



ENVIRONMENTAL LAW & POLICY CENTER

September 19, 2025

Submitted via Regulations.gov

U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, D.C. 20250

Re: Comments on the Department's Planned Repeal of the Roadless Rule—Notice of Intent to Prepare an Environmental Impact Statement (FS-2025-0001)

Dear Secretary Rollins:

The roots of the Roadless Area Conservation Rule can be traced to the Midwest—or a Midwesterner, at least. In 1921, an Assistant District Forester and Iowan, Aldo Leopold, realized that the Forest Service's "doctrine of 'highest use'" required it to keep some of the nation's lands "devoid of roads, artificial trails, cottages, or other works of man."¹ As Leopold emphasized, the "recreational desires and needs of the public" had come to embrace wild places, and it would "be much easier to keep wilderness areas than to create them."² The "latter alternative[.]" in fact, could "be dismissed as impossible."³ Leopold accordingly proposed a transformative idea: that the Forest Service should protect, "in each State[.]" a "continuous stretch of country preserved in its natural state, open to lawful hunting and fishing, big enough to absorb a two weeks' pack trip[.]"⁴

Leopold's proposal came too late for most Midwestern forests, which were subject to "wide-spread and destructive logging ... from the mid-1800s to the early 1900s[.]"⁵ But this has only made the region's remaining wild places—and the legal

¹ Aldo Leopold, *The Wilderness and Its Place in Forest Recreational Policy*, 19 *Journal of Forestry* 718, 719 (Nov. 1921) ("Leopold"). *See also, e.g.*, Peter Russell, *Gila Cliff Dwellings National Monument: An Administrative History* (NPS Southwest Cultural Resources Center) (1992), at 27 (noting that "[t]he idea of a large roadless area in a national forest was originally proposed by Aldo Leopold"), *available at* https://www.nps.gov/parkhistory/online_books/gicl/adhi/adhi1f.htm.

² Leopold at 719–20.

³ *Id.*

⁴ *Id.*

⁵ Lisa A. Schulte, *et al.*, *Homogenization of Northern U.S. Great Lakes Forests Due*

protections they've been afforded—all the more vital. Of the nation's 58.2 million acres of inventoried roadless areas, only 512,000 are in the Midwest. And of these, less than 200,000 acres lie within our National Forests—acres that are broken into a fragmented set of more than forty roadless areas, including:

- The *Bay Creek, Burden Falls, Burke Branch, Clear Springs, Eagle Creek, and Ripple Hollow* roadless areas in Illinois' Shawnee National Forest (10,666 acres, all told).
- The *Mogan Ridge* roadless area in Indiana's Hoosier National Forest (8,435 acres).
- The *Delirium, Fibre, Government Island, and Round Island* roadless areas in Michigan's Hiawatha National Forest (7,846 acres, all told).
- The *Bear Swamp* roadless area in Michigan's Huron-Manistee National Forest (3,915 acres).
- The *Norwich Plains* roadless area in Michigan's Ottawa National Forest (4,360 acres).
- The *Big Island, Elmwood Island, and Potato Island* roadless areas in Minnesota's Chippewa National Forest (77 acres, all told).
- The *Baker–Homer–Brule Lakes, Baldpate Lake, Brule Lake–Eagle Mountain, Cabin Creek, Hegman Lakes, Kawishiwi Lake to Sawbill, Little Indian Sioux, Mississippi Creek, Moose Portage, Phantom Lake, South Kawishiwi River, Tait Lake, and Wood Lake* roadless areas in Minnesota's Superior National Forest (61,726 acres, all told).
- The *Beaver Park* roadless area in South Dakota's Black Hills National Forest (5,009 acres).
- And the *Chase Creek, East Torch, Flynn Lake, Foursection, Gates Lake, Le Roy Creek, Moose, Pentoga Road, Perch Lake, Round Lake, Shelp Lake, Shoe Lake Islands, St. Peters Dome, Tea Lake, Thornapple, and Wheeler Lake Islands* roadless areas in Wisconsin's Chequamegon-Nicolet National Forest (68,981 acres, all told).⁶

to *Land Use, Landscape Ecology* (2007) 22:1089–1103, 1090, available at https://www.nrs.fs.usda.gov/pubs/jrnl/2007/nrs_2007_schulte_001.pdf.

⁶ A comprehensive map of the nation's inventoried roadless areas is available at <https://outdooralliance.maps.arcgis.com/apps/instant/basic/index.html?appid=bffb3fe5fdb43519a84c6a0cf4f8ff5>.

While none of these areas are large enough to sustain a “two weeks’ pack trip[,]” they are cherished by Midwesterners for their beauty, their wildness, and the habitat they provide to the region’s cherished species. As one of the region’s leading organizations dedicated to the environment and natural-resources conservation, the Environmental Law & Policy Center seeks to ensure that the Midwest’s roadless lands retain the protections they deserve.

The Department of Agriculture’s plan to repeal the Roadless Rule ignores all of this, threatening much of the nation’s little remaining wildness—in the Midwest and everywhere else—with irrevocable harm. And it does so needlessly. Rather than reducing “wildfire hazard potential” in roadless areas, the planned repeal “would likely”—in the words of the Forest Service—“increase the chance of human-caused fires due to the increased presence of people.”⁷ Rather than ending a “one-size-fits-all’ approach to roadless area management[,]” the repeal would simply disregard the Roadless Rule’s many “exceptions ... to provide for public health and safety or environmental protection” in individual areas.⁸ And rather than furthering the current administration’s claimed commitment to fiscal responsibility, the planned repeal would only deepen the significant deficit in the Forest Service’s road-maintenance budget; increase “water filtration costs” for downstream communities; and add to the list of timber sales that “cost more to prepare and sell than they realize in revenues received.”⁹

Given all of this, the Environmental Law & Policy Center respectfully requests that the Department abandon its planned repeal and renew the Forest Service’s commitment to roadless-area protection. If the Department chooses to move forward with its plan, however, it must prepare an environmental impact statement that acknowledges and evaluates the significant harm a repeal would cause in our national forests and communities. And as explained below, that statement will have to address both the Forest Service’s earlier findings in support of the Roadless Rule and each of the issues raised in public comments on the Department’s draft EIS.

⁷ U.S. Forest Service, Roadless Area Conservation—Notice of Intent to Prepare an Environmental Impact Statement, 90 Fed. Reg. 42,179, 42,180 (Aug. 29, 2025) (“Repeal Notice”) (attempting to justify the Roadless Rule’s repeal as a means of addressing “wildfire hazard potential”); U.S. Forest Service, Roadless Area Conservation—Final Rule and Record of Decision, 66 Fed. Reg. 3,244, 3,253 (Jan. 12, 2001) (“Roadless Rule”).

