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August 4, 2025

U.S. Army Corps of Engineers
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441 G Street NW
Washington, D.C. 20314-1000

Submitted electronically via <http://www.regulations.gov>

RE: Docket No. COE-2025-0007; Procedures for Implementing NEPA; Removal

To Whom it May Concern:

The New Mexico Interstate Stream Commission (NMISC), the New Mexico Department of Agriculture (NMDA), and the New Mexico Department of Game and Fish (NMDGF) (collectively the "State Agencies") have reviewed the Department of Defense (DOD) Interim final rule entitled *Procedures for Implementing NEPA; Removal*, which was published in the Federal Register on July 3, 2025 (hereafter FR Notice). In the FR Notice, the DOD requests comments regarding its rescission of regulations promulgated pursuant to the National Environmental Policy Act (NEPA). While it is not clear whether the DOD is soliciting comments on its simultaneous promulgation of Department of Army Procedures (DOD 2025) which will guide the NEPA process for the Army Civil Works Program and other DOD components, the State Agencies note that the Department of the Interior is accepting comments on its revised NEPA procedures and that DOD should do so as well.

Overall, the State Agencies contest that the DOD has good cause for issuing DOD 2025 and having it take effect immediately without first issuing a proposed rule and soliciting public comments for at least 30 days. DOD cites a void created by the rescission of the CEQ's NEPA regulations, which DOD's previous regulations were intended to supplement. However, the CEQ's directive to federal agencies to revise their NEPA implementing procedures and regulations allowed federal agencies 12 months to

complete this work and, in the meantime, allowed them to continue following their existing NEPA procedures until new ones could be developed. Therefore, the DOD's argument for good cause for proceeding with an interim final rule is invalid. Additionally, the State Agencies are concerned that DOD 2025 may ultimately not be finalized, potentially leading to confusion over the DOD's official implementation procedures while removing the opportunity for public input into the process.

The State Agencies' specific comments below follow the structure of DOD 2025.

1. Part 0.1 Purpose and policy.

- The State Agencies question the DOD's interpretation of NEPA in (b). The State Agencies contend that NEPA does govern the rights of the public at large, and our agencies in particular, to be apprised of what the Federal Government is doing and our ability to comment upon it.

2. Part 1.1 Determining when NEPA is required.

- Under (a)(3), please give examples of what other statutes you believe could or would conflict.
- Under (a)(7), the explanation would benefit from further clarification of, or a definition of what is meant by "minimal" as this is a subjective term.
- The DOD does not explain why the issuance of these procedures is not subject to NEPA review. Please provide justification for the statement in (a)(8).

3. Part 1.2 Determine the appropriate level of review.

- In section(a), how far out in time will the action's effects be analyzed? When is something not considered to be an effect of the proposed action? Please clarify and provide additional details.
- Section (a)(3) appears to allow for the creation of Categorical Exclusions (CATEXs) for projects, as the DOD may deem needed. This is problematic as it could create CATEXs that are very specific to a certain project, not a project type. In addition, creation of CATEXs in this manner appears to preclude public review and comment. The State Agencies recommend instead that the DOD CATEX list be reviewed annually for needed revisions, deletions, and additions, and that these be published, along with a justification of need, for public review and comment. This procedure could be outlined in Part 1.4(b).
- In Section (b), the State Agencies request clarification on what is meant by "unreasonable". This is a subjective term. In Sections (b)(1) and (b)(2), we question the use of the word "may" as this implies unwarranted discretion. The State Agencies recommend replacing "may" with "shall".
- In section (b)(2)(v) – How will the effects on the "quality of life of the American people" be evaluated?

4. Part 1.3 NEPA and agency decision making.

- For (a) can the DOD give examples of what such "proven strategies" might be?

- The State Agencies recommend that DOD move or copy the language currently in Part 4.1 that makes it clear that decision making under NEPA is an inherently governmental function and applicants or contractors cannot make final determinations for decision documents.

