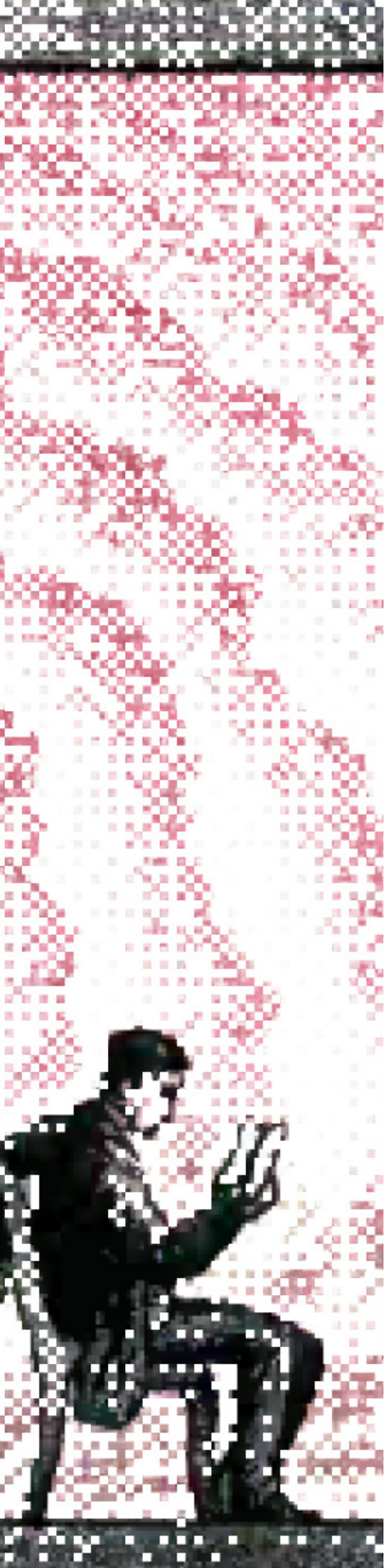

■ Industrial Power

# Redesigning NEPA Regulation to Unleash American Energy

Thomas Hochman


## SUMMARY

President Trump's "Unleashing American Energy" executive order, which rescinded the Council on Environmental Quality (CEQ)'s regulatory authority, has created a generational opportunity to streamline the National Environmental Policy Act (NEPA). To achieve the president's energy dominance goals, the administration should implement three core reforms: narrow the set of actions that trigger NEPA, expand categorical exclusions, and narrow the set of actions that require an environmental impact statement. These changes would significantly reduce the scope and number of environmental reviews under NEPA, leveraging existing statutory authority and recent court decisions to accelerate infrastructure development without requiring new legislation.


## PROBLEM

CEQ, established under NEPA in 1969 as the White House's environmental policy office, oversees NEPA implementation across all fed-

eral agencies. Over decades, CEQ regulations have expanded NEPA's reach far beyond its original mandate, creating substantial barriers to infrastructure development and technological innovation. Projects face years of delays and litigation risk due to overly broad interpretations of key statutory terms. The recent DC Circuit's decision in *Marin Audubon Society v. FAA* invalidating CEQ's regulatory authority, combined with the Fiscal Responsibility Act (FRA)'s statutory changes, creates a unique window for reform. The FRA included significant amendments to NEPA's core definitions, creating a statutory basis for streamlining environmental reviews and reducing regulatory burden. Without action, infrastructure projects will continue facing unnecessary delays and costs, hampering America's ability to build critical infrastructure and maintain technological leadership. With these reforms, agencies could focus resources on truly significant environmental impacts while accelerating approvals.

## SOLUTION

NEPA's review framework operates through three key decision points. The first filter determines what constitutes a "major Federal action." When an activity qualifies as a "major Federal action," it enters the NEPA review process, while activities falling outside this definition bypass NEPA requirements entirely. The second filter addresses categorical exclusions. Actions with environmental impacts that "normally" aren't "significant" can be categorically excluded, allowing these actions to skip detailed review and proceed with minimal documentation. All other actions require at least an Environmental Assessment (EA). The third filter distinguishes between Environmental Assessment and Environmental Impact Statement (EIS) requirements. For actions requiring review, the "reasonable foreseeability" of significant impacts determines the level of scrutiny. Actions with impacts that aren't "reasonably foreseeable" need only an EA, while only those with "reasonably foreseeable" significant impacts require the comprehensive EIS process.

