

DEEP DIVE

The Council on Environmental Quality Implementation of NEPA Memo

On January 20, 2025, President Trump issued Executive Order (EO) 14154 "Unleashing American Energy" which directed the Council on Environmental Quality (CEQ) to provide guidance on implementing the National Environmental Policy Act (NEPA) and propose rescinding CEQ's NEPA Regulations (as amended in July 2024). We provide an in-depth summary about this EO here.

On February 19, 2025, CEQ Chief of Staff Katherine Scarlett issued guidance in the form of a memorandum to the heads of federal agencies and departments (2025 CEQ Memo), providing direction on how agencies should update their existing NEPA procedures for consistency with the NEPA amendments in the Fiscal Responsibility Act (FRA) (2023 NEPA Statute) and the policy priorities laid out in the various Executive Orders (EOs) from President Trump. Notably, the guidance directs agencies to "not delay pending or ongoing NEPA analyses while undertaking these revisions" and should use their existing NEPA procedures, consistent with the text of EO 14154, and make any adjustments necessary to comport with the NEPA amendments made by the FRA. The guidance goes on to direct agencies to use the 2020 CEQ NEPA

Regulations as an initial framework for individual agency updates, while acknowledging that those regulations are also being rescinded.

It's important to note the 2025 CEQ Memo is agency guidance and not a regulation. Agencies are to update their NEPA procedures within 12 months of the date of the memorandum, which is February 19, 2026.

Until agencies update their NEPA procedures, below are key takeaways and potential decisions agencies could make regarding NEPA documents, taking into consideration the 2025 CEQ Memo, existing 2023 NEPA Statute, and use of the 2020 CEQ NEPA Regulations as an initial framework. The key takeaways are based on the order of the topics listed in the 2025 CEQ Memo, followed by other NEPA topics (e.g., purpose and need requirements) that may be of interest.

In addition, **the table at the end of this document** provides a comparison of the 2020 CEQ NEPA Regulations, the 2023 NEPA Statute (amended by the FRA), and the recommendations in the 2025 CEQ Memo.

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Key Takeaways

PROJECT SPONSORS

While the 2020 CEQ NEPA Regulations and 2023 NEPA Statute already allow for project-sponsor prepared environmental documents, the 2025 CEQ Memo specifically promotes the use of project-sponsor prepared environmental documents to allow for "expeditious review." With the recent reduction in the federal workforce, we are assuming agencies will take advantage of and use project-sponsor prepared NEPA documents to the greatest extent possible.

TIME LIMITS/DEADLINES ESTABLISHED BY CONGRESS

The 2023 NEPA Statute allows for more flexibility than the 2020 CEQ NEPA Regulations on the specific start and end date for environmental assessments (EA) and environmental impact statements (EIS) to meet the required timelines (one year for an EA and two years for an EIS). We assume it will be at the agency's discretion when selecting the start and end timeframe when developing their NEPA documents to meet these required timelines. The EA and EIS timeframes are already being followed by agencies, so we don't anticipate a big change here.

REASONABLE RANGE OF ALTERNATIVES

The 2020 CEQ NEPA Regulations defines "reasonable alternatives" to mean "a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant." The 2023 NEPA Statute and 2025 CEQ Memo are consistent with the 2020 CEQ NEPA Regulations, except leave out the language that the reasonable range of alternatives need to meet the goals of the applicant. Going forward, we assume it will be at the agency's discretion if the reasonable range of alternatives will need meet the goals of the applicant. However, taking into consideration the 2020 CEQ NEPA Regulations, an agency could require that an existing NEPA document under development reassess the reasonable range of alternatives considering the goals of the applicant. Going forward, agencies may include this type of language in their agency-specific NEPA procedures. For example, a singular federal agency could update its NEPA procedures and include consideration of the goals of the applicant to further constrain the reasonable range of alternatives while other agencies may not.

EFFECTS OR IMPACTS

2023 NEPA Statute and 2025 CEQ Memo do not provide a definition of "effects" (e.g., "context and intensity" is no longer being used as a key factor to determine whether a proposed action's environmental effects are considered "significant" under NEPA), nor do they require a cumulative impact analysis. We assume most lead agencies will use the 2020 CEQ NEPA Regulations definition of effects (i.e., those "that are reasonably foreseeable and have a reasonably close causal relationship" and that a "but for" causal relationship is insufficient to make an agency responsible for a particular effect under NEPA). In addition, we assume, NEPA documents will not include a cumulative analysis. NEPA documents under development may require a reassessment of effects to be consistent with 2025 CEQ Memo and removal of the cumulative analysis.

