

Decoding Agencies' New NEPA Procedures: Takeaways from CEQ's Draft Template

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July 7, 2025

Introduction

On April 8, the White House Council on Environmental Quality (CEQ) circulated a draft template for federal agencies to use when updating their regulations and procedures implementing the National Environmental Policy Act (NEPA). CEQ issued the draft template in response to President Trump's directive in Executive Order (EO) 14154, *Unleashing American Energy*,¹ which instructs CEQ to provide NEPA implementation guidance that will expedite permitting approvals. According to CEQ, the template "provide[s] a framework that agencies may consider and adapt to their missions" as they implement NEPA.

Agencies are now updating their NEPA rules and procedures to fill a regulatory void after President Trump withdrew a Carter-era executive order authorizing CEQ to issue rules governing agencies' implementation of NEPA.² Though several agencies already have NEPA regulations in place, many are decades-old and conflict with NEPA as amended in 2023. CEQ issued guidance in February telling agencies to complete their updates within one year, and to "expedite permitting approvals" and rely on CEQ's 2020 rule, finalized under the first Trump administration, "as an initial framework."³ The April 8th draft template builds on that guidance by offering model language for agencies' revisions to their NEPA rules and procedures. (For a complete timeline, see EELP's NEPA Regulatory Tracker page.)

Though CEQ's draft template is guidance⁴ and does not have the force of law, several agencies have now issued new NEPA procedures that hew closely to the template. Notably, many of those agencies including the Departments of Energy,⁵ Defense,⁶ and the Interior⁷ are rescinding substantial portions of their NEPA regulations and replacing them with guidance in the form of "operating procedures." These changes are effective immediately. Agencies assert these guidance documents do not have the force of law, and the

¹ 90 Fed. Reg. 8,353 (Jan. 29, 2025).

² Removal of National Environmental Policy Act Regulations, 90 Fed. Reg. 10,610 (Feb. 25, 2025) (codified at 40 C.F.R. pts 1500–08).

³ Memorandum from Katherine R. Scarlett, Council on Env't Quality Chief of Staff, on Implementation of the National Environmental Policy Act to Heads of Federal Departments and Agencies (Feb. 19, 2025), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf>.

⁴ CEQ notes that the "template is not a regulation, does not carry the force and effect of law, and is not intended to bind the public or any federal agency."

⁵ Revision of National Environmental Policy Act Procedures, 90 Fed. Reg. 29,676 (July 3, 2026) (codified at 10 C.F.R. pts. 205, 1021).

⁶ See, e.g., Procedures for Implementing NEPA; Processing of Department of the Army Permits, 90 Fed. Reg. 29,465 (codified at 33 C.F.R. pts. 230, 325, 333) (rescinding NEPA rules for the Army Corps of Engineers); Rescission of Procedures for Implementing the National Environmental Policy Act (NEPA), 90 Fed. Reg. 29,453 (codified at 32 C.F.R. pt. 775) (rescinding NEPA rules for the Department of the Navy).

⁷ National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 29,498 (July 3, 2025) (codified at 43 C.F.R. pt. 46).

Department of Energy clarifies that its procedures can be amended at any time, including on a “case-by-case basis.”⁸

Below, we review the most important changes CEQ recommends in its draft template and highlight where that template pulls from previous CEQ rules (the 1978 rules, the 2020 rule finalized under the first Trump administration, and the Phase I and II rules finalized under the Biden administration) and where the template introduces novel provisions (**see Appendix for a table comparing these rules and the draft template**). These changes include factors that shape agencies’ level and scope of environmental analyses, the preparation of environmental documents, and limits on the consideration of alternative actions. This summary is not comprehensive of all changes in CEQ’s template.

Changes Affecting the Level & Scope of Agencies’ Environmental Analyses

In the template, CEQ proposes new definitions for the terms that determine if an action is subject to NEPA review, and if so, how detailed that review should be. The template also limits the types of effects agencies should consider in those analyses.

CEQ’s Template Would Add New Criteria Defining “Major Federal Actions” Subject to NEPA Review

NEPA requires federal agencies to prepare an environmental analysis for all “major federal actions” that “significantly” affect the “quality of the human environment.” There are three types of environmental reviews an agency can require for a proposed major federal action: an environmental assessment (EA), an environmental impact statement (EIS), or a categorical exclusion. For agencies, an EA is a preliminary step to determine if an action will significantly affect the quality of the environment. If an agency determines that there will be a significant impact, then it must prepare an EIS, which is an in-depth analysis of the proposed action. If an agency determines that there will not be a significant impact on the environment, then the agency can make a Finding of No Significant Impact (FONSI) and forgo preparing an EIS. Agencies can also determine that an action is covered by a categorical exclusion (CE), which is a class of actions that the agency determines do not have a significant effect on the human environment and therefore do not require an EA or EIS. However, agencies must still perform a brief analysis to determine if the CE should apply to a particular project, including whether “extraordinary circumstances” exist that would instead require preparation of an EA or EIS.⁹

In the draft template, CEQ asserts a novel interpretation of “major federal actions,” arguing “major” and “federal action” each have independent force, and accordingly, NEPA only applies when both criteria are met. Notably, the template urges agencies to set a monetary threshold determined by the agency below which actions are presumptively not “major.”

The draft template suggests that agencies determine that “federal actions” do not include actions with no, or minimal, federal funding, or actions with no, or minimal, federal involvement where a federal agency cannot control the outcome of the project. CEQ’s draft template, if adopted by an agency, would also allow the

⁸ *National Environmental Policy Act (NEPA) Implementing Procedures*, U.S. DEPT. OF ENERGY 3 (June 30, 2025) (“DOE retains the discretion to adopt approaches on a case-by-case basis that differ from those described in these procedures where appropriate.”)

⁹ *NEPA Overview*, Harvard Env. & Energy L. Prog. (Feb. 24, 2025) <https://eelp.law.harvard.edu/nepa-overview/>.

agency significant discretion to presume which actions are major federal actions as the “determination is inherently bound up in the facts and circumstances of each individual situation.” The CEQ draft template also does not include a specific list of actions that are not “major federal actions.”

Changes to “Significant”

Under NEPA, agencies are required to prepare an EA or EIS only if the “major Federal action” at issue “significantly affect[s] the quality of the human environment.”¹⁰ Thus, how the agency defines “significance” affects the scope of actions subject to detailed NEPA analysis.

In the draft template, CEQ proposes agencies adopt a revised two-factor test for “significance” addressing the potentially affected environment and the degree of effects, mirroring the 1978 rules with some notable changes. First, agencies would assess the “potentially affected environment,” including the potential “national, regional, or local” affected areas. This definition does not include requirements to consider “global” effects and proximity to communities with environmental justice concerns, both of which were included in the Biden CEQ’s Phase II rule.

Second, agencies would assess the “degree of effects” based on six factors: short- and long-term effects, beneficial and adverse effects, effects on public health and safety, effects on employment, effects on the quality of life of the American people, and effects that would violate federal, state, Tribal, or local laws protecting the environment. By comparison, CEQ’s 1978 rules included a ten-factor “intensity” test, which, in addition to the two factors listed in the draft template, required agencies to assess “unique characteristics” of the geographic area, whether the proposed project’s effects were “highly uncertain” or involve “unique or unknown risks”, and “the degree to which the action may establish a precedent for future actions with significant effects.”¹¹ Importantly, CEQ’s template does not explicitly prohibit agencies from “segmenting” a project, where an agency divides one project into smaller projects to artificially minimize the anticipated environmental effects. This prohibition was expressly included in the 1978 and Phase II rules’ test for “intensity.”

When assessing significance, the CEQ draft template would also bar agencies from conducting “new research unless it is essential to evaluating alternatives and the cost and time of obtaining it are not unreasonable.”

Changes to Effects or Impacts

The CEQ draft template restores the definition of “effects or impacts” included in the 2020 rule, which states that effects must have a “reasonably close causal relationship to the proposed action.” The template also states that agencies need not assess effects that the agency cannot prevent due to limited statutory authority, or those that would occur regardless of the proposed action. As in the 2020 rule and as recently affirmed by the Supreme Court in *Eagle County*, the CEQ draft template also states that a “but for” causal relationship is insufficient—just because a proposed project would cause a certain environmental effect does not necessarily mean the agency is required to analyze that effect in its NEPA review.¹²

¹⁰ 42 U.S.C. § 4332(C).

¹¹ National Environmental Policy Act—Regulations, 43 Fed. Reg. 55,978, 56,005–06 (Nov. 23, 1978).

