

**Regulatory Impact Analysis for the Proposed Rule, Update to the Regulations  
Implementing the Procedural Provisions of the National Environmental Policy Act  
RIN: 0331-AA07  
July 2023**

**Executive Summary**

In July 2020, the Council on Environmental Quality (CEQ) issued the first major revision of its regulations implementing the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.*, in 40 years. On January 20, 2021, President Biden issued Executive Order (E.O.) 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*,<sup>1</sup> which directed agencies to review regulations promulgated in the prior administration for inconsistency with the policies articulated in the E.O. and take action to address those inconsistencies. CEQ reviewed the 2020 regulations for consistency with E.O. 13990’s policies to promote decisions informed by science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.

Based on this review, CEQ has undertaken a multi-phase rulemaking process to better align the NEPA regulations with CEQ and agency expertise, as well as NEPA’s statutory goals and purpose of promoting sound decisions informed by science. As a first step, CEQ issued an interim final rule extending the deadline for Federal agencies to make their procedures consistent with the 2020 regulations.<sup>2</sup> Next, CEQ finalized revisions to the 2020 regulations in a “Phase 1” rulemaking that restored three discrete aspects of the 1978 regulations.<sup>3</sup> Now, CEQ is proposing to further revise, update, and modernize the NEPA regulations in order to ensure that the regulations promote NEPA’s statutory purpose and are consistent with the Administration’s policies to improve public health, protect the environment, prioritize environmental justice, provide access to clean air and water, reduce greenhouse gas emissions, enhance government transparency, and fully support science-based decision making. In addition, CEQ proposes to address provisions of the 2020 regulations that may have created confusion among agencies, applicants, and the public and limited the scope of NEPA analysis in some circumstances.

On June 3, 2023, President Biden signed into law the Fiscal Responsibility Act of 2023 (FRA), which includes a range of amendments to NEPA. The FRA modifies section 102(2) of NEPA, 42 U.S.C. § 4332(2), by amending subparagraph (C) and adding subparagraphs (D) through (F),

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<sup>1</sup> E.O. 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, 86 FR 7037 (Jan. 25, 2021).

<sup>2</sup> *Deadline for Agencies to Propose Updates to National Environmental Policy Act Procedures*, 86 FR 34154 (June 29, 2021) (amending 40 CFR 1507.3).

<sup>3</sup> *National Environmental Policy Act Implementing Regulations Revisions*, 87 FR 23453 (Apr. 20, 2022) (“Phase 1 Final Rule”) (amending 40 CFR 1507.3, 1508.1).

and adds new sections 106 through 111, 42 U.S.C. §§ 4336–4336e. A more detailed description of the FRA’s changes to NEPA is found in the accompanying Notice of Proposed Rulemaking (NPRM or “the Proposal”).<sup>4</sup>

CEQ’s proposed changes are necessary to better effectuate the requirements and policy objectives of NEPA and to implement the FRA’s amendments to NEPA. The proposed changes are justified by the information included in the preamble and the proposed rule text. Together, these analyses constitute the reasonable basis for the proposed changes, which CEQ has determined is the option that provides the greatest net benefits to society by promoting informed, collaborative, and efficient agency decision making.

CEQ has considered the benefits and the costs of the proposed changes relative to a baseline and against alternative regulatory proposals it could have adopted. CEQ acknowledges that only limited data is available to assess the costs and benefits of the proposed rule quantitatively.<sup>5</sup> In addition to the availability of data, CEQ considered performing an event study<sup>6</sup> on other indicia of agency responses to the 2020 rule. CEQ deemed this approach not feasible, however, given the short period of time that has elapsed since the 2020 rule went into effect and the other significant policy changes that may affect agencies’, project sponsors’, and the public’s responses to the 2020 rule.<sup>7</sup> Given these circumstances, CEQ has primarily assessed costs and benefits using qualitative measures.

The proposed changes would have direct and indirect benefits for a variety of groups. The proposed changes are likely to benefit Federal agencies, project sponsors, environmental stakeholders, and members of communities affected by Federal actions, including members of communities with environmental justice concerns. The proposed changes would improve communication across agencies, which would help avoid and address interagency disputes and reduce delay and duplication; clarify the roles of lead and cooperating agencies, which would enhance agency coordination; encourage the use of programmatic environmental impact statements (EISs) and environmental assessments (EAs) to promote efficiency in the review process; help agencies prepare more informative and complete environmental documents, which is likely to reduce the risk of litigation and improve public engagement with actions; provide agencies with more flexible strategies for NEPA compliance; promote more durable and climate-resilient projects and actions; foster better long-term decision making, including through consideration of reasonably foreseeable climate change effects; and lead to a more equitable

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<sup>4</sup> The Notice of Proposed Rulemaking can be accessed at [www.regulations.gov](http://www.regulations.gov), Docket No. CEQ–2023–0003.

<sup>5</sup> U.S. Gov’t Accountability Off. (GAO), GAO 14-370, National Environmental Policy Act: Little Information Exists on NEPA Analyses (Apr. 15, 2014), <https://www.gao.gov/products/gao-14-370>.

<sup>6</sup> An event study is a research method in the economics profession in which variables or outcomes are observed before, during, and after a key event of interest.

<sup>7</sup> See A. Craig MacKinlay, *Event Studies in Economics and Finance*, 35 J. of Econ. Literature 13, 37 (1997). MacKinlay, in discussing event studies in economics and finance, notes, “An important characteristic of a successful event study is the ability to precisely identify the date of the event. In cases where the event date is difficult to identify or the event date is partially anticipated, studies have been less useful. For example, the wealth effects of regulatory changes for affected entities can be difficult to detect using event study methodology.” In this case, it would be difficult to conduct an event study, first, because little time has passed since the event (*i.e.*, the promulgation of the 2020 Rule) and, second, because other intervening events, including additional rulemakings and policy developments, make it difficult to determine the true date of the measured “event.”

distribution of environmental benefits and costs by encouraging agencies to prioritize public engagement and to consider environmental justice.

The proposed changes provide that agencies should prepare informative yet concise environmental documents, including to address climate risk and provide for better public engagement. These provisions may result in agencies conducting more public engagement and preparing more thorough analyses, which could result in additional costs. However, the long-term cost savings from sounder decisions, greater predictability in the decision-making process, and potentially avoided litigation may exceed these upfront costs. CEQ invites comment on the analyses it presents in this document and on this conclusion about the likely net benefits of finalizing the proposed changes.

CEQ considered several alternatives to the current proposed rule, including reverting back to the pre-2020 version of the regulations in their entirety and keeping the 2020 regulations. CEQ has considered these alternatives and concluded that the preferred alternative—making targeted changes to the 2020 regulations, including changes to reflect the FRA’s amendments to NEPA—has the highest net benefits of the options considered.

## **I. Background**

NEPA was signed into law in 1970 as a visionary national policy to promote environmental protection for present and future generations. NEPA requires Federal agencies to interpret and administer Federal policies, regulations, and laws in accordance with NEPA’s policies and to appropriately consider environmental values in their decision making. Furthermore, NEPA seeks to promote efforts that will prevent or eliminate damage to the environment and stimulate the health and welfare of people, making it the continuing policy of the Federal Government to use all practicable means and measures to create and maintain conditions that reduce potential harms and enhance ecological, social, and economic well-being. As discussed above, the FRA amended NEPA on June 3, 2023, by modifying section 102 and adding new sections 106 through 111.

CEQ has issued numerous guidance documents over the past 50 years to assist Federal agencies in their implementation of NEPA and ensure efficiency and effectiveness in implementation. In 2020, CEQ undertook a wholesale revision of the regulations following the issuance of E.O. 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*.<sup>8</sup> On January 20, 2021, President Biden issued E.O. 13990, which directed Federal agencies to review existing regulations issued between January 20, 2017, and January 20, 2021, for consistency with the policies set forth in the E.O. and to take appropriate action to remedy any inconsistencies.<sup>9</sup> E.O. 13990 also revoked E.O. 13807 and directed agencies to promptly take steps to rescind any rules or regulations implementing it. An accompanying White House fact sheet, published on January 20, 2021,

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<sup>8</sup> E.O. 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*, 82 FR 40463 (Aug. 24, 2017).

<sup>9</sup> E.O. 13990, *supra* note 1, sec. 2(a).

specifically directed CEQ to review the 2020 regulations for consistency with the policy of E.O. 13990.<sup>10</sup>

Consistent with E.O. 13990, CEQ has reviewed the 2020 regulations and engaged in a multi-phase rulemaking process to address some of the concerns with the 2020 regulations. In this “Phase 2” rulemaking, CEQ is proposing a broader rulemaking to further revise, update, and modernize the NEPA regulations. It is CEQ’s view that the 2020 regulations may have the effect of limiting the scope of NEPA analysis in some circumstances, with negative repercussions for environmental protection and environmental quality, including in critical areas such as climate change and environmental justice. Portions of the 2020 regulations also may not most effectively promote NEPA’s statutory purposes to “encourage productive and enjoyable harmony” between humans and the environment, promote efforts that will prevent or eliminate damage to the environment and biosphere, and enhance public health and welfare. *See* 42 U.S.C. § 4321. Certain changes introduced by the 2020 regulations also may not well support science-based decision making or may complicate efforts to improve public health, protect the environment, prioritize environmental justice, provide access to clean air and water, and reduce greenhouse gas emissions that contribute to climate change.

At the same time, CEQ is not substantively changing every provision of the 2020 regulations and is only making changes it deems appropriate. The regulatory impact analysis (RIA) for the 2020 regulations focused on the administrative burdens associated with lengthy environmental reviews that agencies conduct pursuant to NEPA, and accordingly, the 2020 regulations included several revisions to streamline the environmental review process. Where appropriate, CEQ is proposing to retain provisions from the 2020 regulations that facilitate a more effective and efficient environmental review process, to preserve these administrative cost savings.

In the 2020 RIA, CEQ attributed most delays in the project approval process to NEPA reviews. The 2020 RIA focused on the administrative cost savings of the 2020 regulations, primarily based on the time savings that might arise from strict adherence to the time limits prescribed in the 2020 regulations. This RIA provides a more comprehensive assessment of the costs and benefits to society of the proposed rule, which include, but are not limited to, cost savings. It provides the public and decision makers with information on the anticipated economic costs and benefits of the proposed rule. The proposed changes are justified by the information that CEQ has set forth in the preamble to the NPRM and the proposed regulatory text, both of which are incorporated by reference, as well as by the discussion of costs and benefits throughout this RIA.

CEQ anticipates that the proposed rule could constitute a “significant regulatory action” within the meaning of section 3(f)(1) of E.O. 12866, *Regulatory Planning and Review*,<sup>11</sup> given the potential cost savings to the Federal Government as well as the economy-wide impacts that CEQ expects the proposed rule to catalyze. However, little standardized quantifiable information exists on the costs and benefits of completing NEPA reviews, particularly because some agencies

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<sup>10</sup> The White House, Fact Sheet: List of Agency Actions for Review (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>.