⁸ Repeal Notice, 90 Fed. Reg. at 42,181; Roadless Rule, 66 Fed. Reg. at 3,255.

⁹ Roadless Rule, 66 Fed. Reg. at 3,245–46. *See also, e.g., id.* at 3,268 (noting that “[i]mplementing the rule could result in agency cost savings”).

I. The Department’s EIS must address the extensive analysis that was done in support of the Roadless Rule.

The Roadless Rule was the result of a thorough process that considered—and rejected—all of the concerns the Department has cited in support of the planned repeal. The Department’s EIS will have to acknowledge this analysis—and offer a reasoned justification for any attempts at reversing the Forest Service’s previous findings.¹⁰

Take wildfire, for instance. The Department’s notice suggests, again, that the Roadless Rule must be abandoned to address the “wildfire hazard potential” in some of the nation’s roadless areas.¹¹ In 2001, however, the Forest Service recognized that it “has a long history of successfully suppressing fires in inventoried roadless areas[;]” that “the agency rarely builds new roads to suppress fires[;]” and that “[b]uilding roads into inventoried roadless areas would likely *increase* the chance of human-caused fires due to the increased presence of people.”¹² The agency also drafted the rule with a carefully crafted set of exceptions that authorize, among other things, the “[t]hinning of small diameter trees” to reduce “the likelihood of uncharacteristic wildfire effects[.]”¹³

The Forest Service’s prior analysis also addressed the Roadless Rule’s place “in the context of multiple-use management.”¹⁴ According to the Department’s notice, the current administration believes that additional “[m]anagement flexibility is needed” for the Forest Service “to achieve its multiple use conservation mission, including timber production, recreation, wildfire suppression, and fuel reduction treatments.”¹⁵ But in 2001, the agency acknowledged that this isn’t true. “[U]nder

¹⁰ See, e.g., *Organized Village of Kake v. USDA*, 795 F.3d 956, 968–69 (9th Cir. 2015) (en banc) (invalidating a new administration’s attempt to remove the Tongass National Forest from the protections of the Roadless Rule due to the administration’s “direct, and entirely unexplained, contradiction of the ... [Forest Service’s 2001] finding ... that continued forest management under ... [the Tongass’s forest plan] was unacceptable because it posed a high risk to the [forest’s] ‘extraordinary ecological values’”).

¹¹ Repeal Notice, 90 Fed. Reg. at 42,180.

¹² Roadless Rule, 66 Fed. Reg. at 3,253 (emphasis added) (concluding that “[f]ire occurrence data indicate[d] that prohibiting road construction and reconstruction in inventoried roadless areas would not cause an increase in the number of acres burned by wildland fires or in the number of large fires”).

¹³ *Id.* at 3,258.

¹⁴ *Id.* at 3,244.

¹⁵ Repeal Notice, 90 Fed. Reg. at 42,181.

multiple-use management[.]” the Forest Service explained, “some land will be used for less than all of the possible resource uses of the national forests and grasslands.”¹⁶ Indeed, the Multiple-Use Sustained-Yield Act of 1960 itself provides that “the establishment of wilderness areas is consistent with ... [its] purposes and provisions[.]”¹⁷ And the Roadless Rule doesn’t even amount to a formal designation of “wilderness.”¹⁸ In the words of the Forest Service, the regulation “allow[s] a multitude of activities” that would be prohibited in designated wilderness areas—“including motorized uses, grazing, and oil and gas development that does not require new roads[.]”¹⁹

Finally, in contending that the Roadless Rule has established either a “one-size-fits-all’ approach” or a “cumbersome national level oversight process[.]” the Department has again ignored the Forest Service’s prior determinations.²⁰ In 2001, for example, the agency emphasized that the Roadless Rule’s exceptions allow for “[t]he cutting, sale, or removal of trees” based on a “project level analysis” of an area’s roadless characteristics, habitat needs, or wildfire risk.²¹ This is not the “one-size-fits-all’ approach” the Department’s notice describes.²² And rather than creating a “cumbersome national ... process[.]” the regulation actually resolved a “major point of conflict in land management planning”—conflict that had itself proven costly and consuming.²³ In fact, it was the persistent disagreement

¹⁶ Roadless Rule, 66 Fed. Reg. at 3,249.

¹⁷ *Id.* See also *id.* at 3,252 (noting that “courts have recognized that the MUSYA does not envision that every acre of National Forest System land be managed for every multiple use, and does envision some lands being used for less than all of the resources”).

¹⁸ *Id.* at 3,249.

¹⁹ *Id.* at 3,249–50 (noting that the Roadless Rule would “not close or otherwise block access to any of [the National Forest System’s approximately 386,000 miles of] roads[.]” and that “management actions that do not require the construction of new roads w[ould] still be allowed [under the regulation], including activities such as timber harvesting for clearly defined, limited purposes, development of valid claims of locatable minerals, grazing of livestock, and off-highway vehicle use where specifically permitted”).

²⁰ Repeal Notice, 90 Fed. Reg. at 42,181.

²¹ Roadless Rule, 66 Fed. Reg. at 3,258. See also 36 C.F.R. § 294.13(b) (2001) (establishing exceptions to the Roadless Rule’s prohibition on timber cutting); *id.* § 294.12(b) (establishing exceptions to the Roadless Rule’s prohibition on road construction and reconstruction).

²² Repeal Notice, 90 Fed. Reg. at 42,181.

²³ *Id.*; Roadless Rule, 66 Fed. Reg. at 3,246.

regarding roadless-area management—among members of the public and Congress—that ultimately convinced the Forest Service to adopt the Roadless Rule. As the agency explained:

The large number of appeals and lawsuits, and the extensive amount of congressional debate over the ... [previous] 20 years, [had] illustrate[d] the need for national direction and resolution and the importance many Americans attach to the remaining inventoried roadless areas on National Forest System lands[.] ... These disputes [we]re costly in terms of both fiscal resources and agency relationships with communities of place and communities of interest. Based on these factors, the agency decided that the best means to reduce this conflict [wa]s through a national level rule.²⁴

The planned repeal, in other words, promises to revive a “cumbersome ... process,” not eliminate one. If it’s to be adequate, the Department’s environmental impact statement and decision must somehow justify this reversal—along with every other about-face the proposed repeal would require.²⁵

II. The Department’s process must grant members of the public a meaningful opportunity to comment on the agency’s proposed rule and draft environmental impact statement.

