[3325-FC]

COUNCIL ON ENVIRONMENTAL QUALITY

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

[CEQ-2025-0002]

RIN 0331-AA10

Removal of National Environmental Policy Act Implementing Regulations

AGENCY: Council on Environmental Quality.

ACTION: Interim Final Rule; request for comments.

SUMMARY: This interim final rule removes the Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) from the Code of Federal Regulations. In addition, this interim final rule requests comments on this action and related matters to inform CEQ's decision making.

DATES: This interim rule is effective [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments are due by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments through any of the following methods:

- *Federal eRulemaking Portal:* https://www.regulations.gov. Follow the instructions for submitting comments.
- *Fax:* 202-456-6546.
- *Mail:* Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503.

Instructions: All submissions must include the agency name, "Council on Environmental Quality," and docket number, CEQ-2025-0002, for this rulemaking. All comments received will be posted without change to https://www.regulations.gov, including any personal information provided. Do not submit electronically any information you consider to be private, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Docket: For access to the docket to read comments received, go to https://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Megan Healy, Principal Deputy Director for NEPA, 202-395-5750, Megan.E.Healy@ceq.eop.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Council on Environmental Quality (CEQ) is issuing this interim final rule to remove the existing implementing regulations for the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., as amended (NEPA), in response to Executive Order (E.O.) 14154, *Unleashing American Energy*. Among other things, E.O. 14154 rescinds E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality*, which amended E.O. 11514, *Protection and Enhancement of Environmental Quality*, and directed CEQ to promulgate regulations for implementing NEPA and required Federal agencies to comply with those regulations. E.O. 14154 also directs CEQ to issue guidance on implementing NEPA and to propose rescinding the NEPA implementing regulations. This interim final rule carries out President Trump's latter instruction. *See* Section II.A. As explained in Section II.B of this rule, CEQ has also concluded that it

may lack authority to issue binding rules on agencies in the absence of the now-rescinded E.O. 11191. CEQ cited E.O. 11991 as authority in 1978 when it first issued its NEPA regulations. However, that Executive Order has now been rescinded, and CEQ therefore has determined that it is appropriate to remove its regulations from the Code of Federal Regulations.

This action meets the requirements of E.O. 14154 and the Administrative Procedure Act (APA). CEQ's action removes all iterations of its NEPA implementing regulations, including 40 CFR parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508, and will delay the effective date of this interim final rule to [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This period serves to provide fair notice to interested persons and to allow for public comment on CEQ's interim final rule. Public comments on the matters addressed in this interim final rule are due by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. As explained in Section IV of this rule, CEQ requests and encourages public comment on the rationale for this action and related matters that may inform CEQ's decision making. CEQ will consider and respond to comments before finalizing the interim final rule.

A. National Environmental Policy Act

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

NEPA, as amended by the Fiscal Responsibility Act of 2023 (FRA), P.L. 118-5, furthers this national policy by requiring Federal agencies to prepare a "detailed statement" for proposed "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. 4332(2)(C). This statement must address: (1) The reasonably foreseeable environmental effects of the proposed agency action; (2) the reasonably foreseeable adverse environmental effects that cannot be avoided; (3) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal; (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action. 42 U.S.C. 4332(2)(C).

NEPA further mandates that Federal agencies ensure the professional and scientific integrity of environmental documents; use reliable data and resources when carrying out NEPA; and study, develop, and describe technically and economically feasible alternatives. 42 U.S.C. 4332(2)(D)–(F). NEPA provides procedures for making threshold determinations about whether an environmental document must be prepared and the appropriate level of environmental review. 42 U.S.C. 4336(a)–(b).

NEPA does not mandate particular results or substantive outcomes. Rather, NEPA requires Federal agencies to consider the environmental effects of proposed actions as part of agencies' decision-making processes. As amended by the FRA, NEPA provides additional requirements to facilitate timely and unified Federal reviews, including

provisions clarifying lead, joint lead, and cooperating agency designations, generally requiring the development of a single environmental document, directing agencies to develop procedures for project sponsors to prepare environmental assessments and environmental impact statements, and prescribing page limits and deadlines. 42 U.S.C. 4336a. NEPA also sets forth the circumstances under which agencies may rely on programmatic environmental documents, 42 U.S.C. 4663b, and adopt and use another agency's categorical exclusions. 42 U.S.C. 4336c.

