

**38 CFR Part 26****RIN 2900-AS33****Implementing Regulation for National Environmental Policy Act (NEPA):
Environmental Effects of the Department of Veterans Affairs Actions**

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule to amend its agency procedures for implementing the requirements of the National Environmental Policy Act (NEPA). Since VA last updated its NEPA regulations in 1989, Congress amended NEPA through the Fiscal Responsibility Act of 2023 and the One Big Beautiful Bill Act of 2025, the Council on Environmental Quality rescinded its NEPA regulations, and substantial changes have occurred in VA's delivery of care and benefits to veterans. The revisions to VA's NEPA regulations improve the efficiency and quality of VA's NEPA process and align the NEPA process with decision-making across VA by more clearly focusing on the planning stages of VA actions, improving consistency in NEPA implementation throughout VA, updating the VA categorical exclusion list to reflect current VA activities, and complying with NEPA, as revised.

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

ADDRESSES: You may submit comments through www.regulations.gov under RIN 2900-AS33. That website includes a plain-language summary of this rulemaking. Instructions for accessing agency documents, submitting comments, and viewing the rulemaking docket, are available on www.regulations.gov under "FAQ."

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SUPPLEMENTARY INFORMATION:

I. Background

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

NEPA furthers this national policy by requiring Federal agencies to prepare an environmental impact statement (EIS)—“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*, 145 S. Ct. at 1497, 1507 (2025)). This statement must address: (1) the reasonably foreseeable environmental effects of the proposed agency action; (2) any reasonably foreseeable adverse environmental effects that cannot be avoided should the proposal be implemented; (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 Federal resources which would be involved in the proposed action should it be implemented. 42 U.S.C. 4332(2)(C).

NEPA does not mandate particular results or substantive outcomes. *Seven County*, 145 S. Ct. at 1510-12. Rather, NEPA requires Federal agencies to consider the environmental effects of proposed actions as part of agencies' decision-making processes. NEPA provides 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 (EAs) and EISs, 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 (CATEXs) (42 U.S.C. 4336c).

NEPA identifies three levels of review – CATEX, EA, and EIS. 42 U.S.C. 4336a. A CATEX is “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 [NEPA] section 102(2)(C)”. 42 U.S.C. 4336e(1). An EA is a “concise” document “set[ting] forth the basis of [an] agency's finding of no significant impact or determination that an environmental impact statement is necessary,” prepared in connection with a proposed agency action that does not have a significant impact or the significance of whose impact is unknown. 42 U.S.C. 4336(b)(2). An EIS is a document analyzing a proposed agency action with significant impact, governed by the provisions of 42 U.S.C. 4332(2)(C) and 4336(b)(1).

VA developed its NEPA implementing procedures in 1986 and amended them in 1989 “in accordance with” the Council on Environmental Quality's (CEQ's) NEPA implementing regulations (title 38 Code of Federal Regulations (CFR) 26.1). Since that time, VA policies and activities have changed and expanded. Moreover, CEQ has rescinded its NEPA implementing regulations, effective April 11, 2025 (*Removal of*

National Environmental Policy Act Implementing Regulations, 90 FR 10610, Feb. 25, 2025). This action was necessitated by, and is consistent with, Executive Order 14154, *Unleashing American Energy* (90 FR 8353, Jan. 20, 2025), in which President Trump rescinded President Carter's Executive Order 11991, *Relating to Protection and Enhancement of Environmental Quality* (42 FR 26967, May 24, 1977), which was the basis CEQ had invoked for its authority to make rules to begin with. VA's regulations thus stand in obvious need of fundamental revision. President Trump, in Executive Order 14154, further directed agencies to revise their NEPA implementing procedures, consistent with the executive order, including its direction to CEQ to rescind its regulations.

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

Moreover, the Supreme Court on May 29, 2025, issued the landmark *Seven County Infrastructure Coalition* decision, in which it decried the "transform[ation]" of NEPA from its roots as "a modest procedural requirement," into a "substantive

roadblock” that “paralyze[s]” “agency decisionmaking”. 145 S.Ct. at 1507, 1513 (quotations omitted). The Supreme Court explained that part of that problem had been caused by decisions of lower courts, which it rejected, issuing a “course correction” mandating that courts give “substantial deference” to reasonable agency conclusions underlying their NEPA processes. 145 S.Ct. at 1513-14. But the Court also acknowledged, and through its course correction sought to address, the effect on “litigation-averse agencies” which, in light of judicial “micromanage[ment],” had been “tak[ing] ever more time and...prepar[ing] ever longer EISs for future projects”. 145 S.Ct. at 1513. VA is therefore issuing this interim final rule to align its actions with the Supreme Court’s decision and streamline its process of ensuring reasonable NEPA decisions.

Finally, Congress again amended NEPA in 2025 through section 60026 of the One Big Beautiful Bill Act (Pub. L. 119-21 (July 4, 2025)), adding section 112 of NEPA, entitled “Project Sponsor Opt-in Fees for Environmental Reviews.” This provision allows project sponsors to pay a fee to obtain shortened NEPA review deadlines.

Thus, VA is revising its NEPA regulations to reflect the current policies and activities within VA, the rescission of the CEQ NEPA implementing regulations, recent case law, and to comply with NEPA, as revised. Further, this revision standardizes the approach to improve both the quality and timeliness of VA’s NEPA process. This revision has been called for, authorized, and directed by all three branches of government at the highest possible levels.

II. Discussion of the Interim Final Rule

A. Subpart A: General Information

The legal authorities for 38 CFR part 26 are revised to remove reference to revoked Executive Order 11991 and Executive Order 11514, add reference to Executive Order 14154, and retain citation of NEPA (42 U.S.C. 4321 *et seq.*).

Section 26.0 addresses the purpose of subpart A by explaining that subpart A provides the procedures by which the VA considers the environmental effects of its actions in carrying out the VA mission. It also explains that subpart A sets forth the scope and terminology of part 26, and the responsibilities for implementing the requirements of the NEPA and part 26.

Existing 38 CFR 26.2 “Applicability and scope” is revised by § 26.11 to clearly state that VA’s NEPA regulations encompass all VA offices, administrations, and activities. Existing § 26.1 “Issuance and purpose” is revised by § 26.10 to include VA’s objectives in the updated approach to implementing NEPA, by emphasizing early incorporation of NEPA into agency planning, the quality of environmental analysis, and timely decision-making.

Section 26.11, the revised “Applicability and Scope” §, describes the types of actions within VA control and subject to NEPA. Currently, the regulations contain a blanket statement (existing § 26.2) applying the NEPA procedures to VA and its offices. The applicability of NEPA, and the reach of VA’s NEPA regulations, will not change, but the new language clarifies the scope and applicability for improved awareness and understanding. These regulations apply only to major Federal actions as defined in section 111(10) of NEPA (42 U.S.C. 4336e(10)), including but not limited to construction and maintenance projects, real property acquisition and disposal, leases and sharing agreements, grants and other funding actions, other facility and asset management decisions, and any other action that meets the statutory definition of a major Federal action and has the potential for a significant environmental impact. Section 26.11 of 38 CFR also identifies activities and decisions that are not major Federal actions and thus not subject to NEPA, for example, entitlements. Entitlements are benefits provided to veterans in which VA’s role is purely administrative in nature such as pension benefits.

The existing regulations do not distinguish between VA actions that are major Federal actions and those that are not.

Section 26.3, the existing “Definitions” §, defines only the terms “United States” and “VA elements” and provides a generic reference to the definitions in the now-revoked CEQ regulations. Section 26.12 of the interim final regulations references the statutory definitions set forth in section 111 of NEPA (42 U.S.C. 4336e) and provides the full text of definitions only for terms relevant to implementing the VA NEPA procedures that are not defined in the statute.

Existing 38 CFR 26.5 “Responsibilities” assigns roles to only three types of VA staff. By contrast, new § 26.13 “Responsibilities” describes and includes a list of responsibilities for “applicants,” “Senior Agency Official,” and other types of agency staff who participate in the NEPA process.

The interim final rule provides a new § 26.14 for specific “Environmental Practices.” Section 26.14 includes practices for efficiency, capability, similar actions, combining NEPA with other environmental and historic preservation requirements, programmatic NEPA documents, and connected actions. Section 26.14 emphasizes the efficient use of VA resources during the NEPA process by encouraging the use of allowable efficiency approaches. The existing regulations do not include information about these practices. VA is including § 26.14 in the interim final rule to encourage strategic planning and avoid redundant environmental analyses.

As part of this revision, some existing §§ and text in the current regulations have been relocated. The following summary provides a guide to where the text originally found in 38 CFR 26.1 through 26.5 has been moved, along with a summary of any revisions to the existing text:

Existing § 26.1 “Issuance and purpose.”

VA revises and moves existing § 26.1 to § 26.10 “Purpose of this part” to provide legal authorities for the revised regulations.

Existing § 26.2 “Applicability and scope.”

The revised and relocated text, in § 26.11 “Applicability and scope,” clarifies the applicability of the interim final rule and describes the types of actions to which the interim final rule does and does not apply.

Existing § 26.3 “Definitions.”

In § 26.12 “Definitions,” moved from existing § 26.3, VA expands the list of definitions to include the full text of terms commonly used within VA during the NEPA process.

Existing § 26.4 “Policy.”

In § 26.14 “Environmental practices,” new practices emphasize strategic environmental planning. Section 26.14 promotes early integration of NEPA into the decision-making process, combining other environmental and historic preservation requirements into the NEPA process for efficiency, and analyzing similar actions together in programmatic analyses for efficient decision-making.

Existing § 26.5 “Responsibilities.”

In § 26.13, moved from existing § 26.5, the interim final rule expands the current list of responsible parties to clarify the roles of VA staff participating in the NEPA process. VA is also including two new NEPA oversight roles to reflect current practice within VA: the NEPA Implementation Officer and the Senior Agency Official. The interim final rule also authorizes chains of delegation and promotes coordination.

B. Subpart B: NEPA Process for VA Actions

As explained in § 26.20, subpart B outlines the requirements and process for NEPA compliance to inform VA decision-making. Section 26.21 provides context by explaining how VA will integrate NEPA with VA planning. Remaining §§ 26.22 through

26.73 lay out NEPA analysis options and NEPA implementation methods specific to those options.

Section 26.7(b) of the existing regulations indicates the time at which VA must complete relevant environmental analyses for leases, grants, policies, legislative proposals, miscellaneous and non-recurring delegated projects, land acquisitions, and emergency circumstances. However, these activities no longer reflect the full scope of VA activities and the list of activities did not provide for decisions related to ongoing or new operations. Section 26.21 of the interim final rule replaces the existing list of activities with procedures for activities now common to VA, including acquisition activities and construction projects. VA is combining and expanding upon existing §§ 26.6, 26.7, and 26.9 in the revised subpart B §§. Acquisitions and construction projects represent the majority of project types that require NEPA analyses within VA. VA is including these projects in § 26.21 “Integrating NEPA with VA planning” to standardize NEPA analyses across VA and clarify the proper timing of the NEPA process together with VA decision-making for these activities. VA also adds an emphasis in § 26.21(a)(1) on beginning the NEPA process at the earliest reasonable time. Additionally, VA added a requirement in § 26.21(a)(2) for relevant NEPA documents, comments, and responses to accompany the proposal through existing agency review processes.

The interim final rule includes a new § 26.22 “Determining the appropriate level of NEPA review,” which explains VA’s process for choosing the appropriate level of NEPA review: CATEX, EA, or EIS. The existing regulations do not explain the process for selecting the appropriate level of review, which has made it difficult for VA decision-makers to know which type of analysis is appropriate for a given project. VA is adding this overview to help VA officials and to standardize the process for determining the appropriate level of NEPA review across VA.

The interim final rule contains specific requirements for CATEXs in §§ 26.30-26.32. Section 26.6 of the existing regulations includes a list of actions that typically require CATEXs, EAs, and EISs. Sections 26.30 and 26.32 revise the list of VA CATEXs and update procedures for their application for consistent documentation and use throughout the agency.

Within § 26.7(b) of the existing VA NEPA regulations, there is a list of “major decision points” when VA must complete a relevant environmental analysis for a proposed action. However, the existing VA regulations do not clearly state what to consider and prepare at each major decision point and the list is not comprehensive for VA activities. To clarify when VA must complete environmental analysis, VA is specifying the requirements in §§ 26.40 and 26.41 “Requirements for EAs” and “Requirements for EISs,” respectively. Requirements for time limits and page limits are included for each analysis type. Additionally, § 26.73 of the interim final rule includes direction on reevaluating and supplementing EAs and EISs.

Through § 26.42 of the interim final rule, VA is also providing procedures for public engagement. The existing regulations do not include information about how VA will reach out to the public. VA recognizes open discussion at the outset of the NEPA process can alleviate public concerns, where relevant. VA is including § 26.42 “Public engagement procedures” to standardize procedures for providing notice of intent and scoping. Section 26.42(a) also clarifies that the NEPA process for a CATEX does not exclude public engagement.

This interim final rule includes § 26.50 “Mitigation and monitoring.” Section 26.50 explains the purpose of mitigation measures and provides examples of mitigation approaches to help VA decision makers formulate and apply mitigation measures. VA is requiring mitigation and monitoring costs to be included in project budgets when the agency has such discretion. VA will identify monitoring and mitigation requirements in

the NEPA decision document. The interim final rule also provides that VA may provide for required mitigation or monitoring where VA has such discretion. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation.

In § 26.60 “The decision: documentation and initiation of action” this interim final rule codifies conditions for when VA can take action evaluated in a NEPA document. Section 26.60 includes a discussion of the required elements of a decision document, such as a finding of no significant impact or record of decision. The existing regulations do not explain when VA may proceed with a proposed action. The revised regulations ensure VA does not violate NEPA by inadvertently committing resources to a proposed action prior to the conclusion of the NEPA process (42 U.S.C. 4332(C)(v)).

VA is adding § 26.70 “Programmatic NEPA documents,” § 26.71 “Reliance on existing NEPA documents,” § 26.72 “Combining documents,” and § 26.73 “Supplemental analyses” to encourage their use throughout VA. These efficiency approaches are not encouraged within the existing regulations. As a result, these approaches are used infrequently in VA and are generally not well understood. For example, programmatic analyses allow VA to use NEPA for broad actions such as the development of master plans at VA facilities. Analyzing broad actions programmatically helps to capture all potential effects while simplifying and focusing tiered analyses for individual projects and improving the efficiency of the NEPA process for these projects. VA may rely on another Federal agency’s NEPA document if an action analyzed in NEPA document prepared by another Federal agency and VA’s action are substantially the same. Direction on how VA may rely on and use an EIS, EA, or CATEX determination have been incorporated into these regulations. VA uses supplemental analyses when VA proposes changes to a previously analyzed action or when there is substantial new information or circumstances relevant to environmental concerns.

Supplemental analyses allow VA to add to an existing NEPA analysis instead of redoing the entire NEPA analysis. Thus, VA is adding § 26.73 “Supplemental analyses” to additionally clarify how the administrative record should document a supplemental analysis. Sections 26.70 through 26.73 will help VA save resources by reducing redundant analyses.

As part of the revision, some text in the current regulations has been relocated to different §§. The following summary provides a guide to these changes to existing §§ 26.6, 26.7, and 26.9:

VA is expanding existing § 26.6 “Environmental documents.” into five new §§: § 26.22 “Determining the appropriate level of NEPA review,” § 26.30 “Categorical exclusions,” § 26.32 “List of VA categorical exclusions,” § 26.40 “Requirements for EAs,” and § 26.40 “Requirements for EISs.” The interim final rule also adds § 26.31 “Adoption and application of CATEXs from another agency’s NEPA procedures.”

VA moved existing § 26.7 “VA environmental decision making and documents.” to new § 26.21 “Integrating NEPA with VA planning” and § 26.22 “Determining the appropriate level of NEPA review.” In the interim final rule, VA reframes the discussion of environmental decision-making in the context of seeking and applying efficiencies, and focusing on reasonably foreseeable environmental effects specific to that action.

Existing § 26.9 addresses “Information on and public engagement in VA environmental process.” The interim final rule codifies public engagement procedures within VA by adding § 26.42 “Public engagement procedures” to provide consistency with and for flexibilities in accordance with current statutory requirements.

C. Subpart C: The Role of Third Parties in the NEPA Process

As explained in § 26.80, subpart C outlines the relationship between VA and Federal, Tribal, State, and local environmental agencies; identifies the role of VA in

actions initiated by other Federal agencies and the role other Federal agencies may play in VA actions; and describes the role of applicants in VA's NEPA process.

