

Trump Administration Rescinds Council on Environmental Quality's Guidelines, Creating Widespread Uncertainty for the National Environmental Policy Act Compliance by Energy and Infrastructure Projects

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On February 19, 2025, the Trump Administration issued an Interim Final Rule rescinding the Council on Environmental Quality's (CEQ's) regulations setting forth the requirements for compliance with the National Environmental Policy Act (NEPA). The validity of the CEQ's NEPA regulations has been cast into substantial doubt by two recent court cases and two of President Trump's executive orders. [Publication of that rule](#) in the *Federal Register* on February 25 sets in motion the elimination of the CEQ's NEPA regulations as the binding standards for NEPA compliance, a role they have served since 1978. Without these standards, federal agencies and project developers will need to base their environmental reviews on the vague provisions of the statute. Unless Congress steps in to revise the statute itself, this change creates significant uncertainty for major infrastructure projects and project developers.

Why NEPA Matters

Signed by President Nixon on New Year's Day in 1970, NEPA requires federal agencies to review the environmental impact of discretionary actions (such as issuing permits). In 1978, in response to an executive order issued by President Carter, the Council on Environmental Quality issued regulations that require all federal agencies to complete an environmental impact statement, an environmental assessment, or to determine that the action qualifies for a "categorical exclusion."

Compliance with NEPA can create significant uncertainty for projects. Preparation of an environmental impact statement can require years to complete, impacting project timelines. Challenges to the sufficiency of NEPA review are common and can add further years of uncertainty to energy and infrastructure projects.

Recent NEPA Decisions, Executive Orders, and the Interim Final Rule

In the past three months, two court rulings and two executive orders preceded repeal of the CEQ's

NEPA regulations.

On November 12, 2024, the D.C. Circuit Court of Appeals ruled in *Marin Audubon Society v. Federal Aviation Authority* that the CEQ does not have rulemaking authority and therefore, the CEQ's NEPA regulations were promulgated without Congressional authorization. The court denied requests for *en banc* review on January 31, 2025. On February 3, 2025, the District Court for the District of North Dakota decided *Iowa v. CEQ*, adopting the reasoning of *Marin Audubon Society* and concluding that the 2024 CEQ NEPA regulations were issued without authority and therefore invalid.

In between those two decisions, on January 20, 2025, the Trump Administration issued Executive Order 14154, revoked President Carter's executive order that first directed CEQ to issue binding regulations implementing NEPA and directed the CEQ to take action within 30 days to propose rescission of the CEQ's NEPA regulations.

Acting within the required 30 days, on February 19 the CEQ issued the Interim Final Rule proposing the rescission of the CEQ's NEPA regulations. The Interim Final Rule cites President Trump's Executive Order 14154 as well as the decisions in *Marin Audubon Society* and *Iowa v. CEQ* as grounds for the decision. That Interim Final Order was accompanied by a memorandum, directing federal agencies to "[c]onsider voluntarily relying on [the soon-to-be-rescinded] regulations in completing ongoing NEPA reviews or defending against" challenges to project, and not delaying ongoing NEPA reviews while the NEPA procedures are updated.

Significant Uncertainty Ahead

Unless the Interim Final Rule and the decision in *Iowa v. CEQ* are overturned on judicial review or Congress takes action to clarify the law, the end of the CEQ's NEPA regulations will lead to significant legal uncertainty for any project that requires federal approvals.

In light of the Interim Final Rule, federal agencies lack clear guidance regarding whether to voluntarily follow the 2020 CEQ NEPA regulations, or whether to rely on the statutory text and any agency-specific NEPA regulations as the basis for their NEPA reviews. The "voluntary" nature of this directive, as well as differences between the level of detail in individual agency NEPA regulations, could result in inconsistent approaches across agencies.

That uncertainty will provide additional grounds for challenges to forthcoming NEPA reviews through litigation, especially if the validity of the Interim Final Rule itself faces a protracted challenge in federal court. Until federal courts establish a new "doctrine" for sufficiency of NEPA review in the post-CEQ NEPA regulations world, the future for NEPA lawsuits will likely be fact- and court-specific, potentially leading to variation between circuits and greater uncertainty for infrastructure projects.

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