

Biden's Repeal of Permitting Reforms Hinders Infrastructure Improvements

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KEY TAKEAWAYS

President Biden's repeal of his predecessor's permitting reforms hinders the economic and safety benefits of infrastructure modernization.

The Administration's "action plan" to remedy regulatory roadblocks fails to address the President's misguided policies that compound permitting dysfunction.

The White House permitting regime unduly inflates the cost of federal projects, encourages judicial activism, and politicizes rulemaking.

A new "action plan"¹ from the Biden Administration purports to "strengthen and accelerate" the dysfunctional federal permitting process for infrastructure projects. It will not. Nothing in the plan eliminates the regulatory roadblocks to modernizing highways, airports, railways, or the electricity grid. The plan instead compounds the damage wrought by President Joe Biden's repeal of permitting reforms.

Onerous and unnecessary red tape has long plagued infrastructure development. Federal permitting for the average highway project takes seven years to complete,² while the average environmental assessment exceeds 1,700 pages.³ Regulatory delays impede the repair of teeth-rattling roads, deteriorating bridges, and timeworn rails and runways, compromising public safety. President

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Donald Trump attempted to streamline the permitting process to an average of two years,⁴ only to be reversed by President Biden on his first day in office.⁵

Among the most problematic of the permitting regimes is the National Environmental Policy Act (NEPA) of 1969. Thoroughly outdated, its many flaws include arbitrary standards, politicized decisions, and protracted litigation.

Reforms initiated by the Trump Administration were intended to remedy the more dysfunctional elements of the NEPA implementation rules. President Biden's scrapping of those reforms is now backfiring. The return to the regulatory swamp is hampering the President's \$1.2 billion infrastructure splurge,⁶ turning "Build Back Better" into "Build Back Bureaucracy."

The NEPA's dysfunction increases project costs substantially, which translates into fewer infrastructure improvements per taxpayer dollar. (The problem is exacerbated by record inflation raising the costs of construction materials.⁷) The North America's Building Trades Unions notes that the NEPA's permitting hurdles "deprive blue-collar workers of jobs and the ability to provide for their families."⁸

According to the Administration, its action plan "will help strengthen supply chains, lower costs for families, grow our clean energy economy, revitalize communities across the country, support good-paying jobs, and deliver infrastructure investments on task, on time, and on budget without unnecessary bureaucratic delay."⁹

That is nonsense. The plan largely consists of platitudes, such as "partnering with trusted local messengers to enhance the effectiveness and efficiency of public participation and conduct proactive outreach to diverse community members" and that agencies "make full use of available technology, data, and tools to efficiently and holistically assess environmental and community effects."

As detailed in Table 1, the few concrete actions in the plan largely duplicate pre-existing presidential and congressional directives and fail to address the Administration's misguided policies that compound the NEPA problems—such as the incorporation of speculative climate predictions in permitting decisions.

Having rescinded his predecessor's regulatory reforms, President Biden is now grappling with the predictable consequences. The Administration's hollow "action plan" cannot sidestep the bureaucratic hurdles of its own making. This is regulatory fate. But the consequences are not confined to the White House. The President's ill-conceived actions undercut public safety.

TABLE 1

Details of the Biden Action Plan (Page 1 of 2)