Section 26.8 of the existing regulations identifies several types of projects with third-party involvement that may require NEPA review and generally states in existing § 26.9 that VA will include other parties in the preparation of environmental documents to the extent practicable, but does not explain how or what type of involvement should occur. Sections 26.81 through 26.84 discuss third parties in greater detail, including relationships with third parties; State, Tribal, and local requirements; and the role of applicants.

Subpart C includes a new § 26.81 "Relationships with third parties." New § 26.81 discusses how VA will participate as a lead, joint-lead, or cooperating agency when Tribes and Federal, State, and local agencies are involved in a proposed action. Section 26.5 of the existing regulations assigns responsibility for picking the lead VA element, but there are no procedures for determining the level of participation of VA, Tribes, and other agencies in a shared action. Section 26.81(c) of the interim final rule changes the responsibility for determining VA's lead agency designation to the Senior Agency Official. The existing regulations also do not discuss joint lead agencies or cooperating agencies. New § 26.81 will help VA to improve coordination with Tribes and other agencies.

Section 26.82 "State, Tribal, and local requirements" addresses two issues. First, VA is including new § 26.82 to harmonize VA actions with State, Tribal, and local compliance activities to the extent practicable. State, Tribal, and local agencies may have programs, plans, and procedures that impact VA actions; or conversely, VA actions may impact the programs, plans, and procedures of State, Tribal, and local agencies. Secondly, new § 26.82 avoids duplication of NEPA analyses when similar environmental analyses and documents as those needed for a VA action exist or are

necessary for State, Tribal, and local environmental and historic preservation requirements. VA does not have procedures for coordinating environmental analyses with other agencies in its existing regulations. Section 26.82 will help VA officials coordinate with their State, Tribal, and local counterparts and improve efficiency.

Tribes are identified separately in § 26.82 and throughout 38 CFR part 26 because of their sovereign status, the government-to-government relationship between Tribes and the Federal government, and the Federal-Tribal trust relationship. The Federal government must respect Tribal sovereignty when its activities may impact Tribal resources and engage with Tribes in a government-to-government relationship. The Federal government also has a trust responsibility to Tribes that includes the protection of Tribal sovereignty, and a legal obligation arises when the Federal government has control or deprives a Tribe of the ability to manage a Tribal resource. This legal obligation will require the Federal government to act in good faith toward a Tribe, Tribal property, and Tribal rights. VA recognizes the special status of Tribes and will interact with Tribes appropriately for VA activities that may impact Tribal resources.

VA is adding § 26.83 “Applicants for Federal assistance” in the interim final rule because an applicant’s participation in the NEPA process is critical to the completion of an EA or EIS for certain Federal assistance actions, and the existing regulations do not discuss the role of applicants in the NEPA process. To complete the NEPA process, VA needs the applicant’s information concerning environmental resources at the site(s) of the proposed action. Applicants may prepare the EA or EIS and perform subsequent mitigation and monitoring. The revised regulations will provide information to applicants about their role in the NEPA process for grants and discretionary benefits, and actions the applicants may take to develop preliminary plans in accordance with NEPA.

VA is adding § 26.84 “Non-compliance by applicants” to codify that VA will promptly notify applicants of any non-compliance with the NEPA process. VA must

ensure applicants comply with NEPA because the ultimate responsibility for compliance falls upon VA.

D. Subpart D: Unique Procedures: Emergencies, Protected Information, and International Actions

As explained in § 26.90, subpart D provides the VA procedures for complying with NEPA during emergencies, how VA will handle sensitive or classified information, and how VA will consider the international effects of VA actions. New subpart D includes NEPA procedures for emergency actions in § 26.91, actions with sensitive or classified information in § 26.92, and international actions or effects in § 26.93. The interim final rule groups §§ 26.91 through 26.93 together because actions taken in these circumstances do not follow the typical NEPA process. The existing regulations do not provide NEPA procedures for these actions. VA is adding subpart D to codify its procedures for developing alternative arrangements in emergencies, protecting sensitive or classified information, and considering international actions or effects to the extent practicable.

Section 26.7 of the existing regulations refers to the now-revoked CEQ regulations for developing alternative arrangements in an emergency, but it does not provide specific guidance on how to determine when alternative arrangements are necessary. New § 26.91 “Emergencies” adds procedures to determine when to develop alternative arrangements. VA is adding § 26.91 to make it easier for VA officials to include NEPA in their response to emergencies.

New § 26.92 “Sensitive or classified information” provides VA with policy and documentation requirements for protecting and documenting sensitive and classified information submitted during the NEPA process. VA does not address sensitive or classified information in the existing VA procedures. New § 26.92 codifies its practice of protecting individual veterans’ information from dissemination to the public or non-VA

entities, consistent with the Freedom of Information Act (5 U.S.C. 552). VA will also protect sensitive and classified information in the interest of national security.

The new regulations include 38 CFR 26.93 “International actions or effects” to clarify what VA should consider with respect to environmental effects overseas. The existing regulations do not discuss international actions, which are actions taken outside of the United States. Extraterritorial actions with effects located entirely outside of the jurisdiction of the United States are excluded from the statutory definition of “major Federal action” and thus not subject to NEPA. 42 U.S.C. 4336e(10)(B). For such extraterritorial actions, the governing authority as cited in the regulations is Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions*. Executive Order 12114 does not rely upon NEPA for its authority but does further the purpose of NEPA and provides guidance for VA on how to consider effects for its overseas operations.

III. Revisions to Categorical Exclusions

A. Explanation of Changes to CATEX List

Section 26.6(b) of current 38 CFR identifies 13 actions that are categorically excluded from further detailed review under NEPA. This list of categorically excluded actions has not been updated since 1989. Since that time, VA has added new programs and missions and gained additional experience implementing actions that do not generate significant effects.

VA is replacing the existing list of 13 CATEXs with 28 categories of actions that may be excluded from further NEPA review, as follows:

VA-wide Operations

1. Field exercises and training.
2. Field studies and surveys.
3. Special events, ceremonies, and related activities.
4. Waste management.

5. Transportation.

Housing Operations

6. Provision of housing.

Acquisition or Disposition of Land, Buildings, or Space

7. Acquisition of space within an existing structure.

8. Acquisition of land and/or buildings.

9. Out-leases to third party tenants.

10. Agreements for use of VA-owned space.

11. Disposal of real property.

Services and Procurement

12. Medical-related services.

13. Research.

14. Laundry and food services.

15. Procurement, lease, transport, storage, and disposition of supplies, materials, and equipment.

Cemetery Operations

16. Interment ceremony services.

17. Soil excavation and replacement for interments.

18. Cemetery land development.

Electronics

19. Communication systems.

New Construction and Related Activities

20. New construction.

21. Interior renovation.

22. Installing new or replacing or relocating onsite existing building components, site elements, utilities, and equipment.

23. Repair, renovation, and maintenance.
24. Demolition.
25. Environmental remediation and abatement.

Energy

26. Solar and wind energy.
27. Retro commissioning.
28. Conservation and energy efficiency measures.

As appropriate, the activities described by VA's existing 13 CATEXs are incorporated into the replacement set of 28 CATEXs. VA found it to be more efficient to replace the existing CATEXs with a new list to add specificity and clarity and provide VA NEPA practitioners with better guidance on what qualifies for a CATEX. VA has found the brevity of the current CATEX descriptions to be difficult to appropriately apply. The revised list of CATEXs articulates with more specificity the types of activities to categorically exclude under each CATEX and adds appropriate limiting factors where needed.

The existing VA regulations do not identify documentation requirements for CATEXs. The revised regulations identify which CATEXs require documentation of the CATEX for each proposed action, prepared in accordance with § 26.30 of the interim final rule.

B. Categories of CATEXs in Revised List

The revised CATEX list is organized categorically by the type of proposed action recognizable to VA staff across VA programs. These new groupings will help staff efficiently identify the CATEX applicable to their proposed action. The following paragraphs describe these CATEX groups:

VA-wide Operations.

The interim final rule provides five CATEXs for actions common to multiple VA administrations or offices including field exercises and training; field studies and surveys; special events, ceremonies, and related activities; waste management; and transportation. Two CATEXs in the current regulations address some aspects of these actions but required definition to clearly describe the types of actions and prevent misapplication.

Housing Operations.

The interim final rule provides one CATEX in this category related to the provision of housing to veterans or other eligible persons. There are no CATEXs in the current regulations that specifically address housing operations.

Acquisition or Disposition of Land, Buildings, or Space.

The interim final rule lists five CATEXs by type of proposed action to address those acquisition and disposition activities that have been demonstrated historically to have no significant environmental impacts. These are acquisition of space within an existing structure, acquisition of land and/or buildings with no near-term change in the general type and intensity of use, out-leases of buildings and/or land to third party tenants, agreements for use of VA-owned space, and disposal of real property that conforms to the General Services Administration guidance and meets applicable environmental and historic preservation requirements. The current regulations include only a single broad CATEX related to some real property type proposed actions.

Services and Procurement.

The interim final rule provides four CATEXs specific to services and procurement, including medical-related services; research; laundry and food services; and procurement, lease, transport, storage, and disposition of supplies, materials, and equipment. The current regulations include two broad CATEXs, one for procurement for

goods and services for routine facility operations and support and one for actions supporting normal operation.

Cemetery Operations.

The interim final rule provides three CATEXs to capture routine operations unique to VA's cemetery system. These are interment ceremony services, soil excavation and replacement for interments, and cemetery land development within the boundaries of an existing cemetery. There is only one cemetery-related CATEX in the existing regulations, which references land development, in addition to a broad CATEX for actions supporting normal operation.

Electronics.

The interim final rule provides one CATEX for communication systems and ancillary equipment to clarify the types of such projects eligible for exclusion. There are two CATEXs in the current regulations that are related but not specific to such projects, resulting in inconsistent application.

New Construction and Related Activities.

The interim final rule provides six CATEXs in this category. These CATEXs provide greater specificity to the types of activities allowable and are organized according to the most common types of construction activities within VA. The CATEXs are new construction on VA property, or property acquisition plus new construction with a building footprint that does not exceed 75,000 square feet or development of up to 20 acres of interment space, within certain limitations; interior renovation; installation, replacement, and relocation of onsite building components, site elements, site utilities, equipment, and cemetery elements; repair, renovation, and maintenance at VA facilities; demolition of structures in accordance with applicable environmental and historic preservation requirements; and environmental remediation and abatement.

There are five CATEXs in the current regulations related to construction, but their grouping and definition require clarification to avoid misapplication.

Energy.

The number of similar VA actions related to energy projects has increased dramatically, pointing to the need for development of new CATEXs to incorporate VA's experience with energy projects to simplify review of these actions where appropriate. The interim final rule adds three CATEXs for proposed actions related to solar and wind energy, retro commissioning, and conservation measures. There are no CATEXs in the current regulations that fully address energy projects.

C. Comparison of Existing and Revised CATEXs

This discussion correlates the revised list of CATEXs with existing CATEXs, for which it provides the existing regulatory language.

1. Existing 38 CFR 26.6(b)(1)(i) through (iii)

VA will remove the following CATEXs in the existing regulations and replace them with new § 26.32(a)(6)(i), (7)(iii), (7)(iv), and (8)(ii), covering related activities:

- Existing § 26.6(b)(1)(i) *Repair, replacement, and new installation of primary or secondary electrical distribution systems.*
- Existing § 26.6(b)(1)(ii) *Repair, replacement, and new installation of components such as windows, doors, roofs; and site elements such as sidewalks, patios, fences, retaining walls, curbs, water distribution lines, and sewer lines which involve work totally within VA property boundaries.*
- Existing § 26.6(b)(1)(iii) *Routine VA grounds and facility maintenance activities.*

The existing CATEXs § 26.6(b)(1)(i) and (ii) group repair, replacement, and installation activities together for electrical distribution systems, and separately group repair, replacement, and installation activities for building and site elements. Existing CATEX § 26.6(b)(1)(iii) provides for grounds and facility maintenance activities. VA

reorganizes these groupings, moving installation and replacement under CATEX 22, repair and maintenance under CATEX 23, alarms and communications equipment under CATEX 19, and retro commissioning activities under CATEX 27. Note retro commissioning is the application of the commissioning process to an existing building that has not previously undergone the commissioning process to reduce reactive repairs, improve building systems performance, and maintain energy efficiency in an existing building. This regrouping will eliminate potential overlapping applicability in the existing list and clearly distinguish between activities that involve putting new components onto VA property as installation or replacement; activities that involve fixing minor components of VA properties; installation or modification of communications equipment; and activities to analyze, diagnose, repair, and maintain building systems.

CATEXs 22 and 23 provide examples (not all-inclusive) to illustrate the type of installation and replacement, and repair and maintenance activities allowable under the respective CATEX.

Application of CATEX 22 requires documentation of the CATEX for each proposed action. Application of CATEX 19 requires documentation of the CATEX for ground-disturbing actions. Application of CATEXs 23 and 27 does not require documentation of the CATEX for each proposed action.

The substantiation record cites application of existing CATEXs (i), (ii), and (iii) to demonstrate that VA has previously found these activities do not generate significant effects and categorically excluded the actions from further NEPA review. To further support CATEX 22, the substantiation record provides EAs of activities similar to installation and replacement to demonstrate its experience with these activities and its findings of no significant impact. VA also includes the professional opinion of VA staff to support CATEX 27. The substantiation record also includes benchmarking of a wide variety of other agencies' CATEXs to demonstrate how other agencies have treated

similar activities. Agency benchmarking examples include CATEXs from the Department of Agriculture, Air Force, Army, Department of Energy, Environmental Protection Agency, Federal Highway Administration, U.S. Forest Service, General Services Administration, Department of Homeland Security, Department of the Interior, and Navy.

2. Existing 38 CFR 26.6(b)(1)(iv)

VA is removing the following CATEX in the existing regulations and replacing it with new § 26.32(a)(4)(iv), covering related activities:

- Existing § 26.6(b)(1)(iv) *Procurement activities for goods and services for routing [sic] facility operations maintenance and support.*

The existing CATEX (iv) addresses procurement activities for goods and services for routine facility operations maintenance and support. VA is issuing one new CATEX to replace existing CATEX (iv). The revision will allow VA practitioners to evaluate the applicability of the CATEX more specifically to a proposed action. Under CATEX 15, VA clarified the CATEX requires that procurements must comply with Federal, State, and local requirements and be purchased in accordance with applicable policies and agency procurement requirements.

Application of CATEX 15 does not require documentation of the CATEX for each proposed action.

The substantiation record cites to VA's application of existing CATEX (iv), which encompasses services and goods for operations maintenance and support as evidence of VA's previous experience with these activities for which it has previously found procurement of goods, including medical supplies and other materials, and services to include a list of other agency CATEXs covering similar types of activities; CATEX 18 includes CATEXs from the Navy and the Postal Service; and CATEX 20 includes CATEXs from the Air Force, Army, Bureau of Prisons, Department of Homeland

Security, Department of the Interior, Navy, and Postal Service. VA also includes the professional opinion of VA staff to support CATEX 17.

3. Existing 38 CFR 26.6(b)(1)(viii)

VA is removing the following CATEX in the existing regulations and replacing it with aspects of new § 26.32(a)(1)(i), (iii), (iv), (v); (2)(i); (4)(i), (ii), (iii), (iv); and (6)(i), covering similar activities:

- Existing § 26.6(b)(1)(viii) *Actions which involve support or ancillary appurtenances for normal operation.*

VA currently uses existing CATEX (viii) to cover a variety of activities that are necessary to support its primary operational focus of supporting veterans. Activities covered by existing CATEX (viii) include those proposed for provision of field exercises and training, special events and ceremonies, waste management, transportation, housing, medical-related services, aspects of research, laundry and food services, procurement, and communication systems. Because the language of existing CATEX (viii) is overly broad, VA staff and the public have had difficulty understanding what the existing language covers, resulting in inconsistent application of the CATEX. The CATEXs are intended to provide greater specificity and consistency in application of CATEXs throughout VA for these ancillary activities.

Application of CATEXs 1, 3, 4, 5, 6, 12, 13, 14, and 15 does not require documentation of the CATEX for each proposed action. Application of CATEX 19 requires documentation for ground-disturbing activities.

The substantiation record for the CATEXs cites to existing CATEX (viii), which VA currently uses to categorically exclude these activities from further NEPA review. The substantiation record also provides a number of similar CATEXs of other agencies to benchmark how other agencies have similarly found these activities to not have the potential for significant impacts. These other agencies include the Air Force, Army,

Bureau of Prisons, Department of Energy, Environmental Protection Agency, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, National Aeronautics and Space Administration, Navy, and Nuclear Regulatory Commission. VA also includes the professional opinion of VA staff to support CATEXs 1, 4, 5, 6, 12, 13, and 14.

