: DOI explained that it revised its NEPA procedures to adjust for the fact that CEQ regulations no longer exist, conform these procedures to the 2023 statutory amendments, respond to President Trump's direction in E.O. 14154, and address the difficulties associated with the NEPA process and NEPA litigation identified by the Supreme Court in *Seven County Infrastructure Coalition*.

DOI also provided more detailed explanation as to how the handful of provisions that will

remain in regulation would operate, including by explaining the reasons to retain those provisions in regulation and for the targeted changes made to those provisions and how those changes are intended to be implemented. DOI is not required to provide the same kind of detail on the establishment of its internal guidance (i.e., the DOI NEPA Handbook), where the balance of its NEPA procedures now reside, but the agency nevertheless provided discussion of the DOI NEPA Handbook, and made it available for public comment along with the IFR. Further, the section-by-section discussion of the DOI NEPA Handbook herein addresses, with particular focus, how concepts that originally appeared in 43 CFR Part 46 are now addressed in the DOI NEPA Handbook. And as DOI explained, it moved its procedures back to Departmental policy—where it appeared for decades prior to 2008—for the benefit of greater flexibility that it provides at this time given that NEPA is rapidly evolving as reflected in statutory amendments over the last several years.

Comment: Several commenters requested that the Department recodify its NEPA regulations instead of providing guidance in the form of a handbook because the latter lacks the enforceability and consistency associated with codified regulations.

Response: In response to both E.O. 14192, which requires reducing regulation, and E.O. 14154, which resulted in CEQ rescinding its NEPA regulations (40 CFR Parts 1500 -1508), the Department reduced its NEPA regulations and consolidated DOI's NEPA procedures in the DOI NEPA Handbook. Those changes reflect DOI's reasoned judgment as to how best to provide for the implementation of NEPA, including in light of recent amendments to and judicial interpretations of NEPA as a "purely procedural statute." Further, as noted above, this return of the DOI NEPA procedures from primarily in regulations to primarily in Departmental policy—where it appeared for decades prior to 2008—supports the Departmental goals of flexibility in a changing legal landscape.

D. Comments on the Consequences of the IFR

Comment: Some commenters stated that the new DOI NEPA procedures will result in

increased litigation and delays. Some comments warned that the IFR could lead to regulatory questions because there are no codified procedures and project sponsors may face conflicting standards due to a combination of regulatory decentralization, legal shifts, and procedural ambiguity in the DOI NEPA procedures. These commenters further assert that the new DOI NEPA procedures will result in deficient records that may need to be supplemented in litigation or as part of later site-specific actions.

Response: Though these asserted harms are speculative, DOI did consider previous litigation and judicial precedents in revising the DOI NEPA procedures, most particularly in moving many of these procedural provisions from regulation back to Departmental policy documents. Procedural rules have always been subject to change without notice and comment. And even if (and to the extent that) DOI's NEPA regulations are deemed to be interpretive rather than procedural, notice-and-comment procedures are not required for interpretive rulemaking, regardless of whether they were originally promulgated with notice and comment. *See* 5 U.S.C. 553(b)(A); *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92 (2015). DOI provided notice of the DOI NEPA procedure revisions, and the announcement of the IFR explicitly allows for previously initiated NEPA reviews to proceed under the previous NEPA procedures as expressed in the 2008 DOI NEPA regulations when appropriate. Additionally, DOI disagrees with commenters' assertions that the flexibilities and efficiencies secured in the new DOI procedures will detract from DOI's ability to assemble sufficient administrative records or otherwise exacerbate litigation risk. The basis for DOI's new procedures is the statute as amended, the implementation of President Trump's policy direction in EO 14154 section 5 as consistent with applicable law, and the Supreme Court's recent, landmark *Seven County* opinion. DOI is confident that NEPA implementing procedures shaped under the guidance of these three pillars will produce legally durable NEPA analyses that are sound as a matter of policy.

Comment: Several commenters raised concerns that the changes to the DOI NEPA procedures would potentially cause conflict with State laws, including third-party compliance

with State environmental review requirements. One commenter stated the revised DOI NEPA procedures result in an increased burden on States to evaluate impacts of Federal actions.

Response: With respect to State interests in maintaining DOI's NEPA implementing procedures in regulation, the removal and revisions do 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. State obligations and authorities related to the evaluation of Federal actions are unchanged by the revision of the DOI NEPA procedures—much less by their return from a regulatory to a Departmental policy format.

Comment: Several commenters noted differences between DOI's NEPA procedures and those of other Federal agencies that issued NEPA procedures concurrently and requested more consistency or expressed preferences regarding aspects of the NEPA procedures. Some of the preferences noted included maintaining previous DOI NEPA procedure regulatory text or revising remaining DOI NEPA procedure regulatory text or guidance. For example, several commenters suggested that DOI adopt NEPA procedures used by other agencies, such as the U.S. Department of Agriculture extraordinary circumstances review protocol for reliance on categorical exclusions.

Response: DOI carefully considered revisions to its NEPA procedures based on the experience of its bureaus and believes the changes, with the edits made in this final rule and the revisions to the DOI NEPA Handbook, provide for both consistency and increased effectiveness in DOI decision-making for its mission and programs. CEQ, including through the working group created by E.O. 14154, is coordinating the revision of Federal agency-level implementing procedures for consistency. This is in keeping with Congress's direction that agencies consult with CEQ when developing their procedures for implementing NEPA, *see* 42 U.S.C. 4332(2)(B).

Comment: Several commenters stated that DOI failed to provide a reasoned explanation for the decision to largely rescind its NEPA regulations in favor of establishing the DOI NEPA Handbook.

Response: As explained in the IFR and this final rule, NEPA "is a purely procedural statute" that covers internal processes, *Seven County Infrastructure Coalition*, 605 U.S. at 173, and DOI's implementation of that procedural statute need not be in regulation. And, as explained above, DOI's legacy regulations were procedural only—those regulations merely described processes for DOI and its bureaus to follow when complying with NEPA. Many Federal agencies do not have NEPA procedures in regulation, just as DOI did not have its NEPA procedures in regulation before 2008, and agencies have discretion to determine the form of their NEPA procedures for effective NEPA implementation. DOI finds the benefit of greater flexibility that guidance provides appropriate at this time given that NEPA is rapidly evolving as reflected in statutory amendments over the last several years.

Comment: Several commenters asserted that DOI failed to adequately explain its departure from CEQ's rescinded regulations and policy positions. These comments suggest that DOI is required to acknowledge CEQ's earlier positions, identify with specificity where DOI's regulations and NEPA Handbook differ from them, and justify those differences in light of CEQ's prior interpretations of NEPA or retain CEQ's regulations.

Response: As explained in greater detail above, DOI acknowledges that CEQ's regulations previously provided a framework for NEPA compliance and informed agency practices. However, as CEQ explained in its final rule affirming the removal of its regulations, CEQ lacks independent statutory authority to maintain NEPA implementing regulations that bind agencies in the absence of an executive order delegating rulemaking authority to CEQ. 91 FR at 622-23; *see also* Executive Order 14154, *Unleashing American Energy*, 90 FR 8,353. Accordingly, agencies may now exercise discretion to adopt procedures consistent with NEPA and executive policies. Indeed, as DOI explained in its IFR, because DOI's prior NEPA implementing procedures were expressly designed as a supplement to CEQ's rescinded regulations, CEQ's recission necessitated that DOI adopt new procedures designed to independently implement NEPA.

While some commenters evaluated DOI's NEPA implementing procedures against CEQ's prior regulations, DOI does not consider the adoption of its new procedures to be a departure from DOI's own prior policy simply because CEQ may in the past have expressed a different view on a given point of NEPA implementation. DOI's primary foundation for the updates to its NEPA procedures, as explained above, is the statute and Supreme Court precedent. Instead of seeking to carry forward or build upon CEQ's repealed procedures, DOI focused on developing NEPA procedures to meet the statutory requirements found in 42 U.S.C. 4321–4347. DOI disagrees that it must retain elements of the former CEQ regulations simply because CEQ in its rescinded regulatory regime included those elements and provided some rationale for so doing. CEQ's regulations no longer govern agency compliance, and the relevant question is whether DOI's procedures satisfy NEPA's requirements. As explained in this rulemaking, DOI has determined, after consultation with CEQ and consideration of comments received, that procedures adopted here as final satisfy NEPA's requirements and DOI's other statutory responsibilities. DOI's updated NEPA procedures appropriately account for DOI's specific authorities and activities, the environmental effects it typically encounters, and the need for timely and efficient decision-making, as well as for significant changes in law since DOI established its prior regulations. Nevertheless, where relevant and appropriate, this preamble to the final rule addresses aspects of DOI's NEPA procedures that follow or depart from aspects of CEQ's prior approach.

Comment: Some comments noted that DOI did not explain how its approach to implementing NEPA compared to approaches adopted by other agencies. For example, commenters raised issue with DOI using a non-codified handbook to implement NEPA, where differently some agencies codified some or all of their NEPA implementing regulations.