<sup>11</sup> E.O. 12866, *Regulatory Planning and Review*, 58 FR 51735 (Oct. 4, 1993), as amended by E.O. 14094, *Modernizing Regulatory Review*, 88 FR 21879 (Apr. 11, 2023).

do not routinely track the costs or benefits of completing NEPA reviews.<sup>12</sup> CEQ does not consider requiring agencies to report information on the costs and benefits of completing NEPA analyses, for the purpose of preparing this RIA, to be an effective use of agency staff time or resources, and CEQ currently does not have sufficient staff or resources to collect and analyze that information. Therefore, the following is a largely qualitative summary of CEQ's expectations for the scope and breadth of the impacts of the proposed rule.

Furthermore, the proposed rule only directly binds Federal agencies; it is a procedural rule that does not mandate specific outcomes. These unique characteristics of a NEPA rulemaking, compared to rulemakings that impose substantive requirements on non-Federal entities, further support CEQ's reliance on qualitative analysis. In assessing the impacts of the proposed rule, CEQ also will consider input from the public and stakeholders, including any qualitative information or quantitative data that CEQ receives in response to the NPRM.

## **II. Proposal**

### **Description of the Proposal**

In the proposed rule, CEQ is proposing improvements to clarify language and codify agency best practices for NEPA implementation. The proposed rule also would promote better environmental outcomes by encouraging agencies to use the best available science and prepare clear analyses of alternatives, and would promote public engagement by directing agencies to engage in robust and meaningful public engagement and to reduce barriers to public comment. Key updates to the regulations would encourage expanded agency flexibility, while proposed structural revisions would ensure internal consistency within the regulations. Finally, CEQ is proposing updates to align the regulations with the statutory changes to NEPA enacted by the FRA.

#### Proposed Changes to Improve NEPA Efficiency and Add Flexibility

CEQ proposes numerous changes to ensure agencies can efficiently comply with NEPA in a way that is most consistent with their own regulatory, statutory, and budgetary limits. Consistent with section 107(e)(2) of NEPA, 42 U.S.C. § 4336a(e)(2), the proposed changes eliminate the requirement that agencies use specific administrative procedures to approve environmental documents that exceed the page limits, in order to improve agency flexibility and reduce delay. A revision to § 1502.7 would remove the same senior agency official approval requirement for documents that exceed imposed page limits to align with section 107(e)(1) of NEPA.

Proposed changes in § 1501.10 clarify that EISs must be completed within two years and EAs within one year and provide starting points from which agencies should calculate deadlines, consistent with the deadlines prescribed in section 107(h) of NEPA. To enhance predictability, a proposed new paragraph in § 1501.10 requires the lead agency to develop schedules for EISs and EAs. This language is also consistent with section 107(a)(2)(D) and (E) of NEPA. The proposed changes identify key milestones that the lead agency should include in the schedule. In developing the milestones, the lead agency should consult with the applicant or project sponsor

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<sup>12</sup> GAO 14-370, *supra* note 5, at 12.

and should consult with and seek the concurrence of joint lead, cooperating, and participating agencies.

The proposed rule also would amend § 1506.10 to clarify that the time period for an administrative review process and the 30-day wait period between filing and publishing a final EIS and issuing a record of decision (ROD) may run concurrently. This would allow agencies with administrative review processes to issue a ROD at the same time they publish the final EIS, bolstering efficiency and flexibility.

Finally, many of the proposed changes allow agencies increased flexibility in the mechanisms they use to implement these regulations. For example, CEQ proposes to add a new section at § 1506.12 that would allow Federal agencies to pursue innovative approaches to NEPA implementation when addressing extreme environmental challenges. This additional language would allow agencies to maximize their flexibility and efficiency to address unique challenges by, for example, using new technology to analyze effects or conduct mitigation monitoring. Proposed revisions also would codify best practices for programmatic environmental documents and tiering in § 1501.11, which would improve the efficiency of these processes. Similarly, the proposed changes would provide clearer direction on agency adoption of EAs, EISs, and categorical exclusion (CE) determinations in § 1506.3.

Proposed revisions in § 1501.7 would clarify that the participating Federal agencies may designate a Federal, State, Tribal, or local agency as a joint lead agency upon invitation to and acceptance by such agency. These changes are proposed for consistency with section 107(a)(1)(B) of NEPA; CEQ also proposes to permit Federal agencies to serve as joint lead agencies because there are circumstances in which having another agency serve as a lead agency may add efficiency. Additional proposed revisions to § 1501.7(g) would add a caveat that agencies must issue joint RODs except where it is inappropriate or inefficient to do so, in order to avoid inefficiency that may be created by joint RODs in some circumstances.

Proposed revisions to §§ 1504.1 and 1504.2 would encourage agencies to engage with each other as early as possible to resolve interagency disputes and collaborate in an informal and non-binding process. Proposed revisions to § 1501.4 would provide agencies with flexibility to establish CEs using mechanisms outside of their agency NEPA procedures to promote more efficient development of CEs as part of planning processes, and also confirm that agencies can develop joint CEs, which can save time and reduce duplication. Lastly, proposed revisions to § 1501.3(a)(1)–(4) would update the criteria for the threshold determination of NEPA applicability; once an agency determines that the threshold criteria are not met, it can devote its resources to other activities. These proposed changes align with new text in section 106 of NEPA.

#### Proposed Changes to Promote Better Environmental Outcomes

CEQ proposes changes that would add new provisions and modernize existing provisions in an effort to better analyze the effects of climate change and greenhouse gas emissions and promote better environmental outcomes. For example, proposed revisions to §§ 1500.1(b), 1501.5(i), 1502.15, and 1502.23 emphasize the importance that agencies identify high-quality and accurate information early in the process and fully disclose when relevant information is incomplete or

unavailable. These proposed revisions also would encourage agencies to use the best available science and information to describe reasonably foreseeable environmental trends, including anticipated climate-related changes, as a part of EAs and EISs. Similarly, proposed revisions to § 1500.2 would highlight climate change and community impacts as important considerations when evaluating action alternatives. Revisions to § 1502.16 would require agencies to include in EISs reasonably foreseeable climate change effects resulting from a proposed action and alternatives and to discuss the effects of climate change on the proposed action and alternatives. Additional revisions to § 1502.16 also would require discussion of the potential for disproportionate and adverse health and environmental effects on communities with environmental justice concerns, as well as an analysis of any adverse environmental effects of the no action alternative. Proposed changes to § 1502.14 would require the identification of the environmentally preferred alternative in EISs, instead of solely in RODs.

Proposed revisions to § 1501.3(d) would restore and update agencies' obligation to evaluate context and intensity factors when making a determination of significance. In paragraph (d)(1), the proposal would restore the consideration of the context of the proposed action as a standalone consideration and restore language from the 1978 regulations requiring agencies to analyze the significance of an action in several contexts. The proposal also provides examples of potential contexts for consideration in paragraph (d)(1). In paragraph (d)(2), the proposal would reinstate the requirement that agencies consider the intensity of effects associated with an action, and would restore and update the list of intensity factors an agency may consider. Updates to the intensity factors include clarifying that effects may be both beneficial and adverse and that an action that results only in significant beneficial effects does not require an EIS. The proposal also prompts agencies to consider the duration of effects and the degree to which effects are highly uncertain, as well as the degree to which an action may have disproportionate and adverse effects on communities with environmental justice concerns, or effects upon the reserved rights of Tribal Nations. These proposed changes are consistent with the proposed rule's overall emphasis on reintroducing the concepts of indirect and cumulative effects and would ensure that agencies consider reasonably foreseeable effects beyond just the immediate area of the action, improving the consideration of environmental outcomes.

Additionally, a proposed change to § 1502.21 would remove the phrase "but available" to clarify that agencies must obtain information essential to a reasoned choice between alternatives. This change would restore the requirement in the 1978 regulations for agencies to undertake studies and analyses when appropriate, rather than relying solely on available information, emphasizing the importance of relying on high-quality and accurate data and scientific information and further expanding agencies' flexibility to evaluate unique circumstances. Similarly, the proposed revision to § 1502.23 would expand the use of reliable, high-quality data, including the flexibility for agencies to use newly gathered data. Proposed changes to § 1501.8 would amplify the use of Indigenous Knowledge as a source of relevant expertise and would help ensure Federal agencies can benefit from the unique knowledge that Tribal Nations bring to the environmental review process. Finally, proposed updates to various definitions in § 1508.1 add climate change examples, including in the definitions of "effects," "environmentally preferred alternative," and "extraordinary circumstances."

## Proposed Changes to Prioritize Meaningful Public Engagement, Including Advancing Environmental Justice and Respecting Tribal Sovereignty

CEQ proposes changes to emphasize the importance of engagement during the NEPA process. CEQ's revisions would reorganize parts of the regulations to clearly identify requirements related to public, State, and Tribal engagement, as well as add additional requirements intended to enhance public transparency. For example, CEQ proposes to restore a modified section § 1500.2 with new language to promote meaningful engagement, including with communities with environmental justice concerns.

CEQ proposes to add in § 1505.3(b) that agencies should “incorporate mitigation measures that address” significant adverse human health and environmental effects of proposed Federal actions that disproportionately and adversely affect communities with environmental justice concerns, and further proposes to include environmental justice in the definition of effects or impacts in § 1508.1.

The proposed changes would add a new paragraph § 1501.5(e), which clarifies agency responsibilities for public notice and comment regarding draft and final EAs. The revised § 1501.9 and § 1502.4 also would require consideration of local communities and encourage consideration of the primary language of affected persons when agencies evaluate appropriate outreach and notification methods, including during the scoping process. Proposed revisions also would encourage agencies to consider the needs of affected communities when determining the appropriate format for a public hearing or meeting. The revised § 1501.9 also would give the requirements for public and governmental engagement greater prominence in the regulations, emphasizing the importance of public engagement in the NEPA process regardless of what level of NEPA analysis an agency undertakes.

The proposed revisions also would incorporate public engagement in new provisions. For example, proposed changes to § 1501.4(c) would require each agency to publish online a list of all the CEs it develops under the new programmatic approach proposed in this rulemaking. CEs established under this programmatic approach also would be subject to requirements for public notice and comment. CEQ further proposes to clarify in § 1502.5(b) that agencies should “work together with potential applicants and applicable State, Tribal and local agencies” as early in the process as practicable. Changes to § 1502.12 would make EISs more accessible by requiring the summary to identify the environmentally preferable alternative or alternatives. Finally, proposed revisions would ease barriers to public engagement by removing requirements for detailed comments in § 1503.3 and ambiguity around requirements for responding to public comments in § 1503.4.

## Proposed Changes to Update Structure and Consistency of NEPA Regulations

CEQ has proposed structural changes to the regulations to improve clarity and ensure consistency among internal cross-references and to conform certain sections with proposed revisions to other sections. The proposed changes to the structure and consistency of the NEPA regulations would improve the readability of the regulations, which, in turn, would enhance the efficiency of the regulation, including by facilitating more and higher-quality engagement from members of affected communities and the public.