B. Council on Environmental Quality

1. Establishment and Statutory Authority

NEPA established CEQ as an advisory agency within the Executive Office of the President to assist and advise the President on certain environmental matters and the implementation of NEPA's national policy. 42 U.S.C. 4342. Specifically, NEPA charges CEQ with the duty and function to: (1) to assist and advise the President in the preparation of the Environmental Quality Report;[1] (2) to gather, analyze, and interpret information concerning the conditions and trends in the current and prospective quality of the environment for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of NEPA's national policy, and to compile and submit to the President studies on such conditions and trends; (3) to review and appraise Federal programs and activities for the purpose of determining the extent to which such programs and activities contribute to the achievement of NEPA's national policy, and to make relevant recommendations to the President; (4) to develop and recommend to the President national policies to foster and promote the improvement

[1] Congress terminated this reporting requirement, effective May 15, 2000, pursuant to section 3003 of Public Law 104-66, as amended.

of environmental quality to meet the conservation, social, economic, health, and other requirements and goals; (5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality; (6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes; and (7) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request. 42 U.S.C. 4344.

NEPA further emphasizes these advisory functions by requiring appointed members of CEQ to be exceptionally well-qualified to analyze and interpret environmental trends and information; to appraise Federal programs and activities in the light of NEPA's national policy; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment. 42 U.S.C. 4342. NEPA authorizes CEQ to employ personnel necessary to carry out these statutory functions. 42 U.S.C. 4343.

In addition, NEPA provides that all Federal agencies must consult with CEQ while identifying and developing methods and procedures to ensure that unquantified environmental amenities and values may be given appropriate consideration in the decision-making process, 42 U.S.C. 4332(2)(B), and to otherwise provide assistance to CEQ, 42 U.S.C. 4332(2)(B). CEQ may also designate a lead agency for environmental review of a proposed action when agencies are unable to reach agreement. 42 U.S.C. 4336a(a)(4)–(5).

2. CEQ Regulations

In 1970, President Nixon issued E.O. 11514, *Protection and Enhancement of Environmental Quality*, which directed CEQ to "[i]ssue guidelines to Federal agencies for the preparation of detailed statements on proposals for legislation and other Federal actions affecting the environment, as required by [42 U.S.C. 4332(2)(C)]."[2] CEQ issued interim guidelines in April of 1970 and revised them in 1971 and 1973.[3]

In 1977, President Carter issued E.O. 11991.[4] E.O. 11991 amended section 3(h) of E.O. 11514, directing CEQ to "[i]ssue regulations to Federal agencies for the implementation of the procedural provisions of [NEPA] . . . to make the environmental impact statement process more useful to decision[ ]makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives," and to "require [environmental] impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses." E.O. 11991 also amended section 2 of E.O. 11514 to require agency compliance with the regulations issued by CEQ. The Executive Order was based on the President's constitutional and asserted statutory authority, including NEPA, the Environmental Quality Improvement Act, 42 U.S.C. 4371 et seq., and section 309 of the Clean Air Act, 42 U.S.C. 7609. CEQ

[2] 35 FR 4247 (Mar. 7, 1970), sec. 3(h).
[3] *See* 35 FR 7390 (May 12, 1970) (interim guidelines); 36 FR 7724 (Apr. 23, 1971) (final guidelines); 38 FR 10856 (May 2, 1973) (proposed revisions to guidelines); 38 FR 20550 (Aug. 1, 1973) (revised guidelines).
[4] 42 FR 26967 (May 25, 1977).

promulgated its NEPA regulations in 1978.[5] CEQ made typographical amendments to the 1978 implementing regulations in 1979[6] and amended one provision in 1986.[7]

On August 15, 2017, President Trump issued E.O. 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*,[8] which directed CEQ to establish and lead an interagency working group to identify and propose changes to the NEPA regulations.[9] In response, CEQ issued an advance notice of proposed rulemaking on June 20, 2018,[10] and a notice of proposed rulemaking (NPRM) on January 10, 2020, proposing broad revisions to revise, update, and modernize the 1978 regulations.[11] CEQ promulgated its final rule on July 16, 2020.[12]