4. Existing 38 CFR 26.6(b)(1)(ix)

VA is removing the following CATEX in the existing regulations and replacing it with new § 26.32(a)(3)(i), (iii), and (iv) covering similar activities:

- Existing § 26.6(b)(1)(ix) *Leases, licenses, permits, and easements.*

VA currently uses existing CATEX (ix) to categorically exclude any activity related to obtaining (or extending or offering) leases, licenses, permits, and easements VA have no significant impact. The substantiation record also benchmarks other agencies' CATEXs covering procurement of goods and services broadly, including agencies such as the Army, Department of Energy, and Nuclear Regulatory Commission.

5. Existing 38 CFR 26.6(b)(1)(v)

VA is removing the following CATEX in the existing regulations and replacing it with new § 26.32(a)(7)(i), (ii), and (vi), covering related activities:

- Existing § 26.6(b)(1)(v) *Interior construction or renovation.*

VA currently uses the existing § 26.6(b)(1)(v) for all interior construction and renovation work that it knows will not generate a significant impact. However, the existing CATEX neither provides any limiting factors nor clearly articulates the type of activities covered within the broad range of interior construction or renovation actions. To improve the application of NEPA for these activities and provide better guidance to VA practitioners, VA provides CATEXs 20, 21, and 25, which together cover activities previously categorically excluded under the existing CATEX.

CATEX 21 clarifies that the scope of actions of “interior renovation” refers to “renovation, alteration, restoration, or rehabilitation projects” and removes the word “construction,” which is now covered under CATEX 20. CATEX 25 includes, along with other types of remediation, asbestos and lead-based paint abatement, which are routine activities for VA during interior construction and renovation projects that VA knows through experience do not generate significant impacts when following all applicable environmental and historic preservation requirements. The additional specificity added through CATEXs 21 and 25, and the separation of construction actions included in CATEX 20, will aid VA practitioners in appropriately and consistently using these CATEXs across all VA facilities.

All VA CATEXs require VA to conduct the action in accordance with applicable environmental and historic preservation requirements.

Application of CATEX 20 requires documentation of the CATEX for each proposed action. Application of CATEXs 21 and 25 does not require documentation of the CATEX for each proposed action.

As VA previously used existing CATEX (v) to cover these activities, the substantiation record lists that existing CATEX for reference to support CATEX 21. VA is also supporting the promulgation of the CATEXs by including EAs in the substantiation record to demonstrate evidence of findings of no significant impact for renovation activities. For CATEX 25, VA cites to existing CATEX (v) to demonstrate its previous experience with remediation and asbestos and lead-based paint abatement activities and its decision to categorically exclude those activities from further NEPA review. VA also states that other types of environmental remediation actions that will be eligible for CATEX 25 would not have significant environmental impacts when conducted in accordance with environmental and historic preservation requirements, as their sole objective is to improve existing environmental conditions. The substantiation

record also includes EAs for which the proposed action included abatement or remediation activities, and other agency CATEXs that benchmark similar activities that have been found to not generate significant impacts, including the Air Force, Army, Defense Logistics Agency, Department of Energy, Environmental Protection Agency, Federal Highway Administration, General Services Administration, Department of Homeland Security, Department of the Interior, Navy, and Postal Service.

6. Existing 38 CFR 26.6(b)(1)(vi and vii)

VA is removing the following CATEXs in the existing regulations and replacing them with aspects of new § 26.32(a)(5)(ii), (iii), and (7)(i), covering similar activities:

- Existing § 26.6(b)(1)(vi) *New construction of 75,000 gross square feet or less.*
- Existing § 26.6(b)(1)(vii) *Development of 20 acres of land or less within an existing cemetery, or development on acquired land of five acres or less.*

In the new CATEXs, VA clarifies the parameters around when new construction and development activities may be categorically excluded. Existing CATEXs (vi) and (vii) provide square footage and acreage limitations only, which do not address the necessary limiting factors that VA historically considers when determining whether to categorically exclude new construction activities from further NEPA review, based on agency experience and understanding of what activities may cause significant impacts. CATEX 18 provides for land development within an existing cemetery when it complies with applicable environmental and historic preservation requirements. CATEX 17 provides for soil excavation and replacement for interments in pre-placed crypts and direct burials in existing cemeteries. CATEX 20 applies to construction supporting any of VA's missions (veterans' health care, veterans' benefits, national cemeteries, and preparedness) and requires the project, whether on existing or newly acquired VA property or through a build-to-suit lease, to not exceed the capacity of existing infrastructure and comply with applicable environmental and historic preservation

requirements. These details will enable VA practitioners to more easily determine whether to apply a CATEX to new construction activities.

Application of CATEXs 18 and 20 requires documentation of the CATEX for each proposed action. Application of CATEX 17 does not require documentation of the CATEX for each proposed action.

For CATEXs 18 and 20, the substantiation record cites to application of existing CATEXs (vi) and (vii), which VA currently use to categorically exclude new construction activities. VA also provides support in the substantiation record through EAs of similar activities to demonstrate the scope of the CATEXs aligns with its findings of the types of new construction activities that will not generate significant impacts, from onsite construction at hospitals and other medical facilities. The substantiation record also knows will not generate significant impacts. However, existing CATEX (ix) lacks descriptive language and limiting factors to guide VA practitioners in its application. In review, VA is establishing CATEXs 7, 9, and 10 to better define these types of activities and requiring the activity to result in no change in the general type of use and no more than minimal occupancy level changes. In CATEX 7, VA is acquiring space within an existing structure from a third party. In CATEX 9, VA is offering out-leases of building and/or land to third party tenants. In CATEX 10, VA is offering Federal or State agencies or entities an agreement for sharing space and resources.

Application of CATEXs 7, 9, and 10 requires documentation of the CATEX for each proposed action.

As VA previously categorically excluded all related leasing, licensing, permitting, and easement activities that it knew through experience would not generate significant impacts, existing CATEX (ix) is the primary support for CATEXs 7, 9, and 10. The substantiation record also includes a number of EAs for CATEX 9 as further substantiation. The substantiation record also includes benchmarking of similar

CATEXs from other Federal agencies, including the Air Force, Army, Bureau of Land Management, Department of Energy, Environmental Protection Agency, Federal Aviation Administration, Department of Homeland Security, General Services Administration, and National Aeronautics and Space Administration.

7. Existing 38 CFR 26.6(b)(1)(x)

VA is removing the following CATEX in the existing regulations:

- Existing § 26.6(b)(1)(x) *Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.*

Section 106 of the NEPA statute as revised states that an agency is not required to prepare an environmental document if “the proposed agency action is a nondiscretionary action with respect to which such agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action”, and section 111 of the NEPA statute as revised excludes “activities or decisions that are non-discretionary and made in accordance with the agency’s statutory authority,” as well as ones with no or minimal Federal funding, from the definition of “major Federal action”. 42 U.S.C. 4336(a)(4), 4336e(10)(B)(vii). Therefore, such actions are excluded from the requirement for NEPA review and VA does not include this CATEX in the interim final rule.

8. Existing 38 CFR 26.6(b)(1)(xi)

VA is removing the following CATEX in the existing regulations and replacing it with new 38 CFR 26.32(a)(1)(ii), covering similar activities:

- Existing § 26.6(b)(1)(xi) *VA policies, actions and studies which do not significantly affect the quality of the human environment.*

VA is replacing existing CATEX (xi) with CATEX 2. The existing CATEX (xi) is written broadly and does not specify what types of policies, actions, studies, and

guidance are major Federal actions subject to NEPA review and that fall within the scope of the CATEX. CATEX 2 will clarify this CATEX's applicability for VA practitioners. The new CATEX specific to field studies and surveys clarifies the types of activities that are eligible for this CATEX and promotes consistency in NEPA reviews across VA.

For CATEX 2, the substantiation record cites to existing CATEX (xi), which VA currently uses to CATEX these types of actions, and benchmarks to other agency CATEXs. Other agency CATEXs similar to CATEX 2 and included in the substantiation record are from the Army, Department of Energy, General Services Administration, Department of Homeland Security, and National Aeronautics and Space Administration.

Application of CATEX 2 does not require documentation of the CATEX for each proposed action.

9. Existing 38 CFR 26.6(b)(1)(xii) and (xiii)

VA is eliminating the following existing VA CATEXs:

- Existing § 26.6(b)(1)(xii) *Preparation of regulations, directives, manuals or other guidance that implement, but do not substantially change, the regulations, directives, manuals, or other guidance of higher organizational levels or another Federal agency.*
- Existing § 26.6(b)(1)(xiii) *Actions, activities, or programs that do not require expenditure of Federal funds.*

VA rarely, if ever, applied CATEX (xii) due to its ill-defined nature, and it is not being retained. Regarding existing CATEX (xiii), section 111 of the NEPA statute as revised excludes actions with no or minimal Federal funding from the definition of "major Federal action". 42 U.S.C. 4336e(10)(B)(i)(I). Therefore, such actions are excluded from the requirement for NEPA review and VA does not include these CATEXs in the interim final rule.

10. CATEXs for activities not previously categorically excluded

The following CATEXs are for activities not previously clearly categorically excluded under the existing VA CATEX list in 38 CFR part 26:

38 CFR 26.32(a)(3)(ii) CATEX 8: Acquisition of land and/or buildings.

The substantiation record includes some aspects of existing VA CATEXs (vi), (vii), and (ix); and a number of EAs demonstrating that VA experience in acquisitions of land and/or buildings does not have the potential for significant impacts when there is no near-term proposed change in the general type of use or occupancy level. Also provided in the substantiation record are similar CATEXs from other agencies to benchmark how other agencies also found similar activities to not have the potential for significant impacts, including the Department of Energy, Environmental Protection Agency, and General Services Administration. Application of CATEX 8 requires documentation of the CATEX for each proposed action.

38 CFR 26.32(a)(3)(v) CATEX 11: Disposal of real property.

The substantiation record for CATEX 11 includes an EA demonstrating VA experience conducting these activities through either the transfer or sale of VA-owned property to other entities. The substantiation record also provides benchmarks of similar CATEXs of other Federal agencies including the Air Force, Army, Bureau of Land Management, Department of Energy, Environmental Protection Agency, Federal Highway Administration, and General Services Administration. Application of CATEX 11 requires documentation of the CATEX for each proposed action.

38 CFR 26.32(a)(4)(ii) CATEX 13: Research.

The substantiation record includes some aspects of existing VA CATEX (viii), and a number of similar CATEXs from other agencies to benchmark how other agencies also found research actions similar to those at VA where applicable environmental and safety requirements are met. These other agency CATEXs include those from the

Department of Agriculture, Air Force, Army, Department of Energy, Environmental Protection Agency, Department of Homeland Security, National Aeronautics and Space Administration, and Navy. VA also provides the professional opinion of VA staff with experience conducting this activity to support CATEX 13. Application of CATEX 13 does not require documentation of the CATEX for each proposed action.

38 CFR 26.32(a)(5)(i) CATEX 16: Interment ceremony services.

Other agencies with memorial services including the Army, the National Aeronautics and Space Administration, and the Navy have found that ceremonies for memorial and interment do not have the potential for significant impacts. VA has included references to these other agencies' CATEXs for similar activities to benchmark its own CATEX. VA also includes the professional opinion of VA staff with experience conducting these activities to support CATEX 16. Application of CATEX 16 does not require documentation of the CATEX for each proposed action.

38 CFR 26.32(a)(7)(v) CATEX 24: Demolition.

For CATEX 24, the substantiation record includes several EAs to demonstrate VA's consistent findings of no significant impact for demolition of structures. Additionally, the substantiation record provides references to similar CATEXs at other agencies to benchmark those other agencies' determinations that demolition activities have no potential for significant impacts with completion of National Historic Preservation Act consultation, including the Army, Department of Energy, and Department of Homeland Security. Application of CATEX 24 requires documentation of the CATEX for each proposed action.

38 CFR 26.32(a)(8)(i) CATEX 26: Solar and wind energy.

The substantiation record includes aspects of existing VA CATEX (ii) and EAs for the installation of solar photovoltaic systems and wind turbines on existing non-historic structures to substantiate the CATEX. These EAs demonstrate the consistent finding of

no significant impact for installation of solar photovoltaic systems and wind turbines by VA on structures such as buildings or carports that have no historical significance. The substantiation record also includes two references to Department of Energy CATEXs covering similar actions to benchmark the CATEX. Application of CATEX 26 requires documentation of the CATEX for each proposed action.

38 CFR 26.32(a)(8)(iii) CATEX 28: Conservation and energy efficiency measures.

For CATEX 28, the substantiation record includes aspects of existing CATEX (v) and EAs VA has conducted that included conservation and energy efficiency improvements in its facilities as part of a variety of larger actions including upgrade, renovation, and new construction in different parts of the country and demonstrates the consistent finding of no significant impact. The substantiation record also benchmarks other agencies' CATEXs for similar actions by the Department of Energy and Federal Transit Administration. Application of CATEX 28 requires documentation of the CATEX for proposed actions involving ground source heat pump and combined heat and power systems, power storage, and small-scale research and development for energy efficiency and conservation.

Executive Orders 12866, 13563, and 14192

VA examined the impact of this rulemaking as required by Executive Orders 12866 (Sept. 30, 1993) and 13563 (Jan. 18, 2011), which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. This interim final rule is a deregulatory action under Executive Order 14192.

Economic Impact: VA expects minor cost savings that cannot be quantified. VA does not have specific data to assess the economic impact of this interim final rule because such data do not exist and would be difficult to develop. This interim final rule modifies 38 CFR part 26. VA anticipates that the changes in this interim final rule will enable projects to move more expeditiously through the Federal environmental review process. It will reduce the preparation of extraneous environmental documentation and analysis not needed for compliance with NEPA while still ensuring that projects are built in an environmentally responsible manner and consistent with Federal law.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B) to publish this rule without prior opportunity for public comment.

VA's basis for issuing an interim final rule is the Administrative Procedure Act (APA) exception for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice". 5 U.S.C. 553(b)(A). VA's regulations implementing NEPA's procedural requirements may be characterized as rules of agency procedure and practice. NEPA itself is a "purely procedural statute" which "simply prescribes the necessary process' for an agency's environmental review of a project"—a review that is, even in its most rigorous form, "only one input into an agency's decision and does not itself require any particular substantive outcome". *Seven County*, 145 S. Ct. at 1511). "NEPA imposes no substantive constraints on the agency's ultimate decision to build, fund, or approve a proposed project," and "is relevant only to the question of whether an agency's final decision . . . was reasonably explained". *Seven County*, 145 S. Ct. at 1511. VA's regulations implementing NEPA do not dictate what outcomes such consideration must produce, nor do they impose binding legal obligations on private citizens. Rather, they prescribe the procedure by

which VA should conduct its NEPA reviews: for example, by detailing the structure of EISs, specifying procedural requirements, and directing the timing of public comment periods. These are procedural provisions, not substantive environmental ones. Indeed, it is hard to see how they could be otherwise, since the Supreme Court has recently repeatedly emphasized that “NEPA is a purely procedural statute”; “NEPA is purely procedural.... NEPA does not mandate particular results, but simply prescribes the necessary process for an agency’s environmental review of a project” (internal quotation omitted); “NEPA is a purely procedural statute”; “NEPA is properly understood as “a modest procedural requirement””; “NEPA’s status as a purely procedural statute”; and “Simply stated, NEPA is a procedural cross-check, not a substantive roadblock”. *Seven County*, 145 S. Ct. at 1507, 1510, 1511, 1513, 1514. Procedures for implementing a purely procedural statute must be, by their nature, procedural rules. Thus, they cannot be legislative rules; as such, they do not need to be promulgated via notice-and-comment rulemaking.

Even if VA’s regulations were not procedural rules, they may be characterized as interpretative rules or general statements of policy. See 5 U.S.C. 553(b)(A). An interpretative rule provides an interpretation of a statute rather than makes discretionary policy choices, which establish enforceable rights or obligations for regulated parties under delegated congressional authority. General statements of policy provide notice of an agency’s intentions as to how it will conduct itself, again without creating enforceable rights or obligations for regulated parties under delegated congressional authority.

Both of these types of agency action are expressly exempted from notice and comment by statute. 5 U.S.C. 553(b)(A). While the exception excludes notice and comment procedures, VA invites public comments on this interim final rule and will fully consider and address any comments received.