¹² *Seven County Infrastructure Coalition et al. v. Eagle County, Colorado, et al.*, 605 U.S. ____ (2025), slip op. at 18–19.

Notably, the template proposes a much narrower scope of analysis than what the Supreme Court held in *Eagle County* (see our [analysis of that decision](#)). Specifically, CEQ asserts that “effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain.” But in *Eagle County*, the Court held that agencies are not required to consider the upstream or downstream effects of **projects** that are separate in time or space, and clarified that “environmental effects of the project at issue may fall within NEPA even if those effects might extend outside the geographical territory of the project or might materialize later in time.”¹³ The language in CEQ’s draft template thus potentially excludes effects that the Supreme Court believes agencies should assess. However, under *Eagle County*, courts must give “substantial deference” to agency decisions about which effects to include or exclude in their analysis.¹⁴ In practice, this likely means that courts will be reticent to second-guess agency decisions about the proper depth or breadth of their NEPA reviews regarding a particular project.

Changes that Affect the Preparation of Environmental Documents

The draft template affirms the ability of a project sponsor to prepare environmental documents, expands agency discretion to limit public comment on NEPA documents, and curtails what research may be conducted.

Allowing Project Sponsors to Prepare Environmental Documents

The 2023 Fiscal Responsibility Act (FRA) authorized project sponsors (typically a private or public entity seeking federal funding or authorization for a specific project) to prepare environmental documents pursuant to procedures adopted by the lead federal agency conducting the NEPA review. Though the documents are prepared by a third party, NEPA still requires the lead federal agency to independently evaluate the document and be responsible for its contents.¹⁵ Under President Biden, CEQ finalized its Phase II rules, which included steps for complying with this provision in the FRA. The draft template mirrors those steps, with two notable changes. First, the template deletes a requirement that agencies “ensure [sponsor-prepared environmental documents] are prepared with professional and scientific integrity, us[ing] reliable data and resources.” Second, the template adds a provision stating sponsors can provide agencies with “a decision file,” though the term is not defined.

Limiting Public Notice and Comment on Environmental Documents

CEQ’s draft template does not include the public participation provisions that were in the 2020 rule, which required agencies to make “diligent efforts” to involve the public in NEPA procedures. Instead, the draft template gives agencies more discretion to limit both public notifications regarding NEPA processes and solicitation of public comments on NEPA documents. For example, the template makes it optional for agencies to publish draft environmental documents, including draft EISs. Under all prior CEQ rules, agencies were required to publish draft EISs, seek public comment, and respond to those comments in the final EIS. This engagement process helped agencies identify and address errors or public concerns before approving a project, improving project design and potentially mitigating the future risk of litigation. By comparison, CEQ’s draft template only requires agencies to seek public comment when issuing a notice of intent to prepare an EIS, and notes those comments should only address project alternatives, effects, and relevant data. The

¹³ *Id.*, slip op. at 16 (emphasis in original).

¹⁴ *Id.*, slip op at. 2.

¹⁵ 42 U.S.C. § 4336a(f).

template also makes it optional to publish a notice of intent when preparing an EA. Though the draft template allows agencies to provide more opportunities for public notice and comment if they choose, it still represents a significant reduction in public transparency and engagement requirements that have been a core component of CEQ's NEPA regulations since 1978.

Limits on Conducting New Research

CEQ's draft template adds a prohibition barring agencies from conducting new scientific and technical research to inform their analyses unless that research is essential, and the overall costs of the research are not unreasonable. By comparison, the 2020 rules simply noted agencies are not *required* to conduct new research.¹⁶

Next Steps and What We're Watching

As discussed above, several federal agencies have issued interim final rules withdrawing their NEPA implementing regulations and replacing those regulations with guidance (i.e., operating procedures), many of which are structured around CEQ's draft template. In almost all cases, these changes are effective immediately.¹⁷

Separately, the Department of the Interior has announced "alternative arrangements" for permitting projects consistent with President Trump's declared energy emergency. These procedures did not go through notice-and-comment rulemaking. On May 12, 2025, Interior announced the first project to be advanced under these emergency procedures: a uranium and vanadium mine in San Juan, Utah, and the Bureau of Land Management stated it plans to complete the EA in 14 days (the statutory deadline for EAs is one year). A number of states have challenged the president's energy emergency declaration and the requirement that agencies, including Interior, expedite permits for certain fossil fuel and critical mineral projects. In their complaint, the states allege that "multiple federal agencies now seek to broadly employ [] emergency procedures in non-emergency situations." The states are seeking declaratory and injunctive relief.¹⁸

For more, see EELP's [NEPA Regulatory Tracker](#) and [NEPA Overview](#).

¹⁶ Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304, 43,367 (July 16, 2020).

¹⁷ Of the agencies that have issued new NEPA rules and procedures, only the Federal Energy Regulatory Commission (FERC) has a delayed effective date. Removal of References to the Council on Environmental Quality's Rescinded Regulations, 90 Fed. Reg. 29,423 (July 3, 2025) (codified at 18 C.F.R. 380, 385) (effective August 18, 2025).

¹⁸ See *State of Washington et al. v. Trump et al.*, No. 2:25-cv-00869 (W.D. Wash.).

Appendix

Comparison of Previous CEQ NEPA Rules and the Draft Template

Key NEPA Requirements	1978 Rule	2020 Rollback	Phase I (2022) and II (2024)	CEQ Draft Template (2025)
“Major Federal Action”	Action (or reviewable inaction) with “significant” effects that is “potentially” subject to federal control.	Action subject to federal control.	Action subject to “substantial” federal control* (“substantial” is not defined).	+ Agencies must assess “major” & “federal action” independently, and project must satisfy both. + Encourages agencies to set monetary threshold under which projects aren’t “major.”
“Significant”	Agencies must consider “context” and “intensity” of environmental effects to determine level of NEPA review. Intensity based on 10-factor inquiry.	Removes “context” and “intensity” analysis by deleting definition of “significantly”	Restores “context” and “intensity” analysis from 1978 rule. Context may include global effects over short and long term. Eight-factor intensity analysis includes consideration of Tribal sacred sites, adverse effects on communities with EJ concerns.	Edits two-factor significance test to address “potentially affected environment” and “degree of effects.” Deletes reference to global effects. Proposes six-factor “degree of effects” analysis. - Does not include consideration of Tribal sacred sites, EJ concerns. + Bars agency from conducting new research unless it is “essential.”
“Effects”	Includes direct, indirect, and cumulative impacts.	Impacts with a “reasonably close causal relationship” to proposed action. Removes reference to direct, indirect, and cumulative impacts.	Restores direct, indirect, and cumulative impacts. + “[D]isproportionate and adverse effects on communities with EJ concerns” among others.	Restores 2020 definition of “effects” but deletes reference to “effects that occur at the same time and place as the proposed action” or “effects that are later in time or farther removed in distance from the proposed action or alternatives”

Key NEPA Requirements	1978 Rule	2020 Rollback	Phase I (2022) and II (2024)	CEQ Draft Template (2025)
Statement of “Purpose and Need”	In environmental impact statement (EIS), agencies must “briefly specify” purpose and need for the proposed action and alternatives.	Agency must base purpose and need “on the goals of the applicant and the agency’s authority.”	Restores 1978 provisions Agency must “briefly summarize” purpose and need for proposed action*	Purpose and need “based on the agency’s statutory authority.” If proposed action requires agency authorization, purpose and need “will also be informed by the goals of the applicant.”
Project Sponsor Can Prepare Documents	No.	Yes, under supervision of agency.	Yes, pursuant to procedures adopted by each agency.*	Same as Phase I/II.
Tiering to Programmatic Analyses Time limits	“Encouraged” to tier EISs as appropriate.	Provides additional guidance.	Can tier to programmatic EIS (PEIS) in 5 years without further review if no substantial new circumstances; after 5 years with review.*	Same as Phase I/II.
Agencies can “Borrow” Categorical Exclusions (CEs)	No.	Yes. + Adds “extraordinary circumstances” when CE may not apply	Yes.* Agencies can also establish CE through land use plans or decision document supported by programmatic EA (PEA) or PEIS.	Yes.* + Adds new provision allowing agencies to rely on another agency’s finding that CE applies to a particular action if that action is “substantially the same” as the proposed project.
Time limits	None.	2 years for EISs; 1 year for EAs.	No change from 2020 rollback.*	No change from 2020 rollback.*
Page limits	EISs 150/300 pp.	EISs 150/300 pp; EAs 75 pp.	No change from 2020 rollback * (limits don’t include citations or appendices).	No change from 2020 rollback * (limits don’t include citations or appendices)