Structurally, CEQ proposes restoring, with clarifying edits, the long-standing purpose and policy sections of the 1978 regulations at §§ 1500.1 and 1500.2. CEQ also proposes updates to these sections for consistency with other regulatory changes, such as the inclusion of climate change and environmental justice considerations throughout the regulations. Proposed revisions to §§ 1500.1 and 1500.2 would clarify the purpose of the NEPA regulations and better reflect NEPA's statutory purpose.

The proposed changes also would remove the comment exhaustion requirement in § 1500.3(b) to reduce the burden on public commenters, and would amend §§ 1503.1 and 1503.3 to conform with this change.

Other proposed structural changes would clarify the importance of public engagement in the NEPA process by adding early engagement language in § 1501.1(b); moving the requirements for public engagement to part 1501, to emphasize that engagement is a core component of the NEPA process and agency planning processes; and updating and reorganizing requirements for scoping in § 1502.4. CEQ also has proposed consolidating separate provisions on determining the applicability of NEPA, considering the scope of the action, and determining of the level of NEPA review into one section at § 1501.3. These proposed changes include restoring and updating the context and intensity factors for evaluating "significant effects." This revised section would clarify the steps for assessing the appropriate level of NEPA review, facilitating a more efficient and predictable review process.

#### Proposed Changes to Enhance Clarity in NEPA Regulations

Many of the proposed changes would improve the clarity of the regulations by articulating the intent of NEPA more clearly, defining roles and responsibilities, and codifying best practices for coordination and collaboration across Federal agencies. The proposed changes would revise §§ 1500.1 and 1500.3 to clarify the purpose of the NEPA regulations, while removing text that suggests NEPA only requires agencies' perfunctory compliance with procedural requirements (§ 1500.1). CEQ's proposed changes also would ensure that the regulations appropriately include considerations of climate change and environmental justice throughout, including in §§ 1500.2(e), 1502.14(f), 1502.16(a), 1502.23, and 1508.1(g). CEQ also proposes to change § 1500.4 to better describe and cross-reference requirements for agencies to create concise and informative environmental documents, including by amending potentially confusing provisions from the 2020 regulations. Similarly, CEQ would amend language in § 1501.4 regarding agencies' flexibilities and obligations when establishing CEs, whether using the traditional method under § 1507.3 or agencies' new ability to establish CEs through programmatic environmental and planning documents. Further, proposed changes would clarify the limited conditions, set forth in § 1500.6, in which agencies may determine that it is impossible to comply with NEPA requirements. Similarly, CEQ proposes to strike 40 CFR 1501.1(a)(6) (regarding functional equivalence) and 40 CFR 1506.9 ("Proposals for regulations"), which were both added in the 2020 rule to allow agencies to substitute other processes and documentation, unrelated to NEPA, for corresponding requirements in the regulations. By removing these provisions, the proposed changes would avoid confusion and controversy over whether completing a separate process meets the requirements of NEPA.

The proposed rule would clarify § 1501.3(b), on how agencies should determine the scope of a proposed action and whether there are other closely related activities or decisions; and move the specific EIS scoping requirements to § 1502.4 and retitle it “Scoping.” It also proposes a new § 1501.9, on public and governmental engagement, to clarify differences between scoping and public involvement or engagement. By making these changes, CEQ will better define the appropriate level of NEPA review that an agency must undertake and the requirements for engagement with the public. CEQ also proposes codifying best practices, such as early interagency dispute resolution (§ 1504.2). CEQ proposes reinstating and improving § 1501.1, from the 1978 regulations, which states the overarching purposes of Part 1501 and highlights the importance of early stakeholder engagement. Similarly, to improve coordination among Federal agencies, CEQ’s proposed revisions to § 1502.4 would include a new paragraph (e)(9) that requires a lead agency to identify any cooperating and participating agencies, as well as any information those agencies require to facilitate their decisions, in the notice of intent (NOI). This proposal intends to consolidate decision making across stakeholders by introducing a simpler framework with deadlines and clear lines of accountability, which will facilitate more efficient NEPA reviews. CEQ also proposes to revise § 1501.5 to provide greater clarity to agencies on the requirements for EAs.

Finally, numerous revisions within § 1508.1 would clarify definitions of key terminology, including “categorical exclusion,” “effects or impacts,” “lead agency,” and “environmental assessment,” among others. The proposed changes would update the language used and clarify previously unclear terms.

### **III. Baseline for Analysis**

To evaluate the costs and benefits of this rulemaking, CEQ will use as the baseline the current NEPA regulations, *i.e.*, the 2020 regulations as amended by the final Phase 1 rule CEQ issued on April 20, 2022.<sup>13</sup> CEQ acknowledges that there may be provisions of the 2020 regulations that agencies have not yet fully implemented, but agencies will implement these provisions if the proposed rule does not move forward, and therefore CEQ analyzes the costs and benefits of the proposal against a baseline in which agencies implement those provisions.<sup>14</sup>

### **IV. Summary of Benefits and Costs**

Appendix 1 provides a summary of the benefits and costs of the proposal. CEQ distinguishes between direct and indirect benefits and costs because certain effects are more closely related to the proposed changes than others. CEQ categorizes benefits and costs as direct when there is a specific link from the proposed change to an obligation on an agency or a course of action by an agency. CEQ categorizes other benefits and costs as indirect if they are foreseeable and likely, but not direct. Possible effects on project stakeholders and other members of the public generally fall into this category. Given that the proposed rule prescribes procedural requirements for Federal agencies, CEQ includes a discussion of indirect benefits and costs that take into account the foreseeable and likely effects resulting from agencies’ implementation of the proposed rule.

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<sup>13</sup> Phase 1 Final Rule, *supra* note 3.

<sup>14</sup> See Off. of Mgmt. & Budget, OMB Circular A-4, Regulatory Analysis (2003).

## V. Benefits of the Proposed Action

CEQ expects that the proposed changes would have direct and indirect benefits in a variety of areas. The proposed changes are likely to benefit implementing agencies, project sponsors, environmental stakeholders, and members of affected communities. CEQ acknowledges the limitations of the data available to address previous assumptions made in the RIA for the 2020 regulations and assess costs and benefits. Given these circumstances, the discussion of benefits is primarily qualitative. Where feasible, it includes specific examples of anticipated outcomes.

In addition to the NEPA review process, project timelines may be impacted by related reviews under substantive Federal laws, such as the Endangered Species Act, the Clean Air Act, and the Marine Mammals Protection Act, among others, and factors beyond the agency's control. In their comments on the 2020 regulations, a group of law professors explained that "NEPA often functions as an 'umbrella' statute, such that studies, reviews, or consultations required under other environmental laws are integrated into the NEPA process," making it difficult to isolate the effects of NEPA procedures, including with respect to project timelines.<sup>15</sup>

### **Direct Benefits**

CEQ assesses that the proposal will have direct benefits to agencies. CEQ discusses these benefits qualitatively. Direct benefits include improved communication and dispute resolution among agencies, as well as improved coordination and efficiency throughout the NEPA process, resulting in cost reductions for agencies.

### Agency Operations

CEQ proposes to update the list of factors that an agency should consider when setting schedules and deadlines to require consideration of the degree to which a substantial dispute exists on the size, nature, or consequences of the proposed action and its effects. This change would encourage agencies to seek ways to resolve or address disputes early in the process to achieve more efficient outcomes and potentially avoid costly and time-consuming litigation later on. Proposed changes to increase transparency and to better notify and engage the public earlier in the process also could result in reduced litigation risk.

The proposed changes would give agencies greater flexibility to produce informative environmental reviews and ensure the regulations are consistent with long-standing agency practice and established case law, which may result in additional reductions in litigation relative to the baseline. CEQ does not have data at this time on the exact amount that agencies spend on legal services in response to NEPA litigation, but understands that the costs are large and non-trivial. Litigation expenses related to NEPA are likely large and unpredictable, as cases may take many years to be resolved in the courts and may involve the participation of both lead and cooperating agency counsel. Further, litigation costs are not borne entirely by agencies, as costs

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<sup>15</sup> Robert H. Abrams et al., Comments on the Council on Environmental Quality NPRM Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, CEQ-2019-0003-169621 (Mar. 9, 2020), <https://www.regulations.gov/comment/CEQ-2019-0003-169621>.

associated with avoidable litigation involve the judicial branch as well. Reducing litigation risk benefits agencies by reducing or avoiding such costs, which are likely substantial.

Additionally, removing § 1502.11's requirement to provide estimates of EIS preparation costs may save agencies time and money associated with tracking these costs.

Further, proposed changes to § 1502.15 emphasize the use of high-quality information, including using the best available science and data, to describe reasonably foreseeable environmental trends, including climate change, and § 1502.16 requires EISs to discuss the environmental consequences of an action in terms of climate, risk, resilience, adaptation, and long-term productivity. Once agencies have obtained and analyzed this information, they may leverage it for future actions. Therefore, agencies may save time and resources when conducting similar analyses in the future.

### Interagency Communication and Dispute Resolution

The proposed changes include revisions related to interagency disputes, including a new section in § 1504.2 on early dispute resolution. CEQ proposes to add this section to encourage agencies to engage with one another and enlist CEQ to help resolve interagency disputes. The added text would codify CEQ's role in convening discussions, mediating issues, and recommending resolutions, and would encourage agencies to use this process to resolve interagency disputes early in the process. One author argues that interagency conflicts caused by inefficient communication and general confusion over the action's purpose and objectives are one of the major causes of planning delays.<sup>16</sup> The author reviews a 2008 U.S. Department of Transportation study and reveals that successful infrastructure planning hinges on good working relationships with open lines of communication, concise project scopes, and shared priorities across coordinating agencies. CEQ also has found evidence that interagency communication delays or disputes can significantly affect the timely delivery of services by agencies.<sup>17</sup> Proposed changes to address interagency disputes and ensure improved communication across agencies, including this revision to § 1504.2, would reduce conflict-related delays. Further, the proposed changes would provide a more structured process for resolving interagency disputes; this structure could lead to quicker and more efficient resolution of issues when compared to *ad hoc* agency coordination.

### Interagency Coordination and Efficiency

CEQ proposes additional changes related to early agency coordination that would allow agencies to better acknowledge when they are subject to similar or identical procedural requirements and coordinate their compliance, which would directly benefit agencies by reducing the administrative costs associated with potential overlap. For example, a proposed change to § 1502.4 would require the lead agency to identify any cooperating and participating agencies, as well as any information those agencies require to facilitate their decisions or authorizations

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<sup>16</sup> Philip Mark Plotch, *What's Taking So Long? Identifying the Underlying Causes of Delays in Planning Transportation Megaprojects in the United States*, 30 J. of Plan. Literature 282, 292 (2015).

