National Environmental Policy Act/Council on Environmental Quality: Final Rule Issued Removing Implementing Regulations



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The White House Council on Environmental Quality ("CEQ") published a final rule in the Federal Register on January 8th removing its National Environmental Policy Act ("NEPA") implementing regulations. See 91 Fed. Reg. 618.

CEQ adopted the interim final rule published on February 25, 2025, as the final rule.

The final rule removes all iterations of CEQ's regulations implementing NEPA from the Code of Federal Regulations.

NEPA requires federal agencies to include values and issues in their decision-making processes. Its federal mandate is accomplished by agency consideration of environmental impacts of proposed actions and reasonable alternatives of those actions.

The statute requires federal agencies in certain circumstances to prepare a detailed Environmental Impact Statement ("EIS"). However, the requirement to prepare this document is only triggered in the event of a major federal action which will significantly affect the human environment.

As opposed to an EIS, which is a much more detailed document, an Environmental Assessment ("EA") provides evidence and analysis for determining whether a finding of no significant impact for an EIS should be prepared.

NEPA differs from action enforcing environmental statutory programs such as the Clean Water Act and Clean Air Act. It does not impose substantive mandates. Instead, it is limited to requiring federal agencies to meet procedural requirements such as preparation of the EIS in certain defined instances. Federal agencies were required to consult with CEQ and identify and develop methods and procedures to government analysis of their proposed major federal actions. As a result, NEPA does not require a certain alternative or meet a particular standard.

CEQ was established in 1970 (as part of the Executive Office of the President) with its duties including oversight of federal implementation of NEPA. Regulations were issued by CEQ many years ago to guide the federal agencies in interpreting NEPA's procedural requirements. However, the federal agencies themselves typically have in place regulations that address NEPA requirements applicable to its activities. Regardless, the CEQ regulations had generally been viewed by the federal agencies as the guideposts for compliance.

The Trump Administration on January 20, 2025, Executive Order 14154, *Unleashing American Energy*. See 90 Fed. Reg. 8353. The EO directed CEQ to:

- Provide guidance on implementing NEPA.
- Propose rescinding CEQ's NEPA implementing regulations within 30 days of the EO.
- Convene a working group to coordinate agencies' revisions of their NEPA implementing regulations or guidance for consistency.

On February 25, 2025, CEQ issued an interim final rulemaking to remove its NEPA implementing regulations. See 90 Fed. Reg. 10610. The final rule adopts as final the interim final rule and removes all iterations of CEQ's regulations implementing NEPA from the Code of Federal Regulations.

The preamble to the final rule further notes:

… Finally, consistent with the directive in E.O. 14154 and guidance from CEQ, numerous agencies have issued updates (either in the form of IFRs, proposed rules, or updated guidance) to their NEPA implementing procedures.

A copy of the Federal Register notice can be found here.