



March 26, 2025

VIA ELECTRONIC SUBMISSION

Ms. Katherine Scarlett
Chief of Staff
White House Council on Environmental Quality
730 Jackson Place, NW
Washington, DC, 20503

Re: Removal of National Environmental Policy Act Implementing Regulations, Docket No. CEQ-2025-0002, RIN 0331-AA10

Dear Ms. Scarlett,

On February 25, 2025, the White House Council on Environmental Quality (CEQ) published an interim final rule removing regulations implementing the National Environmental Policy Act (NEPA).¹ This letter constitutes the Office of Advocacy's (Advocacy) public comments on the CEQ's interim final rule.

Advocacy has discussed the CEQ's interim final rule with small businesses from multiple sectors of the economy. Advocacy and the small businesses we spoke with are in general support for the CEQ's actions. However, there is apprehension about how individual agencies may fill the void left by removing the CEQ's NEPA regulations. Advocacy stands ready to help the CEQ and other federal agencies better understand the impacts small entities face as they navigate the post-CEQ NEPA process. Advocacy is prepared to offer input on how individual agencies can better assess potential impacts to small businesses as they implement their own NEPA regulations.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA) that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

¹ 90 Fed. Reg. 10610 (Feb. 25, 2025).

The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.⁴ If a rule is not expected to have a significant economic impact on a substantial number of small entities, agencies may certify it as such and submit a statement of the factual basis for such a determination that adequately supports its certification.⁵

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁶ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the Federal Register, unless the agency certifies that the public interest is not served by doing so.⁷

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."⁸

B. The Interim Final Rule

The CEQ's interim final rule repeals the agency's NEPA implementation regulations in compliance with Executive Order (EO) 14154, *Unleashing American Energy*.⁹ Additionally, recent federal court decisions have held the CEQ does not have the authority to issue binding NEPA regulations.¹⁰ As a result of both EO 14154 and these recent court decisions, the agency has noted that it "is concerned that agencies and the public are confused as to the status and legitimacy of its NEPA regulations."¹¹ To resolve this confusion and comply with EO 14154 and the federal courts, the CEQ has elected to both promulgate this interim final rule and solicit public comment.¹²

In conjunction with the interim final rule, the CEQ has also issued NEPA implementation guidance to federal agencies.¹³ The guidance states individual agencies, in accordance with EO 14154, "must revise or establish their NEPA implementing procedures (or establish such

² Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

³ Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

⁴ 5 U.S.C. § 603.

⁵ *Id.* § 605(b).

⁶ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

⁷ *Id.*

⁸ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

⁹ 90 Fed. Reg. 8353 (Jan. 29, 2025).

¹⁰ *See, e.g.,* *Marin Audubon Soc'y v. FAA*, 121 F.4th 902 (D.C. Cir. 2024); *Iowa v. Council on Env't Quality*, No 1:24 cv00089, 2025 U.S. Dist. LEXIS 36732 (D.N.D. Feb. 3, 2025).

¹¹ 90 Fed. Reg. 10614 (Feb. 25, 2025).

¹² *Id.*

¹³ Memorandum from Katherine Scarlett, Chief of Staff, Council on Env't Quality, to Heads of Federal Departments & Agencies, *Implementation of the National Environmental Policy Act* (Feb. 19, 2025), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf>.

procedures if they do not yet have any) to expedite permitting approvals.”¹⁴ The guidance gives agencies one year to complete revision or establishment of NEPA regulations and encourages 30 to 60 days of public comment when appropriate.¹⁵ While developing or revising their NEPA regulations, CEQ states that agencies should “not delay any pending or ongoing NEPA analyses” and “apply their current NEPA implementing procedures with any adjustments needed.”¹⁶

Separately, on June 3, 2023, the Fiscal Responsibility Act of 2023 (FRA) was signed into law.¹⁷ Among other changes to NEPA, the FRA sets a time limit of two years for an environmental impact statement (EIS) and one year for an environmental assessment (EA).¹⁸ Additionally, the law sets a limit of 200 pages for an EIS and 75 pages for an EA.¹⁹ Both the CEQ’s interim final rule and guidance stress the need to maintain the FRA’s requirements throughout NEPA’s review process.

II. Advocacy’s Small Business Interests in CEQ’s Interim Final Rule

Small entities are directly impacted by the NEPA process. The projects which undergo NEPA review are built by and provide direct benefits to small businesses.²⁰

Advocacy discussed the CEQ’s interim final rule with small businesses from multiple sectors of the economy. While there is overall support for the CEQ’s actions, Advocacy also recommends the CEQ focus, to the maximum extent possible, on reducing unnecessary confusion and prioritizing consistency while these changes to NEPA take place.

A. CEQ Should Encourage Agencies to Prioritize Consistency in NEPA Procedures.

As a result of the CEQ withdrawing its NEPA implementation regulations, individual agencies will assume the responsibility for NEPA compliance. While some agencies have already developed NEPA procedures, others have not. In the past, the CEQ has provided a baseline for other agencies’ NEPA rules.

Without the CEQ’s implementing regulations, agencies will have the flexibility to develop their own procedures for meeting NEPA’s requirements while focusing on their own statutory mandates. Further, agencies will be able to take better advantage of their familiarity with the specific projects they build. For example, the U.S. Department of Transportation has a greater degree of familiarity with transportation projects than the U.S. Department of Energy, and their NEPA regulations should reflect this.

¹⁴ *Id.* at 1.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 1.

