

Permitting Reform in Action: CEQ Updates Roadmap for Agency NEPA Compliance

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Holland & Knight Alert

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Highlights

- The Council on Environmental Quality (CEQ) on Sept. 29, 2025, issued new, nonbinding guidance to assist federal agencies with implementation of the National Environmental Policy Act (NEPA), updating the prior memorandum that CEQ had issued in February 2025 in light of recent case law and executive action.
- The new guidance includes suggested procedures for agencies to adopt when establishing or revising their NEPA implementing procedures.
- This Holland & Knight alert provides a brief summary of the relevant background and breaks down the new guidance to highlight the most significant updates.

In keeping with the Trump Administration's goals of permitting reform, the Council on Environmental Quality (CEQ) on Sept. 29, 2025, issued an [updated guidance memorandum](#) to the heads of federal agencies regarding implementation of the National Environmental Policy Act (NEPA), which supersedes and replaces CEQ's prior NEPA guidance. This Holland & Knight Alert provides a brief summary of the relevant background and breaks down the new guidance to highlight the most significant updates.

NEPA Overview and Evolution

NEPA requires federal agencies to create a "detailed statement" for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. §§ 4321 *et seq.* Federal agencies are also directed to adopt their own NEPA implementing regulations specific to actions that they have the authority to perform. Generally, NEPA is conducted through a sliding-scale approach. Proposed actions with the potential for "significant" environmental effects normally require an environmental impact statement (EIS), and projects with lesser potential effects can be addressed through an environmental assessment (EA). If an EA determines that impacts can be avoided or mitigated, the agency issues a finding of no significant impact (FONSI) along with the EA. Categorical exclusions (CatEx) – categories of actions that the reviewing agency has determined would not normally, individually or cumulatively have potential for significant environmental impacts absent extraordinary circumstances – can also be applied to satisfy NEPA.

As originally enacted, NEPA creates the CEQ and generally directs the agency to "assist and advise the President." 42 U.S.C. § 4343. Subsequently, former President Jimmy Carter issued executive order (EO) 11991 on May 24, 1977, which directed CEQ to "issue regulations [regarding NEPA] to Federal agencies" and further directed agencies to "comply with regulations issued by the Council." Under this authority, CEQ promulgated NEPA regulations in 1978 and multiple amendments to those regulations during the Trump and Biden Administrations. (See Holland & Knight's previous alert that examined the 2024 amendments, "[Council on Environmental Quality Substantially Rewrites NEPA Regulations](#)," June 6, 2024.) CEQ's regulations dominated the NEPA landscape for more than 40 years.

In 2024, however, a decision from the U.S. Court of Appeals for the District of Columbia Circuit held that CEQ had no authority to issue binding regulations in the first place. (See Holland & Knight's previous alerts discussing these

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decisions, ["Adding Fuel to the Fires Calling for Permitting Reform,"](#) Nov. 26, 2024, and ["Court's Denial of Review Leaves Open Questions of CEQ Authority,"](#) Feb. 3, 2025.) And on his first day in office, President Donald Trump issued EO 14154, ["Unleashing American Energy,"](#) which directed CEQ to consider rescission of the 2024 amendments to the NEPA regulations, issue nonbinding NEPA guidance to agencies and form a NEPA taskforce to coordinate revision of each federal agency's NEPA implementing regulations. President Trump also expressly revoked President Carter's EO 11991 that had directed CEQ to promulgate regulations.

Consistent with President Trump's orders, on Feb. 25, 2025, CEQ issued an interim final rule revoking CEQ's NEPA regulations effective April 11, 2025, as well as a corresponding memorandum to the heads of all federal departments regarding NEPA implementation (February Guidance). (See Holland & Knight's previous alert covering the rescission and memorandum, ["Seismic Changes in Federal Environmental Reviews: CEQ to Rescind NEPA Regulations,"](#) Feb. 25, 2025.) The February Guidance largely focused on efficiency and certainty, urging agencies to avoid delays and ambiguity in their NEPA processes despite the uncertainty presented by the significant shifts in the NEPA landscape. CEQ also directed agencies to revise their own NEPA regulations within 12 months to be consistent with the statutory amendments to NEPA enacted through the Fiscal Responsibility Act of 2023.

Updated NEPA Guidance

CEQ published a [Notice of Availability](#) in the *Federal Register* on Sept. 29, 2025, advising that it had issued new guidance for NEPA implementation (New Guidance) that updates and replaces the February Guidance. The notice makes clear that the New Guidance is "not mandatory or binding" but rather is intended to "expedite and simplify the permitting process and promote consistency." 90 FR 47734 (Sept. 29, 2025).

The New Guidance updates the "initial" February Guidance to incorporate recent case law and statutory amendments, along with the efforts of the NEPA taskforce directed by President Trump in EO 14154. The key updates are:

Incorporating the *Seven County* Decision.

CEQ summarizes the recent U.S. Supreme Court decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497 (2025), characterizing the decision as a call for "NEPA implementation reform." (See Holland & Knight's previous alert covering the *Seven County* decision, ["U.S. Supreme Court Grapples with *Loper Bright* in the Context of NEPA Reviews,"](#) June 2, 2025.) In particular, the New Guidance emphasizes that agencies conducting NEPA review must consider the proposed action and "*that action's* effects," which does not include environmental effects from other projects separate in time or place, that fall outside of the agency's authority or that would have to be initiated by a third party. Though recognizing that courts must accord agencies "substantial deference" in determining the appropriate scope of review, CEQ advises agencies to explain in their NEPA review where they have drawn a "reasonable and manageable line" with respect to this analysis. In other words, even though the Supreme Court recognized that agencies have broad discretion to look beyond an action's effects, agencies that choose to do more than the bare minimum NEPA requires are encouraged to explain themselves.

The New Guidance incorporates these concepts the principles and holdings from *Seven County* throughout the document and in the recommended NEPA procedure framework (discussed below).

Addressing the One Big Beautiful Bill Act.

Section 60026 of the One Big Beautiful Bill Act (OBBA), Pub. L. 119-21 (July 5, 2025), enacted a new Section 112 to NEPA, which permits a project sponsor to pay a fee, set by CEQ on a project-specific basis, to receive shortened NEPA review periods. Specifically, if the project sponsor pays the amount determined by CEQ, then the review periods are cut in half – from two years to one year for an EIS and from one year to 180 days for an EA. 42 U.S.C. §§ 4336, 4336e. The New Guidance explains CEQ's expectation that project sponsors will coordinate with the government before submitting a request to opt in to this process and that federal agencies may address this process in their own

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NEPA implementing procedures.

Providing NEPA Procedures Template.

In coordination with the NEPA taskforce created by EO 14154, CEQ developed a template to assist agencies in developing or updating their NEPA implementing regulations (Template). The Template, attached to the New Guidance as Appendix 1, consists of draft NEPA procedures that largely reflect the 2020 version of the CEQ regulations as amended during the first Trump Administration, with some variation to incorporate updates within the past five years, including the principles of *Seven County* and the opt-in fee created by the OBBB. All Biden Administration amendments to the CEQ regulations are absent, including any reference to climate change or environmental justice considerations (which agencies have already stopped paying attention to in practice during NEPA reviews). The New Guidance emphasizes that the Template is *not* legal or binding in nature and does not establish new requirements or legal obligations but rather is intended to provide clarity and technical assistance. The New Guidance highlights that the U.S. Department of Defense (DOD), U.S. Department of the Interior and U.S. Department of Transportation's (DOT) recently issued NEPA procedures as examples of how the template can be used by agencies to revise their NEPA procedures in a manner consistent with the statute and prevailing case law.

Clarifying Agency Coordination with CEQ.

The New Guidance attempts to clarify CEQ's role in the NEPA context following the changes in its authority and rescission of CEQ's regulations. The New Guidance makes clear that agencies must consult with CEQ while developing or revising their NEPA implementing procedures as required by the statute and that this should begin as soon as possible. In sum, the New Guidance lays out the following timeline of events in connection with this process:

- The agency informs CEQ as early as possible regarding plans to develop or revise its NEPA implementing procedures and submits an anticipated timeline to CEQ.
- The agency submits proposed revised NEPA implementing procedures to CEQ and other required documents specified in III.C of the New Guidance prior to initiating any interagency consultation or public rulemaking process. The New Guidance also encourages agencies to consider issuing their NEPA implementing procedures in guidance documents or handbooks, rather than as codified regulations, to allow for additional flexibility in the future.
- Upon receipt of a complete package, CEQ estimates an approximately 30-day review period during which time CEQ may ask for additional information or meetings with the agency. CEQ will notify the agency in writing that consultation is concluded and, if applicable, the agency revises its proposed NEPA procedures based on CEQ's findings.
- Agency procedures that are not being promulgated by rulemaking are effective once CEQ completes consultation, and those procedures should be made publicly available. Agencies that are formalizing their NEPA procedures in regulations proceed to interagency processes before publication in the *Federal Register*. CEQ's consultation will not conclude until publication of the final rule.

Ultimately, like the February Guidance, the New Guidance urges agencies to continue their existing practices and procedures for NEPA implementation to the extent consistent with prevailing law and stresses that agencies should not delay NEPA reviews due to revision of implementing regulations. CEQ also encourages agencies to voluntarily rely on the now-rescinded CEQ regulations to complete ongoing NEPA reviews or in litigation regarding prior NEPA decisions. Lastly, the New Guidance makes clear that CEQ will continue to provide updated guidance as the NEPA taskforce continues its efforts and further changes are warranted.

What Does It Mean?

The New Guidance largely echoes the general concepts of the prior February Guidance, urging agencies to stay the

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course and continue NEPA reviews without delay and advising agencies to update their own NEPA implementing procedures with preference for the 2020 CEQ regulatory framework. In particular, CEQ's issuance of the Template may lead to most agencies adopting some form of the 2020 CEQ regulations, which in turn may address concerns regarding divergence of NEPA implementation across federal agencies. If most federal agencies use the Template in some fashion to develop or adopt their own NEPA implementing procedures, then this should lead to some consistency between agencies as to NEPA implementation, thereby affording more clarity and consistency to project sponsors.

Furthermore, CEQ's New Guidance strongly endorses the Supreme Court's analysis of NEPA in the *Seven County* decision and urges agencies to memorialize the decision in their NEPA implementing procedures. It is likely that the *Seven County* principles, including the scope of NEPA review and exclusion of actions that are separate in time or place, will be incorporated into future updates to agency NEPA implementing procedures. It is also likely that agency NEPA reviews will see increased scrutiny to go beyond the bare minimum that NEPA requires, which in turn may discourage agencies from looking beyond an action's effects, even though nothing in NEPA prohibits them from doing so.

Lastly, the New Guidance encourages agencies to update their NEPA procedures outside of the normal rulemaking process through issuance of a guidance document or handbook. While not required, this means that agencies may overhaul their NEPA procedures and further their NEPA procedures in the future, without any opportunity for public comment or involvement. This could also make NEPA procedures more elastic and subject to change, potentially resulting in less reliability for project sponsors.

How We Can Help

Holland & Knight's [Environmental Team](#) has been closely evaluating the rapidly evolving NEPA landscape, including CEQ's guidance and agencies' NEPA implementing procedures, and has extensive experience with successfully navigating the regulatory and commercial challenges associated with NEPA review. Please contact the authors if you have any questions.

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