This three-filter structure creates distinct opportunities for streamlining. Federal agencies should redefine these three pivotal terms—"major Federal action," "normally significant," and "reasonably foreseeable." By implementing these definitional changes, agencies can substantially reduce unnecessary environmental reviews.

The FRA provides statutory language that supports narrower interpretations of all three terms compared to CEQ's historical approach. CEQ's new guidance should advance three core reforms:

### Reinterpret "Major Federal Action" Using a Two-Part Test

Federal agencies should adopt a clear, two-part test to determine which actions trigger NEPA review. First, the action must involve meaningful agency discretion that can genuinely shape project outcomes beyond basic compliance checks. This would ensure that NEPA is only applied where federal agencies can actually influence environmental outcomes. Second, the action must demonstrate substantial federal involvement through at least one of three criteria: federal funding representing a significant per-

centage (e.g., greater than 25 percent) of total project costs, essential federal capabilities that are critical to the outcome of the action, or the use of federal eminent domain powers. This approach would explicitly exclude actions with minimal federal involvement, allowing projects with limited federal connection to proceed without unnecessary environmental review processes.

### Expand Categorical Exclusions Using the FRA's "Normally" Threshold

The administration should establish a data-driven approach to categorical exclusions by setting a 70 percent threshold—actions would qualify for categorical exclusion if more than 70 percent of similar projects historically received findings of no significant impact (FONSIs). To determine what constitutes a "significant effect," agencies should apply three criteria: substantial magnitude that goes beyond routine environmental changes, high likelihood of occurrence supported by empirical evidence, and inadequate existing mitigation measures. Additionally, certain types of projects should automatically qualify for baseline categorical exclusions, including projects under five acres in size, facility expansions under 20 percent of existing footprint, and development on previously disturbed lands. This expansion of categorical exclusions would dramatically reduce the burden of environmental reviews for projects with minimal environmental impact.

### Narrow the Set of Actions Requiring an Environmental Impact Statement

Federal agencies should redefine "reasonably foreseeable" impacts to require three elements: a meaningful or substantial possibility of occurring under normal conditions, proximate causation between the federal action and the environmental effect, and legal responsibility of the lead agency for the effect. This narrower interpretation should rely on existing data and standard models rather than requiring extensive new research, which often causes significant delays. Agencies should also eliminate the practice of modeling worst-case scenarios without a data-driven basis, focusing instead on likely outcomes based on empirical evidence.

### Implementation

CEQ and the NEPA Implementation Working Group, established by President Trump's executive order to "coordinate the revision of agency-level implementing regulations," should play the critical role of issuing new guidance and coordinating all reforms. Agencies should review historical NEPA outcomes within six months to identify new categorical exclusion opportunities, compare existing actions against the new "major Federal action" criteria to determine which actions should trigger NEPA, and generally move aggressively to develop and issue new NEPA regulations. The administration should encourage regular progress reporting and best practice sharing across agencies.

## JUSTIFICATION

A comparison between the FRA's amendments and NEPA's original text shows that the proposed reforms represent a straightforward implementation of the statutory changes. The FRA explicitly modified key NEPA definitions to reduce regulatory burden, and these reforms directly translate these statutory changes into actionable policy.

The proposed reforms align with the FRA in three significant ways. First, the FRA's definition of "major Federal action" explicitly requires "substantial Federal control and responsibility," creating a statutory basis for the proposed two-part test. This marks a significant departure from NEPA's original text, which left the term undefined, and CEQ's expansive interpretation, which defined "major Federal action" as an action "potentially subject to Federal control." Therefore, the proposed criteria for substantial federal involvement provides clear, quantifiable standards that align with Congress's intent to narrow NEPA's scope.

Second, the FRA's categorical exclusion language specifically directs agencies to identify classes of action that "normally do not significantly affect" the environment. This represents a meaningful shift from CEQ's historical approach, which initially only allowed categorical exclusions for actions that "do not individually or cumulatively have a significant effect on the human environment," and even after the passage of the FRA required consideration of cumulative effects when making determinations. The proposed 70 percent threshold for categorical exclusions directly operationalizes the FRA's use of "normally," creating an empirical standard that agencies can apply consistently. This data-driven approach would ensure that categorical exclusions remain grounded in actual environmental outcomes rather than speculative concerns.

Third, the FRA's emphasis on "reasonably foreseeable" effects provides clear authority to focus EISs on concrete, demonstrable impacts. This standard supplants CEQ's previous "context and intensity" framework, which encouraged speculation about indirect and cumulative effects. The proposed reforms would implement this change by requiring direct causation between the federal action and the significant effect and eliminating analysis of speculative impacts, ensuring that agency resources focus on meaningful environmental review.