<sup>17</sup> GAO, GAO 04-612, *Wildfire Suppression: Funding Transfers Cause Project Cancellations and Delays, Strained Relationships, and Management Disruptions* (June 2, 2004), <https://www.gao.gov/products/gao-04-612>.

related to an EIS. This would ensure that lead and cooperating agencies are communicating about each agency's statutory or regulatory requirements, reducing the costs arising from duplicative regulations and overlapping regulatory requirements. Similarly, proposed revisions to § 1501.1 would restore language from the 1978 regulations that emphasizes early engagement in the environmental review process and elevates the importance of early coordination and engagement as a way to address potential issues early on. This would help shorten the overall timeline for approving an action and improve outcomes. A 2000 Federal Highway Administration (FHWA) survey of its regional offices found that infrastructure projects completed in three years or less cited early agency coordination as a reason for timely completion.<sup>18</sup> Therefore, changes within the proposed rule related to early agency coordination may lead to abbreviated timelines and, as a result, reduced costs.

CEQ also proposes revisions that would result in more efficient procedures, directly reducing costs to agencies. Changes in the proposed rule, including revisions to § 1501.10 that would require agencies to set schedules, would facilitate meeting statutory deadlines and create predictability in the review process. In other cases, the proposed changes would reduce agency costs by reducing duplication of effort.

The proposed changes also encourage the use of programmatic environmental documents. While the 2020 revisions did not disallow programmatic EISs and EAs, the proposed changes would reorganize the relevant provisions and clarify the use of these processes in line with relevant guidance, resulting in more efficient multi-agency decision making.

Finally, the proposed rule also includes a provision explicitly allowing agencies to jointly develop CEs, which may save agencies substantial time and reduce costs. In addition, the proposed rule would allow agencies to propose new CEs as part of another planning process or programmatic review, opening a new avenue for efficient NEPA compliance while fostering better-integrated strategic planning.

## **Indirect Benefits**

This section discusses the indirect benefits that CEQ expects to result from the proposed changes' improvements to agency efficiency and decision making, including benefits to agencies, project sponsors, environmental stakeholders, and members of affected communities. These indirect benefits would come in the form of better-designed projects and actions that account for projected environmental trends such as climate change, include more effective mitigation measures, and emphasize resiliency.

### Agencies

CEQ proposes changes that would facilitate improved public engagement and encourage earlier public participation, which may result in indirect benefits to agencies. Improved public engagement can result in more transparent, efficient, and informed decision making, and allows

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<sup>18</sup> FHWA, *Reasons for EIS Project Delays* (2000), <https://web.archive.org/web/20141029014303/https://www.environment.fhwa.dot.gov/strmlng/eisdelay.asp>.

agencies to identify problems earlier on, thereby reducing administrative costs.<sup>19</sup> For instance, removing the requirement for comments to be overly detailed and technical in § 1503.3 and removing the exhaustion requirement for public commenters in § 1500.3 would allow both the public and agencies to focus on the most critical issues at hand and, as needed, incorporate important information presented to the agency outside the comment period into its decision making.

Likewise, commenters would be encouraged, but no longer required, to state their comment with as much specificity as possible—a flexibility that is particularly beneficial to those who are limited in their ability to provide comments due to special circumstances. For example, groups representing members of communities with environmental justice concerns commented that the 2020 restrictions on public engagement “squandered the resource of an educated and active public” and suggested that reversing such changes would lead to “more meaningful, collaborative, transparent, and empowering mechanisms for public participation.”<sup>20</sup>

The proposed changes also would result in an indirect benefit to agencies by improving efficiency in completing NEPA reviews, allowing agencies to more efficiently allocate resources to other priorities relative to the baseline. For example, proposed revisions to § 1501.4 would give agencies new flexibility to establish CEs using additional mechanisms outside their NEPA procedures, promoting the more efficient development of CEs. Additionally, removing § 1502.11’s requirement to provide estimates of EIS preparation costs would allow agencies to eliminate the administrative costs of collecting this data.

Finally, the proposed changes will produce unquantifiable benefits by resulting in some decisions and actions that are more effective and durable. For example, the proposed additions concerning climate change, resilience, and environmental justice would promote science-based decision making and lead to more sustainable and resilient projects and actions on the ground, obviating the need for agencies to devote resources to address problems down the road.<sup>21</sup> Further, more sound analysis of environmental effects (§ 1508.1(g)), analysis of reasonable alternatives (§ 1502.14), and consideration and implementation of mitigation measures (§§ 1505.2, 1505.3, 1508.1(w)), as well as earlier identification of an environmentally preferred alternative or alternatives (§§ 1502.14, 1505.2, 1508.1(l)) will provide indirect, unquantifiable benefits by helping to avoid community and environmental impacts. Improving the efficacy of Federal actions also will allow agencies to achieve their goals more efficiently, allowing agencies to shift attention to other goals after an action has occurred.

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<sup>19</sup> John C. Ruple et al., *Evidence-Based Recommendations for Improving National Environmental Policy Act Implementation*, 47 Colum. J. Envtl. L. 273, 338–39 (2022), <https://doi.org/10.52214/cjel.v47iS.9479> (giving two examples of using the NEPA process to engage stakeholders where projects avoided delays and litigation and received more resources from partners and public support: the FRA’s 2012 4FRI EIS and the Forest Service’s Collaborative Forest Landscape Restoration Program pilot established by Congress in 2009).

<sup>20</sup> WE ACT for Environmental Justice et al., Comments of Proposed NEPA Regulations Revisions, CEQ–2021–0002–33761 (Nov. 22, 2021), <https://www.regulations.gov/comment/CEQ-2021-0002-33761>.

<sup>21</sup> Ruple et al., *supra* note 19. Ruple et al. studied the Forest Service’s time to complete NEPA processes and found that the regions which faced greater drought and wildfire threats, were also associated with longer completion times. Their paper references further sources which confirm that the Forest Service had to borrow non-fire funds for emergency wildfire suppression as a result of project delays and NEPA compliance issues.

## Project Sponsors

Project sponsors also may indirectly benefit from the proposed changes. Early interagency coordination and public engagement coupled with greater clarity in project schedules and deadlines would increase predictability in the environmental review process and help project sponsors avoid misallocating resources to project locations or proposals that may ultimately prove difficult to approve or implement. Additionally, early identification and resolution of issues, leading to more effective analyses, has the potential to reduce public controversy and litigation risk. This increased predictability would result in benefits to project sponsors, such as greater certainty in budgets and security in investments. Project sponsors may also indirectly benefit from the changes proposed in § 1507.3 that would require agencies to prescribe procedures to allow a project sponsor to prepare an EA or EIS under the supervision of the agency.

The proposed changes would add new provisions and modernize existing provisions to promote consideration of the effects of climate change and greenhouse gas emissions. These changes codify many agencies' current practices, creating consistency and predictability for project sponsors. Agencies' analyses of reasonably foreseeable climate impacts contribute to the available public information on climate modeling and expands the public's overall understanding of climate impacts. For example, in-depth interviews of staff at Federal and state land management agencies have identified the lack of institutional capacity as a constraint on public land managers' ability to consider climate change adaptation in their planning and management.<sup>22</sup> Additional public information will allow Federal agencies to improve evaluations from both an adaptation and mitigation standpoint. Considering extreme heat events, drought, wildfire, flood, and climate-related public health outcomes, as well as the greenhouse gas emissions impact of an investment or activity, would facilitate more efficient and beneficial resource deployment for current and future generations.

By considering climate change, CEQ can promote the development of more resilient projects that are better prepared to withstand climate impacts. For example, several authors have found that many infrastructure sectors are particularly exposed to changes in climate conditions, and because infrastructure projects require long-term planning, long-lived investments, and some irreversibility in choice, such projects need to account for climate uncertainty and adapt flexibly to climate change.<sup>23</sup> Damage caused by climate events can also lead to impacts that exceed the cost of infrastructure replacement: for example, damage to a transportation network imposes

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<sup>22</sup> Katherine R. Clifford et al., *Navigating Climate Adaptation on Public Lands: How Views on Ecosystem Change and Scale Interact with Management Approaches*, 66 *Envtl. Mgmt.* 614, 621–22 (July 29, 2020), <https://link.springer.com/article/10.1007/s00267-020-01336-y>.

<sup>23</sup> Alejandro E. Camacho, *Adapting Governance to Climate Change: Managing Uncertainty Through a Learning Infrastructure*, 59 *Emory L.J.* 1 (2009), <https://scholarlycommons.law.emory.edu/elj/vol59/iss1/1/>; Wenyi Xia & Robin Lindsey, *Port adaptation to climate change and capacity investments under uncertainty*, 152 *Transp. Rsch. Part B: Methodological* 180 (2021), <https://doi.org/10.1016/j.trb.2021.08.009>; Arash Beheshtian et al., *Climate-adaptive planning for the long-term resilience of transportation energy infrastructure*, 113 *Transp. Rsch. Part E: Logistics & Transp. Rev.* 99 (2018), <https://doi.org/10.1016/j.tre.2018.02.009>.



direct rebuilding costs and, as an indirect effect, slows the recovery of the affected region.<sup>24</sup> The Organization for Economic Co-operation and Development (OECD) recommends that decisions about infrastructure should be adaptive and consider future climate uncertainties to ensure that infrastructure is resilient to climate risks.<sup>25</sup> The new provisions include climate change in the analysis of reasonable alternatives (§ 1500.2(e)) and incorporate climate-related changes in the analysis of foreseeable trends to improve an agency’s analysis of environmental consequences and mitigation measures (§ 1502.15(b)). These provisions would encourage more durable and climate-resilient construction, likely benefitting project sponsors through improved project outcomes.<sup>26</sup> Project sponsors also would benefit from shorter timelines for project completion (i.e., planning, construction, and implementation) resulting from improved efficiency and the ability to identify problems earlier in the process. This is supported by research showing that, relative to ordinary infrastructure projects, climate-resilient infrastructure projects would generate better outcomes, including increased reliability and efficiency of service provision, increased asset life coupled with reduced repair and maintenance costs, and co-benefits across society and the environment.<sup>27</sup> Similar outcomes have also been found for electricity infrastructure, for which climate change impact assessments are expected to improve reliability. Furthermore, assessments that embrace resiliency can adopt more rigorous design processes, e.g., by considering “safe-to-fail” principles instead of the traditional “fail-safe” approaches used today.<sup>28</sup> Finally, the more robust environmental analyses resulting from the proposed changes, including those in §§ 1502.15, 1502.16, and 1502.21, likely would result in greater community support for projects and more durable project design, saving project sponsors money and resulting in indirect project benefits.

### Members of Affected Communities and the Public

The proposed rule includes several provisions that will increase transparency and allow members of the public to better understand agency decisions. Proposed changes to § 1502.12 would require each EIS to include a summary that provides a complete picture of the disputed issues and the trade-offs among alternatives. Proposed changes in § 1505.3(c) would require agencies to develop a monitoring and compliance plan when the EA or EIS relies on mitigation as a component of the proposed action to analyze the reasonably foreseeable environmental effects of a proposed Federal action. This would provide more consistency in mitigation planning, increase the transparency of mitigation measures, and may improve the quality of decisions. These changes should not impose a significant burden on agencies, as the proposed rule directs agencies to use their existing authorities to implement mitigation commitments, such as their authority to determine the terms and conditions of grants or permits. To ensure informed

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<sup>24</sup> Thahomina Jahan Nipa & Sharareh Kermanshachi, *Resilience measurement in highway and roadway infrastructures: Experts’ perspectives*, 14 *Progress in Disaster Sci.*, art. 100230, April 2022, at 1, <https://www.sciencedirect.com/science/article/pii/S2590061722000175>.