Biden Action Plan	Existing NEPA Rules and Policies
Directs the Federal Permitting Improvement Steering Council (FPISC) to improve coordination among agencies.	The FPISC was created in 2015 to facilitate permitting coordination among agencies. ^a
Directs the Department of Transportation’s Infrastructure Permitting Improvement Center (IPIC) to help facilitate environmental review and permitting.	The IPIC was created in 2016 to facilitate environmental review and permitting of infrastructure projects. ^b
A lead federal agency will develop and implement coordination plans, interagency agreements, or other mechanisms to ensure sustained and effective coordination and accountability.	The designation of a lead federal agency was established by the Council on Environmental Quality (CEQ) in its 1978 NEPA implementation rules ^c ; President Trump expanded the role of a lead federal agency in EO 13807. ^d
Directs agencies to convene “sector-specific teams of experts” to facilitate interagency coordination.	The FPISC and the IPIC exist to facilitate interagency coordination of permitting.
Creates permitting schedules with clear timeline goals.	President Trump’s EO 13807 established timeline requirements in permitting; timelines were also codified in the Infrastructure Investment and Jobs Act of 2021. ^e
Directs agencies to track project information on the federal Permitting Dashboard.	The federal Permitting Dashboard was established by Congress in 2011. ^f
Directs agencies conducting NEPA reviews to consult with affected Tribal Nations.	Requirements for consultations with Tribal Nations were established in President Bill Clinton’s EO 13175 ^g ; requirements were also included in the CEQ’s 1999 memorandum on implementing the NEPA. ^h
Directs agencies to coordinate with relevant state, territorial, and local governments.	NEPA implementation rules already require agencies to consult with state and local governments.
Directs agencies to review and update policies, procedures, and staffing to ensure that the public, including disadvantaged communities, has a meaningful opportunity to participate in decision-making.	Agencies are required to provide “meaningful public participation” in the NEPA review ⁱ ; the Trump Administration expanded opportunities for public engagement by instituting online notice and comment of NEPA reviews. ^j
Directs agencies to identify, share, or develop resources, trainings, and tools to help stakeholders navigate the environmental review and permitting process.	The Trump Administration revised the NEPA implementation rules to improve the readability of agency documents online ^k ; the reforms also provided agencies greater flexibility in transmitting information to the public in lieu of a public hearing.

TABLE 1

Details of the Biden Action Plan (Page 2 of 2)

Biden Action Plan	Existing NEPA Rules and Policies
Directs agencies to review agencies' information collection requirements to help consolidate or simplify reporting requirements.	The Trump Administration revised the NEPA implementation rules to allow agencies to use documents required by other statutes or prepared by state, tribal, and local agencies to comply with the NEPA; to require agencies to use "reliable existing information and resources; and to permit agencies to forego new scientific and technical research to inform their analyses. ¹

SOURCES:

- a 42 U.S. Code § 4370m-1.
- b U.S. Department of Transportation, "The Infrastructure Permitting Improvement Center," <https://www.transportation.gov/PermittingImprovementCenter> (accessed August 1, 2022).
- c Council on Environmental Quality, "National Environmental Policy Act—Regulations," Final Regulations, *Federal Register*, Vol. 43, No. 230 (November 29, 1978), p. 55978, <https://ceq.doe.gov/docs/laws-regulations/FR-1978-11-29-43-FR-55978-CEQ-NEPA-Regulations-NOFR.pdf> (accessed August 2, 2022).
- d Presidential Documents, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects," Executive Order 13807 of August 15, 2017, *Federal Register*, Vol. 82, No. 163 (August 24, 2017), p. 40463, <https://www.govinfo.gov/content/pkg/FR-2017-08-24/pdf/2017-18134.pdf> (accessed August 1, 2022).
- e H.R. 3684, Infrastructure Investment and Jobs Act, 117th Congress, 2021–2022, <https://www.congress.gov/bill/117th-congress/house-bill/3684/text> (accessed August 1, 2022).
- f Permitting Dashboard, "The Biden–Harris Permitting Action Plan," <https://www.permits.performance.gov/> (accessed August 1, 2022).
- g Presidential Documents, "Consultation and Coordination with Indian Tribal Governments," Executive Order 13175 of November 6, 2000, *Federal Register*, Vol. 65, No. 218 (November 9, 2000), p. 67249, <https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments> (accessed August 1, 2022).
- h Council on Environmental Quality, "Memorandum for Heads of Federal Agencies," Designation of Non-Federal Agencies to Be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, July 28, 1999, <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ceqcoop.pdf> (accessed August 1, 2022).
- i 40 CFR § 6.203.
- j Council on Environmental Quality, "Update to Regulations Implementing the Procedural Provisions of NEPA," *Federal Register*, Final Rule, Vol. 85, No. 137 (July 16, 2020), p. 43304, <https://www.govinfo.gov/content/pkg/FR-2020-07-16/pdf/2020-15179.pdf> (accessed August 1, 2022).
- k Ibid.
- l Ibid.