Following the issuance of the 2020 rule, five lawsuits were filed challenging it.[13] These cases challenged the 2020 rule on a variety of grounds, including under the APA and NEPA, and contended that the rule exceeded CEQ's authority and that the related rulemaking process was defective. However, as discussed below, after CEQ indicated its intent to reconsider the 2020 rule and again revise the CEQ regulations, the district courts issued temporary stays in each of these cases, except for *Wild Virginia* v. *Council on*

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[5] CEQ, Implementation of Procedural Provisions; Final Regulations, 43 FR 55978 (Nov. 29, 1978).
[6] CEQ, Implementation of Procedural Provisions; Corrections, 44 FR 873 (Jan. 3, 1979).
[7] CEQ, National Environmental Policy Act Regulations; Incomplete or Unavailable Information, 51 FR 15618 (Apr. 25, 1986) (amending 40 CFR 1502.22).
[8] 82 FR 40463 (Mar. 7, 1970)
[9] *Id.* at sec. 5(e)(iii).
[10] CEQ, Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 FR 28591 (June 20, 2018).
[11] CEQ, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 FR 1684 (Jan. 10, 2020).
[12] 86 FR 43304 (July 16, 2020).
[13] *Wild Va.* v. *Council on Env't Quality,* No. 3:20cv45 (W.D. Va. 2020); *Env't Justice Health All.* v. *Council on Env't Quality,* No. 1:20cv06143 (S.D.N.Y. 2020); *Alaska Cmty. Action on Toxics* v. *Council on Env't Quality,* No. 3:20cv5199 (N.D. Cal. 2020); *California* v. *Council on Env't Quality,* No. 3:20cv06057 (N.D. Cal. 2020); *Iowa Citizens for Cmty. Improvement* v. *Council on Env't Quality,* No. 1:20cv02715 (D.D.C. 2020).

Environmental Quality, which the district court dismissed without prejudice on June 21, 2021.[14]

On January 20, 2021, President Biden issued E.O. 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*,[15] which revoked E.O. 13807 and directed agencies to take steps to rescind any rules or regulations implementing it.[16] An accompanying White House fact sheet, published on January 20, 2021, specifically identified the 2020 regulations for CEQ's review for consistency with E.O. 13990's policy.[17]

After conducting that review, on June 29, 2021, CEQ issued an interim final rule extending by 2 years the September 14, 2021, deadline for agencies to propose changes to existing agency-specific NEPA procedures to make those procedures consistent with the 2020 regulations.[18] Next, on October 7, 2021, CEQ issued a "Phase 1" proposed rule to amend the 2020 regulations to restore discrete portions of the 1978 regulations, which CEQ finalized on April 20, 2022.[19]

On June 3, 2023, President Biden signed into law the FRA, which included amendments to NEPA.[20] On July 31, 2023, CEQ published a "Phase 2" proposed rule to again revise, update, and modernize the NEPA implementing regulations and propose

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[14] *Wild Va.* v. *Council on Env't Quality,* 544 F. Supp. 3d 620 (W.D. Va. 2021). The Fourth Circuit affirmed that dismissal on December 22, 2022. *Wild Va.* v. *Council on Env't Quality,* 56 F.4th 281 (4th Cir. 2022).
[15] 86 FR 7037 (Jan. 25, 2021).
[16] *Id.* at sec. 7.
[17] The White House, Fact Sheet: List of Agency Actions for Review (Jan. 20, 2021), https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/
[18] CEQ, Deadline for Agencies to Propose Updates to National Environmental Policy Act Procedures, 86 FR 34154 (June 29, 2021).
[19] CEQ, National Environmental Policy Act Implementing Regulations Revisions, 86 FR 55757 (Oct. 7, 2021) (Phase 1 proposed rule); CEQ, National Environmental Policy Act Implementing Regulations Revisions, 87 FR 23453 (Apr. 20, 2022) (Phase 1 Final Rule).
[20] Specifically, it amended section 102(2)(C) and added sections 102(2)(D) through (F) and sections 106 through 111. 42 U.S.C. 4332(2)(C)–(D), 4336–4336e.

revisions to implement the FRA amendments to NEPA.[21] On May 1, 2024, CEQ finalized its Phase 2 rule, which incorporated many of its proposed revisions, including those to implement the FRA's amendments.[22] After publication of the final rule, the three pending challenges to the 2020 regulations were voluntarily dismissed without prejudice.[23]

Shortly after its issuance, 20 States challenged CEQ's Phase 2 rule.[24] The States argued that the Phase 2 rule was deficient on several grounds, including under the APA and NEPA, and contended that the rule exceeded CEQ's authority. After the parties briefed cross-motions for summary judgment, the Court of Appeals for the District of Columbia Circuit stated in an unrelated case that CEQ's NEPA implementing regulations are *ultra vires* because the agency lacks any lawful authority to promulgate binding regulations.[25] Recognizing the import of the D.C Circuit's reasoning, the North Dakota district court ordered the parties to submit additional briefing on CEQ's authority to issue regulations and allowed for supplemental briefing after a hearing concerning all motions before the court.