Before finalizing the Roadless Rule, the Forest Service gave the public multiple opportunities to comment on the management of our roadless lands. In 1998, Forest Service Chief Mike Dombeck proposed a temporary suspension of road building and reconstruction in most inventoried roadless areas—and he allowed time for the submission of “approximately 119,000 public comments, many of which mentioned the need for ‘permanent protection’ of ... [the] areas.”²⁶ When the agency decided to move forward with permanent roadless protections, its notice of intent to prepare an EIS “drew about 16,000 people to 187 public meetings and elicited more than 517,000 responses.”²⁷ “About 430 public meetings were [later] held” on the Forest Service’s proposed rule and draft environmental impact statement—“230 [or so] for information sharing and written comments and about 200 for collecting oral and written comments.”²⁸ Remarkably, “[e]very national forest and grassland

²⁴ Roadless Rule, 66 Fed. Reg. at 3,246.

²⁵ See, e.g., *Organized Village of Kake*, 795 F.3d at 968–69.

²⁶ Roadless Rule, 66 Fed. Reg. at 3,247.

²⁷ *Id.* at 3,248.

²⁸ *Id.*

hosted at least two meetings” on the regulation.²⁹ And by the end of the process, “more than 1.6 million comments” had been considered by Forest Service officials, the vast majority of which—95 percent—supported roadless-area protections.³⁰

If the Department attempts to move forward with a repeal of the Roadless Rule, it must provide similar opportunities for members of the public to be heard. At the moment, however, it is failing to do so. The Department’s notice of intent was published only three weeks ago—and it required any and all comments to be submitted no later than today.³¹ For an action that would apply to “approximately 44.7 million acres of National Forest System lands,” such a short comment period cannot be reasonably defended.³²

All told, the Department should grant members of the public additional time to address the planned environmental impact statement, ensuring that they have no less than the two months provided in 1999.³³ It should convene public meetings across the country—to give people a chance to be heard in person.³⁴ And once a proposed rule and draft statement have been prepared, it should give the public at least two months to provide comments—either in writing or at meetings held within every national forest and grassland.³⁵

To be clear, the Forest Service has a legal obligation to accept, consider, and respond to comments on its draft environmental impact statement. While the Department of Agriculture recently issued a revised set of NEPA regulations that purportedly give agency officials the “discretion” to “publish a draft EIS”—or not—

²⁹ *Id.*

³⁰ *Id.*

³¹ Repeal Notice, 90 Fed. Reg. at 42,180.

³² *Id.*

³³ See 64 Fed. Reg. 56,306 (Oct. 19, 1999) (establishing a 62-day comment period following the Service’s scoping notice).

³⁴ Roadless Rule, 66 Fed. Reg. at 3,248 (noting that “[t]he agency’s notice of intent to prepare an environmental impact statement [about roadless protections] drew about 16,000 people to 187 public meetings”).

³⁵ *Id.* (noting that the Forest Service’s meetings at “[e]very national forest and grassland ... drew over 23,000 people nationwide[,]” and that members of the public also had more than two months to submit written comments on the proposed roadless rule).

this was unlawful.³⁶ As the Environmental Law & Policy Center explained in its comments on the Department’s “interim” rules:

Congress has confirmed in its recent amendments to [the National Environmental Policy Act] that draft statements must be made available for public review and comment. With the FAST Act, for instance—a law enacted to streamline the procedures that would otherwise apply to large infrastructure projects—Congress declared that a “lead agency shall establish a comment period of not less than 45 days” for “comments by an agency or the public on a draft environmental impact statement[.]”³⁷ Your ... procedures must allow for at least as much comment on projects that do not qualify for the FAST Act’s expedited process.³⁸

This is undoubtedly true here, where the action at issue threatens irrevocable harm to more than 40 million acres of roadless lands across the United States. And there are reliance interests at stake, too, given that the Department’s notice of intent has announced that a “proposed rule, accompanied by a draft EIS, is expected by March 2026, along with a *request for additional public comment*.”³⁹

III. Conclusion

For more than twenty years, the Roadless Rule has extended a vital set of protections to the nation’s inventoried roadless lands—lands that include some of the Midwest’s last slivers of wildness. For the benefit of people and species alike—not to mention the Forest Service’s budget—these protections must be maintained.

³⁶ U.S. Department of Agriculture, NEPA Interim Final Rule, 90 Fed. Reg. 29,632, 29,637 (July 3, 2025) (declaring that “a request for comment may be undertaken at any time that is reasonable in the process of preparing an EIS, as the publication of a draft EIS is no longer required” and merely “adds time and unnecessary process”).

³⁷ 42 U.S.C. § 4370m-4(d)(1) (noting that “the lead agency, the project sponsor, and any cooperating agency [may] agree to a longer deadline[.]” and that “the lead agency, in consultation with each cooperating agency, [may] extend[] the deadline for good cause”).

³⁸ Environmental Law & Policy Center, Comments on the USDA’s Interim Final NEPA Rule (USDA–2025–0008), *et al.* (Aug. 4, 2025), at 11 (attached).

³⁹ Repeal Notice, 90 Fed. Reg. at 42,180 (emphasis added).

We urge the Department to abandon its planned repeal and instead renew the Forest Service's commitment to conserving America's remaining roadless lands.

Sincerely,

Sean Helle, Senior Attorney
Ann Mesnikoff, Federal Legislative Director
David Scott, Senior Attorney
Kelly Thayer, Senior Policy Advocate
Environmental Law & Policy Center

Attachment

Environmental Law & Policy Center, Comments on the USDA's
Interim Final NEPA Rule (USDA–2025–0008), *et al.* (Aug. 4, 2025)



August 4, 2025

Submitted via Regulations.gov

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

U.S. Department of Energy
1000 Independence Avenue SW
Washington, D.C. 20585

U.S. Department of the Interior
1849 C Street NW, MS 5020
Washington, D.C. 20240

U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, D.C. 20590-0001

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

Re: USDA's Interim Final NEPA Rule (USDA-2025-0008)
 USDOE's Revision of NEPA Procedures (DOE-HQ-2025-0026)
 USDOJ's Interim Final NEPA Rule (DOI-2025-0004)
 USDOT's NEPA Procedures (DOT-OST-2025-0171)
 FHWA, FRA, and FTA's NEPA Regulation Revisions (FHWA-2025-0007)
 NHTSA's Recission of NEPA Procedures (NHTSA-2025-0160)
 USACE's Procedures for Implementing NEPA (COE-2025-0006/0007)

Dear Secretaries Rollins, Wright, Burgum, Duffy, and Driscoll:

For nearly sixty years, the National Environmental Policy Act has granted every American a vital set of environmental protections. Under Section 101 of the statute, all federal agencies are required to carry out a critical “mandate”: “us[ing] all practicable means, consistent with other essential considerations of national

policy,” to “fulfill the responsibilities of each generation as trustee of the environment for succeeding generations[,]” while “assur[ing] ... safe, healthful, [and] productive ... surroundings” for “all Americans[.]”¹ And under Section 102, agencies must implement an “action-forcing” set of procedures that are “designed to assure” NEPA’s environmental mandate is fulfilled.²

In the decades since the statute’s enactment, Congress has repeatedly reaffirmed the importance—and mandatory nature—of NEPA’s requirements. Only two years ago, for instance, Congress further codified the process for federal environmental reviews with the Fiscal Responsibility Act—a statute that left the substantive mandate of Section 101 firmly in place.³ As a result of these actions, every federal agency has an obligation to rigorously evaluate the environmental implications of its proposed actions and available alternatives; to engage members

¹ S. Rep. No. 91–296 (1969), at 14 (noting that NEPA “provide[s] all agencies and all Federal officials with a legislative mandate”); 42 U.S.C. § 4331(b) (further requiring every federal agency to “use all practicable means” to “attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;” to “preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;” to “achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities;” and to “enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources”). *See also*, e.g., 42 U.S.C. § 4335 (noting that NEPA’s “policies and goals ... are supplementary to those set forth in existing authorizations of Federal agencies”).

