In one of Trump's first executive orders, he eliminated a centralized system that Jimmy Carter initially set up to issue regulations governing environmental impact statements. Instead, he called on each agency to issue its own regulations, which seems to have caused the predictable amount of confusion. I've examined the new regulations from three agencies: the Department of Defense (DOD), the Department of Energy (DOE) , and the Department of Transportation (DOT), which happened to be the first ones that I saw. There seems to be little rhyme or reason in the variations.

Variations involving other agencies may be even greater. According to EarthJustice, some agencies have adopted new regulations while others have opted for non-binding guidelines.

Shortchanging the Environment

When he told agencies to make their own regulations, Trump also made it clear that environmental considerations were to play little role. Instead, he said, "agencies must prioritize efficiency and certainty over any other objectives" to the extent allowed by law. This section of the order is entitled "Unleashing Energy Dominance through Efficient Permitting," with "energy dominance" being Trump's phrase for dramatically expanding fossil fuels.

Agencies got the message in the sense that none of the regulations I examined cites the policies that Congress articulated in NEPA or show any concern about potentially overlooking important environmental impacts.

One area of commonality involves the definition of effects. All three Departments say:

> "Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to the limits of its regulatory authority, or that would occur regardless of the proposed action, or that would need to be initiated by a third party."

This language seems designed to exclude consideration of impacts on climate change and other systemic environmental risks.

Reducing Public Participation

All three regulations seem to provide less scope for public content than prior regulations. They all do require an opportunity an opportunity to comment early in the process of issuing an environmental impact statement, as required by the statute, but whether there will be any further opportunity to public input varies. There are also variations in what opportunity for public input, if any, exists in the preparation of a more streamlined document, an environmental assessment:

- DOD requires further public input at some point after the initial notice during the preparation of an impact statement, but not necessarily the opportunity to comment on the draft impact statement. It doesn't mention public comment for an environmental assessment.
- DOE makes public comment after the initial scoping announcement optional. Public input into the preparation of an environmental assessment is also optional.
- DOT calls for as much public input into preparation of an environmental assessment as "practicable," but not necessarily an opportunity to comment on or even see a draft of the document. DOT makes disclosure and comment on a draft impact statement discretionary except when required by a statute other than NEPA, which appears to be true for some sub-agencies within DOT.

Notably, CEQ has approved a plan to keep draft environmental impact statements for fossil fuel projects secret to streamline the process in light of Trump's purported "energy emergency."

Discordant Regulations

I had thought the agencies might all issue nearly identical regulation written by the White House. That doesn't seem to have happened. There are certainly a lot of commonalities, but there are also significant differences, not limited to issues like public notice. Here are some other examples:

- DOE has the most elaborate rules governing environmental reviews produced by project applicants; DOD's are sketchy; DOT punts the issue to its various subagencies.
- DOE defines "mitigation" briefly in its definition section; DOD does not define it; DOT has an elaborate definition.
- The DOE, DOD, and DOT emergency provisions were all different, with DOE's being the vaguest, but none of them referenced national emergency declarations.

The differences between agencies may be random, or they may reflect different attitudes toward NEPA. Regardless, they could prove troublesome for the government. Project opponents may be able to score points in court by showing that other agencies would have done things differently. More importantly, the differences between rules will cause problems when two agencies have jurisdiction over the same project but different NEPA rules. FERC's new guidelines look quite different from DOE's rules, which could cause problems. Congress provided a process for agency coordination, but the process assumes that the agencies have the same procedures.

Dubious Weight in Court

Before Trump's executive order, the White House Council on Environmental Quality (CEQ) issued regulations that agencies were required to follow. This led to uniformity across agencies, and the CEQ process was also more deliberative than the preemptory issuance of new regulations that we're now seeing. One might have thought that it was also more consistent with the idea of the unitary executive.

Be that all as it may, the CEQ regulations had one more important characteristic: they received significant deference from the courts. By contrast, these new regulations will get no deference when courts are interpreting NEPA. Even in the *Chevron* era, courts did not defer to agency interpretations of statutes when multiple agencies were interpreting the same law.