On January 20, 2025, President Trump issued E.O. 14154, *Unleashing American Energy*.[26] The Executive Order revoked E.O. 11991, which had directed CEQ to issue

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[21] CEQ, National Environmental Policy Act Implementing Regulations Revision Phase 2, 88 FR 49924 (July 31, 2023) (Phase 2 proposed rule).
[22] CEQ, National Environmental Policy Act Implementing Regulations Revision Phase 2, 89 FR 35442 (May 1, 2024) (Phase 2 final rule).
[23] Order, *Alaska Cmty. Action on Toxics* v. *Council on Env't Quality,* No. 3:20cv5199 (N.D. Cal. Oct. 29, 2024), ECF No. 90; Order, *California* v. *Council on Env't Quality,* No. 3:20cv06057 (N.D. Cal. 2020), ECF No. 132; Order, *Env't Justice Health All.* v. *Council on Env't Quality,* No. 1:20cv06143 (S.D.N.Y. July 12, 2024), ECF No. 109. A fourth case was voluntarily dismissed without prejudice prior to the final rule's publication. Order, *Iowa Citizens for Cmty. Improvement* v. *Council on Env't Quality,* No. 1:20cv02715 (D.D.C. March 29, 2024), ECF No. 42).
[24] *State of Iowa v. Council on Env't Quality*, No 1:24cv00089 (D.N.D. 2024).
[25] *Marin Audubon Society v. Federal Aviation Administration*, 121 F.4th 902 (D.C. Cir. 2024), *reh'g en banc denied*, 2025 WL 374897 (Jan. 31, 2025).
[26] 90 FR 8353 (Jan. 20, 2025) ("E.O. 14154").

regulations implementing NEPA and required Federal agencies to comply with those regulations.[27] E.O. 14154 also directed CEQ to provide guidance on implementing NEPA and propose rescinding CEQ's NEPA regulations within 30 days of the order.[28] Following CEQ's provision of initial guidance, E.O. 14154 directs the Chairman of CEQ to convene a working group to coordinate the revision of agency-level NEPA implementing regulations for consistency.

On February 3, 2025, the North Dakota district court granted summary judgment to the Plaintiff States in the Phase 2 rulemaking litigation, denied CEQ's and intervenor-defendants' cross-motions for summary judgment and partial summary judgment, and vacated the Phase 2 rule.[29] That court found that CEQ lacks statutory authority to promulgate binding rules implementing NEPA, and, in the alternative, that the Phase 2 rule exceeded CEQ's authority under NEPA and was arbitrary and capricious. The district court explained that its judgment would revert the CEQ regulations to the status quo that existed before CEQ promulgated the Phase 2 rule, *i.e.*, the 2020 regulations as amended by the Phase 1 rule.

II. Basis for Removing the CEQ NEPA Regulations

A. Executive Order 14154 Rescinds Executive Order 11991 and Directs CEQ to Propose Rescinding its NEPA Regulations

As explained in Section I.B.2, President Carter originally directed CEQ to implement NEPA regulations via E.O. 11991. However, President Trump rescinded that

[27] *Id.* at sec. 5
[28] *Id.* at sec 5(a). The guidance and any resulting agency implementing regulations must "expedite permitting approvals and meet deadlines established in the [FRA]." *Id.* at sec 5(c).
[29] Order, *State of Iowa v. Council on Env't Quality*, No 1:24cv00089 (D.N.D. Feb. 3, 2025), ECF No.145.

