



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

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MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

FROM: NANCY H. SUTLEY 
Chair
Council on Environmental Quality

SUBJECT: Implementing NEPA After Budget Lapse Shutdown

As agencies assess the impacts of the prolonged funding lapse, it is apparent that agency processes under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4347, have been affected. Of particular concern are instances where comment deadlines on any kind of NEPA documentation, notably on draft or final documents, have passed or run substantially during this period. This circumstance may affect Environmental Assessments and Environmental Impact Statements.

The Council on Environmental Quality (CEQ) has issued regulations interpreting agency NEPA responsibilities. 40 C.F.R. parts 1500-1508. CEQ's regulations on the timing of agency action make plain that agencies are provided with the authority to extend prescribed periods in the NEPA review process. 40 C.F.R. § 1506.10(d). These regulations are entitled to substantial deference. *See Andrus v. Sierra Club*, 442 U.S. 347, 358 (1979).

A fundamental purpose of NEPA is to insure sufficient "public scrutiny" and "expert agency comments" on environmental consequences to inform agency decisions. 40 C.F.R. § 1500.1(b). In addition, the Environmental Protection Action (EPA) is provided with special statutory responsibilities to comment on and, ultimately is provided authority to seek referral to CEQ of, the environmental and public health and welfare impacts of proposed agency actions. 42 U.S.C. § 7609.

During the lapse in appropriations, expert agencies, particularly cooperating agencies, were for the most part precluded from conducting analysis or providing comments to agencies preparing environmental reviews. EPA likewise has been precluded from carrying out its statutory responsibilities to comment on such impacts or to seek referral to CEQ. In addition, the public may also have been prevented from fully participating in the environmental review process (for example, where public meetings have been cancelled or delayed, or when scoping comment periods have been shortened). These circumstances have the potential to undermine significantly the purpose of the NEPA process.

Agencies therefore should consider extending affected deadlines for the period of the lapse so as to avoid any such deficient processes and accommodate the intended

process for input, where such impacts had the potential to occur. Where an agency declines to adjust its schedule in this fashion, it should, in addition to any action pursuant to 40 C.F.R. § 1506.10(d), provide a reasoned public explanation for its decision not to do so, highlighting any exigencies that prohibit any such adjustment. Please do not hesitate to contact CEQ at 202-295-0827 or hgregczmiel@ceq.eop.gov to discuss the application of this guidance to any particularized situations.¹

¹ CEQ is issuing this guidance as an exercise of its duties and functions under section 204 of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4344, and Executive Order No. 11,514, 35 Fed. Reg. 4,247 (Mar. 5, 1970), as amended by Executive Order No. 11,991, 42 Fed. Reg. 26,927 (May 24, 1977). This guidance is not a rule or regulation, and the recommendations it contains may not apply to a particular situation based upon the individual facts and circumstances. The use of “should” is intended to describe CEQ policies and recommendations. This guidance does not change or substitute for any law, regulation, or other legally binding requirement and is not legally enforceable.