

White House has just released its proposed revisions to the rules about environmental impact statements. The White House Council on Environmental Quality (CEQ) simply does not have the kind of power that it is trying to arrogate to itself. The proposal is marked by hubris about the government's ability to control how the courts apply the law.

That hubris is evident in the proposal's effort to tell courts when lawsuits can be brought and what kind of remedies they can provide. For instance, it states that issuance or refusal to issue an impact statement does not trigger the right to go to court, that no claim can ever be raised in court unless it was first raised by the agency, that lawsuits must be always be brought quickly. Some of these might be right, some might not be, but all of them are up to the courts — not the White House — to decide.

The proposal also contains a discussion of how much deference it should receive from the courts, suggesting that it should receive *Chevron* deference. As I explained previously, this seems to be flatly wrong:

“Congress never gave CEQ authority to issue binding regulations or to do anything else except issue advice. That means that CEQ's rules are not entitled to what courts call “Chevron deference,” which would require courts to accept the CEQ position if it's reasonable. Instead, CEQ's rules can get only Skidmore deference. That means that courts should give a CEQ rule weight based on the “merit of its writer's thoroughness, logic, and expertness, its fit with prior interpretations, and any other sources of weight.” This seems consistent with the Supreme Court's more [specific statement](#), issued a decade before the Court [clarified](#) standards of deference, that an amended CEQ regulation is entitled to “substantial deference” if there is a “well considered basis for the change.”

Thus, it is up to the courts to decide whether the White House's arguments for changing the interpretation of the law are persuasive. Apparently, the White House thinks that it, not the courts, has the power to decide what the National Environmental Quality Act means and how courts should enforce it. If so, it's overestimating its authority badly.