Moreover, VA also finds that, to the extent that prior notice and solicitation of public comment would otherwise be required or this action could not immediately take effect, the need to expeditiously replace its existing rules satisfies the APA's "good cause" exceptions (5 U.S.C. 553(b)(B), (d)). The APA authorizes agencies to issue regulations without notice and public comment when an agency finds, for good cause, that notice and comment is "impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. 553(b)(B)) and to make the rule effective immediately for good cause (5 U.S.C. 553(d)(3)). VA's existing regulations were promulgated to implement NEPA in accordance with CEQ's NEPA regulations, and thus relied on CEQ's NEPA regulations (38 CFR 26.1). As such, VA's current rules are in an uncertain status, implementing a NEPA process that no longer exists. VA, thus far and as a temporary, emergency measure, has been continuing to operate under its prior procedures as if the CEQ NEPA process still existed. However, this is not tenable.

That being so, rescinding the old procedures immediately without replacing them would create a vacuum that would inflict immense uncertainty and potentially grind all projects under VA's purview to a halt. So, pairing the rescission with a new structure immediately is critical. Because of this need for speed and certainty, notice-and-comment is, to the extent it was required at all, impracticable and contrary to the public interest.

To the extent that public comment may inform VA as to whether it has legal authority to make a different choice than the one it has taken in this interim final rule, VA's solicitation of public comment for 30 days following the publication of the interim final rule is intended to accommodate that possibility. To the extent that this interim final rule would otherwise require a proposal and solicitation of public comment, VA's view is that the "good cause" exception (5 U.S.C. 553(b)(B)) pertains here. And though VA seeks comments to obtain the public's views, such comments could not alter the legal

realities—most notably the repeal of CEQ's NEPA rules and the rescission of the executive order that purported to authorize them—that create the swift need for such a change. VA will consider comments submitted in response to this action and may address them when issuing a final rule, if warranted, after consideration of the comments received.

For the same reasons, VA finds that “good cause” exists under 5 U.S.C. 553(d)(3) to waive the 30-day delay of the effective date that would otherwise be required. This interim final rule will accordingly be effective immediately.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

Unfunded Mandates

This interim final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 through 3521).

Tribal Consultation

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, directs agencies to engage in nation-to-nation consultation with Tribes on agency actions that have substantial direct effects on Tribes. VA has assessed the impact of this interim final rule on Indian Tribal governments and has determined preliminarily that the interim final rule does not significantly or uniquely affect these communities. VA will continue to consult with Tribal nations on individual actions in

compliance with Executive Order 13175, agency policy, and other authorities such as the National Historic Preservation Act.

NEPA

This interim final rule is procedural in its entirety and therefore does not require preparation of a NEPA analysis. NEPA does not require environmental analysis or documentation when establishing procedural guidance. Thus, establishing NEPA procedures does not require NEPA analysis and documentation (*Heartwood, Inc. v. U.S. Forest Service*, 230 F.3d 947, 954-55 (7th Cir. 2000)).

List of Subjects in 38 CFR Part 26

Environmental impact statements.

SIGNING AUTHORITY

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on June 8, 2026, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Gabriela DeCuir,

Alternate Federal Register Liaison Officer,

Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs revises 38 CFR part 26 to read as follows:

PART 26—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

Subpart A—General Information

Sec.

26.0 Purpose of this subpart.

26.10 Purpose of this part.

26.11 Applicability and scope.

26.12 Definitions.

26.13 Responsibilities.

26.14 Environmental practices.

Subpart B—NEPA Process for VA Actions

26.20 Purpose of this subpart.

26.21 Integrating NEPA with VA planning.

26.22 Determining the appropriate level of NEPA review.

26.30 Categorical exclusions.

26.31 Adoption and application of CATEXs from another agency's NEPA procedures.

26.32 List of VA categorical exclusions.

26.40 Requirements for EAs.

26.41 Requirements for EISs.

26.42 Public engagement procedures.

26.50 Mitigation and monitoring.

26.60 The decision: documentation and initiation of action.

26.70 Programmatic NEPA documents.

26.71 Reliance on existing NEPA documents.

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26.73 Supplemental analyses.

Subpart C—The Role of Third Parties in the NEPA Process

26.80 Purpose of this subpart.

26.81 Relationships with third parties.

26.82 State, Tribal, and local requirements.

26.83 Applicants for Federal assistance.

26.84 Non-compliance by applicants.

Subpart D—Unique Procedures: Emergencies, Protected Information, and International

Actions

26.90 Purpose of this subpart.

26.91 Emergencies.

26.92 Sensitive or classified information.

26.93 International actions or effects.

Authority: 42 U.S.C. 4321-4370a; E.O. 11514, 90 FR 8353.

SUBPART A—GENERAL INFORMATION

§ 26.0 Purpose of this subpart.

This subpart provides the procedures by which the Department of Veterans Affairs (VA) considers the environmental effects of its actions in carrying out the VA mission. This subpart also sets forth the scope and terminology of this part, and the responsibilities for implementing the requirements of the National Environmental Policy Act (NEPA) and this part.

§ 26.10 Purpose of this part.

(a) The purpose of this part is to implement NEPA as amended (42 U.S.C. 4321 *et seq.*) for VA actions. VA will follow the procedures and policies outlined in this part; relevant Executive orders, statutes, and regulations; and the policies of VA.

(b) This part establishes a framework for the early incorporation of the NEPA process into VA planning and decision-making for all VA activities that meet the definition of *major Federal action* in section 111(10) of NEPA (42. U.S.C. 4336e(10)).

(c) This part emphasizes the quality and timeliness of analysis of environmental effects rather than simply the production of documents.

(d) VA intends this part to ensure that VA identifies and considers relevant environmental information early in the process to ensure informed decision-making; to ensure that VA conducts environmental reviews in a coordinated, consistent, predictable, and timely manner; to reduce unnecessary burdens and delays; and to promote concurrent environmental reviews to ensure timely and efficient decision-making.

(e) This part does not, nor does it intend to, govern the rights and obligations of any party outside the Federal Government. They do, however, establish the procedures under which VA will typically fulfill its requirements under NEPA.

(f) In addition to the process for establishing or revising categorical exclusions (CATEXs) set forth in § 26.30(d), VA will consult with the Council on Environmental Quality (CEQ) on any proposed future revisions to these NEPA implementing procedures in accordance with section 102(2)(B) of NEPA (42 U.S.C. 4332(B)).

§ 26.11 Applicability and scope.

(a) This part applies to all VA elements in the United States, its territories, and possessions. VA elements include, but are not limited to, all of the sub-agencies, offices, organizations, and administrations under VA control. This part also has information relevant to third parties who participate or otherwise assist VA in the NEPA process, including but not limited to States, Tribes, and applicants for VA benefits or other assistance. Subpart C of this part discusses the role of third parties in the NEPA

process. In addition, § 26.93 provides information relevant to international actions or effects.

(b) VA's major Federal actions as defined in section 111(10) of NEPA (42 U.S.C. 4336e(10)) are subject to NEPA. In this part, VA actions refer to actions for which VA is the decision-maker (see § 26.12 for definition of *decision-maker*).

(1) This part applies to all VA major Federal actions. VA anticipates, on the basis of its experience, that the following types of actions are generally "major":

- (i) Construction and maintenance projects;
- (ii) Real property acquisition and disposal;
- (iii) Leases and sharing agreements;
- (iv) Grants and other funding actions; and
- (v) Other facility and asset management decisions.

(2) VA will determine that NEPA does not apply to a proposed action when:

(i) The activities or decision do not result in final agency action under the Administrative Procedure Act (5 U.S.C. 704) or other relevant statute that also includes a finality requirement;

(ii) The proposed activity or decision is explicitly exempt from NEPA by law;

(iii) NEPA compliance would clearly and fundamentally conflict with another provision of law;

(iv) Congress, by statute, has prescribed decisional criteria with sufficient completeness and precision such that VA retains no residual discretion to alter its action based on the consideration of environmental factors, in which case that function of VA is nondiscretionary within the meaning of NEPA section 106(a)(4) and/or section 111(10)(B)(vii) (42 U.S.C. 4336(a)(4) and 4336e(10)(B)(vii), respectively), and NEPA does not apply to the action in question;

(v) The proposed action is an action for which another statute's requirements serve the function of agency compliance with NEPA; or

(vi) The proposed action is not a "major Federal action." The terms "major" and "Federal action," each have independent force. NEPA applies only when both of these two criteria are met. Such a determination is inherently bound up in the facts and circumstances of each individual situation, and is thus reserved to the judgment of VA in each instance. NEPA does not apply to "non-Federal actions." Therefore, under section 111(10)(B)(i) of NEPA, NEPA does not apply to actions with no or minimal Federal funding, or with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project (42 U.S.C. 4336e(10)(B)(i)). A "but-for" causal relationship is insufficient to make an agency responsible for a particular action under NEPA. By the same token, minimal Federal funding or involvement, which may in a causal sense be a "but-for" cause of an action, does not by itself convert that action into a Federal action within the meaning of the language of the statute. VA has determined that the following non-exhaustive list of VA activities or decisions are not subject to NEPA because they presumptively do not meet the definition of a "major Federal action":

(A) Entitlement actions (see § 26.83(d)) and the VA home loan guaranty program; or

(B) The actions involve routine administrative matters including but not limited to funding salaries, fellowships, corresponding fringe benefits, and travel; budgeting; finance; program management; and record keeping.

(vii) In determining whether NEPA applies to a proposed agency action, VA will consider only the action or project at hand.

§ 26.12 Definitions.

(a) All definitions of words and phrases in section 111 of NEPA (42 U.S.C. 4336e) apply to the procedures in this part.

(b) In addition to the terms defined in section 111 of NEPA (42 U.S.C. 4336e), the following definitions apply to the procedures in this part:

Applicant means a non-Federal entity that seeks an action by VA such as granting a permit, license, or financial assistance. The term *applicant* includes Project Sponsors as referenced in sections 107(f) and 112 of NEPA (42 U.S.C. 4336a(f); as amended through Pub. L. 119-21, July 4, 2025).

Approval authority means the responsibility and authority to approve and sign a decision document such as a finding of no significant impact or record of decision, a memorandum of agreement, a consultation letter, or programmatic agreement. VA has approval authority for all VA actions. VA assigns and may delegate approval authority according to § 26.13.

Connected actions means a separate Federal action within the authority of VA that is closely related to the proposed agency action and should be addressed in a single NEPA document because the proposed agency action:

(i) Automatically triggers the separate Federal action, which independently would require the preparation of additional NEPA documents;

(ii) Cannot proceed unless the separate Federal action is taken previously or simultaneously; or

(iii) Is an interdependent part of a larger Federal action that includes a separate Federal action, which mutually depend on the larger Federal action for their justification.

Decision document means a record of decision for an environmental impact statement, a finding of no significant impact for an environmental assessment, or the categorical exclusion document required for application of certain categorical exclusions as required in § 26.30(a).

Decision-maker means the entity or individual within VA with the authority to decide whether to proceed on a proposed action or select an alternative. In many, but not all, cases, the decision-maker will be the same individual or entity as the proponent. See also § 26.13(e) for a discussion of decision-maker responsibilities.

Effects or impacts means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.

(i) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects. Effects appropriate for analysis under NEPA may be either beneficial or adverse, or both, with respect to these values.

(ii) A “but-for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to the limits of its regulatory authority, or that would occur regardless of the proposed action, or that would need to be initiated by a third party.

Extraordinary circumstances means factors or circumstances that indicate a normally categorically excluded action may have a potentially significant effect as described in § 26.30(b).

Human environment or environment means comprehensively the natural and physical environment and the relationship of present and future generations with that environment.

Interim action means an action taken before the decision document is issued. Interim actions include but are not limited to VA actions for individual projects within a

program before a programmatic analysis is complete for the entire program. See § 26.60(c) for limitations on actions during the NEPA process.

Jurisdiction by law means agency authority to approve, veto, or finance all or part of the proposal.

Mitigation means measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in a NEPA document and that have a nexus to those effects. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation can include:

(i) Avoiding the impact altogether by not taking a certain action or parts of an action.

(ii) Minimizing effects by limiting the degree or magnitude of the action and its implementation.

(iii) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(iv) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(v) Compensating for the impact by replacing or providing substitute resources or environments.

NEPA document means a categorical exclusion document, environmental assessment, environmental impact statement, finding of no significant impact, record of decision, notice of intent, notice of availability, or any other document prepared by VA pursuant to a requirement of NEPA. This is inclusive of “environmental documents” as defined in section 111(5) of NEPA (42 U.S.C. 4336e(5)), which refers specifically to environmental impact statements, environmental assessments, and findings of no significant impact.

NEPA Implementation Officer means the VA official responsible for helping to ensure the successful implementation of the NEPA process across all VA offices and administrations. See § 26.13(f) for a list of responsibilities.

NEPA process means all measures necessary for compliance with the requirements of section 2 and title I of NEPA (42 U.S.C. 4321, 4331-4336e; section 112 as amended through Pub. L. 119-21, July 4, 2025).

NEPA Specialist means a technical specialist in VA for matters relating to NEPA. See § 26.13(h) for a list of responsibilities.

No action alternative means the option of maintaining the status quo and not proceeding with any action. The no action alternative may be included in the reasonable range of alternatives and may establish a benchmark for comparative analysis under NEPA.

Notice of availability means a notice announcing the issuance and public availability of a NEPA document.

Notice of intent means a public notice that an agency will prepare and consider an environmental impact statement or, as applicable, an environmental assessment.

Other environmental planning requirements means environmental planning requirements including, but not limited to, section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and its implementing regulations, section 7 of the Endangered Species Act (16 U.S.C. 1536) and its implementing regulations, Executive orders, and other environmental laws.

Proponent means the VA element, employee, or representative responsible for planning and initiating the proposed action. In many, but not all, cases, the proponent will be the same individual or entity as the decision-maker. See § 26.13(g) for a list of responsibilities.

Proposed action is used synonymously with “proposal” in this part; see 42 U.S.C. 4336e(12) for the definition of a proposal.

Public means individuals, non-governmental organizations, and community groups. VA may involve the public in the NEPA process through notice and comment procedures. *Affected public* means those parties with a special interest in a proposed action. Affected public includes, but is not limited to, veterans, entities living in close proximity to a proposed action, and entities whose property or other interests may be affected by potential effects of a proposed action. See § 26.42 for public engagement procedures.

Publish and publication mean methods found by the agency to efficiently and effectively make NEPA documents and information available for review by interested persons, including electronic publication.

Related action means an action undertaken by an agency, for example, a permitting action, some other type of authorization action, an analysis required by statute, or the like, that bears a relationship to other actions undertaken by other agencies relevant to NEPA, such that a set of related actions are all related to one overarching project.

Reasonable alternatives means a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.

Reasonably foreseeable means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

Record of decision means a concise public document prepared by VA after an environmental impact statement is complete and that includes all elements listed in § 26.60(a)(2).

Scope consists of the range of actions, alternatives, and effects to be considered in a NEPA document. The scope of an individual statement may depend on its relationships to other statements.

Supplemental means an analysis performed after an environmental assessment or environmental impact statement has been issued. Supplemental analyses are prepared when the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are substantial new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects.

Tiering refers to the coverage of general matters in broader environmental impact statements or environmental assessments (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin-wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.

United States means all States, territories, and possessions of the United States, including all waters and air space subject to the territorial jurisdiction of the United States.

VA elements mean all entities within VA, including but not limited to all offices, programs, and administrations within VA.

§ 26.13 Responsibilities.

(a) *Successful completion.* The successful completion of the NEPA process is the duty of:

- (1) VA elements;
- (2) Persons authorizing or approving VA actions; and

(3) Persons charged by VA to ensure the successful implementation of any and all elements of NEPA.

(b) *Applicants.* VA relies upon applicants to supply the environmental information necessary to complete the NEPA analysis of proposed VA funded and Federal assistance actions and alternatives. VA retains the responsibility for compliance with NEPA and cannot delegate this responsibility to applicants.

(c) *Secretary of VA.* The Secretary of VA recognizes the importance of environmental stewardship and promotes the integration of an environmental ethic into all agency decision-making. The Secretary possesses the ultimate responsibility to ensure VA's compliance with NEPA and other environmental planning requirements.

(1) The Secretary has the following objectives for the NEPA process:

(i) Efficient, timely, and effective NEPA planning;

(ii) Maintenance of sufficient resources to meet the goals of timely, effective, and high-quality NEPA analyses;

(iii) Full compliance with all environmental laws, regulations, and Executive orders; and

(iv) Consistency with other VA mission objectives, including service to veterans, fiscal responsibility, and national security.