These reforms would stand in stark contrast to CEQ's historical approach of expanding NEPA's reach beyond its statutory foundations. By returning to the plain language of NEPA as amended by the FRA, these changes would create a more efficient, legally defensible framework for environmental review that better serves both development needs and environmental protection. ■

## FURTHER RESOURCES

- Thomas Hochman, "How the White House Can Reform NEPA," Foundation for American Innovation, 2025
- Thomas Hochman, How to Rewrite an Environmental Law in 30 Days," *Green Tape*, 2025

- Thomas Hochman, Rewriting NEPA: The Guidance is Out," Green Tape, 2025
- White House, Executive Order 14154: Unleashing American Energy, 2025
- DC Circuit Court, Marin Audubon v. FAA, 2025
- North Dakota District Court, Iowa v. Council on Environmental Quality, 2025
- CEQ, Initial Guidance, 2025
- CEQ, Pre-Publication Interim Final Rule, 2025


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# APPENDIX

## Mock CEQ Guidance

[Date], 2025

MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

FROM: XXXXXX, Chair, Council on Environmental Quality
SUBJECT: Guidance on Implementing the Fiscal Responsibility Act of 2023 Amendments to the National Environmental Policy Act

**1. Purpose and Overview**

The Fiscal Responsibility Act of 2023 (FRA), Public Law No. 118-5, introduces targeted amendments to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4347. These amendments are intended to streamline the NEPA process by ensuring environmental reviews focus on truly major Federal actions and genuinely significant environmental effects. This document sets forth the Council on Environmental Quality's (CEQ) interpretive guidance on the FRA's changes.

The CEQ issues this guidance to federal agencies to clarify and streamline National Environmental Policy Act (NEPA) implementation in accordance with the reforms enacted by the FRA. The FRA amended NEPA for the first time in decades, with the goal of focusing environmental review on truly significant federal actions and effects and speeding up the review process. This guidance provides CEQ's official interpretation of key terms and procedures—specifically "major Federal action," "categorical exclusion," "significant effect," and the scope of "environmental impact statements" (EIS)—consistent with the FRA's amendments.

Agencies may use the recommendations herein to update and administer their NEPA processes, with the aim of improving efficiency, maintaining legal soundness, and targeting analyses toward substantial environmental risks. Federal agencies may integrate this guidance into their NEPA implementing procedures to ensure efficient, legally sound environmental reviews

that concentrate resources on substantial environmental risks while expediting actions with minimal environmental impact.

## 2. Authority, Background, and CEQ's Advisory Role

### 2.1 Authority and Background

The National Environmental Policy Act (42 U.S.C. §§ 4321-4347), as amended by the FRA, provides the statutory framework for federal environmental reviews.

Historically, CEQ promulgated binding regulations governing NEPA implementation (40 C.F.R. parts 1500-1508). However, in light of President Trump's Executive Order (E.O.) 14154, *Unleashing American Energy*, and recent judicial decisions (see *Marin Audubon Soc'y v. FAA* (D.C. Cir. Nov. 12, 2024) and *State of Iowa v. CEQ* (D.N.D. Feb. 3, 2025)), CEQ may no longer have the authority to issue binding NEPA regulations. However, CEQ retains its advisory role and authority to issue interpretive guidance that federal agencies may adopt to help fulfill statutory obligations.

### 2.2 Purpose of this Guidance

The guidance below aligns with the FRA's intent to reduce unnecessary analysis of minor impacts and expedite federal decision-making.

It articulates CEQ's recommended interpretations of key FRA provisions—particularly in clarifying "major Federal action," defining "significant effects," and streamlining the scope of EISs.

Agencies remain responsible for their own NEPA procedures and retain flexibility to implement the FRA's requirements in a manner consistent with their statutory mandates and the changed legal landscape.

## 3. Clarifying "Major Federal Action"

### 3.1 Statutory Changes

The FRA defines a "major Federal action" as "an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility" (42 U.S.C. § 4336e(10)). This statutory language replaces the prior broad standard and expressly excludes from NEPA review:

- Projects with no or minimal Federal funding
- Projects with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project
- Loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action
- Activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority

These amendments make clear that NEPA is not triggered for projects with only a trivial federal nexus.