Executive Order in E.O. 14154.[30] Accordingly, the President has removed CEQ's prior asserted basis for issuing and maintaining its NEPA regulations. The President has further directed CEQ in E.O. 14154 to simultaneously issue guidance to agencies on implementing NEPA and to propose rescinding CEQ's NEPA regulations within 30 days of publication of E.O. 14154.[31] E.O. 14154 then instructs CEQ to coordinate the revision of agencies' implementing regulations.[32] For these reasons, CEQ has determined that it is appropriate to remove its NEPA regulations through this interim final rule, which is consistent with the President's revocation of E.O. 11991 and complies with the direction to propose rescinding the regulations. This is an independent and sufficient reason for CEQ's interim final rule removing its NEPA implementing regulations from the Code of Federal Regulations.

B. CEQ Has Identified No Other Authority to Maintain Its NEPA Implementing Regulations

In addition to the grounds stated in Section II.A, which alone would serve as adequate justification for CEQ's action, CEQ has also come to have serious concerns about its statutory authority to maintain its NEPA implementing regulations, at least in the absence of E.O. 11991. In the absence of E.O. 11991, the plain text of NEPA itself may not directly grant CEQ the power to issue regulations binding upon executive agencies.[33] For this reason, CEQ has concluded that it may lack authority to issue binding rules on agencies in the absence of the now-rescinded E.O. 11191.

[30] E.O. 14154 at sec. 5(a).
[31] *Id.* at sec. 5(b).
[32] *Id.* at sec. 5(c).
[33] None of the other statutory authorities cited in E.O. 11991 furnish CEQ with regulatory authority. Section 309 of the Clean Air Act directs the EPA Administrator to refer environmentally problematic

While CEQ is mindful of the body of Supreme Court case law holding CEQ's past interpretations of NEPA as expressed through its implementing regulations were entitled to deference, *see Andrus* v. *Sierra Club,* 442 U.S. 347, 358 (1979) ("CEQ's interpretation of NEPA is entitled to substantial deference."); *Robertson v. Methow Valley Citizens Council,* 490 U.S. 332, 355 (1989) ("CEQ regulations are entitled to substantial deference."); *Department of Transp. v. Public. Citizen,* 541 U.S. 752, 757 (2004), none of these decisions expressly holds that Congress delegated authority to CEQ to bind Executive Branch agencies. In any event, these decisions occurred against the backdrop of the now-rescinded grant of authority in E.O. 11991. Nowhere in *Andrus*, *Methow Valley*, *Public Citizen*, nor any other case did the Court after briefing and argument find that NEPA provided CEQ with the authority to bind other agencies in the absence of E.O. 11991.

C. No Reliance Interests Implicated by Removal of CEQ's Regulations

Because CEQ's NEPA regulations speak to the procedural obligations of Federal agencies as they implement NEPA, rather than imposing liability, fines, or a tangible burden on third parties, CEQ, when revising or removing those regulations, has no obligation to provide special consideration of reliance interests.

This is particularly so given that the removal of CEQ's regulations does not strip agencies of discretion to continue following similar procedures. Agencies have NEPA

actions to CEQ. 42 U.S.C. 7609. But that provision merely reinforces CEQ's advisory role; it does not transform CEQ into a regulatory agency. The same is true of the Environmental Quality Improvement Act of 1970, which allows CEQ to "assist" agencies—but not to command them. 42 U.S.C. 4372(d). Neither statute gives CEQ the power to independently issue regulations implementing NEPA, much less legislative rules with the force and effect of law.

implementing procedures that largely conform to CEQ's regulations.[34] After this action, agencies will remain free to use or amend those procedures, and agencies should, in defending actions they have taken, continue to rely on the version of CEQ's regulations that was in effect at the time that the agency action under challenge was completed. Thus, removing CEQ's regulations does not constitute a retroactive change in agencies' practices or an alteration of the public or project sponsors' engagement under NEPA with respect to those agency actions. Moreover, to the extent that E.O. 14154 separately directs agencies to review and potentially revise their NEPA procedures, that is a matter of the President's authority to direct the functioning of the Executive branch, and, to the extent any reliance interests are implicated, does not fall within the scope of this interim final rule.

Finally, any reliance on the CEQ regulations has been significantly lessened by CEQ's seriatim amendments of those regulations since 2020. As discussed in Section I.B, courts have questioned CEQ's rulemaking authority,[35] and successive administrations have considered revisions to these rules,[36] which have been subject to litigation. Indeed,

[34] *See*, *e.g.*, 10 CFR part 1021 (Department of Energy); 18 CFR part 380 (Federal Energy Regulatory Commission); 23 CFR part 771 (Federal Highway Administration, Federal Railroad Administration, and Federal Transit Administration); 24 CFR part 50 (Department of Housing and Urban Development); 36 CFR part 220 (U.S. Forest Service).

