Insights: Alerts

Trump Administration Rescinds CEQ NEPA Implementing Regulations and Directs Federal Agencies to Revise NEPA Implementing Procedures

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The National Environmental Policy Act ("NEPA") requires an in-depth evaluation of the environmental impacts of federal actions, including actions by the federal agency itself, through issuance of a federal permit to private parties or where federal financial assistance is provided for a project. NEPA was signed into law by Richard M. Nixon in 1970, and the Council for Environmental Quality ("CEQ") published NEPA's implementing regulations in 1978. Despite the regulations' almost 50-year history of guiding NEPA evaluations, a recent federal court ruling found that CEQ did not have authority to promulgate the NEPA regulations. In turn, on February 25, 2025, the CEQ published an interim final rule to remove its NEPA Implementing Regulations at 40 CFR Parts 1500-1508.

The Trump Administration previously issued a Memorandum for Heads of Federal Departments and Agencies as an accompanying guidance document. The interim final rule invokes the "good cause" exception of the Administrative Procedures Act found in 5 U.S.C. § 553(b)(B), which means the interim final rule will take effect on April 11, 2025 (45 days after the date of publication in the Federal Register). The Administration "requests and encourages public comments of this interim final rule" during the 30-day public comment period that will end on March 27, 2025.

In addition to rescinding these CEQ Implementing Regulations, the Administration is directing federal agencies to revise or establish their own NEPA implementing procedures in an effort to expedite permitting approval. Federal agencies are to continue to follow their existing practices and procedures for implementing NEPA during the process of revising or establishing implementing procedures. The Memorandum encourages federal agencies to consider voluntarily relying on the rescinded NEPA regulations found at 40 CFR Parts 1500-1508 in completing review of their NEPA implementing procedures, and to use the 2020 rule "Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act" when revising their NEPA implementing procedures.

The Memorandum establishes the goal of "prioritizing efficiency and certainty over any other policy objectives" for agencies either revising or establishing their NEPA implementing procedures in order to expedite permitting approvals. This goal is supported by the following recommendations for agencies to use when revising or establishing their NEPA implementing procedures:

- Project Sponsor Preparation: Agencies should develop transparent, clear, and predictable procedures for review of project sponsor-prepared environmental assessments and environmental impact statements. Project sponsor prepared environmental documents should be prioritized for expeditious review.
- Deadlines established by Congress: Agencies should ensure that their NEPA implementing procedures comply with the deadlines that Congress established in section 107 of NEPA.
- Reasonable Range of Alternatives: When developing an EIS, agencies should, to the extent otherwise required by applicable law, only consider a reasonable range of alternatives to the proposed action that are technically and economically feasible and that meet the purpose and need for the proposed action. The consideration of alternatives should include an analysis of any adverse environmental effects of not implementing the proposed action in the case of a no action alternative to the extent that a no action alternative is feasible.
- Effects: Federal agencies should analyze the reasonably foreseeable effects of the proposed action consistent with section 102 of NEPA, which does not employ the term "cumulative effects;" NEPA instead requires consideration of "reasonably foreseeable" effects, regardless of whether or not those effects might be characterized as "cumulative."
- Federal Funding: Proposed agency actions with "no or minimal Federal funding" and "loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action" are not "major Federal actions." Federal agencies should carefully consider the threshold above which an action would constitute a "major Federal action" in light of this direction from Congress and their specific programs and authorities.
- Environmental Justice Considerations: E.O. 14148 revoked E.O. 14096. E.O. 14173 revoked E.O. 12898. Therefore, NEPA documents should not include an environmental justice analysis, to the extent that this approach is consistent with other applicable law.

The Memorandum also includes more than a dozen recommendations for agencies to consider when revising their NEPA implementing procedures to promote consistency and predictability across the federal government.

Agencies will be given 12 months to complete the revisions of their implementation procedures, beginning on the date of the Memorandum. During this revision period, agencies are directed to not delay pending or ongoing NEPA analyses.

The administration may be trying to preserve the *status quo* during this review process by allowing federal agencies to rely on the rescinded NEPA regulations, but the recommendations indicate a desire for change in how NEPA is implemented. Changing from analyzing "cumulative effects" to analyzing "reasonably foreseeable" effects, limiting the scope of alternatives to a "reasonable range" of alternatives, and attempting to clarify what constitutes a "major Federal action" may be attempts to narrow the scope of NEPA in revised implementation procedures. Rather than leading to the desired outcomes of expedited permit approvals, and ensuring consistency and predictability, this change in NEPA policy is likely to lead to confusion as federal agencies grapple with the appropriate process of implementing NEPA. This confusion is likely to lead to delays in decisions and project implementation. This interim final rule is likely to face legal challenges before it becomes effective, which may only add to the confusion and potential project delays.

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