**3.2 Two-Part Test for Substantial Federal Control and Responsibility**
CEQ advises agencies to employ a two-step inquiry:

**Part A—Agency Discretion**
Drawing on the FRA's exemption for non-discretionary actions (42 U.S.C. § 4336e(10)(B)(vii)), agencies should determine whether they have genuine decision-making authority (e.g., whether they can impose conditions or select among alternatives). If the agency's role is ministerial or solely advisory without the ability to alter the project outcome, NEPA does not apply.

Consistent with the FRA's statutory language, CEQ interprets "major Federal action" to require meaningful discretionary authority over the action. If the agency's role is non-discretionary or purely advisory with no decision-making control, the action fails this prong and is not subject to NEPA. For example, "activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority" fall outside NEPA's scope. Agencies should first confirm that a federal decision is required and that the agency has the legal ability to choose among alternatives or impose conditions—if not, NEPA review is not required.

**Part B—Substantial Federal Involvement**
If Part A is satisfied, determine whether federal involvement is "substantial" rather than incidental. CEQ interprets this distinction as follows:

1. Significant Federal Funding: Federal funding comprises a significant portion of the project's financing—approximately 25 percent or more of total project costs may serve as a benchmark. This threshold is suggested as a practical indicator of a substantial federal stake, consistent with other regulatory contexts using 25 percent to denote substantial control. (Notably, the 25 percent figure aligns with ownership thresholds in corporate law equivalent to "substantial control" (see 31 CFR § 1010.380(d)). Agencies retain discretion to adopt a different benchmark, supported by appropriate data and analysis, but should ensure any chosen percentage meaningfully distinguishes "substantial" from incidental federal influence over the project's outcome.
2. Critical Federal Expertise or Operational Control: The federal agency provides unique, essential capabilities or plays an indispensable coordination role that is crucial to the project's outcome. This may include, for example, determining key design or siting parameters, or other support without which the scope or nature of the project would substantially change. If the project's scale or impact would remain largely the same in the absence of federal involvement, the federal role is considered incidental under 42 U.S.C. § 4336e(10)(B) and the action is not a major Federal action.
3. Exercise of Unique Federal Authorities: The action involves use of distinctly federal powers, such as federal eminent domain or other sovereign authorities, to enable the project. Exercising federal eminent

domain on behalf of a project demonstrates a high level of federal control and responsibility, meeting this prong regardless of funding percentage.

CEQ's interpretation is that both Part A (discretionary agency action) and Part B (substantial involvement as indicated by one or more factors above) are required for the proposed undertaking to qualify as a "major Federal action" under NEPA. CEQ interprets the FRA to exclude from NEPA review those activities that fail either prong (e.g., where the federal contribution is minimal and no project control exists). Agencies should document their application of this two-part test in the administrative record to support their determinations. By clearly delineating when Federal involvement crosses from minimal to substantial, this test focuses NEPA compliance on projects truly under federal control, as intended by the FRA.

**3.3 Functional Equivalence as an Alternative to NEPA Review**

Agencies should continue to apply the long-recognized "functional equivalence" doctrine where compliance with another environmental statute effectively meets NEPA's core requirements (i.e., meaningful analysis of environmental effects, consideration of alternatives, and opportunity for public participation) and thereby precludes the need for NEPA review. Courts have upheld functional equivalence for decades in situations where the statutory scheme provides essentially the same review and disclosure benefits as NEPA. See, e.g., *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375 (D.C. Cir. 1973); *Env't Def. Fund, Inc. v. EPA*, 489 F.2d 1247 (D.C. Cir. 1973); *Alabama v. EPA*, 911 F.2d 499 (11th Cir. 1990); *Merrell v. Thomas*, 807 F.2d 776 (9th Cir. 1986).

When invoking functional equivalence, agencies should:

1. Identify the underlying statute and procedures that serve NEPA's purposes
2. Document how these procedures address environmental impacts, alternatives, and public involvement
3. Show that no added NEPA documentation is needed because the relevant issues are fully considered under the other statute.

This approach remains a practical way to avoid duplicative reviews while preserving robust environmental oversight. The Fiscal Responsibility Act's emphasis on streamlining is consistent with these established principles; functional equivalence simply continues to provide an existing avenue for efficient compliance where agencies already meet NEPA's objectives through other statutory programs.

**4. Expanding and Streamlining Categorical Exclusions**

The FRA also codified and reinforced the use of Categorical Exclusions (CEs) as a tool for expediting reviews of minor projects. By statute, a "categorical exclusion" is defined as "a category of actions that a Federal

agency has determined normally does not significantly affect the quality of the human environment." (42 U.S.C. § 4336e(1)). The statutory term "normally" is central to this definition and requires interpretation.