The NEPA in a Nutshell

Congress crafted the NEPA in 1969 to inject environmental stewardship into federal agency actions. The 3,200-word statute requires every executive branch department to assess the environmental effects of "major"¹⁰ public works projects¹¹ and other budgetary and regulatory actions with

potentially “significant” effects.¹² Signed by President Richard Nixon on January 1, 1970, the law also established the Council on Environmental Quality (CEQ) within the Executive Office of the President to administer the NEPA implementation.

Unlike many other environmental statutes, the NEPA is not a “substantive” law; rather than mandate performance standards, it imposes procedural obligations on federal agencies. These include, in part, requiring agencies to consider the environmental impacts of the proposed action, any unavoidable adverse effects, and alternatives to the proposed action.

The act predates the Environmental Protection Agency and virtually all federal environmental statutes, and thus its architects were relatively naive about bureaucratic self-interest, the politicization of science, and flagrant judicial activism—all of which have rendered the NEPA costly, time-consuming, and riddled with conflict.

The NEPA’s aspirational text presents virtually endless opportunities for bureaucratic wrangling and litigation in infrastructure permitting. Green activists exploit judicial review of NEPA procedures to halt even upgrades to highways, pipelines, the electricity grid, water resources, and broadband, among others. The mere filing of a NEPA lawsuit and the resulting delays are often as effective in crippling projects as prevailing in court.

In actuality, the 50-year-old act could be repealed without any adverse effects. Dozens of other federal and state regulations protect water and air quality, wetlands, and endangered species and control run-off, hazardous waste, construction debris, demolition dust, and every other potential byproduct of infrastructure projects.¹³

Action Plan Details

According to the White House, the action plan

outlines the administration’s strategy for ensuring that Federal environmental reviews and permitting processes are effective, efficient, and transparent, guided by the best available science to promote positive environmental and community outcomes, and shaped by early and meaningful public engagement.¹⁴

That is not the case. None of the elements address the systemic flaws in agencies’ administration of the NEPA nor do they compensate for President Biden’s trashing of essential reforms. As documented below, the majority of the actions in the plan duplicate policies adopted by previous Administrations or enacted by Congress.

Trump Administration Reforms

Upon taking office in 2017, President Trump initiated NEPA reforms with Executive Order 13766,¹⁵ which directed agencies to designate select infrastructure projects as “high priority” for the purpose of expediting permitting reviews. Six months later, Executive Order 13807¹⁶ prescribed a policy of “One Federal Decision,” whereby a lead agency is assigned to steer the NEPA review and compile a single record of agencies’ actions. The Trump executive order also called for reducing the processing time for reviews to “not more than an average of approximately two years.” Upon completion of the review, authorization for construction was required to be issued within 90 days.

Executive Order 13807 also directed the CEQ to modernize the environmental review and authorization process. The council issued its update of the NEPA implementation rules on July 16, 2020 (effective September 14, 2020).¹⁷ The reforms included:

- Allowing agencies to use documents required by other statutes or prepared by state, tribal, and local agencies to comply with the NEPA;
- Clarifying that agencies should use reliable existing information and resources—and are not required to undertake new scientific and technical research to inform their analyses;
- Stating explicitly that harm from the failure to comply with the NEPA can be remedied by compliance with the NEPA’s requirements, and a violation of the procedural rules does not create a per se cause of action;
- Requiring a demonstration of an immediacy of harm (unrelated to a mere violation of statutory procedures) for injunctive relief;
- Requiring agencies to scope the NEPA reviews on the “purpose and need” of the applicant, not agencies’ political goals, limited to matters within the agency’s authority;
- Barring agencies from imposing NEPA requirements that exceed those of the CEQ; and
- Excluding outside parties from raising claims based on issues they did not raise during the public comment period.

Of particular importance were changes to the extent of “alternatives” to a proposed action that agencies must consider, and the range of “effects” that must be assessed in the NEPA analyses.

Alternatives. The NEPA statute requires agencies that prepare environmental impact statements (EISs) to “study, develop, and describe appropriate alternatives to recommended courses of action.” It does not specify the type or number of alternatives that must be considered.