¹⁷ Pub. L. No. 118-5, tit. III, 137 Stat. 38.

¹⁸ 42 U.S.C. §4336a(g)(1).

¹⁹ *Id.* §4336a(e).

²⁰ See Press Release, Small Bus. & Entrepreneurship Council, Press Release, *Small Business Group Applauds NEPA Modernization Rule* (July 15, 2020), <https://sbecouncil.org/2020/07/15/small-business-group-applauds-nepa-modernization-rule/> (“Reducing NEPA delays, red tape, and costs will allow our economy to more quickly reap the benefits of modern infrastructure, which will save time and money for individuals and small businesses alike. The environment will also benefit through less congestion, faster routes and projects that promote energy efficiency and alternatives.”).

At the same time, there are many small businesses who work on and are impacted by projects involving multiple agencies. It is important that when developing their NEPA implementation regulations, agencies maintain a degree of consistency to avoid a scenario where small businesses must follow an array of different NEPA rules. Confusion for small businesses could arise on projects involving more than one federal agency. In such cases, designation of a lead agency could prevent conflicts between different agency NEPA regulations. Additionally, the CEQ should specify that on such projects, small businesses need only comply with the lead agency's NEPA regulations as opposed to multiple agency NEPA requirements.

Consistency is important as agencies review different types of projects under their jurisdiction. NEPA is not a statute designed to influence outcomes or express a preference for one type of project over another. Rather it is intended to establish one review process to be used to evaluate all federal actions and/or projects. In other words, a new road should receive the same NEPA review as a new public transit system, and a new solar project should receive the same NEPA review as a new natural gas pipeline. Applying NEPA in this manner will further reduce confusion for small businesses involved with these projects.

Confusion over the NEPA process often leads to litigation, which adds an average of 4.2 years to a project's completion time.²¹ This impacts the small businesses who both build and benefit from the projects. To reduce this confusion and help minimize litigation-related delays, Advocacy recommends the CEQ stress the importance of consistency to agencies in both NEPA regulations and application.

B. CEQ Should Encourage Agencies to Develop NEPA Procedures which Help to Achieve FRA Goals.

The CEQ's own data shows that less than half of EIS documents were completed within the FRA's two-year limit in 2024.²² Further, in discussions with small entity representatives in the mining sector about prior NEPA regulations, Advocacy was told that an EIS can take anywhere from 7 to 10 years. One industry representative explained that they were working on a project where the process for a supplemental EIS took longer than the original EIS. Additionally, Advocacy was told that EAs of 2 to 4 years were not uncommon.

Advocacy has also been contacted by small businesses expressing confusion over the applicability of NEPA to federal Small Business Administration loan programs. Here, the CEQ's guidance points to the FRA's language stating "loans, loan guarantees, or other forms of financial assistance where a [f]ederal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action are not major federal actions."²³ The guidance further directs agencies to "carefully consider" any threshold above which a loan program would trigger NEPA in light of the congressional

²¹ The Breakthrough Inst., *Understanding NEPA Litigation, A Systematic Review of Recent NEPA-Related Appellate Court Cases*, 3 (July 11, 2024), <https://thebreakthrough.org/issues/energy/understanding-nepa-litigation>.

²² Council on Env't Quality, *Environmental Impact Statement Timelines (2010-2024)*, 3 (Jan. 13, 2025), https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2025-1-13.pdf.

²³ Memorandum from Katherine Scarlett, *supra* note 14, at 5, quoting 42 U.S.C. §4336e(10)(B)(i), (iii).

direction provided by the FRA.²⁴ Advocacy recommends CEQ continue to direct all federal agencies to adhere to the FRA when evaluating NEPA's application to individual loan programs and carefully review any agency regulations or practices which contradict the FRA on this issue.

Advocacy strongly supports the CEQ's guidance stating that agency NEPA implementing regulations should have "the goal of prioritizing efficiency and certainty over any other policy objectives."²⁵ Agencies should be encouraged to adopt NEPA procedures that move them closer to the FRA's goals. To accomplish this, individual agency NEPA procedures should not add additional regulatory requirements or be implemented in a manner that will increase the time necessary to complete an EA or EIS. CEQ should further evaluate agencies' proposed NEPA regulations to ensure the FRA's timelines and page limits will be upheld.

C. The Office of Advocacy Can be a Resource to CEQ and Individual Agencies as They Develop Individual NEPA Implementation Procedures

The Office of Advocacy can be a resource as the CEQ implements its interim final rule and individual agencies begin developing their own NEPA regulations. Advocacy routinely interacts with small businesses in all areas of the economy who work with nearly every federal agency. NEPA has been a regular topic of our conversations with these small entities. As agencies prepare to update or promulgate their own NEPA regulations, Advocacy is available to help gather information on how small businesses will be impacted by these changes.

III. Conclusion

Advocacy recommends the CEQ direct agencies to place an emphasis on both consistency and meeting the requirements of the FRA as they develop their own NEPA implementation regulations. Additionally, Advocacy stands ready to be a resource to help both the CEQ and individual federal agencies minimize impacts to small businesses as they meet NEPA's requirements.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Nick Goldstein at (202) 772-6948 or by email at nick.goldstein@sba.gov.

Sincerely,

/s/

Chip Bishop
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

²⁴ *Id.*

²⁵ *Id.* at 4.

/s/

Nick Goldstein
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: Mr. Jeffrey Clark, Sr. Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget