

NEPA Policy Update

John Ryan-Henry

Policy Analyst

Coastal States Organization

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National Environmental Policy Act



- Requires federal agencies to assess the environmental impacts of their actions
 - Consider environmental, social, and economic effects
 - Implement robust public process
- **“Major federal actions”** - programs, projects, permits, funding, and regulations
- A procedural framework: does not set substantive standards

Context

1970 (Nixon): National Environmental Policy Act

1970 (Nixon): EO 11514 - CEQ guidelines

1977 (Carter): EO 11991 - CEQ regulations

1978 (Carter): Initial CEQ regulations

Minor regulatory changes; standards set in case law

2020 (Trump): NEPA Rulemaking

- Time and page limits
- Narrow effects and significance criteria
- Limit on new research
- CEQ rules as ceiling

2022 (Biden): "Phase 1" Rulemaking

- Restore effects, significance, research
- CEQ rules as floor

2023: Fiscal Responsibility Act (debt ceiling)

- Scope of actions & effects
- Codify time and page limits, streamlining

2024 (Biden): "Phase 2" Rulemaking

- Implement FRA
- Codify climate and EJ



A New Direction



Marin Audubon Society v. FAA, 121 F.4th 902, 914 (D.C. Cir. 2024)

- Challenge to Federal Aviation Administration (FAA) and National Parks Service's (NPS) use of a categorical exclusion to manage tourist flights
- **Holding:** CEQ regulations are *ultra vires*
- **En banc:** Rehearing denied; decision does not set precedent

Iowa v. CEQ, No. 1:24-cv-00089-DMT-CRH (D.N.D. Feb. 3, 2025)

- Multi-state challenge to CEQ's 2024 "Phase 2" NEPA rule amendments
- **Holding:** CEQ lacks authority to issue binding rules. Regulations return to CEQ's 2022 "Phase 1" rulemaking
- **Eighth Circuit:** Mooted and vacated

Rescinding CEQ's Regulations



EO 14154 "Unleashing American Energy" (Jan. 20, 2025)

- Rescind EO 11991
- Requires CEQ to provide guidance on implementing NEPA to expedite and simplify permitting process
- CEQ must propose rescinding its NEPA regulations
- CEQ shall establish a working group to coordinate revising agency-level regulations

CEQ Interim Final Rule (Feb. 25, 2025)

- Interim Final Rule for immediate effect
- Removed its NEPA regulations from the CFR
- Issued new guidance for agencies to update agency-specific NEPA procedures

Reducing Courts' Review Role



Seven County Infrastructure Coalition v. Eagle County, 605 US __ (May 29, 2025)

- Challenge to a Surface Transportation Board Environmental Impact Statement for construction and operation of an 80-mile railway
- **Issue:** Whether NEPA requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority
- **Courts:** “[D]efer to agencies’ discretionary decisions about where to draw the line when considering indirect environmental effects and whether to analyze effects from other projects separate in time or place.”
- **Agencies:** Scope based on factual and policy considerations “within a broad zone of reasonableness.”