The original implementation rules directed agencies to “[r]igorously explore and objectively evaluate all reasonable alternatives.”¹⁸

The ambiguous reference to “all” provided agencies and activists leverage to endlessly challenge the sufficiency of agency review. The Trump Administration, in its 2020 reforms, deleted “all” before “reasonable alternatives,” in keeping with the text of the NEPA.¹⁹ As the Administration noted, there was no necessity for the consideration of alternatives to be exhaustive “where the consideration of a spectrum of alternatives allows for the selection of any alternative within that spectrum.”²⁰ Thus, the change was a sensible check on unnecessarily protracted and costly assessments.

The Trump Administration also defined “reasonable alternatives” to mean “a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.” Indeed, to consider infeasible alternatives would waste the resources of both agencies and applicants while unnecessarily delaying public health and safety benefits from infrastructure improvements.

Effects. The NEPA requires agencies to evaluate the environmental impacts and effects of a proposed action, but the statute does not address the scope of such analyses. The original implementation rules categorized effects as “direct,” “indirect,” and “cumulative” for that purpose.²¹ In the context of environmental forecasting, the nature of “indirect” and “cumulative” effects is highly speculative, and many, such as purported climate change, are well beyond the control of both agencies and permit applicants. Such a broad scope resulted in unnecessarily expansive and speculative analyses and, consequently, excessive litigation.

The Trump Administration defined the scope of effects as “reasonably foreseeable and hav[ing] a reasonably close causal relationship to the proposed action or alternatives.”²² Indeed, it is entirely rational that agencies refrain from considering effects that are remote in time, geographically remote, the product of a lengthy causal chain, or those that would occur regardless of the proposed action.

These reforms were long overdue and hardly radical; the changes largely conformed to rulings by the U.S. Supreme Court.²³

The Biden Revocations

Hours after taking office, President Biden issued Executive Order 13990, which revoked President Trump’s reforms, directing all executive departments and agencies to “immediately commence work to reverse NEPA regulations promulgated by the Trump Administration.”²⁴

In response, on April 20, 2022, the CEQ published a final rule to “restore provisions that were in effect for decades before being modified in 2020.”²⁵ The rulemaking largely targeted three elements of the Trump reforms: (1) the formulation of the “purpose and need” of the project and the scope of alternatives to be considered; (2) the definition of “effects”; and (3) the authority of agencies to adopt NEPA implementation rules that exceed the CEQ standards.

In so doing, the Biden Administration resurrected all the dysfunction that the Trump reforms had addressed—all of which inhibit public safety improvements, job creation, and economic growth.

Of particular concern is the reformulation of a project’s “purpose and need.”²⁶ Such determination bears directly on the scope of the review and the range of alternatives the agency considers. The Biden Administration has granted agencies broad discretion to base the purpose and need on “desired conditions on the landscape or other environmental outcomes, and local economic needs.”²⁷ In other words, the Administration allows agencies to tailor permitting decisions to political objectives.

Likewise, the Biden rulemaking grants agencies broad discretion to adopt NEPA requirements that exceed those instituted by the CEQ²⁸—despite the lack of statutory justification. Such discretion unduly empowers the administrative state, fuels regulatory uncertainty, and invites protracted litigation.

Thousands of comments submitted to the CEQ in response to its rulemaking criticized the reversal of President Trump’s reforms as arbitrary and capricious for failing to supply, as required, a reasoned analysis for the changes.²⁹ As a joint comment from two dozen major trade associations noted: “CEQ has not explained why the rationale supporting the 2020 Rule is no longer applicable in order to justify its change in position. Further, CEQ makes the conclusory assertion, without any supporting examples, that the agencies are struggling to implement the 2020 Rule.”³⁰

Alas, the Biden Administration's reform reversal is only the initial step in a radical rewrite of the NEPA rules. In the works is a "more comprehensive" Phase 2 rulemaking to elevate environmental and "equity" dogma into virtually all infrastructure permitting, or, as the Administration puts it, to "protect and enhance the quality of the human environment and advance environmental, climate change mitigation and resilience, and environmental justice objectives."³¹

As with so much of the leftist manifesto, this conceit of government's efficacy and beneficence is unwarranted. In actuality, the Biden Administration's radical regulatory agenda has provoked social and economic misery.