[35] In addition to *Marin Audubon Society* and *State of Iowa* discussed herein, other courts have similarly questioned the legal status and effect of CEQ's NEPA regulations. *See*, *e.g.*, *Food & Water Watch v. United States Dep't of Agric.*, 1 F.4th 1112, 1119 (D.C. Cir. 2021) (Randolph, J, concurring) ("No statute grants CEQ the authority to issue binding regulations.").

[36] *See* CEQ, National Environmental Policy Act Implementing Regulations Revision Phase 2, 89 FR 35442 (May 1, 2024) (Phase 2 final rule); CEQ, National Environmental Policy Act Implementing Regulations Revisions, 87 FR 23453 (Apr. 20, 2022) (Phase 1 Final Rule); CEQ, Deadline for Agencies to Propose Updates to National Environmental Policy Act Procedures, 86 FR 34154 (June 29, 2021); CEQ, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 86 FR 43304 (July 16, 2020).

the Phase 2 rule was subsequently litigated and vacated by the District of North Dakota, after the court concluded that CEQ lacked authority to promulgate its regulations.[37]

Thus, agencies and the public have understood that CEQ's regulations were subject to potential change. Moreover, even as to the 1978 regulations, courts and commenters have raised questions as to whether CEQ's regulations rest on a solid statutory foundation.[38] In these circumstances, continued reliance is not justified.

[37] Order, *State of Iowa v. Council on Env't Quality*, No 1:24cv00089 (D.N.D. Feb. 3, 2025), ECF No.145.

[38] *See, e.g.*, *Nevada v. Dep't of Energy*, 457 F.3d 78, 87 (D.C. Cir. 2006) ("Because the CEQ has no express regulatory authority under [NEPA][]—it was empowered to issue regulations only by executive order—the binding effect of CEQ regulations is far from clear[.]" (internal quotations and citations omitted)); *TOMAC, Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852, 861 (D.C. Cir. 2006) ("[T]he binding effect of CEQ regulations is far from clear."); *City of Alexandria, Va. v. Slater*, 198 F.3d 862, 866 n.3 (D.C. Cir. 1999) ("The Council on Environmental Quality has no express regulatory authority under the National Environmental Policy Act[.]"); *Ctr. for Biological Diversity v. Zinke*, 260 F. Supp. 3d 11, 17 (D.D.C. 2017) ("But NEPA itself does not expressly require that other agencies comply with the CEQ's regulations; therefore, the binding effect of CEQ regulations is far from clear." (internal quotation and citation omitted)). Further, before the Senate Environment and Public Works Subcommittee on Superfund, Ocean, and Water Pollution in 1989, then-CEQ Chairman Alan Hill urged Congress to provide CEQ with clear statutory authority to regulate. *Amending the National Environmental Policy Act*, Hearing before Subcomm. On Superfund, Ocean, and Water Protection, S. Hrg. 101-132 (June 1, 1989) ("I think the first thing - and the legislation does touch on this - is granting statutory authority to the Council to promulgate regulations. Now, the regulations guiding the NEPA process for our Government are solely based on an authorization from executive order, and those are always subject to challenge."); *see also id.* (Testimony of Michael McCloskey, Chairman of Sierra Club) (urging Congress to empower CEQ by codifying E.O. 11991 in law, which would in turn "provide a statutory basis for [the 1978 regulations]."). Commentators have also noted that NEPA itself may not directly grant CEQ the power to issue regulations. *See*, *e.g.*, NEPA LAW AND LITIG. § 2:9 (2024) ("NEPA conferred only advisory duties on the CEQ."), § 2:10 ("Congress usually delegates the administration of a statute to a federal agency, which is authorized to adopt regulations interpreting the statutory provisions. NEPA does not fit this model."); Jamison E. Colburn, *Administering the National Environmental Policy Act*, 45 Envtl. L. Rep. News & Analysis 10287 (2015) (examining CEQ's history, its powers and duties, and invocations of authority across Presidential administrations); Scott C. Whitney, *The Role of the President's Council on Environmental Quality in the 1990's and Beyond*, 6 J. Envtl. L. & Litig. 81 (1991) (concluding after examining the text, structure, and legislative history of NEPA that Congress did not delegate to CEQ the clear power to issue legislative-type rules).

