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Council on Environmental Quality Rescinds NEPA Regulations: Legal and Policy Considerations

The National Environmental Policy Act (NEPA; 42 U.S.C. §§4321 et seq.) establishes a national policy with respect to environmental quality and the basic process for integrating environmental considerations into federal decisionmaking (i.e., “environmental reviews”). NEPA’s environmental review process generally requires that agencies consider the environmental impacts of major federal actions. For actions with significant impacts, agencies generally must consider alternatives and disclose the potential effects of those actions. NEPA is typically described as a procedural statute, focusing on the process of decisionmaking rather than mandating specific environmental outcomes. Agencies retain flexibility to decide how to implement proposed actions provided they meet NEPA’s procedural requirements. This In Focus provides an overview of the Council on Environmental Quality’s (CEQ’s) historical role in NEPA oversight, including its regulatory framework. For a discussion of NEPA’s core elements, see CRS In Focus IF12560, *National Environmental Policy Act: An Overview*, by Kristen Hite (2023).

NEPA established CEQ within the Executive Office of the President. Among other duties, NEPA directs CEQ to assist and advise the President on certain environmental matters, including NEPA implementation. The act instructs federal agencies to “identify and develop methods and procedures, in consultation with CEQ,” to implement NEPA. As discussed in the recent court cases cited below, NEPA does not expressly direct CEQ to issue regulations that agencies would be required to follow. Nevertheless, over the course of nearly five decades, CEQ maintained—and agencies and courts routinely applied—government-wide regulations implementing NEPA. This practice ended on February 25, 2025, when CEQ issued an interim final rule rescinding its NEPA regulations in their entirety.

Changing Landscape of CEQ NEPA Guidance and Implementing Regulations

Over the decades since NEPA was enacted, CEQ’s approach has evolved in response to administrative priorities, statutory amendments, and judicial interpretation. These changes have shaped how agencies conduct environmental reviews and apply NEPA’s procedural requirements. CEQ’s guidance and regulations have traditionally served as a mechanism to standardize NEPA implementation across agencies. They include procedural requirements not explicitly addressed in statute.

Establishment of CEQ Regulations

In 1970, E.O. 11514 directed CEQ to, among other things, issue guidelines to address the preparation of detailed

“environmental statements” under Section 102(2)(C) of NEPA. CEQ issued its first set of guidelines in 1971 and updated them in 1973 to introduce provisions on public involvement, draft and final environmental impact statements (EISs), and the concepts of environmental assessments (EAs). The guidelines were incorporated in 40 C.F.R. Part 1500, in part, to make them widely accessible.

For most of the 1970s, CEQ’s NEPA guidelines informed NEPA’s implementation, but agency approaches varied, resulting in perceived delays in decisionmaking. In 1978, as directed by E.O. 11991, CEQ finalized its first binding regulations. Due, in part, to concerns over inconsistencies in NEPA implementation, CEQ introduced “an efficient, uniform procedure” applicable to all federal agencies in the form of binding regulations that became effective in 1979. CEQ stated that the “three principal aims” of these regulations were “to reduce paperwork, to reduce delays, and at the same time to produce better decisions.” In addition to establishing a uniform baseline procedure, CEQ’s NEPA regulations directed each federal agency to establish its own procedures reflecting agency-specific statutory requirements, regulations, and guidance. CEQ amended its NEPA regulations in 1986 and 2010.

Revisions to CEQ NEPA Regulations

In 2020, CEQ issued a rule (the 2020 Rule) that in some respects limited the scope of agencies’ NEPA analyses. The 2020 updates followed President Trump’s E.O. 13807 (2017), which directed CEQ to, among other things, review and modernize its NEPA regulations to emphasize efficiency in environmental reviews for infrastructure projects. After receiving more than 1 million comments on its proposed rule, on July 16, 2020, CEQ promulgated the 2020 Rule, representing the most comprehensive revision of NEPA regulations in more than 40 years.

In 2021, President Biden issued E.O. 13990, directing agencies to review and address regulatory actions from the prior administration that were inconsistent with specified environmental, public health, and climate objectives. CEQ subsequently announced a two-phased rulemaking approach to reconsider the 2020 Rule. CEQ then rescinded or further amended some portions of the 2020 Rule in 2022 (the Phase 1 Rule) and additional portions in 2024 (the Phase 2 Rule).