**4.1 Empirical Basis for "Normally"**

CEQ interprets "normally" to refer to the typical or usual outcome for a category of actions based on empirical evidence rather than theoretical possibility. This interpretation follows the plain meaning of "normally" as conforming to a type, standard, or regular pattern. It also aligns with judicial expectations that categorical exclusions be based on reasoned analysis rather than unsupported assumptions (see *Alaska Center for the Environment v. U.S. Forest Service*, 189 F.3d 851 (9th Cir. 1999)).

Under this interpretation, CEQ advises agencies to use an empirical, data-driven approach to determine when a category of actions "normally" has no significant effects. In practice, this means examining the agency's own NEPA track record and other relevant data for that category of action. If the vast majority of past projects of that type have resulted in Findings of No Significant Impact (FONSIs), the action category can be deemed to normally lack significant effects.

CEQ recommends a "substantial majority" threshold as a guide: for example, if over approximately 70 percent of comparable actions (agencies may tailor this figure based on their particular record and experience) historically concluded with a FONSI, the action category should qualify for a categorical exclusion. This threshold is grounded in empirical observation (as opposed to an arbitrary value)—it reflects a meaningful confidence level that most such actions do not have a significant effect. Indeed, government-wide statistics show that an overwhelming proportion of Environmental Assessments (EAs)—on the order of 95-99 percent—result in FONSIs rather than findings of significant impact. In light of this reality, many actions currently subjected to EAs can and should be reclassified as CEs, so long as appropriate conditions are in place to ensure unusual cases are caught. Using data on past NEPA outcomes to define "normally" will make CE determinations more objective and accurate.

This interpretation provides agencies with a practical framework for implementing the statutory language while ensuring categorical exclusions remain grounded in empirical reality. The 70 percent threshold is not presented as a rigid requirement but as an interpretive guideline that agencies may adapt based on their particular circumstances, provided they maintain fidelity to the statutory concept of "normally."

**4.2 Extraordinary Circumstances and Documentation**

CEQ interprets the FRA's categorical exclusion provisions as requiring empirical support. This interpretation aligns with judicial precedent requiring a rational basis for agency categorical determinations. See, e.g., *Ca. ex Rel. Lockyer*, 575 F.3d 999 (9th Cir. 2009).

Therefore, agencies should document the analysis supporting any new or

expanded CEs. This includes quantifying the percentage of past actions in the category with no significant impacts, and explaining why future actions are expected to follow the same pattern. Factors to cite may include:

- The use of standard mitigation measures
- Permit requirements
- Best practices that have consistently prevented significant effects in that category
- Rationale for concluding these patterns will continue for future actions

CEQ also emphasizes that agencies should maintain "extraordinary circumstances" review—i.e., screening for site-specific red flags (such as critical habitat) that would merit a fuller review despite the general category being excluded. By taking these steps, agencies can confidently expand their CE lists to cover more routine activities, in turn freeing up resources to focus on proposals with genuinely significant environmental effects.

**5. Refining the Definition of "Significant Effect"**

A crucial companion to the above is clarifying what types of effects count as "significant" in the NEPA context. The original text of NEPA never provided a precise definition of "significant effect," while CEQ's regulations historically added color to the term through broad "context and intensity" factors that invited consideration of speculative or minor effects (e.g. controversy or cumulative impact considerations), contrary to the plain meaning of "significant." With the new FRA text drawing the threshold for requiring an EIS for actions as "a reasonably foreseeable significant effect on the quality of the human environment," 42 U.S.C. § 4336(b)(1), a plain interpretation of the term is necessary.

**5.1 Criteria for Significance**

Drawing from the statutory context and Supreme Court precedent, CEQ interprets "significant effect" as encompassing three essential elements (for CEs, EAs, and EISs alike). An effect should be deemed "significant" under NEPA only if it meets all three of the following criteria:

1. Substantial Magnitude: The expected environmental change or impact is appreciable. The plain meaning of "significant" supports this interpretation, and establishes an inherent substantiality threshold. In other words, the effect is more than minimal or routine in context—it involves a measurable alteration of environmental conditions (e.g. exceeding defined thresholds such as a certain acreage of habitat disturbed, pollutant emissions above a set level, etc.). Minor changes or temporary/transient effects do not satisfy this element.
2. Inadequately Mitigated by Standard Measures: The effect is of a type or severity that would not be prevented or mitigated by routine, well-es-

tablished measures or that is not already regulated by an existing law. This criterion derives from the Supreme Court's holding in *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351-52 (1989), which held that NEPA "merely prohibits uninformed—rather than unwise—agency action" and recognized mitigation measures as central to NEPA's analytical framework. See also *Cabinet Mountains Wilderness v. Peterson*, 685 F.2d 678 (D.C. Cir. 1982) (holding that the adoption of mitigation measures that reduced an action below the significant threshold voided the need for an EIS). If the impact can be effectively avoided or reduced to minor levels through commonly employed mitigation (or if it falls below regulatory significance thresholds set by other environmental laws), then the impact should not be considered significant for NEPA purposes. This criterion ensures that effects already addressed by other environmental requirements (such as permits under the Clean Air Act, Clean Water Act, etc.) are not double-counted as "significant" if those processes will mitigate the impact to an acceptable level.

3. High Likelihood and Proximate Causation: There must be a high probability of the effect occurring as a result of the federal action, based on credible evidence and a direct causal relationship. This criterion directly implements the Supreme Court's holdings in *Department of Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004), where the Court explicitly held that "a 'but for' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA" and instead required a "reasonably close causal relationship" comparable to proximate cause in tort law, a principle the Court previously established in *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983). Speculative or uncertain impacts—those based on unlikely chains of events or dependent on numerous contingencies—do not meet this threshold. The effect should have a reasonably close causal connection to the proposed action, rather than being an attenuated consequence. In essence, this incorporates the "reasonably foreseeable" standard (discussed further below) and the legal doctrine of proximate causation into the significance determination: an impact that is not probable and proximately caused by the action should not elevate an action to EIS-level significance.

CEQ interprets the statutory concept of "significant effect" as requiring all three of the above elements. This approach remains faithful to NEPA's language (ensuring "significant" impacts get attention) and judicial precedent while providing clearer, more objective standards that agencies can apply in practice. Only once an agency determines, using available data (see 42 U.S.C. § 4336(b)(3)(B)), that a reasonably foreseeable significant effect exists should an EIS be prepared. Agencies are encouraged to update their NEPA procedures to reflect these factors—for example, by establishing quantitative thresholds or clear qualitative benchmarks for what constitutes

a "substantial" change in their specific resource contexts—and to explain in decision documents how an impact was evaluated against these criteria.

**6. Focusing EIS Analysis on Direct and Reasonably Foreseeable Effects**

Consistent with the FRA's amendments, CEQ interprets the definition of EISs to focus on the effects that are reasonably foreseeable and proximately caused by the proposed federal action. The FRA explicitly codifies that an EIS should discuss "the reasonably foreseeable environmental effects of the proposed agency action" (as well as a reasonable range of alternatives and any unavoidable effects). This statutory language reinforces longstanding CEQ regulations and case law, and reflects Congress's intent to focus NEPA analysis on probable, proximate effects rather than speculative or attenuated possibilities.

Under this guidance, agencies should ensure that NEPA review (particularly in EISs) remains proportional to the agency's decision at hand, concentrating on effects that can be confidently predicted and are closely linked to the action, while streamlining or omitting analysis of effects that are remote, indeterminate, or beyond the agency's control.

**6.1 "Reasonably Foreseeable" Defined**

CEQ interprets "reasonably foreseeable" effects as those effects which are likely enough to occur that a person of ordinary prudence would take them into account in decision-making, and which have a reasonably close causal relationship to the federal action. This means an effect should:

1. Have a substantial probability of occurring under typical circumstances (not a mere theoretical possibility), and
2. Follow directly from the action (or via a short, clear chain of cause and effect) without too many intervening factors.

A "but for" causal link alone is insufficient—in other words, just because an effect could be traced back to the project in a broad sense does not automatically make it an effect that the agency must consider. There must be a direct or proximate causal connection, analogous to the concept of proximate cause in tort law, for the effect to be attributed to the action for NEPA purposes.

Effects that are geographically or temporally distant, or that depend on unpredictable future actions by other parties, generally fail this test of reasonable foreseeability. For example, if an agency's action enables some subsequent private or state decisions that are not yet planned or are beyond federal control, the downstream impacts of those subsequent decisions may be too attenuated to be deemed reasonably foreseeable effects of the initial federal action. Agencies should focus their analysis on impacts that will likely occur as a direct result of the proposed project or its immediate alternatives, based on reliable data or experience, and need not engage in speculative "worst-case" scenario analysis for improbable outcomes (see *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 356 (1989)).