Response: DOI recognizes that its approach to implementing NEPA may differ from other agencies' approaches to implementing NEPA. Through issuance of this final rulemaking and NEPA Handbook, DOI has determined the best position for DOI to establish NEPA

implementing procedures that fit its programs and authorities. Following the removal of CEQ's NEPA regulations, DOI has flexibility to determine agency-specific NEPA procedures to modernize, simplify, and accelerate NEPA reviews and support responsible development.

Furthermore, DOI notes that NEPA requires agencies to consult with CEQ when developing agency NEPA procedures. *See* 42 U.S.C. 4332(2)(B). NEPA does not require agencies to coordinate with one another to ensure identicality between their respective NEPA procedures, let alone between the means by which each agency issues those procedures. Agencies' statutory authorities and subject-matter expertise differ greatly, and variance on these matters is to be expected. Indeed, agencies' NEPA procedures were not homogenous or identical during the era in which CEQ maintained overarching implementing regulations, and there is no requirement or reasonable expectation that they should be so once those CEQ regulations have been vacated and rescinded.

Comment: Some commenters, citing a 2025 CEQ report from the previous administration, take the position that the data do not support the need to implement measures to shorten timelines for the completion of environmental assessments and environmental impact statements. At least one commenter claims that trends towards longer timelines had been reversed by the policies of the previous administration.

Response: DOI has concluded that further measures are necessary to meet the statutory requirements of NEPA and the policies set forth in EO 14154. As part of the FRA, Congress amended NEPA to add mandatory deadlines and related procedural reforms for the development of environmental assessments and environmental impact statements. 42 U.S.C. 4336a(g). Specifically, Congress identified certain triggering events and directed agencies to complete environmental assessments and environmental impact statements within one and two years, respectively, of those events. *Id.* To enforce these deadlines, Congress provided project sponsors with a cause of action to seek judicial review of an agency's failure to act by the deadline. *Id.* 4336a(g)(3).

The 2025 CEQ report on which commenters rely compared median timelines for environmental impact statements completed from 2013 to 2016 (3.5 years), 2017 to 2020 (3.1 years) and 2021 to 2024 (2.4 years). CEQ, *Environmental Impact Statement Timelines (2010-2024)*, at 4 (Jan. 13, 2025). Though CEQ noted the general downward trend in the amount of time taken to prepare environmental impact statements, it did not evaluate how fewer statements being completed over the periods it analyzed may have contributed to this trend: 2013 to 2016 (621 statements); 2017 to 2020 (436 statements); and 2021 and 2024 (232 statements). For example, CEQ did not assess whether the decline from a median of 3.1 years (2017-2020) to 2.4 years (2021-2024), a 22.6 percent decrease, could be attributed to a 46.8 percent decline in total statements completed. Similarly, CEQ did not assess whether Federal resources available for completing environmental reviews changed over these periods. CEQ also declined to analyze average timelines over these same periods, relegating those averages from 2010 to 2024 to a simple chart. But the report's accompanying spreadsheet estimates that environmental impact statements were completed in 4.1 years on average from 2010 to 2024.

Even assuming CEQ's characterizations were accurate, the report states that environmental impact statements were not completed within the statutorily required two-year period when measured by the median of completed statements. CEQ's data shows that agencies, without more fundamental reform, would not achieve compliance with the statute as amended. Commenters have not provided a basis for DOI to alter its view that the reforms in the IFR as finalized in this final rule are an appropriate means to accomplish compliance with NEPA and the policies of the United States. Regardless, DOI concludes that CEQ's 2025 report is flawed. An equally plausible explanation for its data is the large reduction in output, i.e., fewer environmental impact statements. DOI notes that the Inflation Reduction Act also provided hundreds of millions of dollars above baseline Federal spending for expediting and improving environmental reviews during the 2021 to 2024 period. Pub. L. No. 117-169. DOI cannot rely on CEQ's prior conclusions about the reasons for the downward trend in time needed to complete

environmental impact statements when alternative explanations for those conclusions were plainly ignored.[1] Moreover, DOI cannot rely on CEQ's report where the fundamental conditions are reversed. This administration's policies are designed to increase output and demand energetic, efficient responses to a declared energy emergency, *see* E.O. 14156, *Declaring a National Energy Emergency*, 90 Fed Reg. 8,433 (Jan. 29, 2025); *see also Continuation of the National Emergency With Respect to Energy*, 91 FR 1,667 (Jan. 14, 2026), and related Executive Orders. *See*, *e.g.*, E.O. 14154, *Unleashing American Energy*, 90 FR 8,353.

E. Comments on DOI-specific NEPA Procedures

Comment: Some commenters expressed concerns and proposed edits or text changes to the DOI NEPA procedures to provide clarity or address their specific concerns.

Response: DOI has considered comments and, in some cases, where DOI agrees with the commenter, has made edits to either the regulatory text in the final rule or to the DOI NEPA Handbook. Regulatory text changes in the final rule are non-substantive changes from the IFR and described in Section II above. Text changes to the DOI NEPA Handbook that is reissued concurrently with the final rule reflect both substantive and editorial revisions to address corrections or provide clarity.

Comment: Many commenters expressed concerns about removing NEPA procedures from regulation, which often include notice-and-comment rulemaking, and one commenter "cautions against moving entirely to guidance documents rather than notice-and-comment rulemaking."

Response: From soon after the enactment of NEPA in 1970 through 2008, the DOI NEPA procedures appeared solely in guidance. This procedural guidance was subject to notice-and-comment requirements only by virtue of CEQ regulations that have now been rescinded. *See*

[1] DOI acknowledges that it relies in part on the 2025 CEQ report in the regulatory impact analysis (RIA) accompanying this action. DOI did so because that study is a recent attempt to provide EIS timeline data, and it specifically includes data on EISs issued by DOI bureaus. While DOI has employed the study for purposes of RIA analysis in this regard, we explain here in this final rule why the study does not bear the weight commenters place on it as a matter of policy.

43 Fed Reg. 55,978, 56,003 (Nov. 29, 1978) (promulgation of CEQ's NEPA implementing regulations, directing agencies to publish their proposed procedures for comment); 91 FR 618 (Jan. 8, 2026) (final rule adopting interim final rule rescinding CEQ's NEPA implementing regulations). *Contrast* 42 U.S.C. 102(2)(B) (Congressional direction to agencies to "develop methods and procedures" in consultation with CEQ to implement NEPA, with no notice-and-comment requirement). As the procedural guidance is binding only on the DOI bureaus themselves, it is guidance that does not need to be in regulation or be subject to notice-and-comment requirements for rulemakings under the APA. And as explained above, DOI finds the benefit of greater flexibility that guidance provides appropriate at this time given that NEPA is rapidly evolving as reflected in statutory amendments over the last several years.

Comment: Many commenters expressed concerns that all cooperating agency provisions were removed from regulation, stating that durability and consistency is provided when these provisions are codified in regulation. One commenter stated, "[NEPA] reflect[s] a deliberate congressional commitment to cooperative federalism. The IFR[ ] should be revised to reflect the full breadth of this mandate by reinstating clearly defined, enforceable provisions for engaging cooperating agencies…."

Response: In response to these and other comments, and to better implement the statutory requirement for lead agencies to coordinate with them, 42 U.S.C. 4336a(a) and (b), DOI has reinserted modified regulations for the designation of lead agencies and the selection of cooperating agencies at 43 CFR 46.220 and 46.225, respectively. Because DOI recognizes the unique and special role that cooperating agencies, as representatives of sovereign governments, have in the Federal NEPA process, and because Congress has specifically provided a mechanism in statute for these government agencies to participate under appropriate circumstances in the cooperating agency process, DOI has elected to transfer the procedures governing that process from the DOI NEPA Handbook to the Code of Federal Regulations.,

Comment: One commenter proposed edits to the DOI NEPA Handbook that would require all eligible governmental entities be approved as cooperating agencies and would eliminate the bureaus' discretion to deny requests by eligible agencies for cooperating agency status.

Response: DOI is declining to restrict the discretion to consider whether to approve requests for cooperating agency status granted to lead agencies by NEPA in section 107(a)(3)(B), 42 U.S.C. 4336a(a)(3)(B). Such requests cannot be arbitrarily denied under the DOI NEPA procedures. *See* 43 CFR 46.225(c).

Comment: Commenters raised concerns regarding public participation in NEPA processes and that the revised DOI NEPA procedures alter the long-standing, but now-abrogated, opportunities for public participation, for example by not requiring public comment with the issuance of a draft environmental impact statement, and that in light of the benefits to the agency from public comment periods and other forms of public participation, the reasoning to support that change was inadequate and arbitrary. Additionally, some commenters asserted that DOI has not sufficiently explained why it is not practicable for its NEPA procedures to impose across-the-board requirements that DOI solicit comment beyond those stages in the NEPA process that Congress has mandated.