<sup>25</sup> Michael Mullan et al., *Org. for Econ. Co-operation & Dev., OECD Environment Policy Paper No. 14: Climate-resilient Infrastructure* (2018), <https://www.oecd.org/environment/cc/policy-perspectives-climate-resilient-infrastructure.pdf>.

<sup>26</sup> See Hossein Mahmoudi et al., *Integrating Resilience Assessment in Environmental Impact Assessment*, 14 *Integrated Env'tl. Assessment & Mgmt.* 567 (2018), <https://doi.org/10.1002/icam.4075>.

<sup>27</sup> Mullan et al., *supra* note 25, at 9.

<sup>28</sup> Mikhail V. Chester et al., *Keeping infrastructure reliable under climate uncertainty*, 10 *Nature Climate Change* 488, 489 (2020), <https://par.nsf.gov/servlets/purl/10165222>.



decision making, changes in § 1502.14 would ensure agencies provide the decision maker with reasonable options, including identifying the “environmentally preferable alternative” in the EIS and would allow agencies to consider reasonable alternatives not within their jurisdiction, which may result in more beneficial alternatives being adopted, such as when agencies are considering program-level decisions or anticipate funding for a project. Further, requiring agencies to identify the environmentally preferable alternative in the EIS in addition to the ROD, the proposed rule would give the public the opportunity to comment on that alternative at the draft EIS stage, which also may help produce more informed decisions. The proposed changes to § 1506.3 clarify that an agency must conduct an independent review before adopting another agency’s EIS, EA, or CE determination to ensure it meets certain basic standards. Additionally, the section requires an agency to publicly disclose its adoption of another agency’s CE determinations. Proposed revisions in § 1506.12 would allow CEQ to authorize agencies to pursue innovative approaches to NEPA reviews for actions that will address extreme environmental challenges, in order to maximize agency flexibility, creativity, and efficiency while still meeting the requirements of NEPA and providing for sound environmental review.

CEQ also has proposed structural changes to the regulations to improve clarity, to ensure consistency among internal cross-references, and to conform certain sections with proposed revisions to other sections. The proposed improvements to structure and consistency in §§ 1500.1 and 1500.2 would improve the readability of the regulations, which, in turn, would enhance the efficiency of the regulation, including by facilitating more and higher-quality engagement from members of affected communities and the public.

Finally, a benefit would result from the proposed rule’s continued emphasis on and clarification of the treatment of cumulative effects. A 2021 Alabama Law Review article found that the 2020 revisions’ reduced emphasis on the importance of analyzing cumulative effects in the EIS could lead to poor decision making and negative environmental consequences, because agencies might cease to consider climate change, environmental justice, and other key focus areas in the NEPA process.<sup>29</sup> The article notes several court cases in which important environmental effects would not have been considered absent the cumulative effects requirement.

#### Other Stakeholders, including the Public

Improved decision making resulting from the proposed changes is expected to result in indirect benefits to stakeholders and the public. The proposed rule would require agencies to engage in greater discussion and consideration of reasonably foreseeable climate change effects; furthermore, it would encourage agencies to use the best available scientific data to inform both short- and long-term decision making and to take steps to ensure that mitigation measures included in a decision are successfully carried out. For example, the proposed revision to § 1502.16 would clarify that the discussion of environmental consequences in the EIS must include reasonably foreseeable climate change effects, and would require agencies to consider risk reduction, resiliency, and adaptation measures. Similarly, the proposed revision of § 1501.3(d)(2)(i) would clarify the requirement that agencies consider the duration of effects of a

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<sup>29</sup> Margot Blaire Woolverton, Note, *Turning a Blind Eye to the Environment: Why Eliminating the Cumulative Effects Analysis is not Entitled to Chevron Deference*, 73 Ala. L. Rev. 199 (2021), <https://www.law.ua.edu/lawreview/files/2021/11/5-Woolverton-199.pdf>.

proposed action by providing an example of short-term adverse effects but long-term beneficial effects. Overall, many of the proposed changes, including those in §§ 1502.15, 1502.16, 1502.21, and 1502.23, would result in the incorporation of the best-available science and the use of reliable high-quality data in environmental documents, resulting in more informative documents, more scientifically accurate analyses, and better government decision making. This would indirectly lead to improved environmental outcomes that would generate long-term benefits for stakeholders and the public.

### Members of Affected Communities

Finally, members of affected communities may indirectly benefit from the proposed changes due to better community engagement and increased consideration when an agency determines the appropriate level of NEPA review. This would result in benefits for members of affected communities, especially for members of affected communities with environmental justice concerns, including fewer harmful health impacts, reduced insurance premiums, and reduced opportunity costs.

Often, members of affected communities with environmental justice concerns, which may include communities of color, low-income communities, and Tribal Nations, suffer the greatest adverse effects from natural disasters and other environmental hazards. For example, members of low-income communities may live closer to areas prone to flooding during extreme weather events.<sup>30</sup> Such trends compound the existing economic and social disadvantages these groups already face. While multiple E.O.s already direct Federal agencies to consider environmental justice impacts in their decision making, CEQ's proposed changes would incorporate environmental justice considerations directly into the NEPA process by providing Federal agencies with direction on how to account for the interests of communities with environmental justice concerns in their environmental reviews. CEQ's proposed change to require agencies to consider these communities' interests through public engagement and when determining the appropriate level of NEPA review may reduce the disproportionate distribution of the significant environmental effects of agency decisions.

Early public engagement would bring affected stakeholders together earlier in the process and may avoid the lengthy adversarial process that can result when a project or action advances before members of affected communities have had an opportunity to provide input. For example, the 2020 FHWA survey of regional offices found that early public engagement was a factor in successful project planning and quicker project turnaround.<sup>31</sup> Changes in § 1503.3 would provide more flexibility in the comment process, reducing the burden on commenters and empowering agencies to consider and incorporate a broader scope of concerns into the EIS. The proposed removal of the stringent exhaustion requirement for public commenters in § 1500.3 would allow an agency to consider potentially important comments it receives outside the comment period. Revising § 1501.10 to direct agencies to set deadlines and schedules would create transparency and predictability for stakeholders and the public regarding NEPA review. Revised § 1503.4

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<sup>30</sup> Paul Mohai et al., *Environmental Justice*, 34 Ann. Rev. Env't & Res. 405, 420–21 (2009), <https://doi.org/10.1146/annurev-environ-082508-094348>.

<sup>31</sup> FHWA, *supra* note 17.

would clarify that agencies must respond to comments, which would increase public engagement.

Similarly, proposed changes to § 1501.3(d) would emphasize the consideration of communities with environmental justice concerns and the reserved rights of Tribal Nations when an agency determines the appropriate level of NEPA review. Greater consideration of these factors may reduce the disproportionate environmental, health, and other socio-economic burdens that communities with environmental justice concerns often experience, as an agency considering an action that would impact these communities could determine it to be significant when evaluating the context and intensity of its effect, and therefore subject the action to a higher level of NEPA review.

Affected communities also may benefit to the extent the mitigation measures committed to in the environmental analysis are implemented. For example, a highway project may include sound barriers as mitigation of significant impacts that an agency identifies in an EA and finding of no significant impact (FONSI).

## **VI. Costs of the Proposed Action**

CEQ also assesses that the proposal may impose some costs on agencies and certain groups. CEQ discusses these costs qualitatively in the section below. CEQ assesses that the proposal may have direct costs for agencies and indirect costs for project sponsors, as well as indirect costs for members of the public interested in participation in the NEPA review process. The following sections highlight several provisions as examples and explain CEQ's assessment of the costs of those provisions. Please refer to Appendices 1 and 2 for a complete accounting of key costs and benefits.

### **Direct Costs**

#### **Agency Administrative Costs**

This section details the major direct costs associated with select proposed amendments. For example, removing the requirement in § 1502.11 that agencies provide estimates of EIS preparation costs may deprive agencies and the public of cumulative data on EIS preparation costs. However, without additional statutory authority, CEQ cannot collect this data and report it in a useful manner. Additionally, if agencies did report this data, it might not be useful to the public because EIS preparation costs are not necessarily indicative of an agency's ability to effectively use its resources and conduct environmental reviews. Likewise, the data may not be useful because agencies use different methods to estimate preparation costs, and the resulting cost data may not be comparable across EISs.

Changing §§ 1502.15 and 1502.23 to emphasize the use of high-quality information, including the best available science and data, to describe reasonably foreseeable environmental trends, including climate change, and amending § 1502.16 to require EISs to discuss the environmental consequences of an action in terms of climate, risk, resilience, adaptation, and long-term productivity, may increase the time and effort agencies must devote to preparing NEPA documents if agencies have to conduct additional research or analyses. While this may increase some costs in the short term, over time CEQ expects the costs of incorporating these analyses

will decrease. CEQ expects these costs to decline due to the efficiency improvements agencies would make over time and agencies' increased familiarity with new data and scientific research. This may have the short-term effect of delaying actions or projects and depriving the public of the benefits associated with them.

The proposed changes in § 1505.3(c), which would require agencies to develop a monitoring and compliance plan in certain cases, may result in incremental additional costs. However, this cost is challenging to assess, given that mitigation often depends on an agency's other authorities or compliance with other environmental laws. Further, CEQ is not certain of the extent to which agencies already monitor for compliance with mitigation measures and therefore already incur these costs. Additionally, assessing the net cost impact of this provision is further complicated by the possibility that agencies will rely more heavily on FONSI's to mitigate effects below significance, thereby avoiding the need to prepare an EIS.

The proposed changes to § 1506.3 would clarify that agencies must conduct an independent review before adopting another agency's EIS, EA, or CE determination. The section requires that an agency publicly disclose its adoption of another agency's CE determination, which may have minimal costs to the agency but should not have any costs to project sponsors.

CEQ invites comment from the public, agencies, and stakeholders on its assessment of direct costs.

## **Indirect Costs**

### Project Sponsor Costs

Proposed changes to §§ 1502.15, 1502.16, and 1502.21 may lengthen the review process if agencies determine that new studies and analyses are necessary in order to adequately analyze the environmental effects of a proposed action using "high-quality information, including best available science and data." However, project sponsors and applicants are expected to benefit from the predictability and transparency that would result from requiring agencies to establish schedules and to coordinate, when appropriate, with project sponsors and applicants in doing so (§ 1501.10 (a)). Therefore, the net cost impact of the proposed change is uncertain and may ultimately reduce costs for project sponsors.

### Other Stakeholders, including the Public

Although the proposed regulations do not require the public to participate in the development of NEPA documents, the regulations would facilitate increased public participation and encourage agencies to undertake additional public outreach and engagement beyond the baseline. While not directly imposing additional costs on members of the public, these additional opportunities for participation could lead the public to incur costs to the extent they choose to participate, and those increased costs could raise challenges for Tribal Nations, local governments, or other under-resourced stakeholders. Although these indirect costs are speculative and cannot be quantified, it is important to acknowledge the potential burdens on disadvantaged communities.