MAJOR FEDERAL ACTION/FEDERAL FUNDING

While the 2020 CEQ NEPA Regulations and 2023 NEPA Statute address "major federal actions" related to federal funding, the 2025 CEQ Memo provides greater clarity on the role of funding (or lack thereof) in "major federal actions." We assume agencies will follow the 2025 CEQ Memo regarding NEPA and funding which states, "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." Issuance of a Federal grant or loan (e.g., a Transportation Infrastructure Finance and Innovation Act loan) may not be considered a "major federal action" for NEPA. However, these actions will be subject to National Historic Preservation Act Section 106 review because they meet the definition of an undertaking found at 36 CFR Part 800.16(y). Other project actions may also trigger permits from other federal agencies (e.g., an individual Clean Water Act Section 404 permit for impacts to Waters of the US) and require NEPA compliance.

ENVIRONMENTAL JUSTICE CONSIDERATION

EO 14148 revoked EO 14096. EO 14173 revoked EO 12898. Going forward, we assume NEPA documents will not include an environmental justice analysis, to the extent that this approach is consistent with other applicable laws.

TIERING/PROGRAMMATIC DOCUMENTS

2020 CEQ NEPA Regulations does not address relying on programmatic environmental documents and the ability to rely on information for five years as stated in the 2023 NEPA Statute and supported by the 2025 CEQ Memo. However, we assume agencies will follow the 2023 NEPA Statute whereby programmatic environmental documents will be used to the extent possible, as this has the possibility of expediting the NEPA review.

JOINT DOCUMENTS

Consistent with the 2020 CEQ NEPA Regulations and 2023 NEPA Statute, we assume agencies will continue to issue a joint FONSI or ROD where appropriate, and lead and cooperating agencies will evaluate the proposed action and alternatives in a single EA or EIS. Since 2023, we have seen an increase in joint documents consistent with the 2023 NEPA Statute.

PAGE LIMITS

Consistent with the 2020 CEQ NEPA Regulations and 2023 NEPA Statute, we assume existing page limits will be adhered to by agencies—75 pages for an EA and 150 pages or 300 pages (for complex projects) for an EIS. However, the 2020 CEQ NEPA Regulations provide greater clarity than the NEPA Statute on what a "page" means (e.g., does not include maps, diagrams, graphs, etc.). Agencies have already been adhering to these page limitations since 2023, so we don't anticipate any major changes. However, agencies may prefer to use the "page" definition per the 2020 CEQ NEPA Regulations that allows for more flexibility.

PURPOSE AND NEED

The 2020 CEQ NEPA Regulations state that "When an agency's statutory duty is to review an application for authorization, the agency shall base the purpose and need on the goals of the applicant and the agency's authority." However, the 2023 NEPA Statute and 2025 CEQ Memo do not specifically require the purpose and need to be based on the goals of the applicant. We assume it will be at the agency's discretion if the purpose and need must meet the goals of the applicant. Taking into consideration the 2020 CEQ NEPA Regulations, an agency could require that an existing NEPA document under development reassess the purpose and need, taking into consideration the goals of the applicant.

Interim Final Rule

The interim final rule was published in the Federal Register on February 25, 2025, and will take effect on April 11, 2025 (45 days from date of publication). The interim final rule does what we expected: it rescinds the NEPA implementing regulations at 40 CFR 1500 – 1508 and directs the responsibility of updating or modifying NEPA regulations to the agencies responsible for complying with the statute.

Comparison of the 2020 CEQ NEPA Regulations, the 2023 NEPA Statute (amended by the FRA), and the Recommendations in the 2025 CEQ Memo