² S. Rep. No. 91–296 (1969), at 9; 42 U.S.C. § 4332(C) (directing “all agencies of the Federal Government” to “include in every recommendation or report on ... major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on ... reasonably foreseeable environmental effects of the proposed agency action”).

³ Pub. L. 118–5, Sec. 321. *See also*, e.g., 42 U.S.C. §§ 4331, 4335 (establishing federal agencies’ “supplementary” environmental mandate); Council on Environmental Quality, National Environmental Policy Act Regulations, 43 Fed. Reg. 55,978, 55,979 (Nov. 29, 1978) (“1978 CEQ Rules”) (noting that “Section 101 of NEPA sets forth the substantive requirements of the Act, the policy to be implemented by the ‘action-forcing’ procedures of Section 102”); *id.* at 55,986 (noting that “[t]he language of the Act and its legislative history make clear that Federal agencies must act in an environmentally responsible fashion and not merely consider environmental factors[,]” as “NEPA requires that each Federal agency use ‘all practicable means and measures’ to protect and improve the environment ‘consistent with other essential considerations of national policy’”).

of the public in its environmental decisionmaking; and to ultimately safeguard a “healthful environment” for everyone.⁴

Your agencies’ revised NEPA procedures attempt an unlawful “end-run” around these requirements.⁵ Rather than “ensur[ing] the professional integrity, including scientific integrity,” of “detailed” environmental reviews, the procedures promise arbitrary corner-cutting.⁶ Rather than ensuring meaningful public engagement, the procedures seek to minimize opportunities for notice and comment. And rather than ensuring that NEPA’s substantive mandate is fulfilled, the procedures encourage agencies to disregard environmental considerations almost entirely.

None of this is legally permissible. In order to comply with the requirements Congress has imposed—and in order to further the efficiency goals the current administration has favored—your agencies must abandon their revised procedures and replace them with the rules that have long guided federal environmental reviews.⁷

I. The longstanding requirements that CEQ recently repealed were incorporated into NEPA by Congress—and they must now be added to your agencies’ own rules.

In attempting to justify their decision to weaken or repeal most of their NEPA rules, each of your agencies has emphasized the Council on Environmental Quality’s recent decision to repeal its government-wide regulations.⁸ The Council’s

⁴ 42 U.S.C. §§ 4331(b)–(c), 4332, 4335. *See also, e.g., Simmons v. U.S. Army Corps of Eng’rs*, 120 F.3d 664, 670 (7th Cir. 1997) (noting that “a federal agency cannot ram through a project before first weighing the pros and cons of the alternatives” under NEPA).

⁵ *Simmons*, 120 F.3d at 670.

⁶ 42 U.S.C. §§ 4332(C)–(D).

⁷ *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) (overruling *Chevron* and noting that courts “may not defer to an agency interpretation of the law simply because a statute is ambiguous”).

⁸ *See, e.g.,* U.S. Dep’t of Agriculture, NEPA Interim Final Rule, 90 Fed. Reg. 29,632 (July 3, 2025) (“USDA Rule”); U.S. Dep’t of Energy, Revision of NEPA Implementing Procedures, 90 Fed. Reg. 29,676 (July 3, 2025) (“DOE Repeal”); U.S. Dep’t of the Interior, NEPA Implementing Regulations, 90 Fed. Reg. 29,498 (July 3, 2025) (“Interior Repeal”); U.S. Dep’t of Transportation, Procedures for Considering Environmental Impacts, 90 Fed. Reg. 29,621 (July 3, 2025) (“Transportation Order”); National Highway Traffic Safety Administration, Recission of NHTSA’s

action, however, requires the opposite response. Because Congress has repeatedly required your agencies to carry out the requirements that were long centralized in CEQ’s rules, the same requirements must now be incorporated into your agencies’ own NEPA regulations.

As the Supreme Court has noted, “[t]he Council of Environmental Quality ... [was] established by NEPA with authority to issue regulations interpreting it”—regulations CEQ first issued in 1978.⁹ The Council’s rules were animated by a “threefold objective”: “less paperwork, less delay, and better decisions.”¹⁰ They “replace[d] some seventy different sets of agency regulations, ... provid[ing] uniform standards applicable throughout the Federal government for conducting environmental reviews.”¹¹ And they established the framework that is now regarded as synonymous with NEPA itself, including categorical exclusions, environmental assessments, findings of no significant impact, and meaningful opportunities for public comment.¹²

Congress has approved of the Council’s work. On numerous occasions in the past forty-five years, legislators have amended NEPA to make it read more like CEQ’s rules—codifying the use of exclusions, assessments, and other procedures.¹³

1975 Procedures for Considering Environmental Impacts, 90 Fed. Reg. 29,507 (July 3, 2025) (“NHTSA Repeal”); Federal Highway Administration, Federal Railroad Administration, and Federal Transit Administration, Revision of NEPA Regulations, 90 Fed. Reg. 29,426, 29,426–27 (July 3, 2025) (“FHA Rule”); U.S. Army Corps of Engineers, Procedures for Implementing NEPA, 90 Fed. Reg. 29,461, 29,462 (July 3, 2025) (“Corps Repeal”).

⁹ *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 757 (2004); 1978 CEQ Rules, 43 Fed. Reg. at 55,978.

¹⁰ 1978 CEQ Rules, 43 Fed. Reg. at 55,978. *See also, e.g., id.* (noting that CEQ “expect[ed] the new regulations to ... reduce paperwork, to reduce delays, and at the same time to produce better decisions which further the national policy to protect and enhance the quality of the human environment”).

¹¹ *Id.*

¹² *Id.* at 55,990–56,006.

