



## SOCIETY FOR AMERICAN ARCHAEOLOGY

July 31, 2025

Mr. Stephen G. Tryon  
Director, Office of Environmental Policy and Compliance  
US Department of the Interior  
1849 C Street NW  
MS 5020  
Washington, DC 20240

RE: RIN 1090-AB18

Dear Mr. Tryon,

The Society for American Archaeology (SAA) appreciates this opportunity to comment on the Department of the Interior's (DOI) interim final rule to revoke regulations implementing the Council on Environmental Quality's (CEQ) now-rescinded regulations concerning the National Environmental Policy Act (NEPA). We are also providing comments on the agency's updates to its remaining procedures (Handbook) implementing the statute.

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With nearly 7,000 members, the SAA represents professional and avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

Previously, NEPA and National Historic Preservation Act (NHPA) reviews could be combined for streamlining purposes. The changes being proposed, however, are now in direct conflict with the mission and requirements of NHPA, which is not a procedural law in the same manner of NEPA. NHPA has requirements that are more focused and require different types of analyses than NEPA. For example, NHPA necessitates inventory and evaluation, meaning it may require a field survey and an eligibility evaluation of historic properties (e.g., buildings and archaeological sites). The 1992 amendments to NHPA *mandate* consultation with tribes to identify properties of religious and cultural significance. This is not in NEPA. NEPA does not give agencies the legal right to connect a NEPA categorical exclusion with an NHPA undertaking, thereby unilaterally excluding tribal consultation and forgoing any identification of a potential property of religious or cultural significance. Under the circumstances, all references to NHPA-related activity should be removed, and NHPA should continue as a stand-alone piece of legislation.

Regarding NEPA implementation, the April 2025 repeal of CEQ's NEPA regulations was carried out under Executive Order (E.O.) 14154 (issued January 29, 2025). This E.O. rescinded President Carter's E.O. 11991, which was the legal basis upon which CEQ issued its NEPA rules. Further, on May 29, 2025, the Supreme Court issued its decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*. In that ruling, the Court held that NEPA is fundamentally a procedural law in which courts must give "substantial deference" to "reasonable agency conclusions" underlying that agency's NEPA procedures.

Given the above, the SAA understands that DOI must proceed with updating its NEPA policies. Nevertheless, it is imperative that the agency's revised NEPA procedures ensure that (1) the impacts of any particular undertaking on natural resources and historic properties are taken into account in project planning, (2) meaningful and comprehensive consultation with federally recognized tribal governments is carried out during planning and construction, and (3) that the public—in particular local communities affected by an undertaking—has adequate input into the process.

The new NEPA procedures must also take into account their impact on how other reviews are conducted. In particular, conflating the amended NEPA rules with Section 106 of NHPA will change the congressional intent of cultural resources reviews under NHPA. It is important to remember that NHPA emphasizes the need to consult with tribes and Native Hawaiians on properties of religious and cultural significance. The new NEPA changes focus on direct effects, while under NHPA the impact to properties of religious and cultural significance are often indirect effects. Visual and noise intrusions can adversely affect the tribal need to conduct historically important gatherings and ceremonies. NHPA requires consideration of cumulative impacts regardless of any changes to the guidelines and practices implementing NEPA.

Unfortunately, the SAA finds the procedures outlined in the interim final rule to fall far short of the above requirements. Turning NEPA regulations / procedures into guidance will result in the loss of any legal requirement for uniformity when determining when an Environmental Impact Statement (EIS) or Environmental Assessment (EA) is required. There will also be a loss of consistency in the methodology for an EIS or EA document and whether public comment will be required. This leaves environmental review in an erratic state. Regulations provide uniformity whereas guidance is merely a suggestion.

We offer the following specific questions and suggestions to the proposed policies (SAA comments are in italics):

- FR page 29498 (Summary)—DOI will henceforth maintain the remainder of its NEPA procedures—which apply only to DOI's internal processes. *Because contractors also prepare NEPA documents for DOI, what procedural guidance applies to them? How will contractors know how to prepare these documents?*
- FR page 29498 (Summary)—In a Handbook separate from the Code of Federal Regulations (CFR). *Bureaus within the DOI currently use their own NEPA handbooks specific to their missions, as developed in accordance with the DOI Handbook. Will the Bureaus' NEPA handbooks still be used to guide preparation of NEPA documents?*
- FR page 29498 (Effective dates)—The interim final rule is effective July 3, 2025. *Comments are to be filed by August 4, 2025, after the final rule has gone into effect. Therefore, the effective date*

*is retroactive vis-à-vis the public comment deadline. Normally the comment period precedes the implementation of a rule. This implies the comments will not be given due consideration.*