Key NEPA Requirements	1978 Rule	2020 Rollback	Phase I (2022) and II (2024)	CEQ Draft Template (2025)
Public Comment on Environmental Documents	<p>At scoping stage**, agency must seek comments from affected federal, state, and local agencies, Indian Tribes, the proponent, and “other interested persons.”</p> <p>For a draft EIS, agency shall do the same, and “affirmatively solicit” comments from people “interested or affected.”</p>	<p>Agencies “shall” make “diligent efforts to involve the public” in NEPA procedures, provide public notice of NEPA-related hearings, and consider ability of affected people to access electronic media. Includes specific provisions for how to seek comment and make information publicly accessible.</p>	<p>Requires agencies conduct, “as appropriate,” early engagement with “likely affected or interested members of the public, and “consider” forms of outreach and notification.</p>	<p>If preparing an EIS, agency must publish a notice of intent (NOI) and request public comment on alternatives, effects, & relevant data, and may collect comment on the project’s purpose and need. If agency is preparing an EA, the agency may publish an NOI.</p> <p>Publication of draft EIS is optional.</p> <p>- Does not include 2020 requirements to otherwise involve the public.</p>

Key NEPA Requirements	1978 Rule	2020 Rollback	Phase I (2022) and II (2024)	CEQ Draft Template (2025)
Analysis of “Reasonable Alternatives”	Agencies must “rigorously explore” all alternatives to the proposed action, including those outside agency’s jurisdiction.	Agencies must provide “limited” analysis of “technically and economically feasible” (T&EF) alternatives that meet the proposed action’s “purpose and need” (P&N), are within lead agency’s jurisdiction, and ideally meet applicant’s goals.	<p>Must “rigorously explore” alternatives that are T&EF, meet P&N.*</p> <p>- Removed “and ideally meet applicant’s goals”</p> <p>+ “[M]ay” include reasonable alternatives outside lead agency’s jurisdiction</p> <p>+ Must ID “environmentally preferable alternative(s)”</p>	<p>For EA, must “briefly discuss” alternatives that are T&EF, meet P&N.</p> <p>For EIS, must include “detailed statement” on reasonable range of alternatives that are T&EF and meet project’s P&N.</p> <p>Alternatives should meet applicant’s goals “where applicable.”</p> <p>- Removed “may” include reasonable alternatives outside lead agency’s jurisdiction</p> <p>- Removed requirement to ID “environmentally preferable alternative(s)”</p>
Relevant Data	Agencies must ensure “professional” and “scientific integrity.”	<p>+ Agencies shall use “reliable data.”</p> <p>+ Agencies not required to do new studies.</p>	<p>Agencies must ensure “scientific integrity” and use “reliable data”*</p> <p>+ Agencies to use projections, including climate-related effects, “where appropriate”</p>	<p>+ Agencies “will not undertake” new scientific and technical research unless research is essential to a reasoned choice among alternatives & overall costs/time are not unreasonable</p> <p>- Deletes references to “scientific integrity” and “projections,” and authorizes the agency to use “any reliable data source”</p>

Key NEPA Requirements	1978 Rule	2020 Rollback	Phase I (2022) and II (2024)	CEQ Draft Template (2025)
Mitigation	Agency to adopt “monitoring and enforcement program” for mitigation “where applicable.”	Defines mitigation. Requires agencies cite to statutory authority when specifying mitigation. Monitoring and enforcement program only required for “enforceable” commitments.	If agency relies on mitigation to determine action’s effects, that mitigation must be enforceable and included in “monitoring and compliance” plan.	Retains enforceable mitigation requirements from Phase II rule, including monitoring and compliance plans “if applicable”, but clarifies that NEPA itself does not require or authorize agency to impose mitigation measures. + Defines mitigation as avoiding, minimizing, rectifying, reducing, or compensating for impacts
“Human Environment”	“[C]omprehensively ... the natural and physical environment and the relationship of people with that environment.”	“Comprehensively the natural and physical environment and the relationship of present and future generations of Americans with that environment.”	- Removed “of Americans”	Restores “of Americans” from 2020 rule - Deletes reference to “present and future generations.”