(2) The Secretary will:

(i) Consider the environmental effects of his/her decisions;

(ii) Plan, program, and budget for the requirements of this part;

(iii) Fully integrate the requirements of this part into planning and decision-making for all policies, programs, activities, and operations of VA; and

(iv) Delegate the authority to the Under Secretaries, Assistant Secretaries, and Directors of Staff Offices to implement the requirements of this part, including designation of the NEPA Implementation Officer; delegation of the authority to review

NEPA analyses for technical adequacy and to sign NEPA decision documents based on technical adequacy; and delegation of overall agency NEPA compliance to the Senior Agency Official, who VA will specify in an agency-wide directive on NEPA roles and responsibilities. The Senior Agency Official is an individual with assistant secretary rank or higher and is typically within the Office of Acquisition, Logistics, and Construction.

(d) *Under Secretaries, Assistant Secretaries, and Directors of Staff Offices.* The Under Secretaries, Assistant Secretaries, and Directors of Staff Offices or their delegate will:

(1) Assess environmental and historic preservation consequences of proposed, new, and on-going programs within their respective organizational units; and

(2) Delegate to points of contact within their organizations as needed to support NEPA compliance.

(e) *Decision-makers.* VA decision-makers may include but are not limited to Under Secretaries; medical center and cemetery administration directors; and regional medical, benefits, and cemetery administration directors. VA decision-makers will:

(1) Integrate environmental and historic preservation considerations into their decision-making prior to taking action; and

(2) Sign decision documents, as specified in an agency-wide directive on NEPA roles and responsibilities.

(f) *NEPA Implementation Officer.* The NEPA Implementation Officer is designated by the Secretary or the Secretary's designee, and has the authority to implement the Secretary's objectives for the NEPA process. The NEPA Implementation Officer has the requisite expertise and experience with NEPA to manage implementation of NEPA throughout VA. Typically, the NEPA Implementation Officer is a director within the Office of Construction & Facilities Management; VA will specify the location of this function in an agency-wide directive on NEPA roles and responsibilities.

- (1) Support VA's compliance with NEPA and other environmental planning requirements;
- (2) Provide technical expertise and guidance for proposed plans, programs, and activities throughout VA;
- (3) Inform key environmental staff and Under Secretaries, the Senior Agency Official, Assistant Secretaries, and Directors of Staff Offices about the methods and status of NEPA implementation throughout VA programs and offices;
- (4) Advise proponents, decision-makers, and procurement officials on the status and requirements for the NEPA analysis of VA actions;
- (5) Develop and provide, as needed, supplemental guidance and training to enable the effective implementation of this part and other environmental planning requirements across all VA elements;
- (6) Promote early outreach and solicitation of environmental information for NEPA analysis;
- (7) Coordinate requests for cooperating agency status and joint lead agency status and coordinate with State, local, and Tribal agencies as needed with respect to completion of the NEPA process;
- (8) Liaise with the Advisory Council on Historic Preservation, the Environmental Protection Agency, and other Federal agencies as needed to satisfy coordination requirements and implement the NEPA process;
- (9) Promote the involvement of the public and other non-Federal entities in the NEPA analysis of VA actions with respect to completion of the NEPA process;
- (10) Identify discretionary activities within VA and ensure that VA fully integrates the requirements of this part into the planning and implementation of those activities;
- (11) Sign records of decision (RODs) for environmental technical adequacy;

(12) Review and approve requests from NEPA Specialists to adopt other agencies' CATEXs in accordance with § 26.31 or rely on NEPA documents from other Federal agencies in accordance with § 26.71;

(13) Work with the Senior Agency Official, Under Secretaries, Assistant Secretaries, and Directors of Staff Offices to accomplish the VA mission in harmony with environmental stewardship by:

(i) Ensuring the NEPA process is complete before VA makes a decision or takes an action concerning the proposal that has an adverse environmental effect or limits the choice of reasonable alternatives;

(ii) Ensuring VA elements are aware of mitigation commitments to address the potential environmental effects of VA programs, projects, and plans; and

(iii) Monitoring the NEPA process to ensure compliance with timing, page limit, scoping, consultation, circulation, and public engagement requirements; and

(14) Delegating authority to sign NEPA documents to NEPA Specialists as appropriate.

(g) *Proponent*. Proponents are those VA staff in project or functional management positions in a facility or component organization within the Veterans Health Administration, National Cemetery Administration, Veterans Benefits Administration, or a VA program office. Proponents do not include applicants, non-Federal entities, or entities located organizationally outside of the VA element that is responsible for implementing the project. The proponent will:

(1) Consult with a NEPA Specialist or the NEPA Implementation Officer at the beginning of the planning and feasibility stage of any proposed action and before involving the public;

(2) Ensure the budget for a proposed VA action is adequate to comply with applicable environmental and historic preservation laws;

(3) Ensure the schedule for the proposed VA action includes sufficient time for compliance with relevant environmental and historic preservation laws, including NEPA and the National Historic Preservation Act (NHPA);

(4) Initiate and coordinate with the appropriate environmental support to conduct the NEPA analysis prior to undertaking an action;

(5) Review and consider NEPA analyses before making a decision that has environmental or historic preservation effects or limits the choices of alternatives for a VA action; and

(6) Consider mitigation measures and ensure VA requires and provides for mitigation tasks and monitoring.

(h) *NEPA Specialists*. NEPA Specialists act as the technical specialists in VA for matters relating to the NEPA process and help to ensure its functional integration into the VA mission. NEPA Specialists support the NEPA Implementation Officer with advice and assistance for implementing NEPA in their respective offices and programs. NEPA Specialists may include but are not limited to facility environmental managers, national and regional environmental staff, and other staff specialists throughout VA. NEPA Specialists will:

(1) Act to support and ensure compliance with the requirements of NEPA, this part, applicable Executive orders, and other environmental and historic preservation requirements in conjunction with the proponent;

(2) Provide technical advice on the NEPA process to proponents, decision-makers, the NEPA Implementation Officer, and Under Secretaries, Assistant Secretaries, and Directors of Staff Offices; and

(3) Sign decision documents for technical adequacy, with the project decision itself documented by the approval signature on each decision document as specified

throughout this section and in an agency-wide directive on NEPA roles and responsibilities.

(i) *Procurement Officials*. The Procurement Officials will expeditiously support and execute contract actions to support completion of NEPA analyses within required timeframes.

(j) *Office of General Counsel*. The Office of General Counsel will:

(1) Advise VA, in consultation with the NEPA Implementation Officer, on whether a proposed action is subject to the procedural requirements of NEPA, NHPA, the Endangered Species Act (16 U.S.C. 1531-1544), or other environmental or historic preservation laws, Executive orders, and regulations;

(2) Advise VA on compliance with environmental and historic preservation laws, regulations, applicable Executive orders, and other planning requirements;

(3) Assist in establishing or revising VA's NEPA procedures and guidance documents, including appropriate CATEXs; and

(4) Provide VA with legal sufficiency reviews on environmental and historic preservation analyses, programmatic agreements, interagency agreements, consultations with other Federal agencies, and general legal advice as needed.

(k) *Federal Preservation Officer*. The Federal Preservation Officer will:

(1) Act as the single point of contact for all matters in VA related to stewardship of historic properties and cultural resources;

(2) Inform Under Secretaries, Assistant Secretaries, Directors of Staff Offices, and key environmental and historic preservation staff of current developments in historic preservation policy and programs;

(3) Provide guidance to VA project proponents and advise as needed in consultations with Tribes, Native Hawaiian organizations, and State Historic Preservation Officers; and

(4) Determine which personnel, VA staff, or contractors are qualified to meet the requirements of section 112 of the NHPA (54 U.S.C. 306131) and work on historic resources issues.

(l) *Senior Agency Official*. The Senior Agency Official is an individual with assistant secretary rank or higher. The Senior Agency Official is typically within the Office of Acquisition, Logistics, and Construction, and will be specified in an agency-wide directive on NEPA roles and responsibilities. The Senior Agency Official will:

(1) Act as the designee for oversight over VA NEPA compliance;

(2) Promote timely NEPA analysis;

(3) Review and approve requests for VA to serve as the lead agency for joint Federal NEPA actions, where VA and one or more Federal agencies are cooperating on a project;

(4) Resolve implementation issues; and

(5) Delegate authority for these responsibilities as appropriate.

§ 26.14 Environmental practices.

(a) *Efficiency*. VA seeks out opportunities to avoid duplication and delay in the approval of VA actions by integrating the NEPA process into the VA decision-making process as early as possible. For this reason, VA promotes an agency-wide system of NEPA analysis in this part for quality assessment of environmental effects.

(b) *Capability*. VA will maintain the staff and resources necessary to comply with the requirements of this part. VA may use a contractor or other third party to meet the requirements of NEPA and the procedures in this part, provided VA retains sufficient resources to evaluate the work of those non-VA entities.

(c) *Similar actions*. VA will analyze similar actions the same way regardless of the proponent or funding source.

(d) *Combining NEPA with other environmental and historic preservation requirements.* VA encourages all VA elements to integrate the effects analyses required by other Federal and State environmental laws into the NEPA process to the maximum extent practicable. Through integration into one decision-making process, VA improves the quality of analysis of environmental effects, reduces project delays, and enhances the scoping process for discovering relevant environmental issues.

(1) *Environmental laws.* VA will integrate evaluation required by other environmental laws into the NEPA process, including but not limited to section 106 of the NHPA (54 U.S.C. 306108), section 7 of the Endangered Species Act (16 U.S.C. 1536), and section 404 of the Clean Water Act (33 U.S.C. 1344). VA achieves meaningful integration by synchronizing the timing of reviews under separate laws, removing duplication for requirements such as public comment periods when allowable, and ensuring that the NEPA analysis includes a discussion of the applicable laws and results of any consultation or analysis. VA may also use NEPA as a substitute for section 106 of the NHPA (54 U.S.C. 306108), as allowable under 36 CFR 800.8(c), when the stipulated requirements are met.

(2) *Timing.* VA will integrate other environmental laws into the NEPA process as early as possible. Each environmental law has its own timing requirements. Where VA can initiate or conduct consultations and permits during the NEPA (planning) phase for a project, VA may integrate them into the NEPA review.

(3) *Responsibility.* The NEPA Specialist and proponent are responsible for early integration of other environmental laws. The NEPA Specialist advises on the environmental laws applicable to the action.

(4) *Documentation.* VA will integrate documentation of compliance with other environmental requirements into the NEPA process and include this documentation in the documentation created during the NEPA analysis.

(5) *Executive orders.* VA will integrate compliance with Executive orders related to environmental issues into the NEPA process. VA recognizes its duty to promote the policies set forth in Executive orders that address environmental issues evaluated in NEPA documents, including but not limited to environmental designations such as floodplains, environmental quality, and resource protection.

(e) *Programmatic NEPA documents.* VA prepares programmatic NEPA documents to analyze all or some of the environmental effects of a policy, program, plan, or group of related actions. VA can use programmatic NEPA documents as stand-alone documents when sufficient information is available to evaluate all potential effects or when VA anticipates subsequent analysis for specific projects once additional information is available. A programmatic NEPA document pre-positions environmental information for VA decision-makers to expedite the approval process of a VA action and eliminates repetitive discussions of the same issues. See § 26.70 for VA requirements for a programmatic NEPA analysis.

(f) *Connected actions.* VA will address connected actions in a single NEPA document.

SUBPART B—NEPA PROCESS FOR VA ACTIONS

§ 26.20 Purpose of this subpart.

This subpart outlines the requirements and process for NEPA compliance to inform VA decision-making. Section 26.21 provides context by explaining how VA will integrate NEPA with VA planning. Remaining §§ 26.22 through 26.73 lay out NEPA analysis options and NEPA implementation methods specific to those options.

§ 26.21 Integrating NEPA with VA planning.

(a) *General.* (1) Integration of the NEPA process with VA project and program planning will occur at the earliest relevant stage in the project life cycle to ensure that:

(i) VA minimizes delays and potential conflicts in the NEPA process;

(ii) VA decisions incorporate the environmental values and policies reflected in this part; and

(iii) VA takes no action concerning the proposal that would have an adverse environmental effect or limit the choice of reasonable alternatives until VA issues a ROD or finding of no significant impact (FONSI), or makes a CATEX determination. If VA is considering an application from a non-Federal entity and becomes aware that the applicant is about to take an action within VA's jurisdiction that would meet either of the criteria that would have an adverse environmental effect or limit the choice of reasonable alternatives, VA will promptly notify the applicant that VA will take appropriate action to ensure that VA achieves the objectives and procedures of NEPA. This section does not preclude development by applicants of plans or designs or performance of other activities necessary to support an application for Federal, State, Tribal, or local permits or assistance. When considering a proposed action for Federal funding, VA may authorize such activities, including, but not limited to, acquisition of interests in land (for example, fee simple, rights-of-way, and conservation easements), purchase of long lead-time equipment, and purchase options made by applicants.

(2) Relevant NEPA documents, comments, and responses will accompany other decision documents through the decision-making process.

(b) *Acquisition.* VA will integrate the NEPA process and schedule with the acquisition and procurement process such that:

(1) Consideration of NEPA and planning for NEPA compliance begins as soon as VA identifies the need to acquire real property or materials that VA would use in implementing a major Federal action;

(2) Planning and budgeting activities include gathering data to identify relevant environmental issues and alternatives through the NEPA scoping process; and

(3) VA prepares the appropriate NEPA documents based on the entirety of the proposed action, including VA's proposed development and use of real property or materials.

(c) *Construction projects*—(1) *Design/build*. VA must align contracting decisions for design and construction with VA construction standards and requirements. VA will ensure the NEPA process is completed for all design/build actions before initiating construction or irretrievably committing resources to a construction project. Design/build actions are those actions in which VA hires one contractor to complete the design and construct the project, often shortening the time for contract completion.

(i) To prevent taking actions concerning the proposal that would have an adverse environmental effect or limit the choice of reasonable alternatives prior to completion of the NEPA process, VA will:

(A) Ensure that reasonable alternatives are not eliminated before the NEPA process is complete;

(B) Ensure the NEPA process is underway and advanced as far as possible given the available data prior to award of the design/build contract;

(C) Ensure the NEPA process is complete (as evidenced by signed CATEX determination, signed FONSI, or signed ROD) prior to initiation of on-site construction including site clearing or demolition; and

(D) Include language in design/build contracts that duly notes the project may not proceed until the NEPA process is completed (as evidenced by signed CATEX, signed FONSI, or signed ROD).

(ii) To facilitate the design/build process, VA may:

(A) Issue a request for quotations or request for proposals prior to completion of NEPA, so long as the request for quotations or request for proposals informs proposers

of the status of the NEPA process and makes no commitment as to any alternative under consideration including any no action alternative;

(B) Conduct preliminary design work; and

(C) Support coordination with regulatory agencies under NHPA or other environmental laws.

(2) *Design/bid/build*. VA will ensure compliance with the NEPA process for design/bid/build projects. For design/bid/build projects, VA has separate contracts for the design versus construction of a project. To ensure compliance with NEPA, VA will:

(i) Ensure design and construction contractors align design and construction activities with VA construction standards and requirements; and

(ii) Not irretrievably commit resources to construction prior to completion of the NEPA analysis of all reasonable alternatives.

(3) *Mitigation and monitoring*. VA will ensure construction contractors follow any mitigation and monitoring measures committed to during the NEPA process. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation.

§ 26.22 Determining the appropriate level of NEPA review.

(a) If VA determines under § 26.11 that NEPA applies to a proposed activity or decision, VA will then determine the appropriate level of NEPA review in the following sequence and manner. At all steps in the following process, VA will consider the proposed action or project at hand and its effects.

(1) If VA has established, or adopted pursuant to section 109 of NEPA (42 U.S.C. 4336c), a CATEX that covers the proposed action, VA will analyze whether to apply the CATEX to the proposed action and apply the CATEX, if appropriate, pursuant to § 26.30.

(2) If another agency has already established a CATEX that covers the proposed action, VA will consider whether to adopt that CATEX pursuant to § 26.31 so that it can be applied to the proposed action at issue, and to future activities or decisions of that type.

(3) If the proposed action warrants the establishment of a new CATEX, or the revision of an existing CATEX, pursuant to § 26.30(d), VA will consider whether to so establish or revise, and then apply the CATEX to the proposed action pursuant to § 26.30(d).

(4) If VA cannot apply a CATEX to the proposed action consistent with paragraphs (a)(1) through (3) of this section, VA will consider the proposed action's reasonably foreseeable effects consistent with paragraph (b) of this section, and then will:

(i) If the proposed action is not likely to have reasonably foreseeable significant effects or the significance of the effects is unknown, develop an environmental assessment (EA), as described in § 26.40; or

(ii) If the proposed action is likely to have reasonably foreseeable significant effects, develop an environmental impact statement (EIS), as described in § 26.41.