¹³ *See, e.g.,* 42 U.S.C. § 4336(b)(2) (providing for the use of an environmental assessment whenever “a proposed agency action ... does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown”); *id.* § 4336b (allowing agencies to prepare and rely on programmatic reviews); *id.* § 4336c (allowing agencies to adopt and use categorical exclusions); *id.* § 4370m-4(c)(1) (incorporating the scoping process for projects requiring impact statements); *id.* § 4370m-4(d)(1) (providing for public comment on draft environmental impact statements); CEQ, NEPA Implementing

More often, however, Congress has simply incorporated the Council’s rules by reference—compelling agencies to comply with CEQ’s current or “successor” regulations.¹⁴

Regulations Revisions Phase 2, 89 Fed. Reg. 35,442, 35,443 (May 1, 2024) (“2024 CEQ Rules”) (noting that the Fiscal Responsibility Act of 2023 “codif[ie]d longstanding principles drawn from CEQ’s NEPA regulations, decades of agency practice, and case law interpreting the NEPA regulations, and provide[d] additional direction to improve the efficiency and effectiveness of the NEPA process consistent with NEPA’s purposes”).

¹⁴ See, e.g., 15 U.S.C. § 4659(d)(2) (“Creating Helpful Incentives to Produce Semiconductors for America”) (incorporating “section 1501.4 of title 40, Code of Federal Regulations, or any successor regulation”); 16 U.S.C. § 6554(d)(2)(B) (“Insect Infestations and Related Diseases”) (incorporating “the extraordinary circumstances procedures established by the Secretary [of Agriculture or the Interior] pursuant to section 1508.4 of title 40, Code of Federal Regulations”); 16 U.S.C. § 6591e(b)(1) (“Healthy Forest Restoration”) (incorporating the “defin[ition] in section 1508.4 of title 40, Code of Federal Regulations (or a successor regulation)”); 23 U.S.C. § 139(d)(5) (“Federal-Aid Highways”) (incorporating the cooperating-agency “regulations contained in part 1500 of title 40, Code of Federal Regulations”); *id.* § 139(n)(3)(A) (incorporating “paragraphs (4) through (6) of section 1502.10(a) of title 40, Code of Federal Regulations (or successor regulations)”); *id.* § 139(q)(3)(A)–(B) (incorporating “the criteria for a categorical exclusion under section 1508.1 of title 40, Code of Federal Regulations (or successor regulations)”); 23 U.S.C. § 157(a)(3) (“Federal-Aid Highways”) (incorporating a definition established “in section 1508.1 of title 40, Code of Federal Regulations (or a successor regulation)”); 33 U.S.C. § 408(b)(1)(B)(ii) (“Protection of Navigable Waters”) (incorporating “parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations)”); 33 U.S.C. § 2348(d)(1)(A) (“Water Resources Development”) (incorporating “the requirements of section 1506.8 of title 40, Code of Federal Regulations (or successor regulations)”); *id.* § 2348(d)(3)(b) (incorporating “parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations)”); *id.* § 2348(l)(2) (incorporating “the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (or successor regulation)”); 33 U.S.C. §§ 2348a(a)(1), (2), (4) (“Water Resources Development”) (incorporating definitions established “in section 1508.1 of title 40, Code of Federal Regulations (or a successor regulation)”); 33 U.S.C. § 2349 (“Water Resources Development”) (incorporating “section 1508.4 of title 40, Code of Federal Regulations (or successor regulations)”); 42 U.S.C. §§ 4370m(4), (8) (“Federal Permitting Improvement”) (incorporating definitions established “in section 1508.1 of title 40, Code of Federal Regulations (or successor regulations)”); *id.* § 4370m(15) (incorporating the “environmental review” provisions of “parts 1500 through 1508 of

Given these provisions, the current administration acted unlawfully in electing to strip the Council’s NEPA rules from the Code of Federal Regulations.¹⁵ By explicitly incorporating CEQ’s rules and their “successor[s]” into the fabric of NEPA, Congress required that the regulations remain in place.¹⁶ Without them, the statute’s provisions simply don’t work.¹⁷ While your agencies lack the authority to reinstate the Council’s rules on a government-wide basis, they do have the ability to incorporate the rules’ requirements into their own procedures. In order to ensure that Congress’s demand for NEPA rules is at least partially fulfilled, your agencies must take this action now.

To be clear, the promulgation of unenforceable NEPA guidance—as some of your agencies have attempted—is not enough to fulfill the statute’s requirements.¹⁸

title 40, Code of Federal Regulations (or successor regulations)”; 42 U.S.C. § 4370m-2(e)(1) (incorporating the cooperating-agency provisions of “part 1501 of title 40, Code of Federal Regulations (or successor regulations)”; 42 U.S.C. § 4370m-4(d) (establishing timelines for “comments by an agency or the public on a draft environmental impact statement” and “all other review or comment periods in the environmental review process described in parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations)”; 42 U.S.C. § 10247(c)(1) (“Nuclear Waste Policy”) (incorporating “section 1506.3 of title 40, Code of Federal Regulations”); 43 U.S.C. § 1772(c)(5) (“Federal Land Policy and Management”—“Rights-of-Way”) (incorporating “section 1508.4 of title 40, Code of Federal Regulations (or a successor regulation)”; 49 U.S.C. § 24201(c) (“Rail Programs”—“Project Delivery”) (incorporating “the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations”); 49 U.S.C. § 40128(b)(4)(C) (“Overflights of national parks”) (requiring the Federal Aviation Administration and National Park Service to “comply with the regulations set forth in sections 1501.3 and 1501.5 through 1501.8 of title 40, Code of Federal Regulations”); 49 U.S.C. § 47171(l) (“Aviation Development Streamlining”) (directing the Secretary of Transportation to “solicit and consider comments from interested persons and governmental entities in accordance with ... section 1503 of title 40, Code of Federal Regulations”); *id.* § 47171(p)(5)(I) (referencing “the requirements of ... section 1502.21 of title 40, Code of Federal Regulations”).

¹⁵ Exec. Order No. 14,154 (Jan. 20, 2025), 90 Fed. Reg. 8,353, 8,355 (Jan. 29, 2025) (Section 5(b)) (directing “the Chairman of the Council on Environmental Quality ... [to] propose rescinding CEQ’s NEPA regulations found at 40 CFR 1500 *et seq.*”).

¹⁶ See note 14, *supra*.

¹⁷ See *id.*

¹⁸ See, e.g., Interior Repeal, 90 Fed. Reg. at 29,498 (asserting that “NEPA does not require Federal agencies to issue regulations implementing NEPA,” and electing to place most of its procedures “in a Handbook separate from the Code of Federal

Congress enacted NEPA for the purpose of binding federal agencies to both a substantive environmental mandate and a corresponding set of “action-forcing” procedures.¹⁹ Nonbinding guidance unlawfully defies this purpose. And it would further disregard the language of Executive Order No. 14,154, which directed your agencies to revise their “implementing *regulations* for consistency.”²⁰

II. By adopting the requirements of CEQ’s recently repealed rules, your agencies would remedy the unlawful deficiencies of their newly revised procedures.