Recommendations for Congress

The optimum policy option is to repeal the NEPA entirely. Under current political circumstances, however, incremental reform by Congress is necessary. A variety of reforms instituted by the Trump Administration should be codified, along with others that would lower barriers to investment, job creation, and economic growth—particularly (but not exclusively) for infrastructure and energy-related projects. Congress should:

1. **Require** all NEPA reviews to be completed within two years (from publication of the notice of intent) and the production of a record of decision within 90 days of the issuance of a final EIS.
2. **Limit** the section on alternatives analysis within the EIS to a maximum of 200 pages.
3. **Allow** agencies to use documents required by other statutes or prepared by state, tribal, and local agencies in the NEPA process.
4. **Permit** agencies to forego new scientific and technical research for the NEPA analyses and to utilize reliable existing materials.
5. **Require** agencies to scope the NEPA reviews on the purpose and need of the applicant, not agencies' political goals, and limit the purpose of need framework to matters within agencies' statutory authority.
6. **Prohibit** agencies from imposing the NEPA requirements that exceed those issued by the CEQ.

7. **Exclude** outside parties from raising claims based on issues they did not raise during the public comment period.
8. **Codify** that a violation of procedural rules does not create a per se cause of action, and that failure to comply with procedural rules can be remedied by compliance with the NEPA's requirements.
9. **Require** a showing of an immediacy of harm for injunctive relief.
10. **Revise** the statute of limitations for infrastructure permits and decisions from six years to six months.
11. **Limit** agencies' consideration of alternative to "reasonable alternatives" (instead of "all reasonable alternatives") and define "reasonable alternatives" to mean a range of alternatives that are technically and economically feasible and relevant to the purpose and need of the proposed action.
12. **Define** the scope of "effects" in the NEPA reviews as those that are reasonably foreseeable and have a close causal relationship to the proposed action and alternatives.
13. **Limit** "effects" in the NEPA reviews to "direct effects" and disallow consideration of "indirect" and "cumulative" effects.
14. **Prohibit** consideration of global warming effects in the NEPA review process.
15. **Require** the designation of a lead agency to supervise the NEPA reviews when a project requires the involvement of more than one federal agency; **require** the lead agency to develop a schedule for all reviews and authorizations required for implementation of the action; and **require** a single environmental assessment, EIS, and record of decision when multiple agencies are involved in the NEPA review.
16. **Authorize** the repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility damaged by an emergency as a categorical exclusion;³² **exempt** preventative maintenance of infrastructure, including safety improvements, as well as geotechnical and archeological investigations from the NEPA review.

17. **Allow** project applicants to commit to environmental performance standards in lieu of the NEPA reviews.

Conclusion

The history of the NEPA reflects many of the vexing problems associated with the modern administrative state. The Trump Administration instituted reforms to cut through the NEPA's hyper-politicized regime and to "facilitate more efficient, effective, and timely NEPA reviews." Having reversed those reforms, President Biden is scrambling to mitigate the damage. His hollow "action plan" does not suffice.

The NEPA could be repealed without adverse effects because there are dozens of other regulations that control every environmental byproduct of infrastructure improvement. Its primary purpose, at present, is to facilitate legal challenges to development. The NEPA is an anachronism that unduly complicates federal projects, encourages judicial activism, and politicizes rulemaking.