(b) When considering whether the reasonably foreseeable effects of the proposed action are significant, VA will analyze the potentially affected environment and degree of the effects of the action. VA may use any reliable data source and will not undertake new research unless it is essential to evaluating alternatives and the cost and time of obtaining it are not unreasonable.

(1) In considering the potentially affected environment, VA may consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources.

(2) In considering the degree of the effects, VA may consider the following, as appropriate to the specific action:

- (i) Both short- and long-term effects.
- (ii) Both beneficial and adverse effects.
- (iii) Effects on public health and safety.
- (iv) Economic effects.
- (v) Effects on the quality of life of the American people.

§ 26.30 Categorical exclusions.

(a) *Documentation and procedures*—(1) *Project description*. For CATEXs that require documentation for each proposed action, the proponent or applicant must include the location of the project, the project number (if known), and a project description in a CATEX document. The project description is a brief statement of the project or activities proposed to occur, the existing environment at the project site, and any mitigation incorporated into the project to ensure there are no extraordinary circumstances that would prevent the application of the CATEX. If any unusual activities or potential extraordinary circumstances exist, then the description must disclose that information and whether these circumstances prevent the application of the CATEX. Where extraordinary circumstances are present, the agency should consider whether the application of the CATEX is still appropriate notwithstanding the presence of extraordinary circumstances because, even with the extraordinary circumstance, the proposed action does not have the potential to result in significant impacts. The mere presence of an extraordinary circumstance does not prevent the application of the CATEX.

(2) *CATEX being applied*. The CATEX document, if § 26.32 requires one, must identify the specific CATEX or CATEXs from § 26.32 for which the NEPA Specialist determines the proposed action is eligible.

(3) *Level of analysis.* The NEPA Specialist must indicate, and the approval authority consistent with VA policy or directive must approve, in a CATEX document, if one is required, that no EA or EIS is required and affirmatively state the intent to categorically exclude the proposed action.

(4) *Integration of other laws.* VA will integrate other environmental compliance requirements including NHPA into the NEPA process for CATEX actions. If the review of a CATEX action results in a determination that the proposed action complies with other environmental requirements and the proposed action, as mitigated if necessary, avoids significant impacts to those resources, then no further NEPA analysis is required under this part and VA will document this determination when required. If the level of effects related to other environmental compliance requirements is unclear, VA will determine whether to proceed to an EA or EIS.

(5) *Determination.* VA must make the determination of whether to issue a CATEX or proceed to an EA or EIS. If § 26.32 requires a CATEX document for a proposed action, a NEPA Specialist and decision-maker sign it to confirm the determination in the CATEX. The annotation “CXdoc” for certain CATEXs listed in § 26.32 identifies those that require a CATEX document for each proposed action.

(6) *Documenting the decision to use a CATEX.* When using a CATEX that requires documentation of each proposed action, VA will document the use of a CATEX prior to making a decision on the proposed action. The CATEX document will provide the information required in paragraphs (a)(1) through (3) of this section and be conducted in accordance with the requirements in paragraphs (a)(4) and (5) of this section.

(b) *Extraordinary circumstances review.* Examples of extraordinary circumstances include whether the action:

(1) Introduces and/or uses technology with unknown environmental impacts;

(2) Has a reasonable likelihood of violating any Federal, State, or local law or requirement imposed for the protection of the environment;

(3) Has an effect that has not been satisfactorily resolved through another applicable environmental review or consultation process such as Coastal Zone Management Act (16 U.S.C. 1451-1466) consistency, NHPA section 106 (54 U.S.C. 306108) consultation, Endangered Species Act section 7 (16 U.S.C. 1536) consultation, or issuance of a relevant permit;

(4) Involves effects on the environment that are highly uncertain, or involve unique or unknown risks; or

(5) Establishes a precedent (or makes decisions in principle) for future or subsequent actions that are reasonably likely to have a future significant effect.

(c) *Public notice.* In certain situations, VA may choose to publish a CATEX document. These situations may include, but are not limited to, proposed actions that are of national focus or otherwise involve special issues that would make the proposed action of particular interest to the public. VA may publish a CATEX document on its website, in local newspapers, or in any other manner to reach the interested public.

(d) *VA review of list of categorical exclusions.* (1) VA may periodically review the list of CATEXs published in § 26.32 for continued relevance to VA programs and missions, additional experience on implementing actions that do not generate significant impacts, and improvements in clarity and appropriate limiting factors where needed. This review may conclude with recommendations to add, delete, or revise one or more CATEXs or to add or delete the requirement for project-specific documentation for application of a specific CATEX.

(2) VA may also consider revisions to the CATEX list when substantial changes or additions to VA plans, programs, or activities occur such that the current CATEX list

may be inadequate or inaccurate given the current scope of VA activities. Potential triggers for revising the VA CATEX list may include:

(i) VA determines a class of actions are not expected to have significant environmental effects;

(ii) VA performs NEPA reviews of a class of actions and determines that, when implemented, the actions resulted in no significant environmental impacts;

(iii) Mission changes occur within the VA organization; or

(iv) VA acquires new responsibilities through legislation or administrative restructuring.

(3) To establish or revise a CATEX, VA will determine that the category of actions normally does not significantly affect the quality of the human environment. In making this determination, VA will:

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

(ii) Consult with CEQ on its proposed CATEX, including the written record, for a period not to exceed 30 days prior to providing public notice as described in paragraph (d)(3)(iii) of this section; and

(iii) Provide public notice in the *Federal Register* of VA's establishment or revisions of the CATEX and the location (for example, website) of availability of the written record.

§ 26.31 Adoption and application of CATEXs from another agency's NEPA procedures.

(a) VA may adopt and then apply CATEXs listed in another agency's NEPA procedures after consulting with the other agency when:

(1) VA has determined that it proposes to undertake actions for which another agency has listed a CATEX in its final NEPA procedures; and

(2) VA finds through consultation with the other agency that the adoption and application of the other agency's CATEX to a specific VA action or category of actions is appropriate.

(b) VA shall document the results of the consultation with the other agency including:

(1) How the adoption and application of the CATEX is appropriate for the VA actions;

(2) Whether the other agency identified any limiting factors or extraordinary circumstances specific to the CATEX;

(3) The extraordinary circumstances VA will consider in applying the CATEX; and

(4) Whether each application of the CATEX requires project-specific documentation.

(c) This documentation may take the form of a VA memorandum with attached concurrence of appropriate application of the CATEX to the VA activity from the other agency and VA must publish it on the VA website.

(d) When applying a CATEX adopted from another agency's NEPA procedures to a VA project, VA shall not use another agency's CATEX if there are extraordinary circumstances that would prevent the application of the CATEX.

§ 26.32 List of VA categorical exclusions.

(a) The following classes of major Federal actions, which VA has determined normally do not significantly affect the quality of the human environment, may be categorically excluded from further NEPA analysis. The actions in this section followed by the parenthetical notation "(CXdoc)" require preparation of a CATEX document for each action, in accordance with § 26.30.

(1) *VA-wide operations*—(i) *CATEX 1: Field exercises and training*. Training with field exercises (such as for medical, police, fire, and emergency management

personnel) for emergency preparedness that substantially conforms to the use of the space where the training is proposed or does not otherwise impact the proposed training area (no ground disturbance or adverse effects to air, water, historic resources, or wildlife habitat).

(ii) *CATEX 2: Field studies and surveys.* Site characterization studies and environmental monitoring, including siting, erecting, operating, and dismantling or closing of characterization and monitoring devices, in compliance with applicable environmental and historic preservation requirements. Such activities include, but are not limited to:

(A) Site characterization and environmental monitoring activities;

(B) Feasibility studies;

(C) Geological, geophysical, geochemical, and engineering surveys, including the establishment of survey marks;

(D) Installation and operation of ambient air monitoring equipment;

(E) Sampling and characterization of surface and ground waters, soils, rocks, spills, or contaminants;

(F) Sampling and characterization of water effluents, air emissions, or solid waste streams;

(G) Sampling of flora or fauna; and

(H) Historic property identification and evaluation studies.

(iii) *CATEX 3: Special events, ceremonies, and related activities.* Hosting of special events or short-term ceremonies, including erection of temporary shelters or other structures to be used for the event or ceremony at VA cemeteries, medical centers, or ancillary facilities, including but not limited to Federal holiday events. The event must not exceed applicable noise ordinances or site capacity. The associated

structures must be used only for the purposes of the event or ceremony and the duration of such structures must not substantially exceed the duration of the event.

(iv) *CATEX 4: Waste management.* Routine waste management, including transportation, collection, storage, treatment, removal, and disposition activities for solid waste, medical waste, special hazards (for example, asbestos, polychlorinated biphenyls, lead-based paint), and hazardous waste that comply with existing Federal, State, and local laws and regulations. This CATEX is not applicable to new construction of facilities for such management purposes.

(v) *CATEX 5: Transportation.* Routine transportation of veterans, VA employees, and/or other eligible persons and supplies for medical care, administrative, or other mission-related purposes using existing roads and vehicles.

(2) *Housing operations—(i) CATEX 6: Provision of housing.* Provision of VA housing services to veterans, VA employees, or other eligible persons in existing structures on property with substantially completed infrastructure when the placement does not exceed the capacity of existing transportation, waste, energy, or water infrastructure.

(ii) [Reserved]

(3) *Acquisition or disposition of land, buildings, or space—(i) CATEX 7: Acquisition of space within an existing structure (CXdoc).* VA acquisition of space within an existing structure where there is no change in the general type of use and no more than a 20 percent increase in maximum occupancy level is proposed (previous occupant need not have been a Federal tenant). This also includes lease extensions, renewals, or succeeding leases for VA-occupied space provided the continued use(s) are the same as those contained in the original lease.

(ii) *CATEX 8: Acquisition of land and/or buildings (CXdoc).* VA acquisition of land and/or buildings in the following circumstances:

(A) Acquisition of land where there is no near-term (within approximately five years) proposed change in the general type of use; where, if the land is previously undisturbed, it will remain undisturbed for the near term; or where the continued use will not create significant impacts to the surrounding environment; or

(B) If there are structures or buildings on the land, the acquisition will not increase the previous maximum occupancy level by more than 20 percent (previous occupant need not have been a Federal tenant), although demolition in compliance with environmental and historic preservation requirements may occur.

(iii) *CATEX 9: Out-leases to third party tenants (CXdoc)*. Out-leases to third party tenants of buildings and/or land, where there is no change in the general type of use and no more than a 20 percent increase in the previous maximum occupancy level is proposed, where the out-lease and use by third party tenants will comply with applicable environmental and historic preservation requirements.

(iv) *CATEX 10: Agreements for use of VA-owned space (CXdoc)*. Agreements (for example, permits or licenses) for use of VA-owned space with other Federal or State agencies or entities for sharing of space and resources consistent with their previous use by either agency or entity. This includes agreement extensions, renewals, or succeeding permits or licenses provided the continued use(s) are the same as those contained in the original permit or license to other agencies or entities on VA land.

(v) *CATEX 11: Disposal of real property (CXdoc)*. Disposal of real property to another Federal, State, or local agency; Tribe; private entity; or non-profit group, including demolition and site restoration, that conforms to the requirements of the General Services Administration Real Property Utilization and Disposal Resource Guide or subsequent similar guidance and where the reasonably foreseeable subsequent use is of similar intensity to VA's use and meets the requirements of all applicable environmental and historic preservation laws and guidance.

(4) *Services and procurement*—(i) *CATEX 12: Medical-related services.*

Provision of medical care to veterans or other eligible persons including but not limited to medical diagnostic, treatment, and care services; distribution (and return) of pharmaceuticals, prosthetics, home oxygen, and other medical supplies; and provision of home healthcare services in support of normal day-to-day activities for provision of medical care.

(ii) *CATEX 13: Research.* Research activities conducted within an existing laboratory or other contained facility where all applicable safety and environmental requirements are met. May include use and disposition of radionuclides or hazardous or biological materials for research purposes that comply with VA master materials license requirements and any other applicable environmental and health and safety requirements.

(iii) *CATEX 14: Laundry and food services.* Laundry and food services operations from existing facilities conducted on-site at VA medical centers or ancillary VA facilities in compliance with applicable environmental, historic, and health and safety requirements.

(iv) *CATEX 15: Procurement, lease, transport, storage, and disposition of supplies, materials, and equipment.* Procurement and/or lease, transport, storage, and disposition of materials, supplies, and equipment related to medical treatment, diagnostic support, or research; cemetery operations; and other agency functions. Materials, supplies, and equipment must comply with applicable Federal, State, and local requirements and be purchased in accordance with applicable Federal procurement policies and VA procurement requirements.

(5) *Cemetery Operations*—(i) *CATEX 16: Interment ceremony services.*

Interment ceremony services including but not limited to the committal service, motorcade, burial, and rendering of military honors.

(ii) *CATEX 17: Soil excavation and replacement for interments*. Soil excavation and replacement for access to pre-placed crypts for interment and for direct burials in designated interment areas in compliance with applicable environmental and historic preservation requirements.

(iii) *CATEX 18: Cemetery land development (CXdoc)*. Expansion of cemeteries where the expansion is limited to the construction and development of one or more new crypt fields or columbaria within the boundaries of an existing cemetery, and in compliance with applicable environmental and historic preservation requirements.

(6) *Electronics*—(i) *CATEX 19: Communication systems (CXdoc for ground-disturbing actions only)*. Procurement, installation, operation, modification, removal, or disposal of communication systems, computers, data processing equipment, fiber optic cables, alarm systems, wiring, antennae, and other communications equipment in accordance with applicable Federal, State, and local requirements. Includes installing or modifying communications equipment by VA, a vendor, or telecommunications provider within or on existing structures, erecting free-standing antennae, and constructing buildings or additions.

(ii) [Reserved]

(7) *New construction and related activities*—(i) *CATEX 20: New construction (CXdoc)*. New construction in either of the following circumstances:

(A) Construction on existing VA property with substantially developed infrastructure, in developed or undeveloped areas of the property, the use or operation of which, when completed, is consistent with existing VA use of the overall property, does not change the function of the facility or modify VA's intended land use, and does not exceed the capacity of existing transportation, waste, energy, or water infrastructure serving the property. These activities include but are not limited to new structures or additions to existing buildings that comply with applicable environmental and historic

preservation requirements; associated utility extensions and connections; and installation, use, and removal of facilities such as construction trailers and use of materials laydown areas during the construction process; or

(B) Acquisition of property and subsequent construction, with construction that does not exceed a total building footprint of 75,000 square feet including by build-to-suit lease, and/or 20 acres of interment space installation to be associated with an existing cemetery, and may include installation, use, and removal of facilities such as construction trailers and use of materials laydown areas during the construction process; where use will not exceed the capacity of existing transportation, waste, energy, or water infrastructure serving the property; and construction and use will comply with applicable Federal, State, and local environmental and historic preservation laws, regulations, and ordinances.

(ii) *CATEX 21: Interior renovation.* Interior renovation, alteration, restoration, or rehabilitation projects that do not adversely affect properties listed on or eligible for the National Register of Historic Places and are done in accordance with applicable environmental and historic preservation requirements.

(iii) *CATEX 22: Installing new or replacing or relocating onsite existing building components, site elements, utilities, and equipment (CXdoc).* Installing, replacing, retrofitting, upgrading, or relocating onsite in a manner that substantially conforms to the pre-existing design, function, and location and complies with applicable environmental and historic preservation requirements. These activities include but are not limited to:

(A) Installation or replacement of building components such as windows, doors, roofs, HVAC equipment, or electrical distribution system components in existing facilities;

(B) Installation or replacement of VA facility site elements such as sidewalks, patios, fences, sheds, retaining walls, curbs, parking lots, trails, memorials, fountains, benches, roads, garages, drainage structures, signs, and entrance features;

(C) Installation or replacement of site utilities whether by VA or a third party, such as water distribution lines and storage, storm or sanitary sewer lines, system generators, tanks for heating systems and/or generators, or primary or secondary electrical or communications lines, steam lines, and holding ponds, where the action does not exceed the site or system's capacity and including granting easements to utility companies to conduct these activities on VA property;

(D) Installation or replacement of equipment to support vehicular maintenance and operation (such as fuel storage, repair equipment);

(E) Installation or replacement of headstones, grave markers, statues, and monuments in existing VA cemeteries so long as the activity does not negatively affect the historic integrity or national shrine cemetery characteristics and is to a site that has been previously disturbed and can reasonably accommodate the activity; and

(F) Relocation of statues and monuments in existing VA cemeteries so long as the activity does not negatively affect historic integrity or national shrine cemetery characteristics and is to a site that has been previously disturbed and can reasonably accommodate the activity.