In adopting the requirements that CEQ recently repealed, your agencies would also remedy the deficiencies of their revised procedures—procedures that unlawfully defy NEPA’s core environmental mandate, undermine the public’s right to be heard, and encourage officials to ignore some of the most significant threats facing our communities and the environment.

A. Your agencies’ revised procedures unlawfully subvert the national environmental policy established by Congress in favor of the current administration’s preferred policy goals.

With Executive Order 14,154, President Trump declared that all “agency-level ... [NEPA] regulations” should—to the extent “[c]onsistent with applicable law”—“prioritize efficiency and certainty over any other objectives, including those of activist groups, that do not align with the [administration’s fossil-fuel-focused] policy goals ... or that could otherwise add delays and ambiguity to the permitting process.”²¹ In responding to this directive, your agencies have drafted procedures that marginalize environmental concerns—or invite officials to disregard them altogether. This is unlawful.

The National Environmental Policy Act was adopted to remedy a significant omission in the laws that governed many federal agencies. As the Senate’s Committee on Interior and Insular Affairs explained in 1969, “[m]anagement of the

Regulations” instead); Transportation Order, 90 Fed. Reg. at 29,622 (adopting “guidelines for agency procedure and practice with respect to NEPA compliance”).

¹⁹ See, e.g., S. Rep. No. 91–296, at 9, 14 (noting that NEPA establishes both “a legislative mandate” and “certain ‘action-forcing’ provisions and procedures which are designed to assure that all Federal agencies plan and work toward meeting the challenge of a better environment”); 42 U.S.C. § 4331(b) (codifying mandate); 1978 CEQ Rules, 43 Fed. Reg. at 55,979 (noting that “Section 101 of NEPA sets forth the substantive requirements of the Act, the policy to be implemented by the ‘action-forcing’ procedures of Section 102”).

²⁰ 90 Fed. Reg. at 8,355 (Section 5(c)) (emphasis added).

²¹ *Id.*

environment is a matter of critical concern to all Americans” and “[v]irtually every agency of the Federal Government plays some role in determining how well the environment is managed.”²² Yet prior to NEPA’s enactment, “many of these agencies d[id] not have a mandate, a body of law, or a set of policies to guide their actions which have an impact on the environment. In fact, the authorizing legislation of some agencies ha[d] been construed to prohibit the consideration of important environmental values.”²³ The statute “rectifie[d] this by providing a congressional declaration that it is the continuing policy and responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal planning and activities to the end that certain broad national goals in the management of the environment may be attained.”²⁴ NEPA, in other words, gave all federal agencies a substantive “legislative mandate ... to consider the consequences of their actions on the environment.”²⁵

Your agencies have defied the express will of Congress in attempting to replace NEPA’s national environmental policy with the current administration’s preferred “policy goals.”²⁶ The statute requires every federal agency to give thorough and meaningful consideration to environmental values. Your agencies’ NEPA procedures must accordingly ensure that this consideration takes place—rather than encouraging federal officials to discount or disregard the environmental impacts of their actions.²⁷

²² S. Rep. No. 91–296, at 9.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 14; 1978 CEQ Rules, 43 Fed. Reg. at 55,979 (noting that “Section 101 of NEPA sets forth the substantive requirements of the Act, the policy to be implemented by the ‘action-forcing’ procedures of Section 102”). *See also* S. Rep. No. 91–296, at 7 (noting that “Section 102 [of NEPA] provides that the policies and goals set forth in the act are supplemental to the existing mandates and authorizations of all Federal agencies”); 42 U.S.C. § 4331(b) (codifying the environmental mandate that binds all federal agencies); *id.* § 4335 (noting that NEPA’s “policies and goals ... are supplementary to those set forth in existing authorizations of Federal agencies”).

²⁶ 90 Fed. Reg. at 8,355 (Section 5(c)).

²⁷ *See, e.g.*, USDA Rule, 90 Fed. Reg. at 29,646 (7 C.F.R. § 1b.2(a)) (declaring that “[i]t is the policy of USDA that all USDA subcomponents’ policies and programs shall be planned, developed, and implemented to comply with Congress’ directives in NEPA, as amended by the Fiscal Responsibility Act of 2023, with the

The Supreme Court’s recent opinion in *Seven County Infrastructure Coalition* is not to the contrary.²⁸ The decision noted, of course, that the action-forcing “EIS” requirement of Section 102 is “purely procedural”—as it “does not require ... [an] agency to weigh environmental consequences in any particular way.”²⁹ But the Court did not address the underlying “mandate” that Congress has long maintained in Section 101—one that charges your agencies with “us[ing] all practicable means, consistent with other essential considerations of national policy,” to “fulfill the responsibilities of each generation as trustee of the environment for succeeding generations[.]” and to “assure ... safe, healthful, [and] productive ... surroundings” for “all Americans[.]”³⁰ The Court’s decision ultimately confirmed, moreover, that NEPA “requires agencies to focus on the environmental effects” of their actions, thereby “ensur[ing]” both “agenc[ies] and the public are aware of the environmental consequences of proposed projects.”³¹ “Properly applied,” the Court declared, “NEPA helps agencies to make better decisions and to ensure good project management.”³²

Your agencies’ revised NEPA procedures are inadequate to ensure that the statute will be “[p]roperly applied[.]” that decisions will be “better” made, and that projects will be well managed.³³ By instead adopting the requirements of CEQ’s longstanding rules—which reiterated and carried out NEPA’s “national environmental policy”—the agencies would bring themselves back into compliance with Congress’s commands.³⁴

understanding that NEPA is a purely procedural statute that imposes no substantive environmental obligations or restrictions”).

²⁸ See *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497 (2025).

²⁹ *Id.* at 1507–08.

³⁰ S. Rep. No. 91–296 (1969), at 14 (noting that NEPA “provide[s] all agencies and all Federal officials with a legislative mandate”); 42 U.S.C. § 4331(b); *id.* § 4335 (noting that NEPA’s “policies and goals ... are supplementary to those set forth in existing authorizations of Federal agencies”); 1978 CEQ Rules, 43 Fed. Reg. at 55,979 (noting that “Section 101 of NEPA sets forth the substantive requirements of the Act, the policy to be implemented by the ‘action-forcing’ procedures of Section 102”).

³¹ 145 S. Ct. at 1507–08, 1510.

