



Trump Administration Proposes Sweeping Reforms to National Environmental Policy Act Requirements for Federal Agencies



Lisa Rushton

Partner, Raleigh, NC

t: +1.919.755.2164

e: lisa.rushton@wbd-us.com

The Trump Administration has [proposed the first major changes to the National Environmental Policy Act \(NEPA\)](#) in more than three decades. These proposed changes (announced in a Jan. 10, 2020 Notice of Proposed Rulemaking) would limit the scope of environmental impact assessments that federal agencies must undertake before building highways, pipelines, bridges, telecommunications networks and other public infrastructure projects.

Many pro-business groups, including the US Chamber of Commerce, are applauding the proposal, saying that the changes would streamline an unnecessarily complex regulatory system and empower federal agencies to start much-needed infrastructure projects. But environmental watchdog groups say the changes would roll back protections meant to stem climate change.

The changes are still subject to a public input period and will not be finalized for several more weeks. However, the changes are part of a broader White House effort to reduce environmental regulatory burdens for federal agencies, and that trend shows no sign of abating.

The History of NEPA and How It Currently Impacts Projects

NEPA was signed into law by then-President Richard Nixon on January 1, 1970 and it requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. The range of actions covered by NEPA is broad and includes:

1. Decisions on permit applications;
2. Adopting federal land management actions; and
3. Constructing highways, pipelines and other publicly-owned facilities.

Using the NEPA process, agencies evaluate the environmental and related social and economic effects of their proposed actions. Under the current version of NEPA, this includes the cumulative impact of a particular action and an assessment of how it may contribute to climate change and other long-term, indirect environmental issues. Agencies also provide opportunities for public review and comment on those evaluations.

In recent years, a number of large-scale projects were successfully blocked in court by plaintiffs who argued that the burden of reviewing indirect climate impact was not met as required by NEPA.

NEPA, which applies to nearly 80 federal government agencies, has not been substantially revised since the late 1970s. The House Council on Environmental Quality (CEQ) began soliciting input on changes in 2018 and spent much of 2019 reviewing the current guidelines and working on proposed revisions.

“In the past, many of America’s most critical infrastructure projects have been tied up and bogged down by an outrageously slow and burdensome federal approval process,” President Donald Trump said [in announcing the proposed revisions](#). “These endless delays waste money, keep projects from breaking ground, and deny jobs to our nation’s incredible workers.”

Proposed Changes to the NEPA for 2020

Without question, the White House seeks to make significant, far-reaching changes to NEPA.

The proposed changes seek to create a new category of “non-major” federal actions that may move forward without assessment and thereby narrow the scope of projects subject to review. The proposal also will no longer require agencies to consider the “cumulative” consequences of new infrastructure. Courts have interpreted this requirement to be a mandate on agencies to study direct and indirect effects of projects and generally investigate the impacts of a project on climate change (such as rising sea levels). The Trump Administration’s plan is expected to “simplify the definition of environmental ‘effects’ and clarify that effects must be reasonably foreseeable and require a reasonably close causal relationship to the proposed action.”

If adopted, environmental impact studies under NEPA will no longer be required to study the indirect effects of a project—in other words, how a project would add to a larger problem, such as climate change—but rather, be limited to the reasonably foreseeable direct impact of a project.

A second, but equally important driver for the Trump Administration’s proposed changes relates to the time and effort currently required to move projects forward under NEPA. In 1981, the CEQ estimated that federal agencies should be able to complete most environmental impact statements (EIS) in 12 months or less. Yet due largely to intervening judicial decisions, by 2016, the average government-wide preparation time for an EIS had grown to 5.1 years, without taking into account the time an agency invests before publishing a notice of intent to prepare an EIS or the time after publication of the final EIS to prepare and release the record of decision. For projects that do require NEPA review, the Administration hopes to speed up the process.

The memo states that CEQ’s “proposed rule would modernize and clarify the CEQ regulations to facilitate more efficient, effective, and timely NEPA reviews.” Specifically, the following changes are expected:

- Establishing two-year time limits for environmental impact statements and one-year limits for the less intensive environmental assessments.
- Strengthening the lead agency role and requiring senior agency officials to “timely resolve disputes that may result in delays.” Currently, any federal agency involved in a collaborative project can delay the project if they raise NEPA-related concerns. But under the revised plan, a single lead agency would have the authority to approve a project.
- Providing direction regarding the “threshold consideration” of whether NEPA applies.
- Requiring that public comments be “specific” and “timely submitted.”
- Clarifying definitions such as “major federal action” to ensure they do not include projects with minimal federal funding or involvement.
- Clarifying that “reasonable alternatives must be technically and economically feasible.”
- The plan also would allow companies to conduct their own environmental review “under the supervision of an agency,” the draft memo states.

What's Next for the NEPA?

The [CEQ is soliciting comments on the proposed revisions](#) through March 10. Public forums also are scheduled for Feb. 11 in Denver and Feb. 25 in Washington, DC.

While the agency may be flooded with comments from pro-environment parties of interest, don't expect any major changes in the final rule. The Trump Administration has made streamlining NEPA a major focus of its domestic agenda, so it is safe to anticipate the final rule will reflect the Administration's stated goals of reducing regulatory requirements and shortening timelines for the review processes. And, when adopted, "CEQ anticipates withdrawing all of the CEQ NEPA guidance that is currently in effect and issuing new guidance as consistent with presidential directives."

Despite the strong odds that NEPA revisions will closely align with the Administration's stated goals, it also is a near certainty that the new NEPA standards will face challenges in the courts. New York University Professor of Environmental Law Richard L. Revesz [told the New York Times](#), "A regulation can't change the requirements of a statute as interpreted by the courts." Major environmental groups have roundly criticized the proposed changes, and are likely to lend their weight to any legal challenges.

The wild card in the entire scenario is that 2020 is a Presidential election year, and the outcome of that election is still very much up in the air. Should the White House change parties, then the Trump Administration's NEPA changes likely will be overturned. A Trump reelection means even more scaling back of regulatory requirements in the next four years.

So stay tuned—more is yet to come.

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