Response: The updates to DOI's NEPA public participation procedures, including in the final rule, mirror what NEPA requires. As discussed above, in the past, CEQ's NEPA regulations substantially guided and informed the content of DOI's NEPA procedures. CEQ's NEPA regulations, in all their iterations dating back to 1978, included procedural requirements that exceed those required by the statute. With respect to public participation in particular, CEQ's regulations historically included comment periods that the statute does not compel. For example, CEQ's 1978 regulations directed agencies to prepare environmental impact statements "in two stages," 40 CFR 1502.9 (1978), which included circulation of a draft environmental impact statement for public review and comment. 40 CFR 1503.1(a)(4) (1978).

CEQ's NEPA regulations have now been rescinded by CEQ, *Removal of National Environmental Policy Act Implementation Regulations*, 91 FR 618 (Jan. 8, 2026). In response, DOI developed its own updated NEPA regulations and other NEPA procedures, implementing the President's direction in E.O. 14154, *Unleashing American Energy*, 90 FR 8,353, and E.O. 14192, *Unleashing Prosperity Through Deregulation*, 90 FR 9,065 (Feb. 6, 2025), to ensure that regulatory requirements are grounded in applicable law and to alleviate any unnecessary regulatory burdens. In doing so, DOI considered the appropriate scope of its public participation processes, including whether to define these processes in regulation or by guidance. Having elected to proceed by guidance to allow for greater flexibility to engage in the appropriate mode and extent of public participation on a case-by-case basis, DOI designed the DOI NEPA Handbook that replaces the repealed regulations to reflect the statute's requirements.

NEPA, as amended by the Fiscal Responsibility Act of 2023, requires agencies to take public comment in only one specific circumstance: when agencies issue a notice of intent to prepare an environmental impact statement. *See* 42 U.S.C. 4336a(c). This requirement is fully incorporated into DOI's updated NEPA procedures, which provide, for example, that when a bureau intends to prepare an environmental impact statement, the bureau must publish a notice of intent to prepare an environmental impact statement in the *Federal Register*. DOI NEPA Handbook 1.8(b). Consistent with the statute, the DOI procedures specify that a notice of intent to prepare an environmental impact statement shall include "a request for public comment on alternatives or effects and on relevant information, studies, or analyses with respect to the proposed agency action." DOI NEPA Handbook 1.8(b)(1).

In developing its regulations and NEPA Handbook, DOI elected not to create new and additional public participation requirements that are not grounded in applicable law and which would result in unnecessary regulatory burdens. DOI was also mindful that NEPA, as amended by the Fiscal Responsibility Act, now includes statutory deadlines that agencies must meet. *See* 42 U.S.C. 4336a(g)(1) (establishing a two-year deadline to prepare environmental impact

statements and a one-year deadline to prepare environmental assessments). Mandating a comment period for all environmental impact statements and environmental assessments would not only go beyond statutory requirements but could be in tension with DOI's statutory obligation to meet these deadlines.

Though it need not have done so, DOI has established in its NEPA procedures that when a DOI bureau intends to prepare an environmental impact statement, the bureau must publish a *Federal Register* notice of such intent. DOI NEPA Handbook 1.8(b). And while a bureau intending to prepare an environmental assessment may publish a notice of intent to prepare an environmental assessment, it need not do so. DOI NEPA Handbook 1.8(b). In this respect, the DOI NEPA Procedures are consistent with long-standing flexibility regarding whether and how an agency involves the public when preparing an environmental assessment, as expressed in both the 1978 CEQ regulations and the 2008 DOI NEPA regulations. *See* 40 CFR 1506.6(a) (requiring only "diligent efforts"; rescinded); 43 CFR 46.305 (requiring bureaus to provide for public notification and public involvement when an environmental assessment is being prepared only "to the extent practicable"; rescinded). That is, pre-decisional public involvement when a bureau was preparing an environmental assessment was never guaranteed. While DOI has considered and agrees with comments describing how the agency decision-making process can be improved by public comments and other forms of public participation, Congress has not elected to make pre-decisional public involvement a requirement. Crucially, however, the fact that DOI's NEPA procedures no longer prescribe a particular public comment process or period over and above what NEPA requires—apart from the DOI decision to require bureaus to publish a notice of intent in the *Federal Register* that invites comment when intending to prepare an environmental impact statement—does not prevent DOI bureaus from exercising their discretion to solicit additional public comment when they determine that doing so would be appropriate or helpful. Indeed, since publication of the IFR and DOI NEPA Handbook, DOI bureaus have regularly sought public comment on draft or preliminary NEPA documents. They have

voluntarily elected to do so in a variety of contexts, including inviting public comment on certain environmental assessments for forestry and timber actions, *see, e.g.*, the Outlaw Ridge Timber Management Project, DOI-BLM-ORWA-N010-2025-0011-EA (BLM Cascades Field Office, Oregon); fluid mineral development, *see, e.g.*, Hazel Inez Multi Well Project, DOI-BLM-NM-P020-2026-0287-EA (BLM Carlsbad Field Office, New Mexico); road maintenance, *see, e.g.*, Yellowstone National Park, North Entrance Road Reconstruction Project EA, PEPC 115825 (NPS January 2026); habitat conservation plans, *see, e.g.*, Environmental Assessment of a Proposed Habitat Conservation Plan and Incidental Take Permit for the Dunes Sagebrush Lizard (*Sceloporus arenicolus*) in New Mexico, FWS-R2-ES-2025-0053-0002 (FWS December 2025); and recreation and visitor services. *See* Grand Teton National Park, Reimagining the Taggart Lake Experience, PEPC 119939 (NPS August 2025); SR9 Campground Management, DOI-BLM-UT-C030-2025-0019-EA (BLM St. George Field Office, Utah). Finally, although it should go without saying, what NEPA may or may not require regarding public involvement does not change what other statutes might require; agencies must comply with the provisions of all statutes applicable to their actions.

Additionally, DOI notes that commenters specifically cite section 2(b) of EO 11514, 35 FR 4247 (March 7, 1970), President Nixon's initial executive order regarding implementation of NEPA following the Act's original passage, in which President Nixon provided that agency NEPA implementing procedures "shall include, whenever appropriate, providing for public hearings." In this regard, President Trump's EO 14154 at section 2(b) provides that it is the policy of the United States that agencies "provide opportunity for public comment." DOI notes that this provision of 14154 is not specifically directed towards NEPA implementation, but rather is contained in the introductory policy section of the Executive Order, which addresses the national interest in affordable and reliable energy and natural resources. President Nixon's Executive Order, which is specifically directed towards NEPA implementation, also specifically

provides that agency NEPA procedures shall provide public hearings "whenever appropriate" and "the fullest practicable" provision of public information.

DOI's view is that the NEPA implementing procedures it adopted via the summer 2025 IFR and Handbook, and this final rule and Handbook, constitute an appropriate execution of the policy direction in these two Executive Orders. Specifically: given both Congress's imposition of deadlines in the 2023 statutory amendments to NEPA and President Trump's specific direction with respect to permitting reform in EO 14154 section 5 that, consistent with applicable law, *efficiency* be prioritized over other policy values; and mindful that President Nixon's Executive Order both predated the 2023 statutory amendments and President Trump's Executive Order; and furthermore that President Nixon's Executive Order conditioned its references to public engagement with the qualifier that they be "practicable"; DOI's view is that its NEPA implementing procedures are consistent with these Executive Orders because they provide for public comment where Congress has directed all agencies to do so under NEPA, and, as explained elsewhere in this document, that DOI has and will continue to exercise its discretion to solicit additional public comment when it determines that doing so would be appropriate or helpful.

Comment: Some commenters asserted that public participation is central to NEPA and that DOI is required to invite and respond to comments on draft environmental documents.

Response: DOI disagrees that NEPA requires it prepare draft environmental documents and solicit public comment on each one. Before the FRA amendments to NEPA, the statute contained no requirement to solicit public comment at any stage in the NEPA process. As discussed in Section I.A., *supra*, NEPA's only reference to public review of an agency's environmental document stated that "[c]opies of [the environmental impact statement] and the comments and views of the appropriate Federal, State, and local agencies . . . shall be made available . . . to the public as provided by section 552 of title 5," also known as FOIA. 42 U.S.C. 4332(2)(C). Nonetheless, even this provision does not contemplate solicitation of public

comment; it merely speaks of the public's ability to view an environmental impact statement and comments submitted by certain governmental agencies.

CEQ's prior regulations generally required, in relevant part, that agencies prepare and provide members of the public an opportunity to comment on a draft environmental impact statement. 40 CFR 1503.1 (1978) (rescinded). However, Congress comprehensively amended NEPA in the FRA to provide more prescriptive instructions to agencies on completing timely and unified Federal NEPA reviews. 42 U.S.C. 4336a. Specifically, Congress expressly provided for public comment for the first time, at one and only one step of the process for developing an environmental document: when an agency issues a notice of intent to prepare an environmental impact statement, it must invite public comment on that notice regarding "alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action." 40 U.S.C. 4336a(c). Congress retained the original obligation to make the environmental impact statement available through FOIA.