(iv) *CATEX 23: Repair, renovation, and maintenance.* Repair, renovation, maintenance, grounds-keeping, and custodial activities at VA facilities provided that the activities conform to pre-existing design and are performed in accordance with applicable environmental and historic preservation requirements such as those governing the use of toxic or hazardous materials. These activities include but are not limited to:

(A) Repair, renovation, and maintenance of building components such as windows, doors, roofs, HVAC equipment, and electrical distribution system components in existing facilities;

(B) Repair, renovation, and maintenance of VA facility site elements such as sidewalks, patios, fences, sheds, retaining walls, curbs, parking lots, trails, memorials, fountains, and benches;

(C) Repair, renovation, and maintenance of site utilities such as water distribution lines and storage (including water towers), storage tanks, storm or sanitary sewer lines, primary or secondary electrical or communications lines, steam lines, and holding ponds where the action is in accordance with applicable regulations and does not exceed the site or system's capacity, including granting easements to utility companies for conducting these actions on VA property;

(D) Repair, renovation, and maintenance activities for property site elements such as roads, garages, drainage structures, signs, and entrance features;

(E) Interior and exterior facility maintenance, renovation, and custodial actions to preserve facility appearance, working conditions, and sanitation, and maintain and preserve buildings, structures, infrastructures, and equipment in a condition suitable for a facility to be used for its designed purpose such as pest management measures, window washing, surface coatings, paint, street sweeping, trash collecting, and snow removal that do not adversely impact wildlife habitat or historic resources; and safety, environmental, and historic preservation requirements are met;

(F) Grounds repairs, renovation, and maintenance activities including but not limited to use of irrigation systems where there is sufficient available water to do so; mowing and trimming of vegetation; and application of fertilizers, pesticides, and herbicides;

(G) Repair, renovation, and maintenance of VA equipment and other similar assets that are not attached to a structure; and

(H) Repair, maintenance, and treatment of headstones, grave markers, columbaria, statues, monuments, and flagpoles in existing VA cemeteries so long as the activities do not negatively affect the historic integrity or national shrine cemetery characteristics.

(v) *CATEX 24: Demolition (CXdoc)*. Actions involving partial or complete demolition of non-historic structures or historic structures in accordance with applicable environmental and historic preservation requirements including but not limited to parking structures, medical center buildings, and unused buildings.

(vi) *CATEX 25: Environmental remediation and abatement*. Actions undertaken in accordance with applicable environmental and historic preservation requirements for remediating contamination of soil, water, air, biota, structures, or other environmental components and associated disposal; waste remediation or disposal; or abatement, containment, or removal and disposal of asbestos-containing material or lead-based paint from VA-owned, leased, or operated facilities.

(8) *Energy*—(i) *CATEX 26: Solar and wind energy (CXdoc)*. Installation, modification, operation, and removal on property owned or leased by VA of solar photovoltaic systems and wind turbines mounted on existing non-historic buildings or structures (for example, buildings, carports) or, if located on land, generally comprising less than 10 acres, in accordance with all applicable environmental and historic preservation requirements. For wind turbines, total height would be generally less than 200 feet (measured from ground to maximum height of blade rotation) and would comply with Federal Aviation Administration, National Weather Service, and U.S. Fish and Wildlife Service siting and design requirements and guidelines.

(ii) *CATEX 27: Retro commissioning.* Retro commissioning or re-commissioning of existing structures in accordance with applicable environmental and historic preservation requirements.

(iii) *CATEX 28: Conservation and energy efficiency measures (CXdoc for certain project types).* Actions to conserve water or energy, demonstrate potential water or energy conservation, or promote energy efficiency improvements that do not exceed capacity of system components or have the potential to change concentrations of potentially harmful substances including but not limited to:

(A) Upgrading equipment and systems with more efficient components, green-roof retrofits, weatherization, timers on hot water heaters, energy efficient lighting, low-flow plumbing fixtures, drip-irrigation systems, and efficiency rating improvements for facilities or vehicles;

(B) Ground source heat pump and combined heat and power systems (CXdoc);

(C) Beneficial landscaping;

(D) Power storage (CXdoc); and

(E) Small-scale research and development for energy efficiency and conservation (CXdoc).

(b) VA may amend this list of CATEXs by following the procedure described in § 26.30(d).

§ 26.40 Requirements for EAs.

(a) *Purpose and need.* VA will briefly discuss the purpose and need for the proposed action based on VA's statutory authority. When the proposed action concerns VA's duty to act on an application for authorization, the purpose and need for the proposed action will also be informed by the goals of the applicant.

(b) *Proposed action.* The proponent will identify a proposed action. The proposed action could be a plan, program, policy, or a specific project. VA may incorporate

avoidance or mitigation measures into the proposed action to minimize or negate adverse effects. At a minimum, the description of the proposed action will include:

(1) The proposed site location(s) or geographic extent of the proposed project, plan, or program;

(2) The proposed footprint or area of the proposed project, plan, or program;

(3) The expected duration of the project, plan, program, or policy; and

(4) A detailed description of the proposed action, including any related or connected actions.

(c) *Alternatives*. The EA will briefly discuss alternatives to the extent required by section 102(2)(H) of NEPA (42 U.S.C. 4332(2)(H)).

(d) *Scope of analysis*. The EA will briefly discuss the reasonably foreseeable effects of the proposed action and the alternatives considered.

(1) VA will focus its analysis on whether the environmental effects of the action or project at hand are significant.

(2) Similarly, VA will document in the EA where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographic territory of the project or might materialize later in time.

(3) To the extent it assists in reasoned decision-making, VA 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 VA's regulatory authority, or that would have to be initiated by a third party. If VA determines that such analysis would assist it in reasoned decision-making, it will document this determination in the EA and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate projects.

(e) *Page limits.* The text of an EA is strictly prohibited from exceeding 75 pages, not including citations or appendices.

(f) *Deadlines.* As the Supreme Court has repeatedly held, NEPA is governed by a “rule of reason.” Congress supplied the measure of that reason in the 2023 revision of NEPA by setting the deadlines in section 107(g) of NEPA (42 U.S.C. 4336a(g)). These deadlines indicate Congress’s determination that an agency, working within Congress’s allocation of resources, has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such circumstances, an extension will be given only for such time as is necessary to complete the analysis. Thus:

(1) VA will complete the EA not later than the date that is one year after the date a notice of intent to prepare the EA is published; or, if a public notice of intent is not published, the date on which it is confirmed by VA’s assigned NEPA project manager for an agency- or applicant-prepared EA, or by the NEPA contractor for a contractor-prepared EA, that the proposed action is a major Federal action requiring NEPA review and is sufficiently defined to estimate that it would not have a reasonably foreseeable significant effect on the quality of the human environment.

(2) VA will define the end date for an EA as the date that either a FONSI is signed by the decision-maker or the date the VA NEPA project manager has notified the NEPA Implementation Officer that an EIS is required for the proposed action.

(3) VA will publish the EA, at the latest, on the day the one-year deadline elapses, in as substantially complete form as is possible, unless the deadline is extended pursuant to the provision in paragraph (f)(4) of this section.

(4) If VA determines it is not able to meet the deadline prescribed by section 107(g)(1)(B) of NEPA (42 U.S.C. 4336a(g)(1)(B)), it must consult with the applicant, if any, pursuant to section 107(g)(2) of NEPA (42 U.S.C. 4336a(g)(2)). After such

consultation, if needed, and for cause stated, it may establish a new deadline, approved in writing by the NEPA Specialist responsible for completing the EA on schedule. Cause for establishing a new deadline is only established if the EA is so incomplete at the time at which VA determines it is not able to meet the statutory deadline, that issuance pursuant to paragraph (f)(3) of this section would, in VA's view, result in an inadequate analysis. Such new deadline must provide only so much additional time as is necessary to complete such EA. The announcement of the new deadline will specify the reason why the EA was not able to be completed under the statutory deadline and whether the applicant, if any, consented to the new deadline.

(g) *Scoping*. Scoping is a process used to help determine the scope of issues for analysis during the NEPA process. VA may determine to publish a notice of intent to prepare the EA and accept public comments on the scope of the EA. In such case, VA would follow the procedures described in § 26.42.

§ 26.41 Requirements for EISs.

(a) *Purpose and need*. The EIS will include the purpose and need for the proposed action based on VA's statutory authority. When the proposed action concerns VA's duty to act on an application for authorization, the purpose and need for the proposed action will also be informed by the goals of the applicant.

(b) *Proposed action*. The proponent will identify a proposed action. The proposed action could be a plan, program, policy, or a specific project. VA may incorporate avoidance or mitigation measures into the proposed action to minimize or negate adverse effects. At a minimum, the description of the proposed action will include:

- (1) The proposed site location(s) or geographic extent of the proposed project, plan, or program;
- (2) The proposed footprint or area of the proposed project, plan, or program;
- (3) The expected duration of the project, plan, program, or policy; and

(4) A detailed description of the proposed action, including any related or connected actions.

(c) *Alternatives*. The EIS will include a detailed statement on a reasonable range of alternatives to the proposed action, including an analysis of any adverse environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are, in VA's expert judgment, technically and economically feasible, and meet the purpose and need of the proposal.

(d) *Analysis within the EIS*. (1) The EIS will include a detailed statement on:

(i) Reasonably foreseeable environmental effects of the proposed action;

(ii) Any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

(iv) Any irreversible and irretrievable commitments of Federal resources that would be involved in the proposed action should it be implemented; and

(v) Any means identified to mitigate adverse environmental effects of the proposed action. VA is mindful in this respect that NEPA itself does not require or authorize VA to impose any mitigation measures.

(2)(i) In preparing the EIS, VA will focus its analysis on the environmental effects of the action or project at hand that are significant.

(ii) Similarly, VA will document in the EIS where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographic territory of the project or might materialize later in time.

(iii) To the extent it assists in reasoned decision-making, VA 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 VA's regulatory authority, or that would have to be initiated by a third party. If VA determines that such analysis would assist it in reasoned decision-making, it will document this determination in the EIS and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate projects.

(3) EISs will discuss effects in proportion to their significance. With respect to issues that are not of a substantive nature and do not meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, there will be no more than the briefest possible discussion to explain why those issues are not substantive and therefore not worthy of any further analysis. EISs will be analytic, concise, and no longer than necessary to comply with NEPA in light of the congressionally mandated page limits and deadlines.

(e) *Format and page limits.* (1) Except as provided in paragraph (e)(2) of this section, the text of an EIS will not exceed 150 pages, not including citations or appendices.

(2) An EIS for a proposed action of extraordinary complexity is strictly prohibited from exceeding 300 pages, not including any citations or appendices. VA will determine at the earliest possible stage of preparation of an EIS whether the conditions for exceeding the page limit in paragraph (e)(1) of this section are present.

(f) *Deadlines.* As the Supreme Court has repeatedly held, NEPA is governed by a "rule of reason." Congress supplied the measure of that reason in the 2023 revision of NEPA by setting the deadlines in section 107(g) of NEPA (42 U.S.C. 4336a(g)). These deadlines indicate Congress's determination that an agency, working within Congress's allocation of resources, has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such

circumstances, an extension will be given only for such time as is necessary to complete the analysis. Thus:

(1) VA will complete the EIS not later than the date that is two years after the sooner of, as applicable, the date a notice of intent to prepare the EIS is published; or the date on which it is confirmed by VA's assigned NEPA project manager for an agency- or applicant-prepared EIS, or by the NEPA contractor for a contractor-prepared EIS, that the proposed action is a major Federal action requiring NEPA review and is sufficiently defined to estimate that the reasonably foreseeable effects on the quality of the human environment would be significant.

(2) VA will define the end date for an EIS as the date the EIS is published or, in the case of a NEPA process in which VA first publishes a Draft EIS for public comment, the date the Final EIS is published.

(3) The EIS will publish (unless the deadline is extended pursuant to the provision in paragraph (f)(4) of this section) on the day the deadline elapses, in as substantially complete form as is possible.

(4) If VA determines it is not able to meet the deadline prescribed by section 107(g)(1)(A) of NEPA (42 U.S.C. 4336a(g)(1)(A)), it must consult with the applicant, if any, pursuant to section 107(g)(2) of NEPA (42 U.S.C. 4336a(g)(2)). After such consultation, if needed, and for cause stated, it may establish a new deadline, approved in writing by the NEPA Specialist responsible for completing the EIS on schedule, by means of a notice published to the same VA website where the original notice of intent for the EIS was posted. Cause for establishing a new deadline is only established if the EIS is so incomplete at the time at which VA determines it is not able to meet the statutory deadline, that issuance pursuant to paragraph (f)(3) of this section would, in VA's view, result in an inadequate analysis. Such new deadline must provide only so much additional time as is necessary to complete such EIS. The announcement of the

new deadline will specify the reason why the EIS was not able to be completed under the statutory deadline and whether the applicant, if any, consented to the new deadline.

(g) *Publication of the EIS.* (1) VA will publish the entire EIS on a publicly accessible agency website.

(2) VA will file EISs together with comments and any responses with the Environmental Protection Agency, Office of Federal Activities, for publication in the *Federal Register*.

§ 26.42 Public engagement procedures.

(a) As a preliminary step to determining, in connection with a proposal that is not excluded pursuant to a CATEX, whether VA will prepare an EA or an EIS, VA will determine and document the scope of the project at hand.

(b) As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an EIS, VA will publish a notice of intent to prepare an EIS. If VA determines that it will prepare an EA for a proposed action, VA may publish a notice of intent to publish an EA.

(1) The notice of intent for an EIS will include a request for public comment on alternatives or effects and on relevant information, studies, or analyses with respect to the proposed agency action. See section 107(c) of NEPA (42 U.S.C. 4336a(c)).

(2) In addition to a request for comment required for notices of intent for EISs, notice of intent for any environmental document may include:

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

(ii) A preliminary description of the proposed action and alternatives the environmental document will consider;

(iii) A brief summary of expected effects;

(iv) Anticipated permits and other authorizations (that is, anticipated related actions);

(v) A schedule for the decision-making process;

(vi) A description of the public scoping process, including any scoping meeting(s);

(vii) Contact information for a person within VA who can answer questions about the proposed action and the environmental document; and

(viii) Identification of any cooperating and participating agencies (that is, agencies responsible for related actions), and any information that such agencies require in the notice to facilitate their decisions or authorizations.

(c) VA may use an early and open process to determine the scope of issues for analysis in an environmental document, including identifying substantive issues that meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, eliminating from further study non-substantive issues, and determining whether connected actions should be addressed in the same environmental document. Scoping may begin as soon as practicable after the proposed action is sufficiently developed for consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intent.

§ 26.50 Mitigation and monitoring.

(a) VA will consider possible mitigation measures to avoid, minimize, or compensate for adverse effects caused by a proposed action or alternatives as described in the NEPA document, and that have a connection to those adverse effects. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. NEPA documents will state the authority for any mitigation adopted and any applicable monitoring or enforcement provisions.

(b) Possible mitigation measures for effects generated by the VA action may include, but are not limited to, avoiding the effect by not taking a certain action or parts of an action; minimizing the effect by limiting the degree or magnitude of the action and

its implementation; rectifying the effect by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action; or compensating for the effect by replacing or providing substitute resources or environments.

(c) Mitigation shall be enforceable when the proposed action incorporates the mitigation measure(s) or conclusions about the significance of reasonably foreseeable adverse effects are based on implementation of mitigation measure(s).

(d) If VA finds no significant effects based on mitigation, the mitigated FONSI will state any mitigation requirements enforceable by VA or voluntary mitigation commitments that will be undertaken to avoid significant effects. VA may require a monitoring and compliance plan that includes:

- (1) A basic description of the mitigation measure or measures;
- (2) The parties responsible for monitoring and implementing the mitigation;
- (3) The anticipated timeframe for implementing and completing mitigation;
- (4) As applicable, the standard(s) for determining effectiveness of mitigation and steps to be taken when a measure is determined to be not sufficiently effective; and
- (5) How the mitigation will be funded if other than by project construction funds.

(e) VA will include the cost of the mitigation and monitoring measures as part of the budget for the project when the agency has such discretion.

(f) For grant awards, lease contracts, or land transfer agreements, VA may include mitigation measure(s) as conditions, contract terms, or agreement terms, respectively, that require the applicant, awardee, or land transfer recipient to provide for their implementation.

§ 26.60 The decision: documentation and initiation of action.

(a) *Decision documents.* VA will prepare a FONSI or ROD at the conclusion of the EA or EIS process to evidence the EA- or EIS-level NEPA analysis and the decision

that VA made after sufficient consideration of alternatives and input from the public, as applicable. VA will make the FONSI or ROD available to the public.

(1) *FONSI*. After preparing an EA, VA will prepare a FONSI when VA determines a not otherwise categorically excluded proposed action does not have the potential to cause significant impacts.