## **VII. Determination that the Benefits of the Proposed Action Justify the Costs**

CEQ believes that the 2020 Rule created some efficiencies in the NEPA process that provided some incremental benefits to agencies, project sponsors, and the public. CEQ believes that the proposal mainly retains these benefits. CEQ is also proposing additional changes that would enhance the efficiency benefits while locking in the gains made by the 2020 rule.

Above, CEQ has describes the direct and indirect benefits to agencies of the proposed action through enhanced coordination and dispute resolution. CEQ's analysis also shows that the proposed rule would convey indirect benefits to project sponsors and environmental stakeholders and increased engagement with members of affected communities. CEQ has also identified indirect benefits for project sponsors through the increased predictability that would result from the adoption of agency schedules.

CEQ believes this proposal has benefits that occur in the largest magnitude, with the greatest likelihood, and the lowest potential reversibility.

CEQ also finds that the proposed action may have slight direct costs for agencies and indirect costs for project sponsors. CEQ finds the costs are relatively low and unlikely to impose a significant burden. Overall, CEQ finds the benefits are greater than these costs because the benefits are likely to continue for a long time into the future and affect a wider set of individuals, at a greater magnitude, than the costs. CEQ arrives at this determination based on its extensive experience in overseeing the NEPA process, and under the assumption that a better process yields better results. As agencies continue to implement the proposed rule, agency NEPA processes will become more transparent, consistent, and predictable across the Federal Government. CEQ invites comment on these conclusions and welcomes any specific examples regarding the scope and magnitude of the benefits relative to the costs.

CEQ has concluded that the incremental benefits of the proposed action exceed the incremental costs for Federal agencies, project sponsors, the public, and environmental stakeholders. Quantifiable data for both benefits and costs is limited, so CEQ assessed most of the costs and benefits qualitatively. CEQ has concluded that the unquantified benefits outweigh any unquantified costs of the proposed action.

## **VIII. Consideration of Alternatives**

CEQ considered multiple alternatives to the current proposed rule, including reinstating the regulations as they existed prior to the 2020 rulemaking or retaining the 2020 regulations, as amended by the Phase 1 rule (*i.e.*, retaining the current regulations). Also, for illustrative purposes, CEQ considered retaining the 2020 regulations as they existed prior to the Phase 1 rule amendments.

### **Strict Return to Pre-2020 Regulations**

This alternative would involve the least uncertainty and, therefore, would likely have the lowest costs associated with litigation and other uncertainty. However, this alternative would roll back provisions from the 2020 rule that CEQ believes provide incremental benefits, such as the imposition of time limits and the codification of longstanding caselaw, and would potentially

decrease administrative efficiency, resulting in increased administrative costs and increased time and cost delays for actions or projects, relative to the baseline. CEQ does not propose to revert to the pre-2020 regulations in their entirety because, drawing on 40 years of experience implementing those regulations, CEQ assessed that updates that have been made since that time that will enhance the efficiency and effectiveness of NEPA processes. These updates include revisions made by the 2020 regulations to reflect longstanding agency practices and to improve agency coordination and collaboration with public stakeholders.

### **Retaining the 2020 Regulations, as amended by the Phase 1 Rulemaking**

Under this alternative, the current regulations would remain in effect. CEQ believes this alternative would likely impose higher costs and lower net benefits than to CEQ's proposal arising from increased potential litigation arguing that the 2020 rule diverts from long-standing practice and case law. Second, CEQ believes the net benefits of retaining provisions from the 2020 rule are lower than the net benefits of CEQ's proposal because the 2020 rule removed long-standing provisions that provided agencies with flexibilities to perform robust analyses.

This alternative would be more likely than CEQ's proposal to result in the implementation of actions that have adverse environmental effects. By contrast, CEQ's proposal would diminish that risk by directing agencies to conduct more robust NEPA analyses that, in some cases, would lead an agency to adopt mitigation measures or select a different alternative altogether. In particular, CEQ believes this alternative does not sufficiently encourage consideration of climate-change related or other long-term environmental effects, which could skew agency determinations to the detriment of environmental, historic, and cultural resources. This outcome would be contrary to the requirements and policy objectives of NEPA.

### **Retaining the 2020 Regulations**

For illustrative purposes, CEQ considered reinstating the 2020 regulations without the Phase 1 amendments. CEQ believes this alternative would impose higher costs and lower net benefits than CEQ's proposal, arising in part from ongoing litigation uncertainty, particularly with respect to agencies' consideration of cumulative effects and the scope of alternatives should agencies limit their purpose and need statements to the goals of the applicant. Moreover, as described above, CEQ believes retaining the 2020 regulations would potentially result in the implementation of actions with more serious adverse effects than under CEQ's proposal.

## **IX. Consideration of Costs and Benefits of the Proposed Action Relative to the Alternatives**

The proposed rule reflects the feedback CEQ received from a wide range of stakeholders and the goals of the overall rulemaking effort. The proposed rule also aligns with the FRA's amendments to NEPA. CEQ has considered a range of alternatives and concluded that the proposal has the greatest net benefits of the options under consideration.

Specifically, CEQ prefers this alternative because it is consistent with longstanding agency practice and established case law, which may decrease uncertainty relative to the baseline. At base, the proposal is likely to generate benefits due to better environmental analyses that facilitates improved action outcomes relative to the baseline.

The proposal also would retain many of the administrative cost reductions that the 2020 rule achieved, but which a wholesale return to the pre-2020 regulations would not. Most of these administrative cost reductions are built into the baseline. However, there might also be notable efficiencies and cost savings from the proposal's innovative provisions, including the new flexibilities for project-level reviews.

The net effect is that the proposal should yield larger benefit increases and smaller cost increases than either of the other three proposed alternatives, and therefore has the highest net benefits relative to the baseline. Additionally, CEQ believes the proposal has the greatest magnitude of net benefits, and over time will result in a better process that produces better outcomes. CEQ invites the public to comment on the assessment of costs and benefits in this RIA.

**Appendix 1: Summary of Main Provisions Likely to Have Impacts**

The following appendix lists the main provisions likely to have economic impacts. As the Special Environmental Assessment notes, proposed changes to CEQ’s NEPA regulations would, in themselves, have no environmental effect.

**IMPROVING NEPA EFFICIENCY & FLEXIBILITY**

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Changes in Proposed Rule</b>	<b>Impacts of Proposal</b>
1501.1, 1501.7(g), 1501.9, 1504.1, 1504.2	Agency coordination	Improves flexibility for agency coordination, joint documents, early collaboration, dispute resolution.	Reduces costs due to improved coordination across agencies.
1502.11	Cover page & cost estimates	Strikes requirement to include cost estimates in the final EIS.	Saves lead and cooperating agencies resources devoted to tracking preparation costs, reducing agency costs.
1501.3(a) (1)–(3)	Determine the appropriate level of NEPA review	Moves and consolidates applicability factors, including the addition of a threshold determination of NEPA applicability, and restores and updates the context and intensity factors.	Benefits agencies through cost savings by providing more flexibility to reallocate resources and by reducing confusion regarding context and intensity factors.
1501.4	Categorical exclusions	Provides agencies with flexibility to establish CEs using mechanisms outside their NEPA procedures to expedite development of CEs and or by using another agency’s CE; confirms that agencies can develop joint CEs.	Improves agency flexibility associated with the CE process, which allows agencies to reallocate resources, leading to reduced costs.



<b>Section Number</b>	<b>Section Name</b>	<b>Description of Changes in Proposed Rule</b>	<b>Impacts of Proposal</b>
1501.11	Programmatic environmental documents and tiering	Codifies best practices for programmatic environmental reviews and tiering; clarifies when agencies may rely on programmatic documents in subsequent environmental documents.	Improves the efficiency of programmatic environmental documents and clarifies that programmatic reviews include EAs, which reduces duplicative work and reduces costs for agencies.
1506.3	Document adoption	Clarifies directions on agency adoption of EAs, EISs, and CE determinations.	Improves agency efficiency by providing clearer instructions and indirectly benefits environmental stakeholders by ensuring documents meet certain basic standards. Requiring agencies to publicly disclose adoption of CE determinations may increase agency costs but should not substantially affect project sponsor costs.
1500.6	Agency authority	Removes language stating agencies must ensure full compliance with NEPA “as interpreted by” the regulations, to ensure that agencies review and revise their procedures in compliance with NEPA and the CEQ regulations.	Reduces ambiguous language that could restrict agency implementation of NEPA and provides agencies more flexibility, which may reduce compliance costs.
1506.12	Innovative approaches to NEPA review	Allows Federal agencies to pursue innovative approaches to NEPA implementation when addressing extreme environmental challenges.	Improves agency flexibility and efficiency and indirectly benefits environmental stakeholders by still ensuring agencies meet the requirements of NEPA and conduct sound environmental reviews when addressing extreme environmental challenges.

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Changes in Proposed Rule</b>	<b>Impacts of Proposal</b>
1506.10	Timing of agency action	Provides flexibility in timing to agencies that use an administrative review process.	Reduces administrative costs by allowing agencies with administrative review processes to issue a ROD at the same time the final EIS is published.
1501.5(g), 1502.7	Page limits	Removes the need for senior agency official approval for documents to exceed page limits.	Reduces administrative costs associated with seeking internal approval to exceed strict page limits. Encourages concise documents.

### **PROMOTING BETTER ENVIRONMENTAL OUTCOMES**

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Changes in Proposed Rule</b>	<b>Impacts of Proposal</b>
1500.2, 1501.3(d) (2), 1502.14, 1502.16(a) (2)	Climate change in alternatives	Requires the evaluation of climate change in the analysis of alternatives.	Promotes indirect environmental benefits and action or project savings by requiring agencies to identify and consider climate change impacts affecting an action. Conducting the evaluation may increase agency costs.
1502.16(a) (3)	Analysis of no action alternative	Requires the analysis of any adverse environmental effects of the no action alternative.	Promotes indirect environmental benefits by requiring agencies to consider the adverse environmental effects of taking no action. Conducting the analysis may increase agency costs.
1502.15	Including climate change in foreseeable trends analysis	Requires agencies to discuss environmental consequences and reasonably foreseeable climate change effects of proposed action and alternatives using high-quality information.	Promotes indirect environmental benefits and action or project savings by requiring agencies to identify and consider climate change impacts affecting the action. Conducting the analysis may increase agency costs.

