

CEQ Takes Action to Restore Pre-2020 NEPA Regulations

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This post is part of an ongoing series covering the Biden administration's efforts pursuant to Executive Order 13990 to repeal and replace regulations adopted during the Trump administration. Prior posts include [Catching Up on the 2021 Clean Water Act Releases](#).

The Council on Environmental Quality (CEQ) recently issued a [Notice of Proposed Rulemaking](#) to amend National Environmental Policy Act (NEPA) regulations adopted by the Trump administration in 2020. CEQ oversees federal agencies' compliance with NEPA, including its requirements to consider environmental impacts and prepare Environmental Impact Statements (EIS) before authorizing or directly taking "major federal actions." The 2020 amendments were the first significant revisions to NEPA regulations since their implementation in 1978.

The Notice of Proposed Rulemaking initiates Phase I of CEQ's approach of reconsidering and revising the 2020 amendments in two phases. The Phase I rulemaking focuses on revisions to a discrete set of 2020 amendment provisions "by generally reverting to the language from the 1978 NEPA regulations that w[ere] in effect for more than 40 years."

In Phase I, CEQ proposes three revisions to the NEPA regulations:

- Removal of language added by the 2020 amendments that modified the purpose and need section, and related definition of "reasonable alternatives," of an EIS.
 - When an agency is reviewing an application for authorization, the 2020 amendments require agencies to base the purpose and need of the subject action on the goals of an applicant and the agency's statutory authority. CEQ proposes to revert to the original 1978 regulatory language for purpose.
- Clarification that agencies have the discretion and flexibility to develop procedures beyond the CEQ regulatory requirements.
 - CEQ proposes to remove the "ceiling provisions" added by the 2020 amendments, which made CEQ's regulations a ceiling for agency NEPA procedures. CEQ's proposed rulemaking would permit agencies to develop environmental review

procedures to address their specific programs that go beyond CEQ's regulatory requirements.

- Revise the definitions of “effects” or “impacts” to restore the substance of the definitions contained in the original 1978 regulations with changes consistent with the current Code of Federal Regulations.
 - CEQ proposes to restore the definitions of “direct” and “indirect” effects and “cumulative impacts” to the original 1978 language by incorporating them into the definition of “effects” or “impacts” so that each reference to these terms would include direct, indirect, and cumulative effects.

Where Phase I of the rulemaking process generally restores provisions that were in effect before being modified in 2020, it is anticipated that Phase II of the rulemaking process will propose further revisions to ensure the NEPA process “provides for efficient and effective environmental reviews,” and meets environmental, environmental justice, and climate change objectives. The proposed changes could result in increased NEPA review timelines for projects involving agency action regarding federal lands, federal money, or federal permits or approvals.

The comment period for the Phase I proposed rule closes on November 22, 2021. Comments can be submitted through the [Federal Register](#). More than 34,000 comments have been submitted to date. Phase II of the rulemaking is expected to be issued in the next several months.

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