



Council on Environmental Quality

National Environmental Policy Act Implementing Regulations

Bipartisan Permitting Reform Implementation Final Rule

National Association of Environmental Professionals
Webinar

September 3, 2024



NEPA and Rulemaking History

- January 1, 1970: National Environmental Policy Act (NEPA) enacted
- November 29, 1978: First CEQ NEPA implementing regulations
- July 16, 2020: 2020 Rule
- April 20, 2022: Phase 1 Rule
- June 3, 2023: 2023 NEPA amendments enacted in the Fiscal Responsibility Act of 2023
- July 31, 2023: Bipartisan Permitting Reform Implementation (BPRI)/Phase 2 Proposed Rule
- May 1, 2024: Bipartisan Permitting Reform Implementation (BPRI)/Phase 2 Final Rule

Overview of Final Rule



Implements the Fiscal Responsibility Act's NEPA Amendments

- Sets deadlines and page limits for environmental reviews
- Requires designation of lead agency and sets expectations for lead, joint lead, and cooperating agencies
- Expands use of programmatic environmental reviews
- Allows agencies to adopt other agencies' categorical exclusions



Implements the Fiscal Responsibility Act's NEPA Amendments

- Requires analysis of the adverse effects of no action
- Requires documents to be prepared with professional integrity, including scientific integrity, and use reliable data and resources
- Establishes roles when applicants and contractors are involved
- Updates definitions, including major Federal action



Improves Efficiency and Effectiveness

- Creates more flexible methods to establish categorical exclusions
- Expands the use of programmatic reviews and tiering
- Adds clarity on supplementation and reevaluation of environmental impact statements and environmental assessments
- Clarifies adoption of environmental impact statements, environmental assessments, and categorical exclusion determinations
- Clarifies that agencies may prepare a “mitigated FONSI”



Improves Efficiency and Effectiveness

Spotlight - Information

- Requires agencies to use high-quality information, including reliable data and resources, models, and Indigenous Knowledge
- Moves Methodology and Scientific Accuracy provision to clarify applicability to all NEPA reviews
- Emphasizes importance of transparency and accessibility of material that is incorporated by reference



Improves Efficiency and Effectiveness

Spotlight - Deadlines and Schedules

- Adds end points for measuring deadlines
- Requires agencies to establish schedules and:
 - Consult and seek concurrence with joint lead, cooperating, and participating agencies
 - Consult with applicants
 - Consider factors in setting deadlines and schedules, including Tribal consultation
 - Include identified schedule milestones
 - Make environmental impact statement schedules publicly available



Improves Agency Coordination and Collaboration

- Requires designation of lead agency and sets expectations for lead, joint lead, and cooperating agencies
- Promotes shared analysis to avoid duplication of effort
- Requires preparation of joint environmental documents
- Emphasizes coordination with State, Tribal, and local governments and agencies



Improves Agency Coordination and Collaboration

Spotlight - Applicant and Contractor Involvement

- Clarifies responsibilities when applicants and contractors are involved
- Adds definition of “applicant,” inclusive of project sponsor
- Sets minimum requirements for agency procedures for applicant-prepared environmental assessments and environmental impact statements:
 - Review and approval of the purpose and need and reasonable alternatives
 - Independent evaluation of the applicant-prepared document
 - Prohibition on applicant-prepared findings of no significant impact or records of decision



Encourages Better Environmental and Climate Change Outcomes

- Ensures evaluation of a reasonable range of alternatives
- Directs agencies to identify the environmentally preferable alternative in the draft environmental impact statement rather than only in the record of decision
- Provides additional direction on analysis of reasonably foreseeable environmental effects
- Requires quantification of reasonably foreseeable greenhouse gas emissions where feasible



Encourages Better Environmental and Climate Change Outcomes

Spotlight - Effects

Significance Determinations

- Restores context and intensity factors
- Only adverse effects are significant
- Agencies should consider duration
- Agencies may consider the extent to which an effect is adverse at some points in time and beneficial at others
- Agencies cannot offset adverse effects with other beneficial effects to determine significance

Discussion of Reasonably Foreseeable Effects

- Agencies must discuss the reasonably foreseeable effects of a proposed action and alternatives
- Agencies should consider a non-exclusive list of effects when they are reasonably foreseeable, such as relevant risk reduction, resiliency, or adaptation measures
- Definition of “effects” incorporates “reasonably foreseeable” in the definition



Encourages Better Environmental and Climate Change Outcomes

- Clarifies that agencies may prepare a “mitigated FONSI” if an action will include mitigation to address significant effects
- Monitoring and compliance plans are required when:
 - An environmental assessment or environmental impact statement relies on mitigation as a component of the proposed action to analyze reasonably foreseeable effects; and
 - The agency incorporates mitigation into a record of decision, finding of no significant impact, or other decision document



Promotes Early and Robust Public and Governmental Engagement

- Clarifies the purpose of and agency responsibility for conducting public and governmental engagement
- Requires agencies, where appropriate, to conduct early engagement
- Connects the relationship between determining scope of an action; conducting scoping for an environmental impact statement; and conducting public and governmental engagement
- Requires agencies to identify Chief Public Engagement Officers
- Adds provisions related to making documents available to the public



Addresses Environmental Justice

- **Public Engagement:** Requires agencies to consider the needs of affected communities when developing outreach and notification strategies
- **Definitions:** Defines “environmental justice” and “communities with environmental justice concerns”



Addresses Environmental Justice

- **Context Factors:** Encourages agencies to consider characteristics of the geographic area, such as the proximity to communities with environmental justice concerns
- **Intensity Factors:** Adds the degree to which the action may adversely affect communities with environmental justice concerns
- **Environmental Consequences:** Requires analysis of any reasonably foreseeable disproportionate and adverse human health and environmental effects on communities with environmental justice concerns
- **Mitigation:** Encourages mitigation measures that address or ameliorate significant human health and environmental effects of proposed actions that disproportionately and adversely affect communities with environmental justice concerns



Addresses Legal Issues

- Helps ensure projects are on a strong legal footing, incorporating longstanding case law and best practices for collaboration and coordination across agencies
- Removes provisions that created litigation risk and jeopardized community input
- Removes detailed and onerous requirements on what public comments must contain to be considered by agencies
- Removes provisions that attempted to curtail judicial review



Key Dates and Materials

- **Effective Date: July 1, 2024**
 - Applies to new actions as of this date
- **Agencies to Propose Procedures to CEQ: July 1, 2025**
- **Materials available at www.nepa.gov:**
 - Final Rule
 - Redline Comparing Current Regulations to Final Rule
 - Response to Comments
 - Regulatory Impact Analysis
 - Special Environmental Assessment
 - Updated Desk Reference
 - Slides

Questions?