

# Federal Judge Rejects Call for National Injunction of CEQ's New NEPA Rule

September 18, 2020

On September 11, 2020, U.S. District Judge James P. Jones issued [an opinion](#) rejecting a call for a nationwide preliminary injunction or stay of the Council on Environmental Quality's (CEQ) new National Environmental Policy Act (NEPA) regulations (Rule).<sup>[1]</sup> In rejecting the nationwide preliminary injunction or stay, Judge Jones explained that plaintiffs failed to make the necessary "clear showing" that they would succeed on the merits.<sup>[2]</sup>

Although the "plaintiffs here may ultimately succeed in this case," Judge Jones noted, "at this point they have not made [the required] clear showing" because evidence is needed to determine the "validity of the Rule" and is likely needed to determine the standing and ripeness issues before the court.<sup>[3]</sup> Judge Jones also expressed concern about his authority to issue a nationwide preliminary injunction:

even assuming the power of a single district judge to issue a nationwide preliminary injunction, it should be restricted 'to the most exceptional circumstances,' particularly since such cases typically involve 'rushed judicial decisionmaking, often under immense time pressure, based on expedited briefing, and in the absence of a factual record.'<sup>[4]</sup>

Judge Jones' decision cleared a path for the Rule to go into effect on September 14, 2020.<sup>[5]</sup> Each agency now has 12 months to develop or revise, as necessary, the procedures to implement the Rule.<sup>[6]</sup>

<sup>[1]</sup> The new regulations are the first comprehensive revision to the NEPA regulations since they were originally enacted in 1978. The new regulations can be found at 85 Fed. Reg. 43,304 (July 16, 2020).

<sup>[2]</sup> Opinion and Order, Docket No. 92, at 11.

<sup>[3]</sup> *Id.*

<sup>[4]</sup> *Id.* (quoting *CASA de Md., Inc. v. Trump*, No. 19-2222, 2020 WL 4664820, at \*26-\*27 (4th Cir. Aug. 5, 2020)).

<sup>[5]</sup> 85 Fed. Reg. 43,304; *see* Opinion and Order at 11 n.3 (explaining no other case has sought a preliminary injunction or stay).

<sup>[6]</sup> *Id.* at 43,373.