July 2025 Policy Changes



Commerce Department

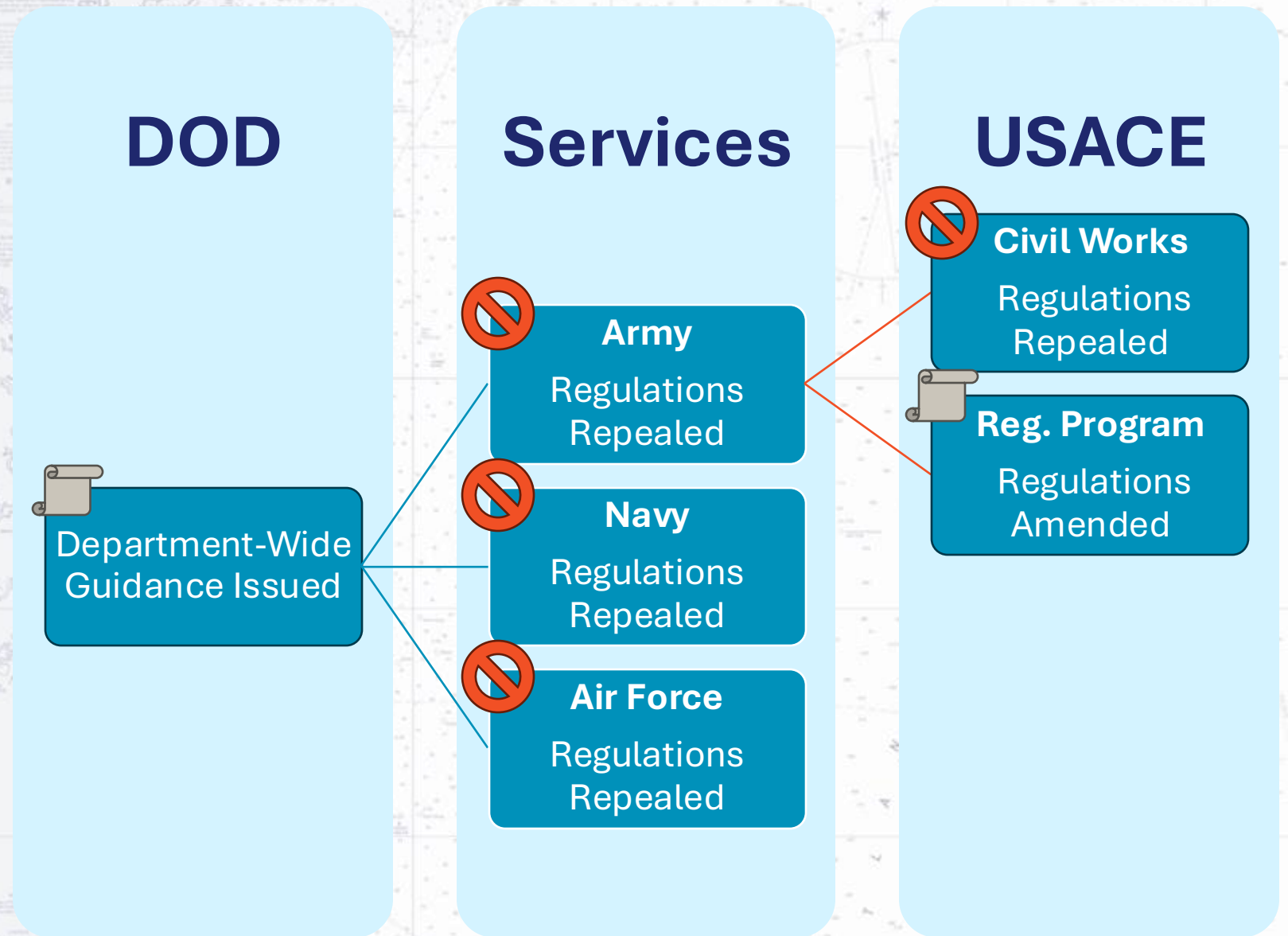
- Agency NEPA procedure updates
- NOAA updated manual and proposed CatEx revisions (Jul. 31)

Interior Department

- Rescind DOI regulations, update handbook
- Pending changes at bureaus

Similar changes at DOT (FHWA, FRA, FTA), FERC, DOE, USDA

DOD NEPA Policy Structure



USACE Regulatory Program:
33 CFR Part 325 Appx B → 33 CFR Part 333, add Sec. 408



DOD Guidance - Key Changes



- Based on CEQ template guidance
- Optional issuance of draft documents
- State comment: “appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards”
- Prioritize programmatic reviews, reliance on past review, adoption of other agency work
- Prioritize proponent-led analysis
- Scope: statutory authority and control over the proposed activity
- “Major” “federal action” independent force
- “Reasonably close causal relationship”
- No new scientific and technical research – essential need and reasonable costs
- Short & long term
- Beneficial & adverse
- Public health & safety
- Employment
- Quality of life
- Violate law

Other Factors



One Big Beautiful Bill Act § 60026 (Jul. 4, 2025)

- Opt-in fee: 125% anticipated preparation/supervision cost
 - EA: 180 days; EIS: 1 year
 - Dropped language on judicial review
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- E.O. 14156 “Declaring a National Energy Emergency” (Jan. 20, 2025)
 - CEQ Permitting Technology Action Plan (May 30, 2025)
 - E.O. 14303 “Restoring Gold Standard Science” (May 23, 2025)
 - E.O. 14255 “Establishing the United States Investment Accelerator” (Mar. 31, 2025)
 - E.O. 14213 “Stopping Waste, Fraud, and Abuse by Eliminating Information Silos” (Mar. 20, 2025)

Implications for Coastal Management



- Statutory obligations have not changed
- Agencies incentivized to try untested approaches; push envelope
- Project-by-project level determination; future changes in guidance
- Greater reliance on programmatic reviews, adopting categorical exclusions
- Greater flexibility for proponent-led drafting

Next Steps

- Expect further litigation
- Implement OBBA fee provision
- Project-by-project implementation
- Future legislation

Thank You
John Ryan-Henry
jryan-henry@coastalstates.org

