



## Changes Ahead for NEPA Implementation Under President Trump's Energy Dominance Executive Order

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On President Trump's first day in office he issued the [Unleashing American Energy Executive Order](#) ("Energy Dominance EO" or "EO") with far-reaching consequences for implementation of the National Environmental Policy Act ("NEPA"). President Trump also signed a number of other executive orders, including the [Declaring a National Energy Emergency Executive Order](#) ("Energy Emergency EO"), that will impact environmental reviews and authorizations for projects. One critical outcome of the Energy Dominance EO is that it sets in motion the rescission of the Council on Environmental Quality ("CEQ") NEPA regulations and a shift to reliance on agency-level regulations for NEPA implementation. Further, an interagency working group will be formed to ensure consistency within agency-specific NEPA implementing regulations and procedures.

The need for NEPA reform has long-been recognized across the political aisle and the role of CEQ's NEPA regulations has already been placed into question. However, the immediate change in a 40+ year-old regulatory framework creates the potential for confusion that could inadvertently *delay* the very projects the EO is meant to benefit. The development of new guidance for this new regulatory paradigm as well as action by the interagency working group that ensures consistent application of NEPA reviews across federal agencies will be critically important.

### Rescission of CEQ Regulations and Reliance Upon Agency-Level Implementing Regulations

The EO requires CEQ to propose rescinding its NEPA regulations by February 19, 2025 (30 days after EO issuance). The rescission is applicable to all CEQ NEPA regulations (40 CFR 1500 *et seq.*), not just those amended by the Biden Administration CEQ NEPA rulemakings. The CEQ implementing regulations had been relatively unchanged for over 40 years until a series of amendments under the first Trump Administration and then the Biden Administration. This proposed rescission further unsettles ongoing and new NEPA reviews.

By February 19, CEQ also is required to issue NEPA implementing guidance. The EO does not prescribe a specific scope or individual elements of this new guidance.

After the proposal to rescind the regulations and guidance issuance, CEQ is to "convene a working group to coordinate the revision of agency-level implementing regulations for consistency." The EO does not dictate a particular outcome for the working group to ensure consistency across agency-level NEPA regulations.

In the time between the rescission of the CEQ NEPA regulations and any revised or new agency-level implementing regulations, agencies must rely on the NEPA statute and their own, existing NEPA implementing regulations and policies. Agencies, of course, continue to have an obligation to comply with NEPA as amended by the [Fiscal Responsibility Act of 2023](#). Those statutory changes included presumptive deadlines and page limits for environmental impact statements and environmental assessments and the authorization for agencies to adopt a categorical exclusion established by another agency.

### Additional EO Impacts on NEPA Implementation

Other provisions of the Energy Dominance EO also may impact NEPA implementation, these include:

- Directing heads of relevant agencies to undertake “all available efforts to eliminate all delays within their respective permitting processes,” which could include maximizing the use of NEPA categorical exclusions and taking further steps to streamline the preparation of environmental assessments and environmental impact statements;
- Requiring the submission of recommendations for legislative changes supporting “greater certainty” in federal permitting and “streamlining” judicial review of NEPA challenges; and
- Terminating current Interagency Working Group Social Cost of Carbon related guidance and directing EPA to issue new guidance on changes to the social cost of carbon for federal permitting and regulatory decisions.

### Impacts on Pending Litigation

The EO directs agencies to notify the Attorney General of any pending litigation where a stay or other action may be appropriate due to the policy changes and agency actions required by the EO. This notification requirement may trigger requests for a stay or other action in the pending lawsuit challenging the most recent Biden Administration amendments to CEQ’s NEPA regulations in *Iowa v. CEQ*, Case 1:24-cv- 0089 (D.N.D.). Further, the EO-directed change in CEQ’s NEPA responsibilities as well as the directed rescission of its NEPA implementing regulations could result in termination, due to mootness, of the currently pending request for *en banc* review in *Marin Audubon Society v. FAA*, 121 F.4th 902 (D.C. Cir. 2024). That pending request for review challenges a December 2024 circuit court panel decision holding that CEQ did not have the requisite rulemaking authority to implement and enforce its NEPA regulations. On January 23, 2025, the Department of Justice filed a notice with the D.C. Court of Appeals that the Administration is reviewing the effect of the EO directive to rescind CEQ’s NEPA implementing rules on the Administration’s position in the pending *en banc* review.

### Additional Executive Order Provisions Impacting Projects

The Energy Dominance EO is one of several executive orders that will affect projects with a federal nexus through regulation, funding, or permitting. Further, these executive orders can intersect. For example, both the Energy Dominance EO and the Energy Emergency EO address use of permitting authorities and advancement of energy projects. In addition, these executive orders set aggressive deadlines, which may not be met in all cases.

### For More Information

Van Ness Feldman closely monitors and counsels clients on NEPA-related issues. If you would like more information on how these updates may impact your business, please contact [Molly Lawrence](#), [Jon Simon](#), [Michael Pincus](#), [Rachael Lipinski](#), [Joe Nelson](#), [Jenna Mandell-Rice](#), or any member of the firm's Environmental practice in Washington, D.C. at (202) 298-1800 or in Seattle, WA at (206) 623-9372.

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