

A Tale of Two Environmental Policies: President Trump Announces NEPA Reform, as Former Vice President Biden Vows to Roll Back Reforms If Elected

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On July 15, 2020, President Trump's administration finalized a significant overhaul of the regulations governing the administration of the National Environmental Policy Act (NEPA). In January 2020, when the regulatory overhaul was announced, [we observed](#) that rolling back 50 years of precedent in an administrative action could trigger judicial challenges to the rule and result in greater regulatory uncertainty for federal projects. The final rule, while making some relatively minor modifications, hews closely to its original terms, and does little to satisfy potential challengers.

The regulatory overhaul seeks to shorten both the environmental review process and the physical length of environmental reviews themselves. Announced in Atlanta, near the proposed expansion of I-75 South supported by President Trump, the administration has billed the regulatory overhaul as modernization of outdated and inefficient rules that resulted in too much bureaucratic red tape. The final rule sets a two-year time limit for environmental reviews, sets page limits for the length of federal environmental assessments (75 pages) and environmental impact statements (150 pages for less complex reviews, and 300 pages for complex projects), and directs federal agencies to use categorical exclusions and findings of no significant impact, which forestall a full environmental impact statement, to reduce delays and inefficiencies. The final rule also establishes a 45-day comment period and attempts to limit the scope of comments, suggesting that public comments cite specific text in the draft Environmental Impact Statement. The rule has been lauded by some as providing much-needed efficiency, and there is little doubt that there is room to improve the often-Kafkaesque federal bureaucratic processes involved in federal environmental reviews. But others have criticized the rule as seeking to limit public comments and forestalling the robust environmental reviews that predominate large federal infrastructure projects. Because large interstate infrastructure projects often impact environmental justice areas, these criticisms have become even more pointed, with some suggesting that the rule seeks to limit the role those communities have in how their neighborhoods are developed. Environmental advocacy groups immediately questioned the legality of the rule and suggested that a court challenge will be forthcoming.

The same day that President Trump announced the final rule, Democratic presidential candidate and former Vice President Joseph Biden outlined an environmental policy that would roll back President

Trump's environmental reforms, invest trillions in clean energy and transportation, and set aggressive emissions goals, including emissions-free power by 2035. Biden's announcement underscored the potential for a complete 180-degree turn on environmental policy, including these NEPA reforms. With the rule coming at the tail end of President Trump's first term, and facing potential lawsuits right off the bat, it remains to be seen whether and when the rule will go into effect. However, it is certain that stakeholders on all sides of the debate will be closely watching both the courts and the November election results to see where the nation's environmental policy lands.

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