This interpretation is in line with Supreme Court precedent in Metropolitan Edison and Public Citizen and the statutory text of the FRA. If an agency has no legal authority to prevent or regulate a particular consequence of its action, or if the effect would occur regardless of the federal action, then that effect is outside NEPA's scope. NEPA does not require analysis of environmental impacts outside the agency's jurisdiction or control, or more properly under another agency's purview. By the same token, indirect effects that are highly speculative or dependent on a string of uncertain events should not consume extensive study. CEQ's 2020 rulemaking clarified that a "close causal relationship" is required and that effects occurring via a "but-for" chain of causation alone (without proximity) are not NEPA effects. The FRA now embeds the "reasonably foreseeable" limitation in statute, giving agencies a clear mandate to trim back analyses of remote possibilities and keep EIS documentation focused on likely, actionable impacts.

**6.2 Application in Practice**

When preparing EISs (or determining whether an EIS is necessary under an EA), agencies may:

1. Focus analysis on likely effects that the agency is legally responsible for: Concentrate on evaluating the environmental impacts that are likely and within the scope of the federal action's influence. These effects may be considered only to the extent they are reasonably foreseeable, have a close causal connection to the proposal, and are most properly under the deciding agency's legal purview.
2. Document briefly why more distant or uncertain impacts are excluded from detailed study: Agencies can briefly describe why more speculative effects are not analyzed in detail, to show they were considered but ruled out as beyond NEPA's requirements.
3. Consider providing a concise discussion of potential but uncertain effects for informational purposes: CEQ encourages a pragmatic approach—for instance, if an energy infrastructure project may facilitate some downstream use that in turn results in emissions, the agency may assess those emissions if they can be reasonably forecast with available tools and are proximate (e.g. directly enabled by the project). However, if quantifying or predicting such effects would require undue speculation about market conditions or policies outside the project, the agency can delineate those uncertainties and refrain from exhaustive analysis.

Analyses may emphasize direct project impacts (e.g., land disturbance, direct emissions, water usage of the project itself) and well-understood indirect impacts, while acknowledging but not deeply analyzing highly uncertain or indirectly linked effects. This focused approach will produce clearer EIS documents that inform decision-makers on the significant likely consequences of their actions, consistent with NEPA's core purpose, and will reduce delay caused by attempting to evaluate every conceivable ripple effect.

Agencies should also be mindful of the litigation context: A reasonable bounding of the EIS scope to foreseeable direct effects is supported by the FRA and case law, but agencies may make a robust record of why more distant effects are not reasonably foreseeable. In some cases, it may be prudent to include a concise discussion or quantification of a potential effect for informational purposes only, even if the agency deems it not legally required, as a "belt and suspenders" measure to demonstrate that considering those effects would not change the decision.

CEQ's interpretation allows such flexibility. The primary analysis may reflect the streamlined, focused scope, but a short appendix or sidebar analysis of a contentious indirect effect (such as upstream or downstream greenhouse gas emissions, in aggregate) can be included to preempt claims that the agency ignored an impact. The overarching principle, however, is that NEPA documents are not required to go beyond what is reasonably foreseeable or to analyze speculative scenarios. By adhering to that principle, agencies can implement NEPA efficiently and in line with the updated statute.

**7. Effective Date, Next Steps, and Implementation**

This guidance is effective immediately. Agencies may:

1. Review their NEPA Procedures to conform to the FRA amendments and this advisory guidance.
2. Incorporate Revisions: For instance, update definitions of "major Federal action," revise CE lists based on historical data, and clarify significance thresholds.
3. Provide Feedback: CEQ welcomes data and suggestions regarding these benchmarks (e.g., the approximately 25 percent and 70 percent figures), which may be refined over time.

Since CEQ functions in an advisory capacity post-Marin Audubon, agencies are not legally bound to adopt these recommendations. However, CEQ believes these interpretations will enhance efficiency and clarity while complying with NEPA's core requirements under the FRA.

**7.1 Alignment with FRA 2023**

The interpretations and recommendations in this guidance are firmly rooted in the amended NEPA statutory text and are intended to carry out Congress's intent in the FRA to improve the timeliness and effectiveness of environmental reviews. By narrowing the definition of "major federal action" to exclude trivial federal involvement, expanding the use of categorical exclusions through evidence-based determinations, and focusing EISs on effects that are reasonably foreseeable and causally direct, federal agencies can fulfill NEPA's requirements in a way that protects environmental values without unnecessary delay. This guidance provides a framework that agencies can incorporate into their NEPA procedures (per 40 C.F.R. § 1507.3) and apply immediately to pending and future actions.

