

New Proposed Rules for the National Environmental Policy Act



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On October 7, 2021 the Council on Environmental Quality (“CEQ”) published a proposed rulemaking (“[Proposed Rule](#)”) to modify three aspects of its regulations implementing the National Environmental Policy Act (“NEPA”) (42 U.S.C. 4321 *et seq.*). CEQ’s Proposed Rule is the first step in a two-step rulemaking process to update and modify the CEQ’s July 2020 [final rule](#) titled “Update to the Regulations Implementing the Procedural Provisions of NEPA” (“2020 Rule”). CEQ’s Proposed Rule seeks to reverse several significant regulatory changes to NEPA promulgated at the end of the Trump Administration in the 2020 Rule.

The CEQ’s [press release](#) states that the “2020 changes caused implementation challenges for agencies, and sowed confusion among stakeholders and the general public,” concluding that the Proposed Rule will “restore

durability and regulatory certainty.” The three changes are as follows:

1. Restores the requirement that federal agencies evaluate all relevant environmental impacts of their decisions—including “direct,” “indirect,” and “cumulative” impacts. The CEQ specifies that this will require an evaluation of climate change impacts and whether a proposed action will compound pollution in communities that are already heavily impacted by pollution.
2. Restores agencies’ authority to determine the “purpose and need” of a proposed action by considering a variety of factors, including working with communities to analyze environmental and public health concerns. The 2020 Rule limited federal agencies’ authority to study alternatives that do not fully align with the goals of a proposed action.
3. Establishes the NEPA regulations as the baseline of environmental review, giving federal agencies the flexibility to modify and adapt their specific NEPA procedures to best suit the agency, so long as the CEQ’s NEPA regulations are maintained.

The Proposed Rule would re-establish a more robust NEPA review, where project developers can expect federal agencies to undertake a broader and more comprehensive NEPA regulatory review process with respect to analyzing alternatives and impacts, including analyses of climate change and environmental justice considerations in project site development and planning efforts.

CEQ is accepting public comments on the Proposed Rule through November 22nd, 2021. CEQ intends to publish a broader set of changes to NEPA as step two of this rulemaking process in the next few months.

For questions regarding this Client Alert, or for assistance in submitting comments, please contact Lippes Mathias’ Environment & Energy Team Practice Leader, Ian Shavitz at ishavitz@lippes.com or Senior Associate, Christina Bonanni at cbonanni@lippes.com.

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