³² *Id.*

³³ *Id.*

³⁴ See, e.g., 40 C.F.R. § 1500.1(c) (July 1, 2024) (noting that “[t]he NEPA process is intended to help public officials make decisions ... based on an understanding of environmental consequences and take actions that protect, restore, and enhance the

B. Your agencies’ revised procedures unlawfully encourage federal officials to avoid meaningful environmental review.

Your agencies’ new NEPA procedures appear to be aimed at avoiding environmental review altogether, in defiance of the statute’s requirements. The Department of the Interior’s recent amendments are illustrative of this problem.³⁵ With its interim final rule, the Department has elected to “retain and ... update[]” the regulations it had previously adopted to exempt agencies from preparing impact statements—on the grounds of emergencies, categorical exclusions, or a third party’s willingness to do the work.³⁶ Interior has otherwise “removed” all of its procedures from the Code of Federal Regulations—meaning that the Department’s rules for “implementing NEPA” have now become rules for avoiding NEPA.³⁷

The Department of Agriculture’s interim final rule similarly emphasizes categorical exclusions and emergency procedures at the expense of NEPA’s environmental-review requirements. The rule instructs, for instance, that once a USDA sub-agency, such as the Forest Service, determines that NEPA applies to an action, it should first seek to apply one of its existing categorical exclusions; then attempt to apply the categorical exclusion of another agency; then seek to establish a new categorical exclusion; and only then, if a categorical exclusion cannot be found or established, “consider the proposed action’s reasonably foreseeable significant impacts” and prepare an environmental assessment or impact statement.³⁸

Categorical exclusions and the like have a well-established place in the NEPA process. Your agencies’ rules, however, must ultimately ensure that federal officials evaluate all significant environmental impacts in an environmental impact statement. The agencies’ revised procedures do the opposite—and they must accordingly be abandoned to ensure compliance with the statute.

environment[.]” and that CEQ’s regulations “provide[d] the direction to achieve this purpose”).

³⁵ Interior Repeal, 90 Fed. Reg. at 29,499.

³⁶ *Id.*

³⁷ *Id.* at 29,502 (declaring that “DOI is repealing its prior regulations that establish procedures and practices for implementing NEPA”).

³⁸ See 7 C.F.R. § 1b.2(f)(2); USDA Rule, 90 Fed. Reg. at 29,648.

C. Your agencies’ revised procedures unlawfully limit opportunities for public engagement in the environmental-review process.

CEQ’s regulations obligated agencies to provide sufficient notice and opportunities for public comment during the environmental-review process.³⁹ These requirements allowed members of the public to review and respond to draft environmental impact statements, which provide the only meaningful glimpse of an agency’s alternatives and analysis before they are finalized.⁴⁰

Rather than acknowledging and implementing NEPA’s commitment to public engagement, your agencies’ revised procedures have attempted to limit it. The Department of Agriculture has stated, for example, that “[p]ublic involvement discussions ... [will be] reduced” under its new procedures, leaving agencies with “discretion on the methods to use given the nature of the proposal and the public entities most likely to be interested or affected.”⁴¹ All told, each of your agencies has attempted to eliminate the public’s right to review and comment on draft environmental impact statements—if drafts are prepared at all.⁴²

This approach is contrary to law. Congress has confirmed in its recent amendments to NEPA that draft statements must be made available for public review and comment. With the FAST Act, for instance—a law enacted to streamline the procedures that would otherwise apply to large infrastructure projects—Congress declared that a “lead agency shall establish a comment period of not less than 45 days” for “comments by an agency or the public on a draft environmental impact statement[.]”⁴³ Your agencies’ procedures must allow for at least as much comment on projects that do not qualify for the FAST Act’s expedited process.

³⁹ 40 C.F.R. §§ 1501.5; 1502.4(e); 1502.9(b)–(c); 1502.19; 1503.1–1503.4; 1506.10(d) (July 1, 2024).

⁴⁰ *See, e.g., id.* §§ 1502.9(b); 1503.1(a).

⁴¹ USDA Rule, 90 Fed. Reg. at 29,638.

⁴² *See, e.g.,* U.S. Department of the Interior Handbook of National Environmental Policy Act Implementing Procedures (516 DM 1), Sec. 2.1(b)(ii) (providing only that “the Responsible Official ... [*m*]ay request the comments of the public, including by affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action”) (emphasis added).

⁴³ 42 U.S.C. § 4370m-4(d)(1) (noting that “the lead agency, the project sponsor, and any cooperating agency [*may*] agree to a longer deadline[.]” and that “the lead agency, in consultation with each cooperating agency, [*may*] extend[] the deadline for good cause”).

D. Your agencies’ revised procedures—and environmental reviews—must address climate change and environmental justice.

Given its focus on “assur[ing] ... healthful ... surroundings” for “all Americans” and “succeeding generations[,]” NEPA requires federal agencies to consider environmental justice and climate change—two of the most pressing environmental issues of our time.⁴⁴ CEQ recognized this in its regulations. In setting out the “environmental consequences” that must be addressed in an environmental impact statement, for instance, the Council directed agencies to analyze both the “disproportionate and adverse human health and environmental effects on communities with environmental justice concerns[,]” and “climate change-related effects, including, where feasible, quantification of greenhouse gas emissions, from ... proposed action[s] and alternatives and the effects of climate change on ... proposed action[s] and alternatives[.]”⁴⁵

Your agencies have attempted to avoid these requirements by omitting explicit references to climate change and environmental justice from their revised procedures. While these omissions are legally inadequate to eliminate either duty—an agency cannot prepare “a detailed statement ... on ... reasonably foreseeable environmental effects” without considering the climate and our communities—they will encourage federal officials to stop short of fulfilling NEPA’s commands.⁴⁶ Your agencies can avoid this problem by incorporating the clear language of CEQ’s regulations into their procedures.

III. Your agencies’ adoption of CEQ’s requirements would also further the current administration’s focus on efficiency and expedition.

Ultimately, your agencies have insisted that their revised rules and guidance will “prioritize efficiency and certainty over any other objectives,” as the President has directed.⁴⁷ Their effect, however, will be the opposite. By replacing CEQ’s

⁴⁴ 42 U.S.C. §§ 4331(b)(1)–(2).

⁴⁵ 40 C.F.R. §§ 1502.16(a)(6), (13) (July 1, 2024). *See also, e.g., id.* § 1500.2(e) (directing agencies to “[u]se the NEPA process to identify and assess ... alternatives that will reduce climate change-related effects or address adverse health and environmental effects that disproportionately affect communities with environmental justice concerns”); *id.* § 1502.14(f) (defining the “environmentally preferable alternative” as one that “will best promote the national environmental policy expressed in section 101 of NEPA by maximizing environmental benefits, such as addressing climate change-related effects or disproportionate and adverse effects on communities with environmental justice concerns”).

⁴⁶ 42 U.S.C. § 4332(C)(i).