Congress elected to require public comment only at the notice of intent stage in the NEPA process. DOI's view is that comment at the notice of intent stage is unique: It provides an opportunity for fact-gathering from persons who may have relevant (indeed, unique) information about environmental conditions of land they live on or by with respect to projects that the bureau has determined will have a significant effect on the environment. It makes sense that Congress required solicitation of public comment on all notices of intent to prepare an environmental impact statement, while imposing no such requirement with respect to an environmental assessment, both because Congress imposed a shorter deadline for agencies to develop an environmental assessment than to develop an environmental impact statement and because an environmental assessment, by definition, is typically prepared only for proposed actions that do not have reasonably foreseeable significant environmental effects. Accordingly, Congress intended that government and public resources should focus on developing and facilitating public

engagement on matters considered in environmental impact statements. DOI's revised regulations reflect this statutory structure.

DOI's NEPA procedures are thus consistent with Congress's instruction to provide an opportunity for members of the public to comment on the notice of intent to prepare an environmental impact statement. DOI will continue to make its environmental documents available to the public consistent with FOIA, and this requirement is not affected by this rulemaking. DOI otherwise maintains discretion to offer opportunities for public comment on draft environmental documents as appropriate.

Comment: Commenters assert that DOI must independently justify the removal of certain public participation procedures, having acknowledged the importance of public engagement in the NEPA process during the rulemaking in which it codified in regulation its NEPA implementing procedures in 2008. Specifically, a commenter stated that the removal of consensus-based management from DOI regulations requires independent justification.

Response: As explained elsewhere in this document, DOI continues to believe that public engagement is an important part of the NEPA process, where Congress has seen fit to require it, or in those cases in which it would be helpful and appropriate. As noted elsewhere in this notice, after DOI revised its NEPA implementing process in the IFR, it has elected to take comment in multiple NEPA reviews where its revised procedures did not impose such obligation. Consensus-based management was never a requirement of NEPA; it was a policy preference toward documenting public input in a certain way during the NEPA process. Members of the public have always been able to suggest reasonable alternatives for analysis to Federal agencies and remain able to do so. As agencies are required to evaluate a reasonable range of alternatives, the agencies must necessarily evaluate reasonable alternatives presented by the public if not already considered.

Comment: Some commenters argued that DOI, rather than adopting the NEPA implementing procedures that it adopted in the summer of 2025 IFR, should instead have

adopted some or all of the provisions of one or more of CEQ's now-rescinded NEPA regulations.

Response: As DOI explains elsewhere in this document, the DOI NEPA procedures as adopted in the summer 2025 IFR and this final rule are not simply a subsequent iteration of the policies previously contained in CEQ's now-rescinded regulations, or a direct successor to them, but rather draw upon and implement the requirements of NEPA itself. DOI explained in the IFR and explains further in this final rule why it has adopted the NEPA implementing procedures that it has adopted, some aspects of which are the same as those in CEQ's now-rescinded regulations and others of which differ. It would not have been appropriate for DOI to more generally adopt CEQ's regulations, which were the product of and based on an Executive Order granting CEQ regulatory authority that has now been rescinded, and of which all but the 2024 rule did not have the benefit of Congress's major overhaul of NEPA in 2023; even with respect to the 2024 CEQ rulemaking, that rulemaking did not have the benefit of the Supreme Court's major, recent *Seven County* opinion, which instructed agencies, lower courts, and the general public that NEPA's effects analysis properly operates in a manner much different than that which formed the basis of the 2024 rule.

Comment: Various commenters asserted that the removal of regulations would affect environmental reviews of proposed actions, and would result in unexamined, unaddressed, and unmitigated impacts, specifically those related to climate change, environmental justice, and cumulative impacts. Commenters also asserted that DOI did not explain its decision to remove references to concepts such as "direct effects," "indirect effects," "cumulative effects," "environmental justice concerns," and "climate-change-related effects."

Response: First, as explained elsewhere in this preamble, the return of DOI's NEPA procedures from regulation to Departmental policy format does not, itself, change the procedural requirements of NEPA compliance for DOI's bureaus. The statute itself sets forth the framework of those procedural requirements and DOI's NEPA procedures, however formatted, merely elaborate upon that framework, hewing as closely as possible to the statutory provisions. Second,

NEPA does not contain any provisions addressing any specific type of environmental impact. Direction from within the executive branch may in the past have pushed agencies to articulate environmental analysis according to artificial distinctions between "direct," "indirect," and "cumulative" types of effects, or to place special emphasis upon certain categories of effects (i.e., "climate change," "environmental justice"), but that direction has now been rescinded. *See* 91 FR 618 (Jan. 8, 2026) (final rule rescinding CEQ's NEPA regulations); Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (Jan. 21, 2025) (revoking Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*; Executive Order 14154, *Unleashing American Energy*, 90 FR 8,353 (Jan. 20, 2025) (revoking Executive Order 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All*). In other words, the distinctions and concepts identified by commenters do not exist in statute and were conceptual creations of CEQ, agencies, and courts to formulate analysis and guide agency decision-making.

Instead of formulating the evaluation of environmental effects of bureau action using the artificial devices of "direct," "indirect," and "cumulative" effects that do not appear in the statute, DOI's NEPA procedures focus on the underlying principle of what constitutes an "effect." In reorienting the focus of its procedures, DOI does not change or purport to change the scope of effects that DOI bureaus are required by statute to consider. Both before and after the updates to DOI's NEPA procedures, DOI bureaus were and are required to consider effects that are both reasonably foreseeable and have a reasonably close causal relationship to their proposed actions, each including a reasonable range of action alternatives, consistent with the statute, as clarified by the Supreme Court in *Public Citizen* and *Seven County Infrastructure Coalition*. Additionally, in light of Supreme Court's decision in *Seven County Infrastructure Coalition*, DOI elected to update its procedures to reflect the phrasing provided by the Supreme Court regarding effects. That is, "agencies may, but are not required to, analyze environmental effects from other projects separate in time, or separate in place, or that fall outside of the bureau's

regulatory authority, or that would have to be initiated by a third party. If the bureau determines that such analysis would assist it in reasoned decision-making regarding the proposed action, it will document this determination in the environmental assessment and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate projects." DOI NEPA Handbook 1.5(c). "Similarly, the bureau will document in the environmental assessment where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the proposed action that extend outside the geographical territory of the project or might materialize later in time." *Id.* (citing *Seven County Infrastructure Coalition*, 605 U.S. 168). This language, adapted directly from *Seven County Infrastructure Coalition*, provides DOI with direction on how to consider, as appropriate, the environmental consequences of bureau action that may previously been expressed in concepts such as "indirect effects" and "cumulative effects." This focus on the meaning of "effect" has led DOI to restore in large part the concept of "connected action" to the way it was defined in the CEQ's 1978 regulations, with clarifying emphasis that the subject of analysis is the Federal action, not action taken by non-Federal entities. *See* 40 CFR 1508.25(a)(1) (rescinded). Even as originally defined in CEQ's 1978 regulations, the term "cumulative impact" referred to the "incremental impact" of the agency proposed action in relation to the context within which that action was taken. *See* 40 CFR 1508.7 (rescinded). That is, the focus, even of the "cumulative impact analysis" should always have been on change wrought by the effects of the proposed action, and *Seven County Infrastructure Coalition* merely refines that focus.

As to one term—climate change—to which the comment refers, that term has never appeared in DOI's NEPA procedures previously.

DOI will conduct its NEPA reviews in accordance with statutory requirements and relevant caselaw, such as the Supreme Court's decision in *Seven County Infrastructure Coalition*.

F. Alternative Arrangements

Comment: Various commenters urged the Department to reconsider decisions made in reliance on alternative arrangements for compliance with NEPA. Alternative arrangements are flexible procedures authorized by CEQ that agencies can use when there is an immediate threat to human health or safety, urgent action is needed to protect valuable natural or cultural resources, and the standard process would create delays in critical response efforts (collectively described in DOI's regulations as "Emergency Responses"). In addition, several commenters raised questions regarding the use of alternative arrangements for energy-related projects related to E.O. 14156, *Declaring a National Energy Emergency*.

Response: These comments are outside the scope of this rulemaking. Importantly, these alternative arrangements do not waive NEPA compliance, they simply provide a different path to meets its requirements. Particular determinations under the DOI NEPA procedures related to E.O. 14156 are not within the scope of this rulemaking, which pertains solely to the establishment or revision of DOI procedures for compliance with NEPA.

Comment: A commenter requested that DOI remove the discretionary authority currently granted to Responsible Officials in the DOI NEPA procedures, such as the alternative arrangements under 43 CFR 46.150.

