

## First Round of Biden-Harris Administration NEPA Regulatory Revisions Effective May 20, 2022

In January, we posted about the Biden-Harris administration's proposed revisions to the National Environmental Policy Act ("NEPA") regulations: [Biden-Harris Administration Proposes NEPA Regulatory Revisions](#). These regulatory changes went into effect on May 20, 2022, and target and reverse three Trump-era modifications to the NEPA regulations.<sup>[1]</sup> The new changes accomplish the following:

- Revise the "purpose and need" requirement, §1502.13, restoring reviewing agency authority to more fully consider project alternatives.
- Restore the term "cumulative," allowing for a cumulative impact analysis. §1508.1(g).
- Reinstate NEPA as the minimum review threshold—not maximum. §1507.3(a-b).

Under the Trump-Pence administration, the Council on Environmental Quality ("CEQ") promulgated the first major revisions to the NEPA regulations since their original issuance in 1978. Now, the Biden-Harris administration is taking steps to reverse those changes.

With the Notice of Final Rulemaking published on April 20, 2022, going into effect on May 20, 2022, this final rule concluded the Biden-Harris administration's "Phase 1" of NEPA regulatory restoration. The administration also proposed a second, more comprehensive rulemaking as a "Phase 2." While formal Phase 2 rulemaking has not begun, the April 20, 2022 Notice of Final Rulemaking noted "CEQ is developing a Phase 2 rulemaking to propose comprehensive revisions to the 2020 regulations and intends to issue a second proposed rule for notice and public comment," and "[i]n Phase 2, CEQ will consider the NEPA regulations comprehensively and assess whether to revise additional provisions to revert to the language of the 1978 regulations or to propose other revisions based on its expertise, NEPA's policies and requirements, relevant case law, and feedback from Federal agencies and the public."

[1] National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23453, April 20, 2022. Available at <https://www.govinfo.gov/content/pkg/FR-2022-04-20/pdf/2022-08288.pdf>