5. **Part 1.4 Categorical exclusions.**

- In section (b)(3), the State Agencies recommend deleting, “At DOD’s discretion” and affirming that DOD will provide public notice and the opportunity to comment for establishment and revision of CATEXs.
- Section (d)(1) (ii-iv) are vague, subjective, and discretionary. Please revise.
- Section (d)(2) appears to contemplate fragmentation of an action, which is not allowed under NEPA.
- Section (d)(3) contradicts section (d)(1). The State Agencies recommend that the DOD continue the long-standing policy of **not** applying CATEXs to projects with extraordinary circumstances.

6. **Part 1.5 Environmental assessments.**

- In section (a), if the significance of an effect is not known at the initiation of NEPA, then an environmental assessment is the appropriate starting place. However, if at any time in the analysis an effect is shown to be significant, then the appropriate level of documentation is an Environmental Impact Statement (EIS). The DOD Procedures should specifically articulate this.
- In section (c)(2), please define what is meant by “later in time” (i.e. is it one year or is it 20 years?).
- In section (d), please clarify how a responsible official is designated for a specific project, or add a definition of “responsible official” to the definitions section.

7. **Part 1.7 Lead and cooperating agencies.**

- The State Agencies are concerned that, because there is no required public notice and opportunity to comment, except for the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS), the State Agencies may only become aware of a project **if they are asked** to become a cooperating or participating agency. This does not seem transparent or in the public interest. In addition, other federal agencies are addressing this differently. The State Agencies encourage the federal government to strive for consistency among federal agencies, when appropriate.

8. **Part 1.8 Notices of intent, scoping, planning, and tiering.**

- In section (b), the State Agencies recommend deleting “on a publicly accessible website” and replacing with “in the Federal Register”.
- In section (b)(2), the State Agencies believe the “may” in (b)(2) is unwarranted and should be replaced with “must”.
- Section (c) is unclear. Please clarify when scoping will be employed, who will be able to participate in the scoping process, and how the public will be notified about the scoping process.

- Section (e), how is “tiering” different from a programmatic EIS and how are “members of the public known to have an interest in the study” or “interested public” identified or determined?

9. Part 2.1 Preparation of environmental impact statements.

- What is the appeal process for the determination described in section (a)?
- The definition in (b)(1)(i) and (ii) could be viewed as not requiring DOD to seek comments from agencies such as the State Agencies that are not authorized to develop and enforce environmental standards. The State Agencies recommend that the DOD revise the language in this paragraph to say it will seek comments from “all appropriate State, Tribal, and local governments.”
- How and to whom does one make the request described in section (b)(1)(iv)?
- It is unclear in section (b)(1)(vi) and (c) at what junctures public comments will be solicited. The State Agencies recommend solicitation of public comments at the scoping, NOI, and Draft EIS (DEIS) phases. The State Agencies believe that timeline waivers should be granted, as needed, to address public comments if there was not enough time allotted in the document schedule, when developed, to address public comments.
- In section (d), who determines if a comment is “significant”? Please provide additional clarity of how significance is determined.
- Will the DOD consider new alternatives in response to comments? If so, will there be additional public notice and comment period? Please provide clarity on section (e)(2).

10. Part 2.3 Analysis with the environmental impact statement.

- Please provide clarity on what is meant in section (a)(4).

11. Part 2.4 Page limits.

- Please define “extraordinary complexity” in section (b) and describe what the conditions are for exceeding the page limit.
- Tailoring the breadth and analysis in an EIS to a desired page limit as dictated in section (e) is contrary to the intent of NEPA.

12. Part 2.6 Publication of the environmental impact statement

- The State Agencies firmly believe all DEISs should be published for public review and comment in the Federal Register with a **minimum** 30-day review period.
- A Notice of Completion must be published in the Federal Register.
- The language in Part 2.6(b) suggests that publication of a Draft EIS is discretionary. This does not promote transparency and is contrary to the spirit of NEPA.

The State Agencies encourage the DOD to revise the interim final rule for clarity and to include non-discretionary public review and comment periods. If you have questions

about these comments, please contact Colleen Cunningham at colleen.cunningham@ose.nm.gov.

Sincerely,



Hannah Riseley-White
Director, NMISC

Cc: Lisa Henne, General Counsel, NMISC
Colleen Cunningham, Environmental Coordinator, NMISC