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Changes in Proposed Rule</b>	<b>Impacts of Proposal</b>
1502.23	Methodology and scientific accuracy	Directs agencies to use reliable existing data and resources. States that agencies are not required to undertake unreasonable new research to inform analyses and clarifies that the language is not intended to prohibit compliance with other statutes pertaining to scientific and technical research.	Promotes indirect environmental benefits by prompting agencies to make decisions using accurate and well-researched sources. May reduce costs to agencies that leverage existing resources.
1501.8	Cooperating agencies	Amplifies the use of Indigenous Knowledge as a source of relevant expertise for cooperating agencies.	Reduces information gathering costs to agencies and benefits project sponsors by directing agencies to use available Indigenous Knowledge.
1508.1	Proposed revisions to definitions	Modernizes definitions to incorporate climate change, including revisions to the definitions of “effects,” “environmentally preferred alternative,” and “extraordinary circumstances.”	Reduces ambiguity.
1500.1(b), 1501.5(j), 1502.21	Incomplete or unavailable information	Clarifies the expectations for the use of incomplete or unavailable information and ensures evaluation of high quality and accurate information.	Reduces costs by identifying high quality and accurate information and could positively affect project sponsors due to increased data quality. May add agency costs if it is determined that additional analysis is necessary.

**PRIORITIZING MEANINGFUL PUBLIC ENGAGEMENT**

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Changes in Proposed Rule</b>	<b>Impacts of Proposal</b>
1500.2, 1500.4(k), 1501.5, 1501.9, 1502.5(b), 1502.4, 1507.2(a)	Improved community engagement	Encourages early and robust public participation through better public notice requirements and greater stakeholder collaboration; requires agencies to designate a Chief Public Engagement officer.	Saves agencies time and costs in the long-run by collaborating early with the public; benefits agencies and project sponsors through improved stakeholder input during decision making; provides increased opportunities for community engagement by requiring agencies to designate a Chief Public Engagement Officer.
1500.3(b)(3), 1503.1, 1503.3	Comment exhaustion	Removes the comment exhaustion requirement and allows consideration of potentially important comments received outside the comment period. Changes to § 1503.3 would allow for more and shorter comments.	Improved stakeholder input reduces costs and saves time for agency and project sponsors, where applicable by avoiding the need to rework actions later on; may increase costs to agencies that must organize, address, and respond to additional comments.

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Changes in Proposed Rule</b>	<b>Impacts of Proposal</b>
1503.3	Specificity of comments and information	Removes language requiring comments to be as detailed as necessary and deletes some of the suggestions for what public comments should discuss. Deletes requirements for comments and objections to be submitted within the comment period and for comments related to § 1502.17 to be as specific as possible.	Benefits public commenters and may reduce administrative costs from increased comment period standardization.
1505.3(b)	Implementing the decision	Encourages incorporation of mitigation measures that address significant adverse human health and environmental effects of proposed actions that disproportionately and adversely affect communities with environmental justice concerns. Adds technical changes.	May benefit environmental stakeholders and the public. May lead to additional agency costs when further consideration of mitigation measures is required; however, the proposal directs agencies to use existing authorities, which should reduce these potential costs.
1502.12	Summary	Requires that the EIS summary identify the environmentally preferable alternative or alternatives.	Increases accessibility of conclusions for public review leading to benefits to project sponsors. Marginal increase in administrative costs to agencies by incorporating this information into the summary.

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Changes in Proposed Rule</b>	<b>Impacts of Proposal</b>
1508.1	Definitions	Incorporates disproportionately high and adverse effects to communities with environmental justice concerns into the definition of “ <i>Effects or impacts.</i> ” Adds a definition for “environmental justice.”	Benefits environmental stakeholders by improving clarity. May lead to additional agency costs when further evaluation of impacts on members of communities with environmental justice concerns is required.
1503.4	Response to comments	Removes ambiguity regarding requirements for responding to public comments.	Eases barriers to public engagement by improving clarity.

#### **UPDATING STRUCTURE AND CONSISTENCY**

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Changes in Proposed Rule</b>	<b>Impacts of Proposal</b>
1500.3(b)(3), 1503.1, 1503.3	Comment exhaustion	Removes the comment exhaustion requirement and allows consideration of potentially important comments received outside the comment period and allows for more and shorter comments.	Provides greater flexibility in the comment process, reducing the burden on public commenters. Benefits agency decision making by allowing agencies to incorporate important information presented outside the comment period.
1501.1(b), 1501.9	Public engagement	Adds early engagement language.	Improves agency planning and decreases associated costs. Benefits environmental stakeholders through early engagement.

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Changes in Proposed Rule</b>	<b>Impacts of Proposal</b>
1501.3	Determine Appropriate Level of NEPA Review	Consolidates provisions on NEPA applicability and determining the scope of an action and the appropriate level of analysis into one section; restores the context and intensity factors in determining significance of effects.	Fosters better agency decision making regarding environmental effects by directing agencies to take into account a wider range of significant effects. Reduces agency confusion by restoring long-standing context and intensity factors in evaluating significance.
1502.4	Scoping	Updates and moves requirements regarding <u>scoping</u> .	Improves the readability of NEPA regulations and the efficiency of agencies' compliance with NEPA, thereby decreasing agencies' administrative costs.
1501.11	Programmatic environmental documents and tiering	Codifies best practices for programmatic environmental reviews and tiering; clarifies when agencies may rely on programmatic documents in subsequent environmental documents.	Improves the efficiency of programmatic environmental documents, which reduces agency document preparation costs by eliminating duplication of work.

## ENHANCING CLARITY

Section Number	Section Name	Description of Changes in Proposed Rule	Impacts of Proposal
1500.1, 1500.3	Purpose	Clarifies the purpose of NEPA regulations, removes misleading text, and ensures consideration of climate change and environmental justice concerns throughout the environmental review process.	Improves agency decision making regarding environmental effects by prompting agencies to consider a wider range of significant effects.
1500.4	Concise and informative environmental documents	Strengthens requirements for creating concise and informative environmental documents; amends potentially confusing provisions of the 2020 regulations.	Improves agency preparation of environmental documents.
1501.5	EA requirements	Clarifies requirements for EA preparation, including what agencies must discuss in EAs, how agencies should consider public comments, page limits, and other requirements.	Results in more concise documents and better-informed government decision-making; benefits project sponsors by providing more clarity on the schedule for their completion. However, the magnitude of the benefit associated with this provision may be uncertain.
1501.4, 1507.3	CE requirements	Amends language regarding agency flexibility and obligations when preparing CEs; provides process for an agency to use another agency's CE; establishes a new category of CEs.	Improves agency flexibility associated with the CE process and allows agencies to devote resources where needed, leading to reduced costs.



<b>Section Number</b>	<b>Section Name</b>	<b>Description of Changes in Proposed Rule</b>	<b>Impacts of Proposal</b>
1500.6	Agency authority	Removes language stating agencies must ensure full compliance with NEPA “as interpreted by” the regulations, to ensure that agencies review and revise their procedures to be in compliance with NEPA and the CEQ regulations.	Reduces ambiguous language that could restrict agency implementation of NEPA and provides agencies with more flexibility, which may reduce compliance costs.
1506.9	Filing requirements	Requires agencies to notify the Environmental Protection Agency when they adopt an EIS pursuant to § 1506.3(b).	Codifies common practice and existing EPA guidance. Improves transparency to the public regarding the status of the EIS process. Helps agencies and the public track the status of EISs across the Federal Government.
1501.9; 1502.4	Scoping and public engagement	Clarifies differences between scoping and public involvement or engagement.	Provides clarity to Federal agencies around the requirement to determine the scope of issues for analysis in an EIS and the requirements for public and governmental engagement in all NEPA reviews. Directs agencies to engage stakeholders to address potential issues earlier in the process, which may benefit project sponsors.
1501.1	Purpose (reference to public engagement)	Clarifies statement of overarching purpose and highlights the importance of early stakeholder engagement.	Encourages agencies to engage stakeholders and address potential issues early in the process, which may benefit project sponsors.

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Changes in Proposed Rule</b>	<b>Impacts of Proposal</b>
1508.1	Proposed revisions to definitions	Clarifies definitions of key terminology, including “categorical exclusion,” “cooperating agency” “effects or impacts,” “joint lead agency,” “lead agency”, “major Federal action,” and “environmental assessment,” among others.	Improves the accuracy and informative value of NEPA documents by updating regulatory terminology and clarifying previously unclear terms. Directly benefits agencies by clarifying key provisions, including provisions regarding the designation of lead and cooperating agencies.
1500.2(e), 1502.14(f), 1502.16(a), 1502.23, 1508.1(g)	Climate change and environmental justice considerations	Ensures that agencies appropriately consider climate change and environmental justice throughout the environmental review process.	Encourages agencies to develop more durable and climate-resilient designs, thereby benefiting project sponsors; encourages agencies to incorporate the best-available science, resulting in more informative environmental documents and better government decision making.
1504.2	Early dispute resolution	Codifies best practices for early interagency dispute resolution.	Provides a more structured process for resolving interagency disputes, leading to quicker and more efficient resolution of issues and reducing conflict-related delays.

**Appendix 2: Master List of All Proposed Changes**

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Change</b>
1500.1	Purpose	Clarifies the purpose of NEPA regulations by removing misleading text.
1500.2	Policy	Reestablishes the goals of NEPA policy and highlights climate change and communities with environmental justice concerns as important considerations when evaluating alternatives.
1500.3	NEPA compliance	Removes reference to E.O. 13807; removes the comment exhaustion requirement and allows consideration of potentially important comments received outside the comment period; clarifies the intentions of the regulations regarding judicial review; strikes provisions related to “remedies;” redesignates sub-sections.
1500.4	Concise and informative environmental documents	Clarifies requirements for creating concise and informative environmental documents; amends potentially confusing provisions from the 2020 regulations; redesignates sub-sections.
1500.5	Efficient process	Proposes minor changes to provide clarity and flexibility and improve readability. Changes “real issues” to “important issues that required detailed analysis” and expands some provisions to cover all environmental documents.
1500.6	Agency authority	Removes language stating agencies must ensure full compliance with NEPA “as interpreted by” the regulations to ensure that agencies review and revise their procedures in compliance with NEPA and the CEQ regulations and to make clear, consistent with § 1507.3(b), that while procedures must be consistent with both NEPA and the CEQ regulations, agencies can develop procedures beyond the CEQ regulatory requirements.
1501.1	Purpose	Clarifies statement of overarching purpose and highlights the importance of early stakeholder engagement; redesignates sub-sections.
1501.2	Apply NEPA early in the process	No substantive changes.