Response: It is appropriate for Responsible Officials to have a degree of discretion in conducting NEPA reviews, especially with respect to internal procedures. Further, DOI does not claim to have the authority to exempt actions from NEPA or to otherwise excuse noncompliance, regardless of whether an emergency exists. DOI's emergency response provisions, including its "alternative arrangements" process, do not circumvent NEPA compliance obligations but rather enable DOI to establish alternative means for NEPA compliance to ensure that it can act swiftly to address emergencies while also meeting its statutory obligations under NEPA.

G. Applicant-Prepared Information and Environmental Documents

Comment: Some commenters expressed concern about the procedures and content associated with applicant-prepared environmental assessments and environmental impact

statements stating they do not provide enough guidance, may create a risk of bias and conflict of interest, and raise questions about the scientific accuracy of the NEPA analyses in the documents.

Response: As noted in the IFR, DOI is ensuring that its procedures conform to the statute, including the amendments made by the FRA directing agencies to provide for procedures governing applicant-prepared environmental assessments and environmental impact statements 42 U.S.C. 4336a(f). In the IFR, DOI established procedures for applicant-prepared environmental assessments and environmental impact statements at 43 CFR 46.107. These procedures ensure that applicant-prepared NEPA documents are completed according to standards required by the DOI Responsible Official. They require the submission of a professional integrity statement by the applicant or applicant-directed contractor, as applicable. *Id.* at 46.107(g). They also require applicants or their contractors to furnish to DOI bureaus "all relevant supporting information, including all studies, surveys, and technical reports" used to support applicant-prepared environmental assessments or environmental impact statements. *Id.* at 46.107(f). Applicants or their contractors must further "certify that the materials provided to the bureau are complete for the bureau's independent review." *Id.* As to conflicts of interest, the fact that NEPA provides for applicants (who, by definition, have an interest in the outcome of the Federal review of their application) to prepare NEPA documents in the first instance indicates Congress resolved any concern over potential conflicts of interest in favor of allowing applicant and applicant-contractor prepared NEPA documents. As outlined in the FRA, it is ultimately the responsibility of DOI to ensure applicant-prepared documents comply with NEPA and associated DOI policy. DOI's NEPA procedures therefore clarify that each DOI bureau relying on an applicant-prepared environmental assessment or environmental impact statement "must independently evaluate and verify that the environmental analysis, including the methodologies used by the applicant or applicant-directed contractor," and verify that the environmental analysis meets applicable legal and bureau standards. *Id.*

Comment: At least one commenter stated that NEPA does not preclude applicant preparation of documentation, even beyond environmental assessments and environmental impact statements. The commenter requested that DOI make clear in the regulation that Determination of NEPA Adequacy (DNA) checklists may be prepared by applicants and applicant-directed contractors.

Response: NEPA directs agencies to "prescribe procedures" governing the preparation of an environmental assessment or environmental impact statement, consistent with the agency's statutory obligation to "independently evaluate the environmental document and ... take responsibility for the contents." 42 U.S.C. 4336a(f). DOI's final rule does so at 43 CFR 46.107. Additionally, the rule does not preclude preparation of split documents (i.e., drafted in part by an applicant or applicant-directed contractor and in part by the agency), nor does it preclude applicants from providing information to assist DOI in the preparation of environmental documentation, such as DNA checklists. When not preparing the environmental assessment or environmental impact statement, applicants may provide information that the Responsible Official evaluates and uses in the environmental review or making a determination of NEPA compliance.

H. Categorical Exclusions and Extraordinary Circumstances

Comment: Some commenters expressed concerns regarding a perceived overreliance on categorical exclusions in the DOI NEPA procedures, stating that categorical exclusions could be used to circumvent engaging the public in environmental reviews.

Response: Categorical exclusions can apply to a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment within the meaning of section 4332(2)(C) of the statute. 42 U.S.C. 4336e(1). Categorical exclusions are a longstanding and legally recognized tool under NEPA that allow agencies to efficiently manage routine actions that they have determined do not normally result in any significant effects to the human environment. *See* 43 CFR 46.205. Categorical exclusions remain

a vital tool for streamlining environmental review. Categorical exclusions established or adopted for the use of the bureaus are included in Appendix 2 of the DOI NEPA Handbook and are tailored to bureau-specific activities, such as routine maintenance, administrative actions, and certain land management operations. It is important to note that the DOI NEPA Handbook requires that before applying a categorical exclusion, each proposed action must undergo a review to determine that it applies and that no extraordinary circumstances exist (*see* 43 CFR 46.215). Finally, expanding or updating categorical exclusions does not limit public involvement for projects where significant effects are possible.

Comment: One commenter suggested that the "[P]roposal to allow any of [DOI's] individual bureaus to utilize any categorical exclusions adopted by any other bureau within DOI is far too sweeping [and] may be suitable only to the other bureau's circumstances" and potentially unsuitable to covering another bureau-specific action.

Response: The focus of a categorical exclusion is on the characteristics of the proposed action and that the proposed action does not result in significant impacts, not on the identity of the agency that conducts the action. There is, therefore, no reason in principle that a bureau cannot apply another agency's categorical exclusion for the same kind of proposed action. Should a bureau's proposed action be different from the proposed action encompassed by the other bureau's categorical exclusion, there would be no reason for the bureau to apply that other bureau's categorical exclusion, and the concerns the commenter raises would not arise. Likewise, where a bureau's categorical exclusion could apply only to that bureau's actions—for example, because of unique programmatic aspects—other bureaus could not seek to apply that CE to their actions. In the case of DOI bureaus being able to use one another's categorical exclusions, DOI bureaus also share the same extraordinary circumstances review protocol and are readily able to confer with their sister bureaus when questions arise.

Comment: Commenters expressed concern with applying multiple categorical exclusions to a proposed action, including one commenter that suggested the use of multiple categorical

exclusions for a proposed action would violate NEPA.

Response: NEPA allows an agency to rely on multiple categorical exclusions to approve a single proposed action, provided that the agency verifies that no extraordinary circumstances are present. For example, if a DOI bureau determines that more than one categorical exclusion supports a proposed action in its entirety, and if the bureau further determines that no extraordinary circumstances are present, then the bureau can authorize the action using alternative or multiple categorical exclusions, documenting reliance on those categorical exclusions, as appropriate, in one categorical exclusion determination.

A DOI bureau might also determine that categorical exclusions apply to every constituent element of a proposed action, even though no one categorical exclusion may apply to all of those constituent elements. Under DOI's NEPA procedures, the DOI bureau may, in such cases, use multiple categorical exclusions, ensuring that at least one categorical exclusion supports each element of the proposed action, and provided that the DOI bureau completes extraordinary circumstance review for the proposed action as a whole. This approach promotes permitting efficiency by allowing DOI bureaus to exercise discretion to rely on multiple appropriate categorical exclusions to authorize broader actions. NEPA does not require DOI bureaus, when using categorical exclusions, to contrive smaller proposed actions by artificially breaking apart larger ones. DOI's more efficient approach is consistent with NEPA because, crucially, the agency must determine that each element of a larger proposal is not the type of action that normally results in significant effects to the human environment. And DOI's NEPA procedures safeguard against the possibility that applying multiple categorical exclusions to a proposed action in this manner would result in significant effects. In particular, DOI will evaluate for extraordinary circumstances and will not apply a CE to a particular action if it might result in significant effects. *See* 43 CFR 46.205(c)(1) (requiring DOI bureaus to prepare "further analysis and environmental documents" for an action if any extraordinary circumstances are present).

Comment: One commenter noted that the Department's categorical exclusion list should

be expanded to include categorical exclusions from external agencies.

Response: The DOI has not included the categorical exclusions of external agencies unless a DOI bureau has complied with the requirements of NEPA Section 109 regarding adoption of another agency categorical exclusion, i.e., non-Department or bureau categorical exclusions. These categorical exclusions are in Appendix 2 of the DOI NEPA Handbook.

Comment: One commenter argued that there is "improper expansion of the availability of categorical exclusions and adoption of unlawful procedures for their establishment and application in violation of the statute" under section 4336c of NEPA and stated that it is unclear what is required for relying on another agency's categorical exclusion determination, including whether a DOI extraordinary circumstances review is necessary.

Response: If one agency determines that a categorical exclusion applies to a proposed action and another agency is taking substantially the same action, then there is no reason why the second agency cannot rely on the first agency's determination that a categorical exclusion applies to the action. Agency A's determination that the action fits within a particular category of actions for which Agency A does not anticipate significant effects is available for Agency B to rely on, where Agency B is taking substantially the same action. It is important to note that reliance on another agency's categorical exclusion determination has been available to bureaus since the 2020 CEQ NEPA regulation (*see* 40 CFR 1506.3(d) (2020), which used the term "adoption" to describe this concept) and, based on experience to date, DOI proposes no change to this procedure other than to incorporate the procedure in its own regulation.