III. Basis for Issuing an Interim Final Rule

A. The Interim Final Rule Satisfies Notice-and-Comment Rulemaking Procedures

CEQ has determined that an interim final rule is the appropriate mechanism to remove the implementing regulations. An interim final rule containing all elements required by the APA for an NPRM, as provided in 5 U.S.C. 553(b)–(d), satisfies the APA's procedural requirements.

This interim final rule contains all of the APA-required elements for notice-and-comment rulemaking, *see id*.: a reference to legal authority, as required by 5 U.S.C. 553(b)(2) (Section II); a description of the terms and substance of the rule, as required by 5 U.S.C. 553(b)(3) (Sections II and III); and a request for public comment, as required by 5 U.S.C. 553(c) (Section IV). CEQ finds that an interim final rule is the most appropriate mechanism to accommodate both the President's direction and the principles of public participation in regulatory action. Specifically, the President has directed CEQ in E.O. 14154 to simultaneously issue guidance to agencies on implementing NEPA and to propose rescinding CEQ's NEPA regulations within 30 days of publication of E.O. 14154. Furthermore, CEQ has concluded, as explained in Section II.B, that it may lack authority to maintain its NEPA regulations in the absence of E.O. 11991. In light of these considerations, and as exacerbated by the fact that the most recent amendment to its regulations has been vacated by a district court after it concluded that CEQ has no rulemaking authority, CEQ is concerned that agencies and the public are confused as to the status and legitimacy of its NEPA regulations. CEQ determines that the most appropriate mechanism to carry out the President's dual direction, and to minimize and

expeditiously resolve this period of confusion while still allowing for public participation, is to issue this interim final rule providing 30 days for public comment thereafter.

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

Moreover, CEQ also finds that, to the extent that prior notice and solicitation of public comment would otherwise be required, the need to expeditiously resolve agency confusion satisfies the "good cause" exception in 5 U.S.C. 553(b)(B). The APA authorizes agencies to issue regulations without notice and public comment when an agency finds, for good cause, that notice and comment is "impracticable, unnecessary, or contrary to the public interest," 5 U.S.C. 553(b)(B), and to make the rule effective immediately for good cause. 5 U.S.C. 553(d)(3). As discussed in Section III.A, the need to meet the deadlines in E.O. 14154 and to avoid agency confusion given the recent vacatur of CEQ's 2024 Rule makes proceeding through notice and comment before removal impracticable and unnecessary.

To the extent that public comment may inform CEQ as to whether it has legal authority to make a different choice than the one it has taken in this interim final rule, CEQ's solicitation of public comment for 30 days following the publication of the rule is intended to accommodate that possibility. But, to the extent that this interim final rule would otherwise require a proposal and solicitation of public comment, CEQ's view is that the "good cause" exception from the proposal and public comment requirement as codified at 5 U.S.C. 553(b)(B) obtains here. The President has revoked CEQ's authority to issue or maintain its NEPA implementing regulations and has instructed CEQ to propose rescinding its existing regulations.[39] And though CEQ seeks comments to obtain

[39] E.O. 14154, sec. 5(a)–(b).

the public's views, such comments could not alter the President's decision. *See* Section II.A. CEQ will consider comments submitted in response to this action and address them when issuing a final rule, with changes, if warranted, after consideration of the comments received. Accordingly, this rulemaking provides the requisite notice and comment, is procedurally sound, and is the product of reasoned decision making.

C. Notice-and-Comment Rulemaking Is Not Required

Finally, CEQ's view is that there is an alternative basis for the procedure it is employing here. Specifically, it may be the case that notice and comment procedures are not required because this interim final rule falls within the APA exception for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). Although CEQ is voluntarily providing notice and an opportunity to comment on the interim final rule, the agency has determined that notice and comment procedures are not required for several reasons.

As explained in Section II.B, CEQ may not possess the authority to issue rules binding upon agencies in the absence of E.O. 11991. Because E.O. 14154 rescinded E.O. 11991, this interim final rule is a procedural and ministerial step to implement the President's directive.