**7.2 Agency Discretion**

In implementing this guidance, agencies should note that the numerical thresholds and criteria provided (such as the 25 percent funding benchmark for substantial involvement and the 70 percent FONSI rate for categorical exclusions) are grounded in rational precedent. They are offered as presumptive safe harbors to enhance clarity and consistency, not as inflexible rules. Agencies have discretion to depart from these benchmarks as befits their particular case, but should consider providing appropriate justification in the administrative record.

For example, if an agency's experience indicates a different percentage of federal funding is more appropriate to define incidental vs. "substantial" involvement for a certain program, the agency may adopt that threshold—provided it explains the reasoning (e.g. citing historical project data or analogous standards). Similarly, the "substantial majority" test for CEs should be anchored by data; while roughly 70 percent is a generally reasonable guide, an agency could establish a higher confidence requirement for very sensitive resource areas, or a slightly lower percentage if supplemented by other indicia of low impact (like stringent permit requirements that apply to all actions in the category). The key is that any such threshold should be justified by facts or logic, thereby avoiding arbitrariness.

CEQ finds that the 25 percent and 70 percent figures, in particular, have strong justification—25 percent being a level of ownership/control commonly recognized in law as significant, and 70 percent being a conservative definition of "most" or "normally" based on NEPA outcomes—but agencies remain free to refine these values with proper support. CEQ will monitor implementation and welcomes feedback from agencies on the practical efficacy of these standards.

**Next Steps**

Agencies should review their NEPA implementing regulations and guidance in light of this CEQ guidance. Where immediate conflicts exist (for instance, if existing agency NEPA procedures define "major Federal action" more broadly than the FRA statutorily allows), agencies should promptly update or clarify their procedures to be consistent with the FRA.

CEQ also notes that the FRA introduced other process improvements (such as page limits for NEPA documents and timelines for completion) that, while outside the scope of this document, complement the substantive clarifications provided here. Taken together, these modifications aim to refocus NEPA on its core purpose—informing decision-makers and the public about significant environmental effects of major Federal actions—rather than creating unnecessary barriers to needed projects. CEQ will continue to assist agencies in implementing these changes and will consider further guidance or rulemaking as necessary to ensure NEPA reviews are effective, efficient, and faithful to the law.

Agencies may apply these principles to ongoing NEPA processes to the extent practicable, especially where doing so can streamline analysis without undercutting environmental protection. CEQ stands ready to provide technical assistance as agencies integrate this guidance. By adhering to the clarified definitions and focused analytical scope outlined above, agencies will improve NEPA's functionality and better serve both environmental stewardship and the expeditious development of infrastructure and other federal actions, in alignment with the FRA and NEPA's goals.

**8. Disclaimer**

Following Executive Order 14154 and judicial decisions such as *Marin Audubon Soc'y v. FAA* (D.C. Cir. Nov. 12, 2024) and *State of Iowa v. CEQ* (D.N.D. Feb. 3, 2025), CEQ recognizes that it may lack authority to issue binding regulations governing NEPA implementation. However, CEQ retains its role as the expert agency on NEPA matters and continues to have authority to issue interpretive guidance.

This document represents CEQ's interpretations of key statutory provisions in the FRA amendments to NEPA. These interpretations reflect CEQ's specialized expertise and institutional experience with environmental review processes. While they lack the force of law that binding regulations would carry, they may prove persuasive to agencies and courts based on the thoroughness and validity of their reasoning, their consistency with judicial precedent, and their grounding in CEQ's expertise.

Federal agencies remain responsible for their own NEPA procedures and retain ultimate authority to interpret statutory requirements within their jurisdictions. Agencies may adopt, adapt, or develop alternative approaches to the interpretations presented here, provided those approaches comply with the statutory text and relevant judicial precedent.

This guidance does not create or confer any legal rights, impose legally binding requirements, or mandate particular outcomes. It represents CEQ's expert judgment on implementing the FRA amendments in a manner that advances NEPA's fundamental purposes while respecting the FRA's streamlining objectives.

CEQ will continue to evaluate the effectiveness of these interpretations and may issue updated guidance as implementation experience accumulates. CEQ welcomes feedback from agencies on their experiences implementing the FRA amendments.