Comment: One commenter questioned why categorical exclusions established by section 390 of the Energy Policy Act (EPAct) were not subject to extraordinary circumstances review since "the statute does not absolutely require those activities to be excluded from NEPA review."

Response: DOI has not changed its position regarding the Bureau of Land Management's use of the EPAct section 390 categorical exclusions. This protocol for use of these categorical exclusions has been in place almost since the enactment of the EPAct of 2005, was noticed and

explained in the *Federal Register* at 85 FR 25,472 (May 1, 2020) and is merely repeated in the DOI NEPA procedures.

Comment: Several commenters asserted that the removal of three extraordinary circumstances at 43 CFR 46.215 (c), (i), and (j) (2008), and revision of other extraordinary circumstances was without reasoned explanation. At least one commenter provided examples of purported "unresolved conflicts concerning alternative uses of available resources" citing 2024 CEQ NEPA regulations and suggested that the "highly controversial" criterion that was eliminated is not sufficiently addressed by other extraordinary circumstances. Several other commenters supported the DOI's removal of these extraordinary circumstances.

Response: As part of the Department's ongoing efforts to modernize and streamline its NEPA procedures, these revisions reflect a deliberate and necessary recalibration of our regulatory framework in light of recent legal, executive, and statutory developments.

Paragraph (i) was removed because whether a proposed Federal action may violate a law imposed for the protection of the environment is a question that goes beyond the procedural requirements of NEPA and may be better considered and appropriately addressed by the Responsible Official when making the decision on the proposed action. While some commenters speculated specifically that this extraordinary circumstance was grounded in the statutory direction that agencies consider "comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards," *see* 43 U.S.C. 4332(C)(v), and that the removal of the extraordinary circumstance might prevent a DOI bureau or the public from considering how an action might have legal infirmities, these concerns are misplaced. For actions that "may violate a Federal, State, local, or Tribal law" imposed for the protection of the environment, the Department will continue to comply with all applicable laws and continue to consider State, local, and Tribal laws in its decision-making process. These concerns also misunderstand the reason that agencies review categorically excluded actions for extraordinary circumstances, which is to evaluate whether a proposed action might have

significant environmental effects. Federal, State, local, and Tribal laws—even those directed towards the protection of the environment—often balance a number of competing political or policy objectives. They simply do not provide a sound basis for evaluating whether a proposed Federal action may have significant environmental effects within the meaning of NEPA. For these reasons, DOI has changed its position and eliminated this extraordinary circumstance.

Paragraph (j) regarding environmental justice impacts was promulgated in response to E.O. 12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations* (Feb. 11, 1994), but that E.O. was rescinded by E.O. 14173. Therefore, it is appropriate to remove the associated provision.

Furthermore, and to provide further clarity, paragraph (c) has been removed as it causes confusion and has been frequently misunderstood to mean that any controversy surrounding the substance of the action itself constitutes an extraordinary circumstance. The concept is sufficiently addressed in existing paragraph (d), which the final rule renumbered as paragraph (c) and which applies to proposed actions where there are highly uncertain and potentially significant environmental effects or that involve unique or unknown environmental risks. If a proposed action's environmental effects are highly uncertain and have potentially significant effects or involve unique or unknown environmental risks, that extraordinary circumstance (c), which remains in DOI's NEPA regulations, would apply.

Finally, the term "cumulative" was appropriately removed from 43 CFR 46.215(f) (2008), now paragraph (e) in this section, as unnecessary. In addition, 43 CFR 46.215(k) and (l) (2008), now paragraphs (h) and (i) in this section, were appropriately revised to focus their application on whether there is a potential for significant effects.

Comment: One commenter noted that the removal of paragraph (i) addressing any violation of Federal, State, local or Tribal law from the list of extraordinary circumstances at 43 CFR 46.215 (2008) is not consistent with E.O. 13132, *Federalism* (Aug. 4, 1999), where it is

stated that Federal rulemakings should not affect the "distribution of power and responsibilities among the various levels of government."

Response: As explained above, violation of a Federal, State, local or tribal law imposed for the protection of the environment is not an issue of environmental effect but a question of compliance with law; therefore, it need not be considered when reviewing environmental effects.

I. Laws, Regulations, and Authorities Other than NEPA

Comment: Various commenters raised concerns regarding other laws that could affect environmental reviews or decision-making, including the Federal Land Policy and Management Act, Organic Act, Surface Mining Control and Reclamation Act, and Endangered Species Act.

Response: As noted, there are some laws or regulations that might also apply when bureaus make decisions regarding Federal actions and these still apply, including any public participation requirements. Compliance with these other laws does not depend on how an agency complies with NEPA.

Comment: Several commenters stated that for the rulemaking DOI was required to engage in consultation with the National Marine Fisheries Service and the FWS, as appropriate, under Section 7 of the ESA, which requires each Federal agency to "insure [sic] 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.

Response: DOI has determined that to the extent to which Section 7 of the ESA may apply to this rulemaking action neither the IFR nor this rulemaking affects listed species or critical habitat, as it is entirely procedural and relates to how the DOI and its bureaus proceed to evaluate the environmental effects of their actions. That is, neither the DOI NEPA implementing regulations themselves, nor the action to amend them, result in any environmental effects; therefore, this procedural rulemaking would not result in adverse impacts on endangered or threatened species or critical habitat. Rather, NEPA and its implementing regulations provide

procedures to ensure that DOI accounts for the environmental effects of its actions. Any alleged harm to species raised by the commenter is speculative. To the extent any harm occurs, it would result from separate future agency actions, not DOI's establishment or revision of NEPA procedures. Moreover, these future actions remain subject to Section 7 of the ESA, as applicable.

J. Comments on the Regulatory Analyses and Notices

Comment: One commenter noted that the rulemaking Regulatory Impact Analysis acknowledges that the rule will have a significant impact, and argues that this significance means that this rulemaking action is subject to an environmental assessment or environmental impact statement under NEPA. The commenter states that the Regulatory Impact Analysis "only discusses potential cost savings and fails to analyze the increased costs associated with an uncertain NEPA process that presents litigation risks" and notes that "the lack of permitting certainty has significant impacts on public health and safety [and] creates highly uncertain and unique risks" especially for infrastructure projects. In addition, "[s]ince the Handbook could be changed arbitrarily, nothing in it can be relied upon to mitigate these effects."

Response: The determination by the Office of Management and Budget (OMB) under E.O. 12866, *Regulatory Planning and Review*, and E.O. 13563, *Improving Regulation and Regulatory Review*, that a rulemaking is significant is separate from a determination of applicability and necessary level of review under NEPA. As stated in the IFR and this final rule, the rulemaking was deemed "significant" by OMB as that word is understood in the context of E.O. 12866. The DOI rule is considered economically significant since DOI expects that revisions and updates to the DOI NEPA implementing regulations will have a broad range of cost savings for the Federal Government, interested stakeholders, and DOI applicants. The commenter's examples of permitting uncertainty are not directly related to the appropriate level of NEPA review for the IFR or this final rule. While the DOI NEPA procedures provide for the consideration of environmental effects in decision-making processes, including economic, public health, and safety, DOI does not believe that this rule will 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. Under DOI NEPA procedures, DOI determined that a categorical exclusion was an appropriate level of NEPA review for this rulemaking.

Comment: Several commenters expressed concern that the rule may disproportionately affect small municipalities, Tribal governments, and local water authorities.

Response: As the Department is not required to publish a notice of proposed rulemaking for this IFR, the Regulatory Flexibility Act (RFA) does not apply. The RFA generally requires agencies to assess the impact of final rules on small entities. Even if the RFA were to apply, this rule does not directly regulate small entities. Rather, the rule applies to Federal agencies and sets forth the process for their compliance with NEPA.

IV. Regulatory Analyses and Notices

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

E.O. 12866 provides that the OIRA in the OMB 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 section 3(f) of E.O. 12866, and has reviewed this final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended, (RFA), 5 U.S.C. 601 et seq., and E.O. 13272, *Proper Consideration of Small Entities in Agency Rulemaking* (August 13, 2002), generally require agencies to assess the impacts of final rules on small entities by preparing a regulatory flexibility analysis. Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). As the Department was not required to publish a notice of proposed rulemaking for this final rule, the

RFA does not apply.

Even if the RFA applies, this rule does not directly regulate small entities. Rather, the rule applies to Federal agencies and sets forth the process for their compliance with NEPA. Accordingly, DOI hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Environmental Analysis

DOI has determined that the rule 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, DOI does not intend to conduct additional NEPA review of the effects of this final rule. DOI finds this rulemaking is excluded pursuant to its categorical exclusion at 43 CFR 46.210(i). The categorical exclusion covers policies, directives, regulations, and guidelines that are "of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case." Further, the final rule does not implicate any of the extraordinary circumstances listed in 43 CFR 46.215. The promulgation of NEPA implementing procedures is not generally itself subject to NEPA. *Heartwood v. U.S. Forest Serv.*, 230 F.3d 947, 954–55 (7th Cir. 2000).