In addition, CEQ's regulations implementing NEPA's procedural requirements may be characterized as rules of agency procedure and practice. CEQ's regulations do not dictate what environmental policies agencies must adopt. Rather, they prescribe how agencies should conduct their NEPA reviews: detailing the structure of environmental impact statements, specifying procedural requirements, and directing the timing of public

comment periods.[40] These are procedural provisions, not substantive environmental ones. And because procedural rules do not require notice and comment, absent a specific provision of law requiring such procedures, they do not require notice and comment to be removed from the Code of Federal Regulations. *See* 5 U.S.C. § 553(b)(A). In fact, NEPA itself is merely a procedural statute that does not dictate the outcome of any particular environmental review.

Even if CEQ's regulations were not procedural rules, they may be characterized as interpretative rules or general statements of policy. An interpretative rule provides an interpretation of a statute, rather than make 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).

IV. Request for Comments

CEQ requests and encourages public comments on all aspects of this interim final rule. However, CEQ stresses that this rulemaking does not undertake any reconsideration of the substance of the 2020 rule, the Phase 1 rule, or the Phase 2 rule, nor is CEQ soliciting comment on the specific content of those rulemakings or the amendments to CEQ's NEPA regulations that they adopted. This rulemaking does not take any position on the agency's prior interpretations of NEPA's procedural requirements. CEQ will

[40] See 40 CFR parts 1501 and 1502.

consider comments it receives and provide responses in a final rule, with changes, if warranted.

V. Regulatory Analyses and Notices

A. Regulatory Procedures

As explained in Section III, by issuing an interim final rule with an effective date delayed by 45 days and for a 30-day public comment period, CEQ has satisfied any notice and comment requirements applicable to this action. Further, under the APA, notice and comment procedures are not required if an action is an interpretative rule, a general statement of policy, or a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A). As discussed in Section III.C, CEQ has determined that the CEQ rules are rules of "agency organization, procedure, or practice" or, alternatively, interpretive rules. Therefore, CEQ is not required to engage in a notice and comment rulemaking process to remove them. Even if notice and comment rulemaking were required, CEQ has established good cause to waive notice and comment because such procedures are impracticable, unnecessary, and contrary to the public interest.

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

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

C. Regulatory Flexibility Act

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

D. Environmental Analysis

The CEQ regulations do not require agencies to prepare a NEPA analysis before establishing or updating agency procedures for implementing NEPA. While CEQ prepared environmental assessments for its promulgation of the CEQ regulations in 1978, its amendments to 40 CFR 1502.22 in 1986, and its Phase 1 and Phase 2 regulations, in the development of this interim final rule, CEQ has determined that the rule will not have a significant effect on the environment because it will not authorize any specific agency activity or commit resources to a project that may affect the environment. Therefore, CEQ does not intend to conduct a NEPA analysis of this interim final rule for the same reason that CEQ does not require any Federal agency to conduct NEPA analysis for the development of agency procedures for the implementation of NEPA and the CEQ regulations.

E. Executive Order 13132, Federalism

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

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

E.O. 13175 requires agencies to have a process to ensure meaningful and timely input by Tribal officials in the development of policies that have Tribal implications. Such policies include regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This interim final rule is not a regulatory policy that has Tribal implications because it does not impose substantial direct compliance costs on Tribal governments (section 5(b)) and does not preempt Tribal law (section 5(c)).

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

Agencies must prepare a Statement of Energy Effects for significant energy actions under E.O. 13211. This interim final rule is not a "significant energy action"

because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

H. Executive Order 12988, Civil Justice Reform

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

I. Unfunded Mandates Assessment

Section 201 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments, and the private sector to the extent that such regulations incorporate requirements specifically set forth in law. Before promulgating a rule that may result in the expenditure by a State, Tribal, or local government, in the aggregate, or by the private sector of $100 million, adjusted annually for inflation, in any 1 year, an agency must prepare a written statement that assesses the effects on State, Tribal, and local governments and the private sector. 2 U.S.C. 1532. This interim final rule applies to Federal agencies and would not result in expenditures of $100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any 1 year. This action also does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of 2 U.S.C. 1531–1538.

J. Paperwork Reduction Act

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

List of Subjects

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

Jomar Maldonado Vazquez,

Director for NEPA.

For the reasons stated in the preamble, the Council on Environmental Quality amends subchapter A of chapter V in title 40 of the Code of Federal Regulations by removing and reserving parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508.