

Trump Administration Proposes New Guidelines for Implementing the National Environmental Policy Act

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For the first time in over forty years, the White House Council on Environmental Quality (the “CEQ”) is proposing to revise the National Environmental Policy Act (“NEPA”) regulations.

On January 9, 2020, the Trump Administration and the CEQ announced proposed regulatory changes designed to speed up the permitting process and “reduce unnecessary paperwork.”^[1]

The current NEPA process can be extremely lengthy and complex. The CEQ has found that the average length of an environmental impact statement is “over 600 pages,”^[2] and that the average time for Federal agencies to conduct NEPA reviews is four and one half years. Moreover, according to Mary B. Neumayr, chairman of the CEQ, “More lawsuits have been brought under NEPA than under any other environmental statute.”^[3]

The QEC is now proposing changes intended to “modernize, simplify, and accelerate the NEPA process in order to promote public involvement, increase transparency, and enhance the participation of states, tribes, and localities. These changes would also reduce unnecessary burdens and delays and would make important clarifications to improve the decision-making process.”^[4] The proposed changes codify aspects of the One Federal Decision policy, including instituting a two-year time limit for completing an environmental impact statement. The proposal would also put one federal agency in charge of overseeing the review process, instead of giving multiple agencies oversight.^[5]

Background

NEPA is a procedural statute that requires federal agencies to consider the potential environmental consequences of certain proposed actions, such as issuing federal permits or other approvals as well as providing funding for infrastructure, land management activities, and environmental restoration projects.^[6]

NEPA was signed into law in 1970 and the CEQ first issued regulations for federal agencies to implement NEPA in 1978. Under the CEQ regulations, there are three levels of environmental review: (1) environmental impact statements (“EISs”), (2) environmental assessments (“EAs”), and (3) categorical exclusions (“CEs”). The CEQ has not comprehensively updated these regulations since 1978, aside from one limited substantive amendment in 1986.

Overview of Key Elements of the Proposed Rule

The pre-publication version of the proposed rule is almost two-hundred pages, but the following are some of the key changes proposed:

- **Modernize, simplify and accelerate the NEPA process by:**

- establishing time limits of two years for completion of EISs and one year for completion of EAs;
 - specifying page limits;
 - requiring joint schedules, a single EIS, and a single record of decision (“ROD”), where appropriate, for EISs involving multiple agencies;
 - strengthening the role of the lead agency and requiring senior agency officials to timely resolve disputes to avoid delays; and
 - promoting the use of modern technologies for information sharing and public outreach.
- **Clarify terms, application, and the scope of NEPA review by:**
 - providing direction regarding the threshold consideration of whether or not NEPA applies to a particular action;
 - requiring earlier solicitation of input from the public to ensure informed decision-making by Federal agencies;
 - requiring comments to be specific and timely to ensure appropriate consideration;
 - requiring agencies to summarize alternatives, analyses, and information submitted by commenters, and to certify consideration of submitted information in the ROD;
 - narrowing the definition of environmental “effects” and clarifying that the “effects” must be reasonably foreseeable and have a reasonably close causal relationship to the proposed action;
 - stating that analysis of “cumulative effects” is not required under NEPA (This is perhaps the most significant change, since agencies often struggle with the proper scope and litigants often focus on “cumulative effects” in challenging NEPA documents, as discussed in further detail here.);
 - clarifying that “major Federal action” does not include non-discretionary decisions and non-Federal projects (those with minimal Federal funding or involvement); and
 - clarifying that “reasonable alternatives” requiring consideration must be technically and economically feasible.
- **Improve coordination with States, Tribes, and Localities by:**
 - reducing duplication and facilitating use of documents required by other statutes or prepared by State, Tribal, and Local agencies to comply with NEPA;
 - ensuring appropriate consultation with affected Tribal governments and agencies; and
 - eliminating the provisions in the current regulations that limit Tribal interests to reservations.

- **Reduce burdens and delays by:**

- facilitating use of efficient reviews (including categorical exclusions (“CEs”) and environmental assessments);
- allowing agencies to establish procedures for adopting other agencies’ CEs; and
- allowing applicants and contractors to assume a greater role in preparing EISs under the supervision of an agency.

Conclusion

Energy companies involved in pipeline projects and other infrastructure development works, including renewable energy projects, would benefit from the proposed new streamlined regulations and simplified NEPA procedures. However, environmental groups and some Democrats reject the argument that NEPA is the cause of project delays and are concerned that the proposed changes will weaken NEPA.

The CEQ’s plans to revamp its regulations implementing NEPA will go through a sixty-day public comment period before being finalized.

For more information on this topic, contact a member of [Benesch's Energy Practice Group](#).

[1] See

<https://www.whitehouse.gov/wp-content/uploads/2020/01/20200110FINAL-FACT-SHEET-v3.pdf>

[2] See

<https://www.whitehouse.gov/wp-content/uploads/2020/01/20200110FINAL-FACT-SHEET-v3.pdf>

[3]

<https://www.washingtonexaminer.com/opinion/op-eds/a-needed-update-to-the-nations-environmental-rule>

[4] See

<https://www.washingtonexaminer.com/opinion/op-eds/a-needed-update-to-the-nations-environmental-rule>

[5] See

<https://www.theguardian.com/environment/2020/jan/09/white-house-projects-permits-climate-impact-plan>

[6] See

<https://www.washingtonexaminer.com/opinion/op-eds/a-needed-update-to-the-nations-environmental-rule>