

Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503.

Via Federal eRulemaking portal: <https://www.regulations.gov>

RE: docket number CEQ–2021–0001

July 27, 2021

Dear CEQ:

We are responding to your Federal Register notice of June 29, 2021 (86 Fed Reg 34154), issuing an interim final rule extending the deadline for Federal agencies to develop or revise proposed procedures for implementing the procedural provisions of the National Environmental Policy Act (NEPA).

We agree with this interim final rule (but see below) extending the deadline for agency compliance with section 1507.3(b) of the NEPA rule, which requires agencies to develop or revise their regulations for applying NEPA to conform with the CEQ’s rule issued on July 16, 2020. It would make no sense to require agencies to comply with the previous deadline, September 14, 2021, since the CEQ’s clear intent is to revise the entire rule.

Many of us commented on the proposed revision of the NEPA rule (85 Fed Reg 1684 et seq., January 10, 2020). We pointed out that the draft rule had serious problems, especially with regard to requirements for disclosing cumulative impacts and those related to climate change. Unfortunately, the final rule (85 Fed Reg 43304, July 16, 2020) did not address these and other issues expressed by many commenters. Thus we appreciate the CEQ’s commitment to closely examine, and probably revise significantly, the existing NEPA rule:

CEQ has begun its review of the 2020 Rule and has substantial concerns about the legality of the 2020 Rule, the process that produced it, and whether the 2020 Rule meets the nation’s needs and priorities, including the priorities set forth in E.O. 13990 and E.O. 14008. These concerns include that some of the changes made to the NEPA regulations create confusion with respect to NEPA implementation, break from longstanding caselaw interpreting NEPA’s statutory requirements, and may have the purpose or effect of improperly limiting relevant NEPA analysis, with negative repercussions in critical areas such as climate change and environmental justice that are inconsistent with the mandates of E.O. 13990 and E.O. 14008. CEQ plans to address these issues through further rulemaking, ...

86 Fed Reg 31455.

In this regard, we ask the CEQ to remove altogether the time limit for agencies to formulate or revise their NEPA procedures for the current rule, since it appears highly likely from the above

that CEQ will issue a new NEPA rule that will be considerably different than the current one. Hopefully, the new rule will be finalized before the new deadline proposed in the just-issued interim rule, September 14, 2023. It makes no sense for agencies to begin establishing or revising their NEPA procedures to conform to a rule that will be significantly changed.

We strongly encourage the CEQ to proceed with all deliberate speed in revising the NEPA rule, taking to care to comply with all procedural requirements of the Administrative Procedures Act, 5 U.S.C. 551 et seq.

Sincerely,

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