MAJOR TOPIC	2020 CEQ NEPA REGULATIONS SUMMARY (40 CFR)	2023 NEPA STATUTE (AS AMENDED BY FRA) (42 USC)	2025 CEQ MEMO ON IMPLEMENTATION OF NEPA	COMMENTS
General	CEQ revised the 1978 NEPA Regulations and these regulations took effect on September 14, 2020	NEPA Statue was amended by FRA and took effect June 3, 2023	CEQ Memo on Implementation of NEPA was released on February 19, 2025. Provides recommendations on how agencies should consider revising or establishing their NEPA implementing procedures. Recommends using 2020 CEQ NEPA Regulations until agencies adopt their own.	2020 CEQ NEPA Regulations were amended in 2022 and 2023, EO 14154 directed CEQ to rescind the regulations. The interim final rule sets that process in motion with the effective date 45 days after the interim final rule is published.
Project Sponsor	States that the agency is responsible for the accuracy, scope, and content of environmental documents prepared by an applicant or contractor under the supervision of the agency	Agencies should proscribe and allow a project sponsor to prepare EAs and EISs under supervision of the agency	Agencies should develop procedures for review of project sponsor-prepared EAs and EISS. Project sponsor prepared environmental documents should be prioritized for expeditious review.	2025 CEQ Memo specifically promotes the use of project sponsor-prepared environmental documents. Assumes the lead agencies will use the project-sponsored prepared documents, as appropriate.
Time Limits/Deadlines Established by Congress	Created time limits - EAs with one year from agency decision to prepare an EA to FONSI and EISs within two years from NOI to ROD. (40 CFR 1501.10)	Created time limits for EAs (one year) and EIS (two years) (Section 107(g))	Agencies should ensure that their NEPA implementing procedures comply with the deadlines that Congress established in section 107 of NEPA	2023 NEPA Statue has more flexibility than the 2020 CEQ NEPA Regulations on when the start and end date are determined for an EA and EIS. Assumes lead agency discretion on which timeframe to use as they update their NEPA implementing procedures.
Reasonable Range of Alternatives	Defines "reasonable alternatives" to mean "a reasonable range of alternatives that are technically and economically feasible, meet the Purpose & Need (P&N) or the proposed action, and, where applicable, meet the goals of the applicant." (1502.13) and 1508.1(z)	Stated reasonable range of alternatives are technically and economically feasible and that meet the P&N (Section 102(C)(iii) and 102(F))	Stated a reasonable range of alternatives are technically and economically feasible and that meet the P&N.	2023 NEPA Statue/2025 CEQ Memo does not state the range of alternatives need to meet the goals of the applicant. Assumes lead agency will decide if the P&N needs to meet the goal of the applicant.
Effects or Impacts	Defined "effects" as those "that are reasonably foreseeable and have a reasonably close causal relationship." States that a "but for" causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Eliminated the requirement to evaluate cumulative impacts. (1508.1(g))	Added the "reasonably foreseeable" language to the analysis of the effects and the adverse environmental effects which cannot be avoided (Section 102(C)(i)(ii)).	Effects should be consistent with NEPA Statue Section 102, which does not employ cumulative effects.	2023 NEPA Statue and 2025 CEQ Memo do not provide a definition of "effects" (e.g., no longer defined as related to "context and intensity") nor do they require cumulative impact analysis. Assumes most lead agencies will use the 2020 CEQ definition of effects and will not include a cumulative analysis.
Major Federal Action/ Federal Funding	Clarified which undertakings should and should not be subject to NEPA environmental analysis (1501.1)	Clarified the term 'major federal action and what it does not include (Section 111(10)). Clarified when an agency is not required to prepare an environmental document with respect to a proposed agency action (Section 106(a)).	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."	While the 2020 CEQ NEPA Regulations address "major federal actions" and funding, the 2023 NEPA Statue and 2025 CEQ Memo provides greater clarity on the role of funding (or lack thereof) in "major federal actions." Assumes lead agencies will follow the 2025 CEQ Memo and 2023 NEPA Statue regarding funding and NEPA.
Environmental Justice Considerations	N/A	N/A	EO 14148 revoked EO 14096. EO 14173 revoked EO 12898. NEPA documents should not include an environmental justice analysis, to the extent that this approach is consistent with other applicable law.	Environmental justice analysis is no longer required for NEPA documents.
Tiering/Programmatic Documents	Focus on tiering and incorporate by reference material, such as planning studies, analyses, or other relevant information, into environmental documents by reference when the effect will be to cut down on bulk without impeding agency and public review of the action (1501.1 and 1501.11)	Stated that agencies may rely on programmatic environmental documents and within five years can rely on the analysis in the programmatic environmental document, unless there are new substantial new circumstances or information (Section 108)	References NEPA Statue and directs agencies to include in their procedure updates a discussion of when programmatic NEPA documents may be appropriate.	2020 CEQ NEPA Regulations do not address relying on programmatic environmental documents and relying on information in five years as in the 2023 NEPA Statue. Assumes 2023 NEPA Statue is what will be used.
Joint Documents	Issue a joint FONSI or ROD, where appropriate, and lead and cooperating agencies should evaluate the proposal in a single EA or EIS (1501.7(g))	Recommends one environmental document if there are actions by more than one Federal agency (Section 107(b))	References NEPA Statue	N/A

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Page Limits	Created page limits for EAs and EISs—75 pages for EAs and 150 pages or 300 pages (for complex projects) for EISs (1501.4 and 1502.7)	Created page limits for EAs and EISs—75 pages for EAs and 150 pages or 300 pages (for complex projects) for EISs (Section 107(e))	References NEPA Statute	2020 CEQ NEPA Regulations provide greater clarity than the NEPA Statute on what a “page” means (e.g., does not include maps, diagrams, graphs, etc.)
Methodology and Scientific Integrity	Agencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents. Stated that agencies shall make use of reliable data and not required to undertake new scientific and technical research.	Ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document; make use of reliable data and resources in carrying out this Act (Section 102(D) and (E))	References NEPA Statute	N/A
Purpose and Need (P&N)	Requires agencies to base the P&N on the goals of an applicant and the agency’s authority when the agency’s statutory duty is to review an application for authorization. (1502.13)	Provided additional information on the purpose and need (Section 107(d))	Referenced only as it relates to a reasonable range of alternatives	2023 NEPA Statute does not state the P&N based on the goals of the applicant