In June 2023, Congress amended NEPA in the Fiscal Responsibility Act of 2023 (FRA; P.L. 118-5). On May 1, 2024, CEQ issued its Phase 2 Rule to implement the FRA NEPA amendments and for certain other purposes. Some of

the changes included in the Phase 2 Rule concerned inter-agency reviews, public engagement, climate change, and environmental justice. Shortly after issuance, the rule faced legal challenges from multiple states. In February 2025, the U.S. District Court for the District of North Dakota, in *Iowa v. CEQ*, invalidated CEQ’s Phase 2 Rule. The court relied in part on a decision from the U.S. Court of Appeals for the D.C. Circuit in *Marin Audubon Society v. Federal Aviation Administration*, in which the court declared CEQ lacked statutory authority to issue binding regulations.

Revocation of CEQ NEPA Regulations

On January 20, 2025, President Trump issued E.O. 14154, which among other things rescinded E.O. 11991 and directed CEQ to “propose rescinding” its NEPA regulations in their entirety. E.O. 14154 instructed CEQ to provide new guidance on NEPA implementation and convene a working group to revise agency-specific procedures for expedited permitting approvals.

Citing both E.O. 14154 and recent court decisions, on February 25, 2025, CEQ published an interim final rule rescinding its NEPA regulations and opening a 30-day public comment period before finalizing the rescission. CEQ asserted that, under the Administrative Procedure Act, notice-and-comment rulemaking was not required for this action for several reasons, although it did provide a comment period and received over 100,000 comments. The effective date for the rescission is April 11, 2025.

On February 19, 2025, in a *Memorandum for Heads of Federal Departments and Agencies on the Implementation of NEPA* (CEQ’s memorandum), Kathryn Scarlett, Chief of Staff for CEQ, instructed federal agencies to revise or establish their NEPA implementing procedures within 12 months to expedite permitting approvals and align with NEPA’s 2023 amendments. The memorandum directs agencies to consult with CEQ during this process. In the interim, agencies are asked to continue adhering to their existing NEPA practices and procedures, adjusting as needed for consistency with the FRA’s 2023 NEPA amendments. CEQ’s memorandum also recommends that agencies consider voluntarily relying on the rescinded regulations from 40 C.F.R. Parts 1500–1508 when completing ongoing NEPA reviews or defending challenges to previously completed reviews conducted under those regulations. The memorandum suggests that the 2020 version of CEQ’s NEPA regulations may serve as an “initial framework” for any updates.

Considerations for Congress

E.O. 14154 and CEQ’s rescission of its NEPA regulations raise the possibility that agencies may employ increasingly divergent interpretations of NEPA. Congress has options available to address any concerns it may have about the evolving regulatory landscape for implementing NEPA.

Congress could consider enacting legislation to address NEPA’s evolving regulatory landscape. For example, if Congress is concerned that a lack of binding government-wide CEQ regulations could lead to more inconsistencies between agencies in implementing NEPA, Congress could explicitly authorize and direct CEQ to issue binding NEPA regulations. In light of recent court opinions, direct authorization by Congress for CEQ to issue binding NEPA-implementing regulations would resolve outstanding questions about CEQ’s legal authority to do so.

Congress could codify some or all of the elements of the NEPA process that were previously found only in CEQ regulations. For example, in the FRA, Congress codified some of the procedural elements of the NEPA process previously specified in the regulations, such as specifying the circumstances under which an agency would prepare an EIS or EA. Many other elements of CEQ’s NEPA-implementing regulations were not codified in the FRA, such as the processes by which agencies typically create and apply a categorical exclusion. Incorporating specific procedural requirements into statute would provide federal agencies and stakeholders with clarity on the environmental review requirements Congress intends for agencies to apply. Alternatively, if Congress believes NEPA is best implemented via a less standardized approach, Congress could consider directing agencies to promulgate or update regulations detailing their NEPA procedures based on any additional parameters that Congress believes to be warranted.

Litigation based on inconsistent NEPA implementation was one of the reasons CEQ cited for originally issuing regulations instead of guidance. If Congress is concerned about how NEPA litigation may affect the current regulatory landscape, Congress could consider altering the framework for judicial review of NEPA-related actions.

Given recent executive actions, regulatory changes, and potential legal challenges affecting NEPA implementation, Congress may also choose to monitor agency implementation or gather additional information before determining whether to adopt new legislation. Congress could invoke its oversight authorities to obtain more insight into agency decisionmaking. For example, Congress could hold hearings to assess how agencies are applying the guidance within CEQ’s memo and clarify their plans for updating their agency-specific NEPA implementing procedures.

These policy options present trade-offs among administrative flexibility, regulatory certainty, and environmental oversight.

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