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Endnotes

1. The White House, "The Biden-Harris Permitting Action Plan to Rebuild America's Infrastructure, Accelerate the Clean Energy Transition, Revitalize Communities, and Create Jobs," May 11, 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/05/Biden-Harris-Permitting-Action-Plan.pdf> (accessed August 1, 2022).
2. Council on Environmental Quality, "Update to Regulations Implementing the Procedural Provisions of the National Environmental Policy Act," *Federal Register*, Vol. 85, No. 137 (July 16, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-07-16/pdf/2020-15179.pdf> (accessed August 1, 2022). The Council on Environmental Quality observed that the average time across all federal agencies for completion of the NEPA review was 4.5 years, with only one-quarter of environmental impact statements (EISs) being completed in under 2.2 years.
3. Council on Environmental Quality, Length of Environmental Impact Statements (2013–2018), June 12, 2020, https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Length_Report_2020-6-12.pdf (accessed August 1, 2022).
4. Council on Environmental Quality, "Update to Regulations Implementing the Procedural Provisions of the National Environmental Policy Act," *Federal Register*, Vol. 85, No. 137 (July 16, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-07-16/pdf/2020-15179.pdf> (accessed August 1, 2022).
5. Council on Environmental Quality, "National Environmental Policy Act Implementing Regulations Revisions," Final Rule, *Federal Register*, Vol. 87, No. 76 (April 20, 2022), p. 23453, <https://www.govinfo.gov/content/pkg/FR-2022-04-20/pdf/2022-08288.pdf> (accessed August 1, 2022).
6. President Biden signed the Infrastructure Investment and Jobs Act on November 15, 2021. See Public Law No. 117–58, <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf> (accessed August 1, 2022).
7. Transportation Secretary Pete Buttigieg recently acknowledged that inflation presents "very real challenges" to projects incorporated in the Infrastructure Investment and Jobs Act. See "Biden's Infrastructure Implementation Task Force Holds Press Conference on 5/16/22, Transcript," *Rev.com*, May 17, 2022, <https://www.rev.com/blog/transcripts/bidens-infrastructure-implementation-task-force-holds-press-conference-on-5-16-22-transcript> (accessed August 1, 2022).
8. Council on Environmental Quality, Comments from North America's Building Trades Unions, *Regulations.gov*, December 2, 2021, <https://www.regulations.gov/comment/CEQ-2021-0002-39371> (accessed August 1, 2022).
9. The White House, "Fact Sheet: Biden– Harris Administration Releases Permitting Action Plan to Accelerate and Deliver Infrastructure Projects On Time, On Task, and On Budget," May 11, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/11/fact-sheet-biden-harris-administration-releases-permitting-action-plan-to-accelerate-and-deliver-infrastructure-projects-on-time-on-task-and-on-budget/> (accessed August 1, 2022).
10. The term "major rule" refers to any rule that is likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, industries, or government agencies; or adverse effects on competition (in domestic and export markets), employment, investment, productivity, or innovation.
11. Public works projects include construction of roads, bridges, highways, and airports; conventional and renewable energy production and distribution; electricity transmission; water infrastructure; broadband deployment; and management of public lands.
12. The term "significant effects" refers to a rulemaking action that will have an annual effect on the economy of \$100 million or more or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or governments or communities.
13. Including the Clean Air Act of 1970, the Clean Water Act of 1972, the Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, the Resource Conservation and Recovery Act of 1976, the Federal Land Policy and Management Act of 1976, and the Surface Mining Control and Reclamation Act of 1977, among others. In addition, 16 states have enacted laws to evaluate the effects of potential state agency actions—many of which involve federal funding. See Ballotpedia, "State Environmental Policy Acts," https://ballotpedia.org/State_environmental_policy_acts (accessed August 1, 2022).
14. The White House, "Fact Sheet: Biden–Harris Administration Releases Permitting Action Plan to Accelerate and Deliver Infrastructure Projects On Time, On Task, and On Budget.
15. Presidential Documents, "Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects," Executive Order 13766.
16. Presidential Documents, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects," Executive Order 13807 of August 15, 2017, *Federal Register*, Vol. 82, No. 163 (August 24, 2017), p. 40463, <https://www.govinfo.gov/content/pkg/FR-2017-08-24/pdf/2017-18134.pdf> (accessed August 1, 2022).
17. Council on Environmental Quality, "Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act," Final Rule.
18. 40 CFR § 1502.14(a) (1978). See Council on Environmental Quality, "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act," Final Rule redline of 1978 CEQ regulations, July 16, 2020, <https://ceq.doe.gov/docs/laws-regulations/ceq-final-rule-redline-changes-2020-07-16.pdf> (accessed August 1, 2022).

