



The Future of NEPA Implementation Without CEQ Regulations

FEBRUARY 24, 2025

By [James Garland](#), [Rachael Lipinski](#), [Molly Lawrence](#), [Michael Pincus](#), and [Jonathan Simon](#)

On February 19, 2025, the Council on Environmental Quality (“CEQ”) announced an Interim Final Rule rescinding its longstanding regulations implementing the National Environmental Policy Act (“NEPA”) and issued a new [Memorandum on the Implementation of NEPA](#) (“Guidance”) to all federal departments and agencies. President Trump directed both actions in his January 20, 2025 [Unleashing American Energy Executive Order](#) (“EO 14154”).

The Interim Final Rule, to be published in the Federal Register on February 25, 2025, removes all existing CEQ regulations implementing NEPA from the Code of Federal Regulations, many of which have been in place since 1978.

The Guidance implements the President’s direction in EO 14154 to “expedite and simplify the permitting process” and strives to minimize potential delays and confusion associated with the removal of CEQ’s regulatory framework for consistent NEPA implementation across agencies. The Guidance “encourages” agencies to use the CEQ regulations issued during the first Trump Administration (the “[2020 Rule](#)”) as “an initial framework” while agencies revise or establish agency-specific NEPA implementing procedures over the next year, as directed by EO 14154. Until those changes are complete, the Guidance directs agencies to follow existing practices and procedures, with adjustments for consistency with the NEPA statute, EO 14154, and the Guidance. Further, the Guidance directs agencies to “consider voluntarily relying” on CEQ regulations for ongoing NEPA reviews and lawsuits on NEPA reviews completed while the regulations were still in effect.

The Guidance expressly states that “[a]gencies should not delay pending or ongoing NEPA analyses while undertaking these revisions.” Despite this explicit instruction, the dismantling of a regulatory structure that stood for nearly five decades may cause at least short-term NEPA review delays.

Background

NEPA applies to a broad range of actions with a federal nexus, including federal permit applications, federal land management decisions, highway construction, and other federally funded projects. Through the NEPA process, federal agencies must evaluate the environmental and related social and economic effects of their proposed actions. The NEPA statute and regulations remained largely unchanged from the 1970’s until recent revisions to the CEQ regulations made during the Trump and Biden Administrations in [2020](#), [2022](#), and [2024](#), and statutory amendments to NEPA made by the Fiscal Responsibility Act in [2023](#).

Over the decades, courts have developed a robust body of caselaw on the NEPA statute and CEQ regulations. In the last several months, however, two court cases

questioned CEQ's underlying authority to issue binding regulations. In November 2024, a D.C. Circuit panel found the CEQ regulations exceeded CEQ's authority in [*Marin Audubon Society v. Federal Aviation Administration*](#), although a majority of the court in denying rehearing indicated that portion of the court's decision was non-binding dicta. More recently, the District of North Dakota vacated Biden's 2024 Phase II regulations on the grounds that CEQ lacked rulemaking authority in [*Iowa v. CEQ*](#).

The Interim Final Rule

The Interim Final Rule rescinds all of CEQ's NEPA regulations and is expected to be published in the Federal Register on February 25, 2025. The Interim Final Rule does not take a position on CEQ's prior interpretations of NEPA's procedural requirements, and CEQ avoided a definitive statement on whether it lacks authority to maintain the NEPA regulations. The Interim Final Rule will be effective 45 days after publication.

CEQ issued this as an "interim final rule," avoiding the typically required notice and comment rulemaking process. CEQ states that this procedural mechanism was appropriate both because the rule is "procedural" and because there was "good cause" for doing so. Although the Interim Final Rule will be effective April 11, CEQ is allowing a "voluntary" 30-day public comment period, and CEQ committed to "consider[ing] and respond[ing] to comments before finalizing" the Interim Final Rule. This is a procedural process that is vulnerable to litigation under the Administrative Procedure Act.

The Guidance

The Guidance directs agencies to establish or revise their NEPA implementing procedures by February 19, 2026, providing at least 30 days but no more than 60 days for public comment on proposed regulations, to the extent public comment is required. The Guidance offers certain recommendations for agencies as they promulgate and revise their own NEPA implementing procedures, including:

- developing clear procedures for reviewing project sponsor-prepared environmental assessments ("EAs") and environmental impact statements ("EISs");
- ensuring procedures comply with statutory deadlines (two years for EISs and one year for EAs);
- limiting alternatives analyzed to those that are "technically and economically feasible" and "meet the purpose and need for the proposed action";
- limiting analyzed effects to those that are "reasonably foreseeable," regardless of whether those effects can be characterized as "cumulative";
- considering the establishment of "thresholds" for Federal funding that would not constitute a "major Federal action" triggering NEPA review; and

- eliminating environmental justice analyses from NEPA reviews, except to any extent otherwise required by law.

The Guidance includes additional recommendations to help promote consistency and predictability in the absence of governmentwide CEQ regulations. The Guidance specifies additional elements that agencies should, at a minimum, include in their procedures. It also requires agencies to consult with CEQ in developing or revising their NEPA procedures. Over the next year, CEQ will host monthly meetings of the Federal Agency NEPA Contacts and NEPA Implementation Working Group required by EO 14154 to share additional guidance and provide assistance to agencies as they work to develop or revise their NEPA procedures.

In the meantime, the Guidance recommends that agencies continue to follow their existing NEPA practices and procedures and voluntarily rely on the CEQ regulations for projects currently undergoing NEPA review and legal challenges.

Implications

The intent of the Interim Final Rule and Guidance, consistent with EO 14154, is to expedite critical project approvals. However, the uncertainty caused by such wholesale changes may have the opposite effect, at least in the near term. These significant changes—in many cases to longstanding regulatory requirements—risk creating confusion at the agency level, which could lead to delays in NEPA reviews. This is especially true in the short-term, where CEQ’s NEPA regulations have been rescinded but agencies have not yet implemented new or revised NEPA regulations of their own. Additionally, inevitable litigation—on the Interim Final Rule itself, on CEQ’s rulemaking authority, or on the agency-specific regulations developed through this process—will further add to uncertainty and confusion. There is a risk that projects may benefit from a potentially faster NEPA review, only to face increased litigation risk after project approval. Moving forward, it will be critically important for project proponents and other stakeholders to engage with relevant permitting agencies and participate actively in the development of agency-specific NEPA implementing procedures.

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](#), [Jonathan 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.

© 2025 Van Ness Feldman, LLP. All Rights Reserved. This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.