



**DEPARTMENT OF AGRICULTURE  
STATE OF NEW MEXICO**

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U.S. Department of Agriculture  
1400 Independence Ave. SW  
Washington, D.C. 20250-0108

RE: USDA-2025-008. National Environmental Policy Act; Interim Final Rule; Request for Public Comment

To Whom It May Concern:

The New Mexico Department of Agriculture, the New Mexico Interstate Stream Commission, and the New Mexico Department of Game and Fish (the State Agencies) submit the following comments in response to the U.S. Department of Agriculture (USDA) Interim Rule that revises and removes various USDA National Environmental Policy Act (NEPA) implementing regulations at 7 CFR § 1b. USDA's action is in response to Executive Order (E.O.) 14151, the Council on Environmental Quality's (CEQ) direction in its February 19, 2025 *MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES* to revise or establish their own implementing NEPA regulations, and CEQ's subsequent repeal of its NEPA implementing regulations at 40 CFR §§ 1500-1508.

The State Agencies have a mission to ensure that decisions made regarding major federal actions in the state of New Mexico are based on well-informed environmental analyses. To this end, the State Agencies provide the following comments on USDA's Interim Rule.

**Interim Rule, Good Cause, and Effective Date**

USDA issued an Interim Rule that took effect immediately upon publication in the *Federal Register*, July 3, 2025, for 'good cause,' rather than issuing a proposed rule with the required public comment period. USDA cited a void created by CEQ's rescission of its regulations, upon which USDA's regulations had been based, thus creating a sense of urgency. But 'good cause' is not justified for the following reasons:

- CEQ's memo gave federal departments and agencies a deadline of 12 months to revise their implementing NEPA regulations.
- CEQ's memo allows agencies and departments to continue following their existing NEPA practices while revisions are made, while ensuring compliance with the Fiscal Responsibility Act (FRA) amendments to NEPA, even though CEQ planned to rescind their regulations.

- USDA's Interim Rule gives its agencies "*discretion to determine which NEPA procedures to apply*" (albeit depending on stage of preparation) until an effective date of these revisions in a Final Rule. Research indicates that most Interim Rules are never followed by a Final Rule<sup>1</sup>, thus possibly creating uncertainty and confusion over which NEPA regulations USDA agencies will use. USDA should establish a reasonable future effective date to implement these new regulations through a Final Rule.
- USDA claims they cannot rescind prior regulations until new regulations are in place, and that these implementing rules are purely procedural, if not simply interpretive, and thus do not require public comment. While it is technically true that an agency cannot rescind prior regulations until new ones are in place, the sense of urgency cited as a reason for USDA's Interim Rule is obviated by CEQ's one-year deadline and USDA's transition provisions.

**The State Agencies request that the USDA withdraw the Interim Rule, and publish a Proposed Rule with a minimum 60-day comment period.**

A cornerstone of NEPA is public participation in environmental reviews of federal major actions, thus it seems appropriate to allow greater public involvement in this major shift in NEPA implementation. A proposed rule provides for adequate public comment and address by USDA. For instance, a proposed rule would allow USDA to address the following issues:

- Re: 7 C.F.R. § 1b.11(a)(12)(ii) *Effects and Impacts*. USDA narrows the 'but for' chain of causation in estimating effects of the proposed action.
  - The State Agencies agree that the recent Supreme Court decision<sup>2</sup> provides that an agency is not responsible for effects of an action that could occur later in time or in a remote geographic area if the action agency has no authority or control over actions that happen as a consequence of the proposed action. However, USDA combines a general exemption from effects remote in time or in distance with the exception above, implying that the same case law justifies that any effect later in time or geographically remote is not necessarily an effect of the proposed action. Effects of the action should include all cascading events or consequences triggered by the action, regardless of time or geographic location, if those events or consequences are within the authority or control of USDA to address, and are reasonably certain to occur in the foreseeable future.
  - USDA gives the action proponent discretion to determine the extent of an action's effects, but there are no sideboards on that discretion.
  - The above very much could limit, inappropriately, USDA's liability for cause and effects of an action. As a result, USDA may use a Categorical Exclusion instead of developing an EA, or USDA may develop an EA instead of an EIS. This outcome seems ripe for litigation that would delay or enjoin an action.
- Re: 7 C.F.R. § 1b.5(f) – *Publication of the Environmental Assessment* and 7 C.F.R. § 1b.7(k) *Deadlines*.

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<sup>1</sup> <https://www.americanactionforum.org/research/interim-final-rules-not-so-interim/>

<sup>2</sup> *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497 (2025)

- USDA allows for the publication of environmental reviews (EAs or EISs) by the deadlines established by the FRA if the documents are “*in as substantially complete form as possible.*” Does this mean USDA will publish incomplete review documents? Will those documents ultimately be completed?
- USDA says a responsible official can issue a decision based on a presumably incomplete document, with a “...*good faith effort to satisfy the requirements of the statute.*” These allowances potentially lead to unidentified or underestimated harms that adversely impact the environment, and put projects at risk of litigation and subsequent delays.
- USDA also allows extensions to FRA-mandated deadlines for documents that are, in the opinion of a given responsible official, “*so incomplete,*” that they do not sufficiently inform the responsible official’s analysis and decision. While the FRA amendments to NEPA allow for deadline extensions (40 C.F.R. §§ 1501.10(b)(1)-(2)), USDA should provide specific criteria for extending environmental reviews beyond the FRA required deadlines.
- “*substantially complete*” and “*so incomplete*” are subjective terms, so how will USDA ensure consistency in completeness of environmental reviews?
- Re: 7 C.F.R. § 1b.3(f) *Extraordinary Circumstances*. These regulations have logic problems.
  - One part says agencies “*shall consider relevant resources*” for which an extraordinary circumstance might exist.
  - That part is followed by the statement that “*resources for consideration...will be determined at the responsible official’s sole discretion...and determined on a case-by case basis.*”
  - While it makes sense that the relevant resources should be determined on a case-by-case basis (as action areas are specific in regard to what resources are present), which relevant resources to consider, pertinent to a specific action, should not be discretionary. There are no apparent side-boards to this discretion, and thus government decisions could be arbitrary and capricious, leading to potential litigation and associated delays.
  - Discretion implies a freedom to decide what to consider, and by extension, that some resources can be ignored when, in fact, they should be considered. All relevant resources should be identified and considered for possible effects and/or extraordinary circumstances. By not doing so, USDA is open to litigation which may stop or delay actions.

Thank you for the opportunity to review and comment on the USDA’s NEPA implementing regulations and your consideration of these comments. Please contact Dr. Kelly Ebert at (575) 646-2670 or [kebert@nmda.nmsu.edu](mailto:kebert@nmda.nmsu.edu) if you have questions related to these comments.

Sincerely,



Jeff M. Witte

JMW/ke