19. The act directs agencies to include in every recommendation or report on proposals for legislation and other major federal actions a statement on “alternatives to the proposed action,” and to study, develop, and describe “appropriate alternatives to recommended courses of action.” See U.S. Department of Energy, “The National Environmental Policy Act of 1969, as Amended,” https://www.energy.gov/sites/default/files/nepapub/nepa_documents/RedDont/Req-NEPA.pdf (accessed August 1, 2022).
20. Council on Environmental Quality, “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act,” *Federal Register*.
21. Formerly 40 CFR 1508.7 (1978).
22. Council on Environmental Quality, “Update to Regulations Implementing the Procedural Provisions of the National Environmental Policy Act,” *Federal Register*, Vol. 85, No. 137 (July 16, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-07-16/pdf/2020-15179.pdf> (accessed August 5, 2022).
23. Eli Dourado and Josh T. Smith, “Improving the Magna Carta of Environmental Law,” Medium.com, April 22, 2020, <https://medium.com/cgo-benchmark/improving-the-magna-carta-of-environmental-law-e50ddd702198> (accessed August 1, 2022).
24. Presidential Documents, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” Executive Order 13990 of January 20, 2021, *Federal Register*, Vol. 86, No. 14 (January 25, 2021), p. 7037, <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01765.pdf> (accessed August 1, 2022), and The White House, “Fact Sheet: List of Agency Actions for Review,” January 20, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/> (accessed August 1, 2022). In a related action on January 27, 2021, the White House issued Executive Order 14008 directing agencies to consider the effects of greenhouse gas emissions and climate change in federal permitting decisions. See The White House, “Executive Order on Tackling the Climate Crisis at Home and Abroad,” January 27, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/> (accessed August 1, 2022).
25. Council on Environmental Quality, “National Environmental Policy Act Implementing Regulations Revisions,” Final Rule, *Federal Register*, Vol. 87, No. 76 (April 20, 2022), p. 23453, <https://www.govinfo.gov/content/pkg/FR-2022-04-20/pdf/2022-08288.pdf> (accessed August 1, 2022).
26. The Trump Administration required an agency to base the purpose and need on the goals of an applicant and on the agency’s statutory authority when reviewing an application.
27. Council on Environmental Quality, “National Environmental Policy Act Implementing Regulations Revisions,” Notice of Proposed Rulemaking, *Federal Register*, Vol. 86, No. 192 (October 7, 2021), p. 55757, <https://www.govinfo.gov/content/pkg/FR-2021-10-07/pdf/2021-21867.pdf> (accessed August 1, 2022).
28. The Trump Administration barred agencies from adopting NEPA permitting requirements that exceeded those established by the CEQ.
29. The U.S. Supreme Court has held that, when “an agency chang[es] its course by rescinding a rule [the agency] is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance.” See U.S. Supreme Court, *Motor Vehicle Manufacturers Association of the United States, Inc., et al., Petitioners v. State Farm Mutual Automobile Insurance Company et al., State Farm Mutual Automobile Insurance Company et al., Consumer Alert et al., Petitioners v. State Farm Mutual Automobile Insurance Company et al., United States Department of Transportation et al., Petitioners v. State Farm Mutual Automobile Insurance Company et al.*, June 24, 1983, <https://www.law.cornell.edu/supremecourt/text/463/29> (accessed August 5, 2022).
30. Comments on the Council on Environmental Quality’s Proposed Rule “National Environmental Policy Act Implementing Regulations Revisions,” Docket ID No. CEQ-2021-0002, June 21, 2021, https://www.abc.org/Portals/1/2021%20Files/Government%20Affairs/Regulatory/Association%20Comments%20on%20CEQ%20NEPA%20NOPR%2011_22_2021.pdf?ver=2021-11-23-104205-717 (accessed August 5, 2022).
31. Council on Environmental Quality, “National Environmental Policy Act Implementing Regulations Revisions.” This objective was expressed in President Biden’s Executive Order 14008, which directed the CEQ chair to ensure that federal permitting decisions consider the effects of greenhouse gas emissions and climate change. See The White House, “Executive Order on Tackling the Climate Crisis at Home and Abroad.”
32. The term refers to waivers that agencies routinely grant for environmental review requirements.