



ZERO EMISSION
TRANSPORTATION
ASSOCIATION

Summary of CEQ's Final Rule on NEPA Phase 2 Revisions

Agency: Council on Environmental Quality

Action: Final Rule

Announced: May 1, 2024

Effective Date: June 30, 2024

Federal Register Publication: [Here](#)

Key Links:

- [Proposed rule](#) (July 2023)
- ZETA [comments](#) (September 2023)

Overview

The Council on Environmental Quality has published a final rule on revisions to the procedural provisions of the National Environmental Policy Act (NEPA). These revisions have five general categories:

1. Implementing amendments to NEPA made by the Fiscal Responsibility Act of 2023,
2. Amendments to regulations to enhance consistency and clarity,
3. Revising regulations to improve efficiency and effectiveness of the environmental review process,
4. Reverting to and revising certain language from the 1978 regulation, amended by the Trump administration in 2020,
5. Removing certain provisions added by the Trump administration's 2020 rule.

The most notable streamlining changes related to improving efficiency and effectiveness of the NEPA process are:

1. Setting 150-page limits on Environmental Impact Statements (EISs), and 300-page limits for "proposals of extraordinary complexity"
2. Requiring the completion of an Environmental Assessment (EA) within one year, and an EIS within two years
3. Designating a single lead federal agency for each NEPA process, including EAs and EISs, and granting CEQ the authority to designate one if relevant agencies cannot decide themselves

CEQ's Response to ZETA's Recommendations

ZETA treated this comment period as an opportunity to elevate our [permitting reform framework](#) and included these recommendations in our written comments.

- Appoint a single lead Federal agency to oversee the application process from start to finish for designated projects. Information such as deadlines, descriptions of documents required for environmental reviews, and other relevant materials should be provided to the applicant by the Federal lead agency.
 - CEQ is eliminating reference to “complex” Environmental Assessments (EAs), such that regulations now require a lead agency to supervise the preparation of any Environmental Impact Statement (EIS) or EA for any actions involving more than one agency.
 - The lead agency may invite Federal, State, Tribal, or local agencies to serve as joint lead agency.
 - CEQ clarifies that if a lead agency has not been designated 45 days after the first written request to agencies to determine a lead agency, CEQ may, by written request from an agency involved, designate a lead agency.
- Address the 2022 decision by the 9th Circuit Court regarding the Rosemont Copper mine to ensure certainty in the domestic production of minerals including lithium, copper, and cobalt.
 - CEQ did not comment on the 9th Circuit Court decision in this rulemaking.
- Identify a specific set of EV and electrification mineral projects designated as important to national security and thus eligible for a reformed and streamlined review process. If a critical minerals project has already been supported by the Defense Production Act, it would automatically be designated as a project of national importance.
 - CEQ did not address these concerns in its final rule.
- Align permitting review timelines for hardrock mineral projects with the Fiscal Responsibility Act by creating a two-year maximum deadline for the lead agency to review projects and issue a final decision for an Environmental Impact Statement and one year for an Environmental Assessment.
 - The CEQ finalized a proposed rule to require agencies to complete EAs within one year and EISs in two years, unless the lead agency extends the deadline in writing and “establishes a new deadline that provides only so much additional time as is necessary to complete” the EA or EIS.
- Create a 150-day deadline for legal appeal of the lead agency’s final decision to ensure litigation risk does not unnecessarily delay properly permitted, high-priority EV and electrification mineral and battery projects.

- CEQ did not address these concerns in its final rule.
- Direct the federal permitting agency to issue a Record of Decision on proposed hardrock mineral production projects, thereby eliminating the requirement to review “no action” alternatives.
 - CEQ clarified that the role of the no action alternative is to ensure that agencies don’t distort the comparative analysis by selecting a different alternative as the baseline against which to assess all other alternatives. They did not comment on the elimination of the requirement to review no action alternatives.
- Direct appeals of such decisions directly to the D.C. Circuit Court to ensure a timely judicial review process.
 - CEQ did not address these concerns in its final rule.
- Support, align, and facilitate the build out of electric vehicle charging infrastructure consistent with the administration’s stated goals by listing federally-funded charging stations as categorical exclusions for all agencies.
 - CEQ did not implement this in the final rule, however, the Department of Transportation [adopted](#) categorical exclusions for FHWA-funded chargers in September 2023.
- Properly address and quantify GHG emissions and climate change impacts of federal projects.
 - CEQ had originally invited comment on whether or not to codify its 2023 NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, but chose not to with the exception of including GHG and climate change quantification in analysis of environmental consequences, but only “where applicable.” However, CEQ did include the following: “Section 1500.2(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these action upon the quality of the human environment, such as alternatives that will reduce climate change-related effects or address adverse health and environmental effects that disproportionately affect communities with environmental justice concerns.”