



SOCIETY FOR AMERICAN ARCHAEOLOGY

July 31, 2025

Mr. Scott Vandegrift
Chief Environmental Review and Permitting Officer
Office of the Secretary
US Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250-0108

RE: RIN 0503-AA86

Dear Mr. Vandegrift,

The Society for American Archaeology (SAA) appreciates this opportunity to comment on the Department of the Agriculture's (USDA) interim final rule to modify or remove departmental regulations implementing the Council of Environmental Quality's (CEQ) now-rescinded regulations concerning the National Environmental Policy Act (NEPA).

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 a 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 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 This E.O. rescinded President Carter's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 USDA must proceed with updating its NEPA policies. Nevertheless, it is imperative that the department’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.

It is in this vein that we offer the following specific comments and recommendations on the proposed policies. The SAA’s comments are in italics.

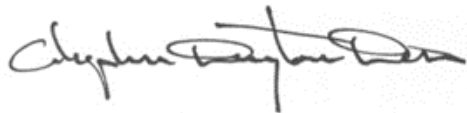
- FR page 29649 (§ 1b.3 Categorical exclusions and findings of applicability and no extraordinary circumstance—The resources to screen for in the potentially affected environment when considering extraordinary circumstances may include but are not limited to . . . property eligible for listing on the National Register of Historic Places). *The SAA recommends that USDA change “may” to “shall” in this sentence, “The resources to screen for in the potentially affected environment when considering extraordinary circumstances shall include, but are not limited to . . . property eligible for listing on the National Register of Historic Places.”*
- FR page 29650 (Categorical exclusions and findings of applicability and no extraordinary circumstance—the mere presence of one or more of the resources listed in paragraph (f)(1) of this section, or as otherwise identified at the sole discretion of the responsible official, does not mean an extraordinary circumstance exists). *A categorical exclusion can be used for NEPA analysis if no extraordinary circumstances, like the presence of a historic property, applies. This is identified, however, at the sole discretion of the responsible official, who may not have any*

experience or expertise in historic preservation. This is of concern, and we urge the USDA to revise this provision.

- FR pages 29650-29652 (§ 1b.4 Categorical exclusion of USDA subcomponents and actions, (a) The USDA subcomponents listed in paragraphs (a)(1) through (9) of this section conduct programs and activities that do not normally result in reasonably foreseeable significant impacts on the natural or physical environment. As such, these subcomponents' actions are excluded from the preparation of an environmental assessment (EA) or environmental impact statement (EIS)). *This section excludes financial assistance for minor construction proposals if it occurs on "previously disturbed land" from compliance with Section 106 of NHPA without consultation with State Historic Preservation Offices or Tribal Historic Preservation Offices, yet "previously disturbed land" is not defined. This is not in compliance with Section 106 and should be deleted.*
- FR page 29637 (7 CFR 1b.7—Environmental impact statements--the publication of a draft EIS is no longer required as well as publishing a notice of availability in the Federal Register). *Given that public disclosure of effects is being so drastically curtailed, compliance with Section 106 of NHPA should be decoupled from compliance with NEPA. In fact, there is no legal justification for linking a categorical exclusion with the Section 106 regulations. Therefore, the USDA will need to remove the link between a categorical exclusion and "no potential to effect historic properties." The NHPA specifically requires federal agencies to consult with tribes on properties of religious and cultural significance. The statute is paramount over regulations and cannot be waived or changed without a congressional amendment to the law. Further, there is nothing in law that links NEPA and NHPA when the laws diverge from their legally required responsibilities. The SAA urges the deletion of this provision.*

The SAA urges the USDA to make the suggested important changes to the interim final rule and its new NEPA implementing procedures.

Sincerely,

A handwritten signature in dark ink, appearing to read "Christopher D. Dore", is written over a light gray, textured background.

Christopher D. Dore
President