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Change</b>
1501.3	Determine the appropriate level of NEPA review	Consolidates provisions on NEPA applicability, determining the scope of an action, and the appropriate level of analysis; restores context and intensity factors in determining significance; and updates the list of context and intensity factors to provide for consideration of environmental justice communities and the reserved rights of Tribal Nations.
1501.4	Categorical exclusions	Gives agencies the flexibility to establish categorical exclusions outside of their NEPA procedures; sets standards for establishing categorical exclusions; clarifies that agencies can establish categorical exclusions jointly; provides a process by which agencies can apply a categorical exclusion listed in another Federal agency's NEPA procedures to a proposed action or related actions.
1501.5	Environmental assessments	Clarifies requirements for EA preparation, including what agencies must discuss in EAs, how agencies should consider public comments, page limits, and other requirements; redesignates sub-sections.
1501.6	Findings of no significant impact	Clarifies language codifying best practices for mitigating findings of no significant impact.
1501.7	Lead agency	Improves agency coordination in issuing a joint record of decision or joint finding of no significant impact; clarifies lead agency's role in designating cooperating agencies.
1501.8	Cooperating agencies	Amplifies the use of Indigenous Knowledge as a source of relevant expertise for cooperating agencies; removes clause requiring cooperating agencies to limit their comments.
1501.9	Public and government engagement	Reorganizes sections on public engagement and scoping to clarify differences between scoping for EISs and general public engagement requirements; redesignates sub-sections; adds provisions to emphasize consideration of affected communities when developing public outreach and notification methods.
1501.10	Deadlines and schedule for the NEPA process	Requires agencies to set schedules for completion; establishes deadlines for EISs and EAs; sets milestones for agencies to consider in setting schedules; redesignates sub-sections.
1501.11	Programmatic environmental documents and tiering	Codifies best practices for programmatic environmental reviews and tiering; redesignates sub-sections; clarifies when agencies may rely on programmatic documents in subsequent environmental documents.

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Change</b>
1501.12	Incorporation by reference into environmental documents	Requires agencies to briefly explain the relevance of incorporated material and ensure incorporated material is publicly available.
1502.1	Purpose of environmental impact statement	Restores one purpose of an EIS as an action-forcing device for implementing NEPA; clarifies that agencies should focus on substantial environmental issues and should use EISs in conjunction with other relevant materials; redesignates sub-sections.
1502.2	Implementation	Clarifies EISs should be analytical; adds that an EIS's length should be determined by its complexity.
1502.3	Statutory requirements for statements	No changes.
1502.4	Scoping	Updates and moves requirements regarding scoping; redesignates sub-sections.
1502.5	Timing	Makes three clarifying changes: first, to clarify that the feasibility analysis and the "go/no-go" stage may not occur at the same time; second, to clarify that an agency must begin preparing an EIS after receiving a complete application, though it can elect to begin the process earlier if it chooses to do so; and, third, to clarify that agencies should work "together and with" potential applicants and other entities before receiving the application.
1502.6	Interdisciplinary preparation	No substantive changes.
1502.7	Page limits	Maintains the page limit requirements of 150 pages or 300 pages for proposals of extraordinary complexity; removes requirement that a senior agency official approve longer documents; clarifies that page limits do not include citations or appendices.
1502.8	Writing	Clarifies agencies should use relevant visual aids and charts in EISs.
1502.9	Draft, final, and supplemental statements	Makes clarifying language changes; redesignates sub-sections.
1502.10	Recommended format	Clarifies that an EIS should include a summary of scoping information and a list of preparers as appendices; adds cross references to the relevant regulatory provisions.
1502.11	Cover	Requires that the EIS cover page include the document identification number that the agency identified in the notice of intent; strikes requirement to include cost estimates in the final EIS.
1502.12	Summary	Requires that the EIS summary identify the environmentally preferable alternative or alternatives.

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Change</b>
1502.13	Purpose and need	Clarifies that an EIS must include a statement that briefly summarizes the underlying purpose and need for the proposed agency action.
1502.14	Alternatives including the proposed action	Clarifies that agencies have the discretion to explore alternatives, sharply define issues for the decision maker, and provide a clear basis for their choice of preferred option, and that agencies need only consider a reasonable range of alternatives, rather than every conceivable one; stipulates that the environmentally preferable alternative will maximize environmental benefits and should include examples of such benefits.
1502.15	Affected environment	Encourages agencies to use high-quality information, including the best available science and data, to describe reasonably foreseeable environmental trends, including climate-related changes; redesignates sub-sections.
1502.16	Environmental consequences	Updates the list of elements that an agency should discuss in the environmental consequences section of an EIS, adding reasonably foreseeable climate change effects; relevant risk reduction, resiliency, or adaptation measures; analysis of any adverse environmental effects of the no action alternative; and the potential for disproportionate and adverse health and environmental effects. Redesignates sub-sections.
1502.17	Summary of scoping information	Changes the title to “Summary of scoping information” and makes conforming edits clarify that the pertinent section of the EIS should focus on comments submitted during scoping.
1502.18	List of preparers	No changes.
1502.19	Appendix	Makes minor edits to align with changes made in § 1502.17.
1502.20	Publication of the environmental impact statement	No substantive changes.
1502.21	Incomplete or unavailable information	Strikes reference to “but available” to clarify that agencies must obtain information relevant to reasonably foreseeable significant adverse effects that is essential to a reasoned choice between alternatives where the overall costs of doing so are reasonable, and the means of obtaining that information are known.
1502.22	Cost-benefit analysis	No changes.

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Change</b>
1502.23	Methodology and scientific accuracy	Directs agencies to use reliable data and resources, including existing sources and materials; encourages agencies to use high-quality information, such as the best available science and data; encourages agencies to explain relevant assumptions or limitations of the models; deletes the statement that agencies are not required to undertake new research to inform analyses; adds a requirement to use projections when evaluating the reasonably foreseeable effects of an action, including climate-change related effects, where appropriate; redesignates sub-sections.
1502.24	Environmental review and consultation requirements	No changes.
1503.1	Inviting comments and requesting information and analyses	Technical edits; makes conforming edit striking language inviting comment specifically on the submitted alternatives, information, and analyses and the summary thereof.
1503.2	Duty to comment	No substantive changes.
1503.3	Specificity of comments and information	Removes requirement for comments to provide as much detail as possible and removes language describing the types of impacts a comment should cover; deletes all of paragraph (b) for consistency with proposed changes in § 1500.3 on the exhaustion requirement and corresponding changes to § 1502.17.
1503.4	Response to comments	Changes “may” to “shall,” clarifying that agencies must respond to comments, but that they can be responded to individually or in groups; adds language clarifying requirements that apply when an agency uses an errata sheet for a final EIS.
1504.1	Purpose	Clarifies the purpose of the sections that follow it.
1504.2	Early dispute resolution	Retitles this section “Early dispute resolution” and adds new provisions to encourage agencies to use informal dispute resolution to resolve interagency disputes early in the process.
1504.3	Criteria and procedure for referrals and response	Moves the criteria for referral currently in 40 CFR 1504.2 to this section and updates the title; updates the list of considerations that agencies use to determine what environmental objections should be referred to CEQ.
1505.1	Reserved	Reserved.

<b>Section Number</b>	<b>Section Name</b>	<b>Description of Change</b>
1505.2	Record of decision in cases requiring environmental impact statements	Restructures language for readability; adds “environmental” to the list of relevant factors an agency may use as the basis for describing preferences among alternatives; states that mitigation should be enforceable using an agency’s authorities; deletes paragraph referencing § 1502.17; redesignates sub-sections.
1505.3	Implementing the decision	Makes technical changes; encourages agencies to incorporate mitigation measures that address or ameliorate adverse human health and environmental effects of proposed Federal actions that disproportionately and adversely affect communities with environmental justice concerns; clarifies that the lead agency shall prepare a monitoring and compliance plan when the environmental assessment or EIS relies on mitigation and incorporate the mitigation into a record of decision, finding of no significant impact, or separate decision document; lists the contents of a mitigation plan; clarifies that new information developed through a monitoring and compliance plan would not trigger a requirement to supplement an EIS or EA solely because of this new information; redesignates sub-sections.
1506.1	Limitations on actions during NEPA process	Technical changes; clarifies that the agency retains discretion to select appropriate alternatives regardless of the activities that an applicant takes prior to the conclusion of the NEPA process.
1506.2	Elimination of duplication with State, Tribal, and local procedures	No changes.
1506.3	Adoption	Improves the clarity of standards and reduces redundancy; clarifies that an agency must conduct an independent review before adopting another agency’s EIS, EA, or CE determination to ensure it meets certain standards; requires an agency to publicly disclose its adoption of a CE determination.
1506.4	Combining documents	No changes.
1506.5	Agency responsibility for environmental documents	Clarifies that Federal agencies are responsible for the content of an environmental document regardless of the preparer and that they must ensure the documents are prepared with professional and scientific integrity; clarifies that agencies can authorize a contractor to draft a FONSI or ROD, but the agency is responsible for its accuracy, scope, and contents; redesignates sub-sections.
1506.6	Reserved	Reserved.



<b>Section Number</b>	<b>Section Name</b>	<b>Description of Change</b>
1506.7	Further guidance	Makes technical changes and changes to legal authorities.
1506.8	Proposals for legislation	No changes.
1506.9	Filing requirements	Deletes existing 40 CFR 1506.9 on “Proposals for regulations” and redesignates § 1506.10 as 1506.9; makes technical changes; adds requirement for agencies to notify the Environmental Protection Agency when they adopt an EIS consistent with § 1506.3(b).
1506.10	Timing of agency action	Makes technical changes; clarifies procedures for administrative review.
1506.11	Emergencies	Clarifies alternative arrangements do not waive NEPA requirements.
1506.12	Innovative approaches to NEPA reviews	Adds a new section to part 1506 that would allow Federal agencies to pursue innovative approaches to NEPA implementation when addressing extreme environmental challenges.
1506.13	Effective date	Makes technical changes.
1507.1	Compliance	Clarifies agencies have flexibility in implementing § 1507.3.
1507.2	Agency capability to comply	Emphasizes agency’s responsibilities under NEPA, including by adding requirements of section 102(2) of NEPA; requires agencies to designate a Chief Public Engagement Officer.
1507.3	Agency NEPA procedures	Makes technical changes; clarifies that existing agencies have no more than 12 months after the effective date to propose procedures (or propose revisions to existing procedures) to implement the regulations; clarifies that agencies shall continue to review their policies and procedures in consultation with CEQ to ensure full compliance with the regulation; clarifies that agencies should integrate the environmental review process into their decision-making process; clarifies that combining environmental documents with other agency documents facilitates sound and efficient decision making; identifies criteria for classifying actions as categorical exclusions and encourages agencies to review such exclusions every 10 years; requires continued compliance with other statutory and regulatory requirements; where applicable, requires agencies to include in their agency procedures a process for allowing a project sponsor to prepare EAs and EISs; redesignates sub-sections.
1507.4	Agency NEPA program information	Makes technical changes; requires agencies to publish their NEPA procedures and lists of their EAs and EISs on websites or through similar mechanisms; redesignates sub-sections.

Section Number	Section Name	Description of Change
1508.1	Definitions	Modifies or adds definitions for “categorical exclusion,” “cooperating agency,” “effects or impacts,” “environmental assessment,” “environmental document,” “environmental justice,” “environmentally preferable alternative,” “extraordinary circumstances,” “finding of no significant impact,” “human environment,” “joint lead agency,” “lead agency,” “major Federal action,” “mitigation,” “page,” “participating Federal agency,” “programmatic environmental document,” “scope,” and “significant effects;” redesignates sub-sections; better incorporates climate change, including revisions to the definitions of “effects,” “environmentally preferable alternative,” and “extraordinary circumstances;” expressly includes communities with environmental justice concerns in the definition of “effects or impacts;” redesignates sub-sections.
1508.2	Reserved	No changes.