- FR page 29503 (Executive Order 13175, Consultation and Coordination with Indian Tribal Governments)—This interim final rule is not a regulatory policy that has tribal implications. *This interim final rule appears to eliminate public involvement in NEPA proceedings including consultation with tribes. We strongly object to the conclusion that these procedures do not have tribal implications when tribes are given no opportunity to express concerns about the effects of federal actions on the environment, including on reservation lands managed by the BIA. This means that these new procedures fail the second of the requirements that SAA believes are necessary for the DOI's new NEPA policies.*
- DOI Handbook of NEPA Procedures Appendix 1 (NPS—12.4 Actions Normally Requiring an Environmental Assessment of Environmental Impact Statement—authorizing gathering of plants or plant parts by federally recognized Indian tribes (36 CFR 2.6). *When destructive actions like road building or tree cutting in National Parks do not require an EA or an EIS under these policies, why does a traditional cultural activity like harvesting native plants by federally recognized tribes require an EA? Under National Register Bulletin 38 a place where Indigenous people gather traditional plants is recognized as a Traditional Cultural Place protected by the NHPA.*
- DOI Handbook of NEPA Procedures Appendix 1 (BIA—10.4 Major Actions Normally Requiring an EIS). *Under these procedures, oil and gas actions are specifically exempted from preparing an EIS, yet these actions can cause significant impacts on Trust lands. The US government is required under treaties signed with sovereign tribal nations to protect their resources. Lands held in Trust are to benefit a tribe or individual tribal member. How does exempting Trust lands from environmental analysis for oil and gas projects benefit tribes and tribal members?*
- DOI Handbook of NEPA Procedures Appendix 1 (BLM—11.7 Actions Requiring an Environmental Assessment (EA). *Only land-use plans or revision of land-use plans require preparation of an EA. Oil and gas actions prevalent on BLM managed lands are excluded, which is arbitrary and capricious and will result in environmental destruction without analysis or disclosure to the American public. For instance, under Appendix 2 (categorical exclusions) permitting of new oil and gas development is not covered by a categorical exclusion but is exempted from EA or EIS in Appendix 1. This major federal action thereby falls through the cracks and is out of compliance with the NEPA statute.*
- DOI Handbook of NEPA Procedures Appendix 1 (BOR—14.4 Major Actions Normally Requiring an EIS or Actions Normally Requiring and EA—None). *The Bureau of Reclamation instigates many major actions “that may have an impact on man’s environment” (42 U.S.C. 4331. Sec. 102), yet this appendix says there are “none.” That circumvents the purpose of the NEPA, as stated in Sec. 2. NEPA Sec. 101 recognizes “the profound impact of man’s activity on the interrelations of all components of the natural environment,” while Appendix 1 dismisses major federal actions as needing no environmental analysis because these actions do not fall within the parameters of an agency’s categorical exclusions and preparation of an EA and EIS are precluded in Appendix 1.*
- DOI Handbook of NEPA Procedures Appendix 3 (Regulatory Impact Analysis for the Interim Final Rule 11, Environmental Impacts—DOI has determined that those changes, for example, changes to the identification in guidance of the actions normally subject to NEPA or normally

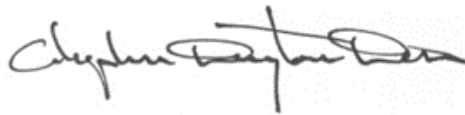
meriting preparation of an EA or EIS and new categorical exclusions, would not result in a substantive environmental impact). *Please provide documentation of this analysis. How did DOI determine that eliminating precluding environmental analysis and preparation of an EA or EIS would not cause a substantive environmental impact?*

- DOI Handbook of NEPA Procedures Appendix 3 (Subpart C—Initiating the NEPA Process; Adds FRA NEPA amendment requirement to meet deadline of one-year for environmental assessments and two years for environmental impact statements). *This timeline may be insufficient to complete identification and evaluation of historic properties under NHPA for large and complex federal undertakings.*
- DOI Handbook of NEPA Procedures Appendix 3 (Subpart D—Environmental Assessments—Public involvement removed from the DOI regulations). *Public involvement is absolutely critical in identifying environmental issues and historic properties. According to the NEPA statute, an EA is a public document, thus the public must have opportunities to contribute to its preparation.*

In addition, the interim proposed rule does not make it clear what effect the revised DOI Handbook will have upon the handbooks of the Department's various agencies and bureaus.

We strongly urge the DOI to withdraw the interim final rule and create procedures regarding the NEPA process that will provide clarity for staff and developers alike. Clarity and uniformity will generate predictability and reduce the threat of litigation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Christopher D. Dore". The signature is fluid and cursive, with a large initial "C" and a stylized "D" at the end.

Christopher D. Dore  
President