(i) VA shall include the EA in the FONSI or incorporate it by reference.

(ii) VA shall include any mitigation requirements or commitments in the FONSI (see § 26.50).

(iii) VA will make the EA and FONSI available to the public on an agency website.

(2) *ROD*. After completing an EIS, VA will issue a ROD that summarizes the findings of the EIS and identifies VA's selected alternative for implementation.

(i) The ROD will:

(A) State the decision.

(B) Identify the alternatives considered by VA in reaching its decision.

(C) Identify and discuss all relevant factors that VA balanced in making its decision and how their consideration entered into its decision, including, as relevant, environmental, economic, technical, considerations; VA's statutory mission; and essential considerations of national policy.

(D) State whether VA has adopted all practicable means to mitigate environmental harm from the selected alternative and, if not, why it has not.

(E) Identify any enforceable mitigation requirements or commitments (see § 26.50).

(ii) VA will publish a notice of availability in the same manner as the notice of intent to prepare the EIS was published, to notify the public of the existence of the ROD.

(iii) VA may issue a decision concurrently with or at any time after making an EIS publicly available, or making an EA publicly available if a FONSI is deemed appropriate.

(b) *Signatories*. The VA decision-maker must sign the FONSI or ROD. See § 26.13(e) for information on the responsibilities and designation of VA decision-makers.

(c) *Initiation of VA action*. With the exception of interim actions and actions that would not have an adverse environmental effect or limit the choice of reasonable alternatives:

(1) VA will not undertake actions evaluated in an EA until after VA signs a FONSI; and

(2) VA will not undertake actions evaluated in an EIS until after VA signs a ROD.

§ 26.70 Programmatic NEPA documents.

(a) Programmatic NEPA documents allow VA to conduct broad or holistic evaluations of effects or policy alternatives, evaluate widely applicable measures, or avoid duplicative analysis by considering all or some of the environmental effects of a policy, program, plan, group of projects or related types of projects, national or regional actions, or otherwise related actions. Programmatic NEPA documents support efficiency of NEPA review at the site-, action-, and project-specific level. VA may evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions that have relevant similarities, such as common timing, effects, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development.

(b) Consistent with section 108 of NEPA (42 U.S.C. 4336b), after completing a programmatic NEPA document, VA may rely on that document for five years if there are not substantial new circumstances or information about the significance of adverse

effects that bear on the analysis. After five years, as long as VA reevaluates the analysis in the programmatic NEPA document and any underlying assumption to ensure reliance on the analysis remains valid and briefly documents its reevaluation and explains why the analysis remains valid considering any new and substantial information or circumstances, VA may continue to rely on the document.

(c) VA need not wait until the initiation of a specific project to begin a programmatic review.

(d) VA may prepare a NEPA analysis specific to a unique program or project that has aspects different from or not sufficiently evaluated within a larger programmatic analysis. To tier an analysis to a previous programmatic EIS or EA, VA must:

(1) Incorporate the programmatic EIS or EA by reference in the tiered analysis, and

(2) Analyze all specific reasonably foreseeable environmental effects and a reasonable range of alternatives not covered at the programmatic level.

§ 26.71 Reliance on existing NEPA documents.

(a) *Generally.* If the action covered by an original NEPA document from another Federal agency and VA's action are substantially the same, VA may rely on the other agency's NEPA document to satisfy or complete part of the NEPA analysis or to fulfill other Federal requirements integrated into the NEPA process. Existing documents are prepared for a purpose other than the proposed VA action. VA will only rely on another agency's NEPA document after the VA NEPA Implementation Officer or their delegate conducts and documents an independent review and creates a decision document to finalize the reliance on the other agency's NEPA document. The document may be an EIS, EA, or CATEX. When relying on a NEPA document, or portion thereof, VA will cite, briefly describe the content and relevance to VA's proposed action, and may make

modifications that are necessary to render the relied-upon document, or portion thereof, fit for fulfilling NEPA's analytic requirements for the action at hand.

(b) *Substantial similarity.* (1) If the actions covered by an original EIS or EA and the proposed action are substantially the same, VA will republish the relied-upon EIS or EA.

(2) If the actions are not substantially the same, VA may modify the EIS or EA as necessary to render the document fit for fulfilling NEPA's analytic requirements for the action at hand, and publish the relied-upon EIS or EA, as modified. Where appropriate, VA may solicit comment to the extent that solicitation of comment will assist VA in expeditiously adapting the relied-upon EIS or EA so that it is fit for VA purposes.

§ 26.72 Combining documents.

Whenever practicable, VA will reduce duplication and paperwork by combining NEPA analyses for two or more VA actions or combining NEPA documents with other VA documents, to the fullest extent practicable. Circumstances in which VA may combine documents include but are not limited to actions located at the same site or region, similar actions (such as construction of similar types of facilities), and actions within the same program.

§ 26.73 Supplemental analyses.

VA will prepare a supplemental analysis if a major Federal action is incomplete or ongoing and if there are substantial changes to the proposed action that are relevant to environmental concerns or there are substantial new circumstances or information about the significance of adverse effects that bear on the analysis. VA may also prepare a supplemental analysis when the purposes of NEPA will be furthered by doing so. A supplemental analysis may be completed at any stage of an EIS or EA. If, following internal agency review of an existing NEPA document, VA finds that changes to the proposed action or new circumstances or information relevant to environmental

concerns are not substantial and therefore do not require a supplement, a NEPA Specialist will prepare a memorandum-to-file detailing the review process and analysis, with concurrence from either the decision-maker (or their successor) who signed the original NEPA document (EA or EIS) or the current VA NEPA Implementation Officer.

(a) *Supplemental EA.* VA may publish for public comment a supplemental EA to a draft or final EA, as appropriate to the stage of the EA involved, in consideration of whether public comments on the EA were previously solicited and the nature of any comments received as relevant to the new information or circumstances.

(b) *Supplemental EIS.* VA may publish for public comment a supplemental EIS to a draft or final EIS, as appropriate to the stage of the EIS involved, in consideration of whether public comments on the EIS were previously solicited and the nature of any comments received as relevant to the new information or circumstances.

(c) *Administrative record.* VA must add any supplemental analysis, or memorandum-to-file concluding supplemental analysis is not required, to the administrative record of the original EA or EIS to which the supplement applies. VA will integrate the supplemental EA or EIS using a format and technology compatible with the administrative record for the original EA or EIS. If an index for the original administrative record exists, VA will update or supplement it to list the supplemental EA or EIS.

SUBPART C—THE ROLE OF THIRD PARTIES IN THE NEPA PROCESS

§ 26.80 Purpose of this subpart.

This subpart outlines the relationship between VA and Federal, Tribal, State, and local environmental agencies; identifies the role of VA in actions initiated by other Federal agencies and the role other Federal agencies may play in VA actions; and describes the role of applicants in VA's NEPA process.

§ 26.81 Relationships with third parties.

Although VA is ultimately responsible for ensuring the NEPA process is completed for VA actions, VA may share responsibility with third parties for the completion of a NEPA analysis. VA will participate as a lead agency, joint lead agency, or cooperating agency during the NEPA process for VA actions and actions taken by third parties. See sections 111(2) and (9) of NEPA (42 U.S.C. 4336e(2) and (9)) for the definitions of cooperating agency and lead agency.

(a) *Cooperating agencies.* Cooperating agencies assist the lead agency during the NEPA process. VA may request Tribes and Federal, State, and local agencies to participate in the NEPA process as a cooperating agency for a VA action. Other agencies and Tribes may request to participate in a VA action as cooperating agencies or may request VA to participate in their NEPA processes as a cooperating agency.

(1) *Requests for another agency to participate as a cooperating agency in a VA action.* VA may request and approve another agency to participate in the NEPA process for a VA action as a cooperating agency when the other agency possesses specialized knowledge or jurisdiction by law applicable to the VA action, VA makes the request early in the NEPA process, and granting cooperating agency status will not create undue delay.

(2) *VA acting as a cooperating agency in another agency's action.* If another agency with a proposed action requests VA to participate in the NEPA process as a cooperating agency, VA will participate in the requesting agency's NEPA process whenever practicable. VA may request to participate as a cooperating agency in another agency's NEPA process when the other agency's proposed action overlaps with VA authority or actions.

(b) *Joint lead agencies.* VA may share lead agency status with one or more other agencies. Joint lead agencies can be Federal or non-Federal entities. Ordinarily, the lead agency follows its own regulations implementing NEPA when preparing an

environmental document in the NEPA analysis. However, when there are joint lead agencies, they will each ensure consistency with their own NEPA procedures to ensure they can rely on the environmental document. For each specific procedure, they will typically need to follow the most conservative agency procedure for each step.

(c) *Lead agency designation.* All requests from another agency for VA to participate as a lead agency should be sent to the Senior Agency Official.

(d) *Documentation.* VA will work with the other agencies participating in the NEPA process to separate and establish responsibilities among the agencies and will document these decisions in accordance with departmental policy.

§ 26.82 State, Tribal, and local requirements.

State, Tribal, and local agencies may have programs in place that apply to the implementation or planning of a VA action, including but not limited to a State permitting system. When possible, VA will eliminate duplicate documentation of compliance with State, Tribal, and local procedures that involve similar analysis or information gathering to what NEPA requires by producing one NEPA document to satisfy environmental requirements at the Federal, State, Tribal, and local levels.

§ 26.83 Applicants for Federal assistance.

(a) *Procedures for applicant-prepared NEPA documents.* (1) In accordance with section 107(f) of NEPA (42 U.S.C. 4336a(f)), VA has established procedures allowing applicants, or contractors hired by applicants, to prepare environmental documents under VA's supervision.

(2) A VA NEPA Specialist will independently evaluate the environmental document and VA will take responsibility for its contents.

(3) VA will assist applicants and applicant-hired contractors by providing guidance and outlining the types of information required for the preparation of the environmental document. VA may also provide appropriate guidance and assist in

environmental document preparation, to the extent that VA's resources and policy priorities permit. VA will work with the applicant to define the purpose and need and, when appropriate, to develop a reasonable range of alternatives to meet that purpose and need.

(4) VA will develop and modify, as appropriate, a schedule for preparation of the environmental document. VA will document major changes to the schedule or related matters through written correspondence.

(5) VA may request from an applicant environmental information for use by VA in preparing or evaluating an environmental document. This may include a decision file consisting of any factual, scientific, or technical information used, developed, or considered by the applicant or applicant-hired contractor in the course of preparing an environmental document, including any correspondence with VA or third parties.

(6) Project sponsors intending to pay a fee for an expedited EIS or EA deadline pursuant to section 112 of NEPA (as amended through Pub. L. 119-21, July 4, 2025) for which VA would be the lead agency should consult with VA before submitting a request to CEQ. VA will use such consultation to assist the project sponsor in providing an accurate description of the project as it relates to the anticipated EIS- or EA-associated costs and understanding the anticipated scope of the environmental review including whether to prepare an EA or an EIS.

(b) *Grants.* Third parties may apply for VA grants. Where VA can identify similar types of grants, such as with the establishment of a new grant program, a programmatic NEPA analysis may be appropriate. Program applicants, including but not limited to entities such as a State veterans agency, may have to provide information to VA to support an environmental analysis of the project. Examples of grant actions include but are not limited to State veterans home construction grants and State cemetery grants.

(c) *Discretionary benefits.* VA may conduct a programmatic NEPA analysis for any benefit program that constitutes a major Federal action as defined in section 111(10) of NEPA (42 U.S.C. 4336e(10)).

(d) *Entitlements.* Entitlements are defined as assistance provided to a veteran or veteran's beneficiary over which VA has no discretion. VA's role in entitlements is purely administrative in nature. Since VA actions on entitlements are non-discretionary, entitlement awards do not meet the definition of a major action in section 111(10) of NEPA (42 U.S.C. 4336e(10)), are outside of the scope of this part, and NEPA does not apply. Examples of VA entitlements include but are not limited to pensions and survivor benefits.

(e) *Plans for VA assistance.* Applicants for VA grants and discretionary benefits may develop preliminary plans, designs, and other work to support an application to VA. Preliminary plans do not violate the purpose of this part.

§ 26.84 Non-compliance by applicants.

VA will promptly notify the applicant that VA requires appropriate action to comply with NEPA when VA becomes aware that an applicant is about to take action that would have an adverse environmental effect or limit the choice of reasonable alternatives prior to the issuance of a CATEX, FONSI, or ROD.

SUBPART D—UNIQUE PROCEDURES: EMERGENCIES, PROTECTED INFORMATION, AND INTERNATIONAL ACTIONS

§ 26.90 Purpose of this subpart.

This subpart provides the VA procedures for complying with NEPA during emergencies, how VA will handle sensitive or classified information, and how VA will consider the international effects of VA actions.

§ 26.91 Emergencies.

An emergency is a situation in which human life or the human environment is in jeopardy and urgent or immediate action is necessary to prepare for or respond to the situation. Emergencies include natural disasters and human-caused events such as terrorist attacks, oil spills, and industrial explosions. Emergencies do not include a failure to plan for a project or program or a failure to adequately prepare for a NEPA analysis or other environmental requirements. During an emergency, VA will comply with the NEPA process as established in this part or implement alternative arrangements for compliance with NEPA to the extent feasible, and only for actions necessary to control the immediate impacts of the emergency; other actions remain subject to NEPA review in accordance with this part.

(a) *EISs*. Alternative arrangements are alternatives to the traditional documentation requirements for EISs in NEPA. VA creates alternative arrangements based on specific facts and circumstances. Alternative arrangements are limited to actions necessary to control the immediate impacts of the emergency. The long-term response or recovery actions remain subject to the regular NEPA process. When VA is contemplating an emergency action with alternative arrangements to the NEPA process, relevant factors include the nature and scope of the emergency, whether the action is necessary to control the immediate effects of the emergency, potential adverse effects of the proposed action, components of the NEPA process that VA can follow and provide value to decision-making, the duration of the emergency, and potential mitigation measures.

(b) *CATEXs*. VA may respond to an emergency with an action that is categorically excluded from further NEPA analysis. When a CATEX applies in an emergency situation, no alternative arrangements are necessary.

(c) *EAs*. For VA emergency actions that are not expected to have significant environmental impacts and are not categorically excluded, VA prepares an EA. VA will

waive its own procedural requirements for actions normally subject to an EA if an emergency necessitates an action to save human life and property. In such an emergency, VA will develop alternative arrangements. VA will consider factors including but not limited to the nature and scope of the emergency, whether the action is necessary to control the immediate effects of the emergency, potential adverse effects of the proposed action, aspects of the NEPA process that VA may follow during the emergency response, the duration of the emergency, and potential mitigation measures.

(d) *Consultation with CEQ.* VA consults with CEQ as early as possible when VA determines alternative arrangements for compliance with section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)) may be necessary to respond to an emergency for an action with reasonably foreseeable significant environmental effects. The NEPA Implementation Officer will contact CEQ when VA makes such a determination.

§ 26.92 Sensitive or classified information.

(a) *Policy.* VA will not disclose information that is protected from disclosure under the Freedom of Information Act. Although VA will not release protected information to the public, VA may in some cases use sensitive or classified information in preparing NEPA analyses. VA policy for withholding sensitive and classified information will not contravene VA's commitment to public engagement under NEPA. When a NEPA analysis relies on sensitive or classified information, VA must withhold the protected information from intentional disclosure while releasing the environmental analysis to the public. VA will not disclose sensitive information, including an individual veteran's medical records, personal information, or other information considered personal. Generally, VA will use veterans' information in the aggregate in a NEPA analysis to identify trends, needs, levels, types, and locations of services or benefits that VA provides. VA must protect classified information for national security reasons. See the Freedom of Information Act for an explanation of classified information.

(b) *Documentation.* VA must assess and document the environmental effects of its proposed action despite the presence of sensitive or classified environmental information. If only part of the environmental information is sensitive or classified, VA will segregate the sensitive or classified information from the remainder of the environmental information. VA will disclose the non-sensitive and non-classified information to the public in the NEPA analysis.

§ 26.93 International actions or effects.

(a) *Customary international law.* VA programs and benefits extend to veterans of the United States who live abroad. VA is committed to pursuing an active role in addressing environmental quality issues in VA relations with neighboring communities in foreign countries and assuring that consideration of the environment is an integral part of all decisions.

(b) *VA actions abroad.* Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions*, does not rely upon NEPA for its authority but does further the purpose of NEPA and provides guidance for analyzing the environmental impacts of VA actions abroad. VA will act in accordance with the requirements of Executive Order 12114 and document potential environmental effects of VA actions abroad to the extent consistent with law.