D. 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 does not have federalism implications because it applies to Federal agencies, not States.

E. 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 impose substantial direct compliance costs on Tribal governments (section 5(b)) and does not preempt Tribal law (section 5(c)).

F. 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.

G. Executive Order 12988, Civil Justice Reform

Under section 3(a) of E.O. 12988, agencies must review their 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 ensure compliance with section 3(a). DOI has conducted this review and determined that this final rule complies with the requirements of E.O. 12988.

H. 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 one 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 by State, Tribal, and local governments, in the aggregate, or the private sector in any one year. This final rule also does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments.

I. 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 in 43 CFR Part 46

Environmental protection, Environmental impact statements.

Doug Burgum,
Secretary of the Interior.

For the reasons stated in the preamble, under the authority of NEPA, as amended (42 U.S.C. 4321-4347), the Office of the Secretary revises part 46 of title 43 of the Code of Federal Regulations to read as follows:

PART 46—IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Sec.

Authority: 42 U.S.C. 4321-4347

Subpart A—[Reserved]

Subpart B—Protection and Enhancement of Environmental Quality

§ 46.105 Using a bureau-directed contractor to prepare environmental documents.

(a) A Responsible Official may use a bureau-directed contractor to prepare any environmental document.

(b) If a Responsible Official uses a bureau-directed contractor, the Responsible Official remains responsible for:

(1) Preparation and adequacy of the environmental documents; and

(2) Independent evaluation of the environmental documents after their completion. The Responsible Official must briefly document the bureau's evaluation of the environmental document and ensure that it meets the standards under NEPA, this Part, and any Departmental or bureau-specific procedures or guidance.

(c) The Responsible Official shall require any bureau-directed contractor preparing an environmental document to submit a professional integrity statement certifying that the environmental document is prepared with professional and scientific integrity, using reliable data and resources, consistent with 42 U.S.C. 4332(2)(E) and Secretary's Order 3441, *Implementing the Requirements of Executive Order 14303*, *Restoring Gold Standard Science* and meets bureau needs for decision-making. In addition, the Responsible Official shall require any bureau-directed contractor preparing an environmental document to submit a disclosure statement specifying that the contractor has no financial or other interest in the outcome of the action.

§ 46.107 Procedures for applicant-prepared environmental impact statements and

environmental assessments.

In accordance with NEPA section 107(f), 42 U.S.C. 4336a(f), the following procedures are established for bureaus to allow applicants, or contractors directed by applicants, to prepare environmental impact statements and environmental assessments under bureau supervision when the bureau is the Federal lead agency.

(a) A Responsible Official has discretion to allow an applicant or applicant-directed contractor to prepare an environmental impact statement or an environmental assessment (including analysis supporting these documents). A bureau may request more information, revise analysis methodologies, or choose not to use an environmental impact statement or an environmental assessment prepared by an applicant or its contractor at any time.

(b) Applicants or applicant-directed contractors may not prepare decision documents, including records of decision.

(c) The Responsible Official remains responsible for the accuracy, scope, and content of the environmental impact statement or environmental assessment and must independently evaluate and approve each such analysis before the bureau may use it. To maintain the scientific quality and integrity of the impact assessment, if in-house expertise is not available for the technical evaluations, another bureau or cooperating agency may be relied on, as needed, to verify the analyses.

(d) Prior to a Responsible Official initiating the preparation of an environmental impact statement or an environmental assessment proposed to be prepared by an applicant or an applicant-directed contractor, the bureau must engage with the applicant and provide written documentation outlining the bureau's expectations regarding roles, responsibilities, the project schedule, coordination, deliverables (including draft and final documents), and supervision. Such engagement must occur within 30 days of the date initiating the preparation of an environmental impact statement or an environmental assessment.

(e) If a Responsible Official uses information from an applicant or applicant-directed

contractor to prepare an environmental impact statement or environmental assessment, the bureau must independently evaluate and provide written concurrence to the applicant or applicant-directed contractor documenting that the information submitted meets the standards under NEPA, this Part, and any Departmental or bureau-specific NEPA procedures or guidance. If a Responsible Official uses any of the following information prepared by an applicant or applicant-directed contractor in initiating a review, such information must be submitted in writing to the Responsible Official for independent evaluation prior to initiating the NEPA process:

(1) The purpose and need for the proposed action;

(2) The proposed action and reasonable alternatives to the proposed action;

(3) A community and stakeholder engagement plan;

(4) Anticipated permits and authorizations required for the proposed action;

(5) Anticipated cooperating agencies;

(6) The process for consultations with relevant Federal agencies and State, Tribal, and local governments to ensure compliance with environmental laws and regulations.

(7) Anticipated issues and resources to be analyzed in the environmental impact statement or environmental assessment, and summary of analysis methodology, as applicable; and

(8) Schedule.

(f) If a Responsible Official uses an environmental impact statement or environmental assessment prepared by an applicant or applicant-directed contractor, the Responsible Official must independently evaluate and verify that the environmental analysis, including the methodologies used by the applicant or applicant-directed contractor, meets bureau standards and complies with NEPA, this Part, and any applicable Departmental or bureau-specific NEPA procedures or guidance. The applicant or applicant-directed contractor must provide the bureau with all relevant supporting information, including all studies, surveys, and technical reports

pertaining to the environment prepared by the applicant or applicant-directed contractor for the proposed action. The applicant or applicant-directed contractor must certify that the materials provided to the bureau are complete for the bureau's independent review and inclusion in its decision file. The Responsible Official shall document the bureau's review and determination in any bureau-approved environmental impact statement or environmental assessment. The bureau is responsible for publishing all environmental impact statements and environmental assessments and, if an action is administratively or judicially challenged, for using the materials in its decision file to prepare an administrative record.

(g) The Responsible Official shall require any applicant or applicant-directed contractor preparing an environmental impact statement or environmental assessment to submit a professional integrity statement certifying that the environmental analysis is prepared with professional and scientific integrity, using reliable data and resources, and meets any relevant Federal information quality standards and bureau needs for decision-making. In addition, the Responsible Official shall require any applicant or applicant-directed contractor preparing an environmental impact statement or an environmental assessment to submit a disclosure statement specifying any financial or other interest the entity has in the outcome of the action.

(h) Bureaus must publish or otherwise provide bureau-specific policy information to assist applicants preparing environmental impact statements or environmental assessments. Bureaus may provide additional guidance to Responsible Officials describing how to document the independent evaluation of environmental impact statements and environmental assessments to ensure that they meet the standards under NEPA and these implementing procedures.

§ 46.150 Emergency responses.

This section applies only if the Responsible Official determines that an emergency exists that makes it necessary to take actions to address imminent threats to life, property, or important natural, cultural, or historic resources before preparing an environmental document or documenting the use of a categorical exclusion in accordance with the provisions in this chapter.

(a) The Responsible Official may take those actions necessary to control the immediate impacts of the emergency that are urgently needed to address imminent threats to life, property, or important natural, cultural, or historic resources. When taking such actions, the Responsible Official shall consider the probable environmental consequences of these actions and consider taking steps to mitigate reasonably foreseeable adverse environmental impacts to the extent practicable and consistent with agency authority.

(b) The Responsible Official shall document in writing the determination that an emergency exists and describe the responsive actions taken at the time the emergency exists. The form of that documentation is within the discretion of the Responsible Official.

(c) If the Responsible Official determines that the nature and scope of proposed actions that must be taken beyond actions noted in paragraph (a) of this section but in response and relation to such emergency action that makes it necessary to take action before preparing an environmental document, the Responsible Official must consult with the Office of Environmental Policy and Compliance about alternative arrangements for NEPA compliance for such additional responsive actions. The Assistant Secretary, Policy Management and Budget may authorize the use of alternative arrangements. Reliance on any such alternative arrangements shall apply only to the proposed actions necessary to control the immediate actions in response and related to the emergency beyond those noted in paragraph (a) of this section and must be documented. Consultation with the Office of Environmental Policy and Compliance and with the Assistant Secretary, Policy Management and Budget must be coordinated through the appropriate bureau headquarters.

(d) For actions meeting the criteria noted in paragraph (c) of this section that the Responsible Official reasonably foresees would be likely to result in significant effects, the Assistant Secretary, Policy Management and Budget or their designee must consult with the Council on Environmental Quality prior to authorizing the use of alternative arrangements for compliance with NEPA section 102(2)(C), 42 U.S.C. 4332(2)(C).

(e) Other proposed actions remain subject to compliance with NEPA and the remaining sections of this part.

Subpart C—Initiating the NEPA Process

§ 46.205 Actions categorically excluded from further NEPA review.

Categorical Exclusion means a category of actions that a bureau has determined normally do not significantly affect the quality of the human environment.

