

President Trump Moves to Repeal NEPA Regulations

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UPDATE

On February 19, the White House unveiled an [interim final rule](#) (IFR) to rescind all National Environmental Policy Act (NEPA) implementing regulations that the Council on Environmental Quality (CEQ) has promulgated since 1977. The IFR takes effect immediately and bypasses the usual public notice and comment process for rulemakings by invoking the “good cause” exception in the Administrative Procedures Act (APA)[\[1\]](#), although its publication in the Federal Register will trigger a 30-day public comment period.

Observers have long expected that the new administration would revisit the NEPA rules. The first Trump administration promulgated the first significant overhaul of CEQ’s NEPA regulations since they were initially codified in 1978. However, the full and formal repeal of CEQ’s NEPA regulations is both remarkable and somewhat predictable in the wake of *Marin Audubon v. Federal Aviation Administration*, No. 23-1067 (D.C. Cir. 2024), which jolted the environmental legal world by holding that CEQ never had the authority to promulgate NEPA regulations in the first place, and the second Trump administration’s “day one” orders to streamline environmental reviews for certain energy projects and revoke President Carter’s 1977 EO issued that originally directed CEQ to issue NEPA regulations. A subsequent decision in *Iowa v. Council on Env’tl. Quality*, 1:24-cv-089 (D.N.D. Feb. 3, 2025) followed the lead of *Marin Audubon* in vacating the Biden administration’s Phase 2 NEPA rule based on CEQ’s lack of regulatory authority, and also limited the types of actions CEQ can take to set policy and priorities for other federal agencies in implementing NEPA. These events constituted the bulk of the Trump administration’s justification for the IFR.

Accompanying the IFR is a [February 19, 2025 memorandum](#) to all federal agencies directing them to do the following:

- Revise or establish new NEPA implementation procedures consistent with the “Unleashing American Energy” executive order.
- Not delay pending NEPA analyses while those NEPA procedures are being updated.
- “Consider voluntarily relying on [the soon-to-be-rescinded] regulations in completing ongoing NEPA reviews or defending against” legal challenges.

Troutman Insights:

While this action follows naturally from the developments described in our [February 6 alert](#), it introduces new regulatory uncertainty and an obvious litigation target.

- **NEPA Reviews:** As we noted previously, federal agencies currently are in limbo regarding what regulations, if any, govern their statutorily mandated NEPA reviews. The Trump administration's suggestion that agencies "voluntarily" continue to follow the old (and presumptively invalid) regulations for existing NEPA reviews and litigation appears to be a recognition that some guidance is needed while a new regulatory regime is being formulated. However, the voluntary nature of this directive could result in inconsistent approaches across agencies.
- **Litigation:** It is possible that environmental groups will challenge the IFR as an inappropriate use of the APA "good cause" exception (which is typically reserved for emergencies) and seek an injunction requiring the White House to release any modifications to existing CEQ rules as a proposed rule. A drawn-out legal challenge could further unsettle the legal landscape for agencies and project proponents. Moreover, plaintiffs challenging existing and forthcoming permitting decisions will no doubt capitalize on this uncertainty to add an array of alternative NEPA claims to their complaints. Unless and until courts have settled on a new "doctrine" for how to handle such claims, every NEPA lawsuit could be a white-knuckle ride.

[1] 5 U.S.C. § 553(b)(B).

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