



NOAA Fact Sheet: CEQ's Revised NEPA Regulations

On July 16, 2020, the Council on Environmental Quality (CEQ) issued [revised regulations implementing the National Environmental Policy Act \(NEPA\)](#). The final NEPA rule modifies requirements pertaining to process and content for agency NEPA compliance, and requires that, within one year of the effective date of September 14, 2020, all Federal agencies develop or revise their proposed procedures to comply with the new provisions. CEQ has provided background materials including a redline version of the new regulations, responses to public comments, and economic analyses on their [website](#).

Overview of Key Elements of the Final Rule:

The NEPA Process

- Formalizes principles and strategies reflected under “One Federal Decision” ([Executive Order 13807](#) and its implementing [Memorandum of Understanding](#)) and expands application to all actions, not just major infrastructure projects.
 - Establishes presumptive time limits of two years for the preparation of environmental impact statements (EISs) and one year for the preparation of environmental assessments (EAs).
 - Specifies presumptive page limits for EISs (150-300) and EAs (75).
 - Requires joint schedules, a single EIS, and a single record of decision (ROD), where appropriate, for EISs involving multiple Federal agencies.
 - Reinforces the role of the lead agency and requires senior agency officials to oversee NEPA compliance, including engaging in timely resolution of disputes to avoid delays.
- Allows applicants/contractors to assume a greater role in preparing EISs with appropriate disclosure of financial or other interests and with supervision and independent evaluation by the agency.

Codifies Certain Case Law and Creates New Provisions

- Includes new provisions to provide a series of considerations to assist Federal agencies in a threshold analysis for determining whether NEPA applies to a proposed activity and the appropriate level of environmental review.
- Clarifies that procedures and documents prepared pursuant to other statutory or Executive order requirements may satisfy one or more requirements of the CEQ NEPA regulations, including potentially all requirements under NEPA.
 - Allows agencies to determine that analyses prepared under other authorities (such as EO 12866 or the Magnuson-Stevens Fishery Conservation and Management Act) are functionally equivalent to compliance with NEPA if the



procedure or document satisfies one or more requirements of the NEPA regulations.

- Requires that agencies identify which corresponding requirements of the NEPA regulations are satisfied and consult with CEQ to confirm such determinations.
- Simplifies the definition of environmental effects by striking from the regulation's definition of "effects" references to "direct", "indirect", and "cumulative" effects. Requires agencies to consider environmental effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action.
- Clarifies the definition of major Federal action and excludes activities with minimal Federal funding or involvement such as small business and farm loan guarantees. Major Federal action definition also excludes "extraterritorial activities or decisions, which are defined as activities or decisions with effects located entirely outside the jurisdiction of the United States. The final rule cites the Restatement (Fourth) of Foreign Relations Law to explain that the areas within the territorial jurisdiction of the United States include "its land, internal waters, territorial sea, the adjacent airspace, and other places over which the United States has sovereignty or some measure of legislative control.
- Directs agencies to analyze only a reasonable range and number of technically and economically feasible alternatives.
- Allows agencies to establish procedures to use other agencies' categorical exclusions (CEs) and to adopt EAs and CE determinations, where appropriate.

Public Involvement and Coordination with States, Tribes, and Localities

- Requires agencies to provide more information to and solicit input from the public earlier in the NEPA process.
- Facilitates the use of documents prepared by State, Tribal, and local agencies to comply with NEPA.
- Enhances ability of Native Americans and other indigenous groups to participate in the NEPA process and ensures appropriate consultation with affected Tribal governments and agencies.
- Eliminates provisions in the prior regulations that limit Tribal interest to reservations.
- Promotes use of modern technologies for information sharing and public outreach.
- Requires agencies to certify consideration of alternatives, information, and analyses submitted by State, Tribal, and local governments and public commenters.

Implementation

- The effective date of these regulations is September 14, 2020, and the final rule makes these regulations applicable to NEPA reviews begun after this date. After this date, agencies are required to apply these regulations to new NEPA analyses unless there is a clear and fundamental conflict with an applicable statute.
- CEQ has determined that agencies may continue to rely upon the categorical exclusions contained in agency NEPA procedures as of September 14, 2020 while making any revisions to those procedures.
- For NEPA reviews begun or ongoing before the effective date of the new regulations, agencies may choose whether to apply the revised regulations or proceed under the 1978 regulations and their existing agency NEPA procedures. Agencies should clearly indicate to interested and affected parties which procedures it is applying for each proposed action.
- In the interim period between the effective date of the final rule and when agencies complete updates to their agency NEPA procedures, in any instances where an interpretation of the 1978 regulations is inconsistent with the new regulations or the final rule preamble's interpretation of the new regulations, the new regulations shall apply.

Next Steps at NOAA

- The final rule does not require agencies to withdraw their existing agency NEPA procedures upon the effective date, but agencies should conduct a consistency review of their procedures.
- NOAA NEPA has begun this consistency review by examining NOAA's Companion Manual for NOAA Administrative Order 216-6A and supporting guidance documents found on the NOAA NEPA Intranet.
- All NOAA line, staff, and program offices that have developed NEPA procedures, handbooks, manuals, guidance and policies must also undertake a consistency review in coordination with NOAA NEPA.
- In addition, NOAA NEPA has begun identifying what additional provisions may need to be added to NOAA's NEPA procedures to conform with the new regulations.
- NOAA will develop a proposed schedule for updating its NEPA procedures and coordinate with CEQ.
- NOAA will consult with CEQ while revising its proposed NEPA procedures.
- Within one year from the effective date of September 14, 2020, NOAA will submit its proposed revised procedures to CEQ.