



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION


1401 East Broad Street Richmond, Virginia 23219

Stephen C. Brich,
P.E. Commissioner

MEMORANDUM

Date: November 14, 2023

To: Virginia Design and Construction Communities; VDOT Location & Design and Local Assistance Divisions; VDOT District Project Development Engineers; VDOT District Environmental Managers

From: Chris Swanson, P.E., Environmental Division Director 

Subject: National Environmental Policy Act (NEPA) Proposed Rulemaking

The Council on Environmental Quality (CEQ) issued the [Phase 2 Notice of Proposed Rulemaking \(NPRM\)](#) on July 28, 2023 to propose revisions to regulations on implementing the procedural provisions of the National Environmental Policy Act (NEPA). This follows the CEQ's issuance of the Phase 1 NRPM on October 7, 2021. When the CEQ issues the final rule (anticipated to be late 2023 or early 2024), the Federal Highway Administration (FHWA) will have one year to update its NEPA regulations in response. In lieu of FHWA's updates, both FHWA and VDOT are subject to CEQ's final rulemaking. It is unclear at this time what FHWA's expectations will be between the issuance of CEQ's final rulemaking and the issuance of updated FHWA NEPA regulations. Individuals working on NEPA documents for VDOT or localities do not need to change their current processes for project clearances, and VDOT Environmental does not expect an impact to any current projects when regulations change.

What is Included in the NPRM?

The following updates and changes are proposed. This list is not an exhaustive summary of the updates, but these have the most potential to be relevant on current and near-future transportation projects:

1. The incorporation of the Fiscal Responsibility Act of 2023 (FRA), which allows agencies to adopt and use categorical exclusions (CEs) from other agencies; clarifies roles and responsibilities of lead, joint, and cooperating agencies. CEQ also reaffirmed the 75-page limits and 1-year time frames to Environmental Assessments (EAs).ⁱ
2. In response to [Executive Order 14096](#) Revitalizing Our Nation's Commitment to Environmental Justice for All, signed on April 21, 2023, the CEQ affirmed environmental justice (EJ) policy,

including but not limited to considering EJ when determining the Preferred Alternative and environmental consequences. The CEQ also instructs agencies to promote meaningful engagement with communities with EJ concerns and to consider the needs of affected communities when developing outreach and notification methods. Agencies should also promote mitigation of significant adverse effects that disproportionately and adversely affected (previously disproportionately high and adverse effect) communities with EJ concerns. Importantly, the NPRM implies that the NEPA document may be elevated (for example from a CE to an EA) based on EJ impacts.

3. Prior to the issuance of the Phase 2 NPRM, the [CEQ issued Interim Guidance on Greenhouse Gas \(GHG\) and Climate Change](#) in January 2023, which instructs agencies to analyze GHG emissions and climate-resilient design. Climate change must be considered in the discussion of alternatives, reasonably foreseeable effects, environmental consequences, and alongside environmental justice in its effects on communities. The CEQ also incorporates language of infrastructure resiliency, innovative approaches to NEPA reviews, and promoting agencies to address extreme environmental challenges during the NEPA process.

When VDOT Environmental has more information on CEQ's final rulemaking and FHWA's response, an updated memorandum will be issued to interested parties. The updated memorandum will include a more detailed breakdown on what is new and how VDOT will respond in the coming year in coordination with the FHWA.

ⁱ The timeframes are based on the formal initiation of the NEPA process.