⁴⁷ 90 Fed. Reg. at 8,355 (Section 5(c)).

government-wide rules with a balkanized system of agency-specific requirements, your agencies' new procedures promise only to introduce inefficiency, uncertainty, "delays[,] and ambiguity"—the very things Executive 14,154 sought to preclude.⁴⁸

CEQ first adopted its regulations when it became clear that an agency-by-agency approach to NEPA was creating significant problems for project proponents, the public, and the federal government itself. As the Council explained in 1978, eight years after the statute's enactment:

The lack of a uniform, government-wide approach to implementing NEPA ha[d] impeded Federal coordination and made it more difficult for those outside government to understand and participate in the environmental review process. It ha[d] also caused unnecessary duplication, delay and paperwork.⁴⁹

The Council's regulations were accordingly made "binding on all Federal agencies"—"replac[ing] some seventy different sets of agency regulations, and provid[ing] uniform standards applicable throughout the Federal government for conducting environmental reviews."⁵⁰

Shortly before their repeal, CEQ revised its regulations to further advance the "objective" of "less paperwork, less delay, and better decisions."⁵¹ In 2024, the Council issued an amended set of rules aimed at "improv[ing] the efficiency and effectiveness of the NEPA process, enhanc[ing] regulatory certainty[,] ... address[ing] potential sources of litigation risk, and promot[ing] consistency across the Federal Government while recognizing the importance of providing agencies with flexibility to tailor their NEPA processes to ... specific statutes and factual contexts[.]"⁵² CEQ's 2024 rules also codified the requirements of the Fiscal Responsibility Act—a statute your agencies have repeatedly cited as justification for their own recent amendments.⁵³ The agencies would accordingly further efficiency and ensure compliance with Congress's commands by incorporating CEQ's requirements into their own regulations.

⁴⁸ *Id.*

⁴⁹ 1978 CEQ Rules, 43 Fed. Reg. at 55,978.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² 2024 CEQ Rules, 89 Fed. Reg. at 35,442.

⁵³ *Id.* at 35,443.

IV. Your agencies unlawfully circumvented the notice-and-comment process in issuing their revised procedures.

In revising and repealing their NEPA regulations, finally, most of your agencies unlawfully relied on inapplicable exceptions to the Administrative Procedure Act. The APA “sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts.”⁵⁴ The statute generally requires that any agency promulgating a rule must provide the public with both a “[g]eneral notice of a proposed rule making” and “an opportunity to participate ... through submission of written data, views, or arguments[.]”⁵⁵ The APA provides for exceptions to these default requirements only for “good cause,” and for procedural and interpretive rules.⁵⁶ While these limited exceptions must be “narrowly construed and only reluctantly countenanced[.]” several of your agencies’ interim final rules unlawfully invoked them in an effort to avoid giving the public a meaningful opportunity to comment.⁵⁷ None of the exceptions apply here, however. Your agencies’ failure to provide the statutorily required notice and opportunity to comment was unlawful.

First, your agencies’ interim final rules do not make the necessary showing to invoke the narrow “good cause” exception. For example, the Department of Agriculture has asserted that there was good cause for skipping public comment due to CEQ’s rescission of its own NEPA regulations in February.⁵⁸ It could not explain, however, why the rescission of CEQ’s rules five months ago was *any* cause, much less “good cause,” for circumventing the required notice-and-comment process now. The “good cause” exception is limited to emergencies and situations “where delay could result in serious harm.”⁵⁹ Your agencies’ interim final rules did not even attempt to argue that this standard had been satisfied; rather, they merely cited a “need for speed and certainty” or simply claimed that comment was “not ... tenable,”

⁵⁴ *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992).

⁵⁵ 5 U.S.C. § 533.

⁵⁶ *Id.* §§ 533(a)(2), (b)(4)(A)–(B).

⁵⁷ *New Jersey Dep’t of Env’t Prot. v. EPA*, 626 F.2d 1038, 1045 (D.C. Cir. 1980). *See, e.g.*, USDA Rule, 90 Fed. Reg. at 29,644–45; Corps Repeal, 90 Fed. Reg. at 29,471; FHA Rule, 90 Fed. Reg. at 29,429; NHTSA Repeal, 90 Fed. Reg. at 29,508; Interior Repeal, 90 Fed. Reg. at 29,502.

⁵⁸ *See* 90 Fed. Reg. 10,610 (Feb. 25, 2025).

⁵⁹ *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir 2004).

even though “an agency’s desire to eliminate more quickly legal and regulatory uncertainty is not by itself good cause.”⁶⁰

Second, your agencies’ interim final rules are much more than “internal house-keeping measures[.]”⁶¹ Instead, they are substantive, legislative regulations that will impact the interests and rights of the public and therefore require notice and comment. The rules attempt to undo decades of established practice and eliminate the public’s right to participate in the review of agency decisions that impact human health, safety, and the quality of the environment. Moreover, the regulations seek to amend prior legislative rules that were the result of notice and comment—and “of course, an amendment to a legislative rule must itself be legislative.”⁶²

In short, the public has a legal right to participate both in agency decisionmaking under NEPA *and* in an agency’s promulgation of regulations implementing NEPA. Your agencies’ interim final rules violate these legal rights.

V. Conclusion

The revised environmental-review procedures your agencies have adopted are contrary to the requirements of NEPA. To remedy these violations—and to further the objectives of “less paperwork, less delay, and better decisions”—the agencies must incorporate the requirements that CEQ recently repealed into their own regulations.⁶³

⁶⁰ USDA Rule, 90 Fed. Reg. at 29,645 (asserting a need for speed); Corps Repeal, 90 Fed. Reg. at 29,471 (same); FHA Rule, 90 Fed. Reg. at 29,429 (same); USDA Rule, 90 Fed. Reg. at 29,645 (claiming comment would be untenable); Interior Repeal, 90 Fed. Reg. at 29,503 (same); Corps Repeal, 90 Fed. Reg. at 29,471 (same); *California v. Azar*, 911 F.3d 558, 576 (9th Cir. 2018).

⁶¹ *AFL-CIO v. NLRB*, 57 F.4th 1023, 1034 (D.C. Cir. 2023) (discussing the “limited carveout” for procedural rules).

⁶² *American Mining Congress v. Mine Safety & Health Admin.*, 995 F.2d 1106, 1109 (D.C. Cir. 1993) (noting that “an agency seems likely to have intended a rule to be legislative if it has the rule published in the Code of Federal Regulations”) (internal quotations omitted).

⁶³ 1978 CEQ Rules, 43 Fed. Reg. at 55,978.

Sincerely,

Sean Helle, Senior Attorney
Daniel Abrams, Senior Associate Attorney
David Scott, Senior Attorney
Environmental Law & Policy Center