(a) Except as provided in paragraph (c), (d), or (e) of this section, if an action is covered by a Departmental categorical exclusion, the bureau is not required to prepare an environmental assessment or an environmental impact statement. If a proposed action does not meet the criteria for any of the listed Departmental categorical exclusions or any of the individual bureau categorical exclusions, then the proposed action must be analyzed in an environmental assessment or environmental impact statement.

(b) The actions listed in § 46.210 are categorically excluded, Department-wide, from preparation of environmental assessments or environmental impact statements.

(c) DOI has provided for extraordinary circumstances in which a normally excluded action may have a significant environmental effect and require additional analysis. Section 46.215 lists the extraordinary circumstances under which actions otherwise covered by a categorical exclusion require analyses under NEPA.

(1) Any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances in § 46.215; if it does, further analysis and environmental documents must be prepared for the action.

(2) Bureaus must work within existing administrative frameworks, including any existing programmatic agreements, when deciding how to apply any of the § 46.215 extraordinary circumstances.

(d) Congress may establish categorical exclusions by legislation, in which case the terms of the legislation determine how to apply those categorical exclusions.

(e) A Responsible Official may rely on another agency's determination that a categorical exclusion applies to a particular proposed action if the action covered by that determination and the bureau proposed action are substantially the same. The Responsible Official need not conduct extraordinary circumstances review according to the protocol set forth at § 46.215 but must document any reliance on another agency's categorical exclusion determination. When more than one agency is reviewing a proposed action, a bureau may also reach and document a joint determination with another agency that a categorical exclusion applies to the action.

(f) Bureaus may apply multiple categorical exclusions in combination to cover a proposed action composed of multiple action elements. In some circumstances, a bureau might consider a proposed action that is a composite of multiple smaller actions or action elements. In such instances, a combination of categorical exclusions—each covering an action that is an element of the larger proposed action—can cover all the actions or action elements composing the larger composite action and support the bureau's determination that it is not reasonably foreseeable that the effects of the composite proposed action, with all its elements, would be significant. When a bureau completes its review of a proposed action composed of several action elements in reliance on multiple categorical exclusions, the bureau must concisely document this reliance, including by verifying that each smaller action or action element is supported by a categorical exclusion and completing all applicable review for the presence of extraordinary circumstances that, if present, would preclude application of the categorical exclusions to the larger or composite proposed action.

(g) Each bureau may rely on any categorical exclusion administratively established or adopted, under NEPA section 109, 42 U.S.C. 4336c, by the Department or any bureau within the Department.

(h) To establish or revise a categorical exclusion, the Department will determine that the action is of a type that normally does not significantly affect the quality of the human environment. In making this determination and identifying and describing such a category, the

Department will:

(1) Develop a written record containing information to substantiate its determination;

(2) Consult with the Council on Environmental Quality on its proposed categorical exclusion, including the written record, for a period not to exceed 30 days prior to providing public notice as described in paragraph (h)(3) of this section; and

(3) Provide public notice in the *Federal Register* of establishment of the categorical exclusion and the location of availability of the written record.

(i) To remove a categorical exclusion from its NEPA procedures, the Department will follow steps similar to those by which it establishes or revises a categorical exclusion.

(j) Neither the establishment nor the modification or removal of a categorical exclusion from bureau NEPA procedures is subject to NEPA review.

§ 46.210 Listing of Departmental categorical exclusions.

The following actions are categorically excluded under § 46.205(b), unless any of the extraordinary circumstances in § 46.215 apply. Reliance on paragraphs (a) through (j) of this section to support approval of a proposed action does not need to be documented; reliance on paragraph (k) or (l) of this section to support approval of a proposed action does need to be documented:

(a) Personnel actions and investigations and personnel services contracts.

(b) Internal organizational changes and facility and bureau reductions and closings.

(c) Routine financial transactions including such things as salaries and expenses, procurement contracts (*e.g.*, in accordance with applicable procedures and Executive Orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

(d) Departmental legal activities including, but not limited to, such things as arrests, investigations, patents, claims, and legal opinions. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA.

(e) Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

(f) Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (*e.g.*, limited size and magnitude or short-term effects).

(g) Management, formulation, allocation, transfer, and reprogramming of the Department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.)

(h) Legislative proposals of an administrative or technical nature (including such things as changes in authorizations for appropriations and minor boundary changes and land title transactions) or having primarily economic, social, individual, or institutional effects; and comments and reports on referrals of legislative proposals.

(i) Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

(j) Activities which are educational, informational, advisory, or consultative to other agencies, public and private entities, visitors, individuals, or the general public.

(k) (Not for use within the jurisdiction of the Ninth Circuit Court of Appeals.) Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities:

(1) Shall be limited to areas—

(i) In wildland-urban interface; and

(ii) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface;

(2) Shall be identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan;"

(3) Shall be conducted consistent with bureau and Departmental procedures and applicable land and resource management plans;

(4) Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and

(5) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction.

(l) Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities must comply with the following:

(1) Shall be conducted consistent with bureau and Departmental procedures and applicable land and resource management plans;

(2) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and

(3) Shall be completed within three years following a wildland fire.

§ 46.215 Categorical exclusions: Extraordinary circumstances.

Extraordinary circumstances (*see* § 46.205(c)) exist for individual actions within categorical exclusions that may meet any of the criteria listed in paragraphs (a) through (i) of this section. Applicability of extraordinary circumstances to categorical exclusions is determined by the Responsible Official. If an extraordinary circumstance is not present, the Responsible Official may determine that the categorical exclusion applies to the proposed action and

conclude review.

(a) Have significant impacts on public health or safety.

(b) Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; national monuments; migratory birds; and other ecologically significant or critical areas.

(c) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

(d) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

(e) Have a direct relationship to other actions that implicate potentially significant environmental effects.

(f) Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.

(g) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species.

(h) Significantly limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites.

(i) Contribute to potentially significant effects resulting from the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or from other actions that promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act).

§ 46.220 How to designate lead agencies.

(a) In most cases, the Responsible Official should designate one Federal agency as the lead with the remaining Federal, State, Tribal, and local agencies assuming the role of cooperating agency. In this manner, the other Federal, State, Tribal, and local agencies can work to ensure that the environmental impact statement will meet their needs for adoption and application to any related decision.

(b) In some cases, a non-Federal agency (including a State, Tribal, or local government) must comply with State, Tribal, or local requirements that are comparable to the NEPA requirements. In these cases, the Responsible Official may designate the non-Federal agency as a joint lead agency.

(c) In some cases, the Responsible Official may establish a joint lead relationship among several Federal agencies. If there are joint leads for an environmental impact statement, then one Federal agency must be identified as the agency responsible for filing the environmental impact statement with the Environmental Protection Agency.

(d) Bureaus may allow joint lead agencies to cooperate in developing environmental assessments.

§ 46.225 How to select cooperating agencies.

(a) An eligible agency is:

(1) Any Federal, State, Tribal, or local agency that is qualified to participate in the development of an environmental assessment or environmental impact statement by virtue of its jurisdiction by law, consistent with 42 U.S.C. 4336a(a)(3);

(2) Any Federal, State, Tribal, or local agency that is qualified to participate in the development of an environmental assessment or environmental impact statement by virtue of its special expertise.[1]

(b) The Responsible Official for a lead bureau may invite eligible agencies to participate

[1] *See* Council on Environmental Quality, *Federal and Federal-State Agencies with Jurisdiction by Law or Special Expertise on Environmental Quality Issues* (June 15, 2018), https://ceq.doe.gov/docs/nepa-practice/Agency-Jurisdiction-and-Expertise-formerly-Appendix-II-2018-06-15.pdf.

as cooperating agencies when the bureau is developing an environmental assessment and must invite eligible agencies to participate as cooperating agencies when the bureau is developing an environmental impact statement, subject to the exception described in paragraph (c) of this section.

(c) The Responsible Official for the lead bureau must consider any request by an eligible agency to participate in a particular environmental impact statement or environmental assessment as a cooperating agency. Such request shall not be arbitrarily denied. If the Responsible Official for the lead bureau denies a request, or determines it is inappropriate to extend an invitation, he or she must state the reasons in the environmental impact statement or environmental assessment, as applicable. Denial of a request for cooperating agency status is not subject to any internal administrative appeals process, nor is it a final agency action subject to review under the Administrative Procedure Act, 5 U.S.C. 701 et seq.

(d) Bureaus should work with cooperating agencies to develop and adopt appropriate documentation that includes their respective roles, assignment of issues, schedules, and staff commitments so that the NEPA process remains on track and within the time schedule. Such documentation must be used in the case of non-Federal agencies and must include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the bureau of any environmental document, including drafts, to the extent permitted by the Freedom of Information Act and other applicable law. However, no memorandum can require a cooperating agency to waive the right to judicial review.

(e) Bureaus within the Department will be cooperating agencies with other bureaus when requested.

Subpart D—[Reserved]

Subpart E—[Reserved]

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