

Trump Administration Begins Process of “Streamlining” NEPA Reviews, but Many Steps Remain

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On January 9, 2020, the Trump Administration proposed new regulations to implement the National Environmental Policy Act, better known as NEPA, which is the framework statute that requires federal agencies to identify and evaluate the environmental impacts of federal actions, such as issuing permits or providing funding.

Unlike many other environmental laws, NEPA is purely a procedural statute; it requires agencies to consider and seek public input on the environmental consequences of their actions, but it imposes *no substantive* environmental obligations. Rather, NEPA seeks to facilitate informed decision-making by requiring environmental analysis before taking an action, which can at times significantly delay permits or the availability of funding.

Industry advocates have long desired to limit the scope of NEPA reviews and speed them up, and the current proposal would do just that by limiting how federal agencies consider the effects of their actions, including with respect to studying greenhouse gas emissions and climate impacts, and studying more than what is strictly required. The proposal would also impose new time and page limits on various stages of the environmental review process and delay judicial review of an agency’s NEPA compliance until a project is complete.

The White House – and supportive industry groups – believe this proposal will make the NEPA process faster and more predictable, allowing increased investment in infrastructure across the country. Environmental advocates, on the other hand, are sure to object that the proposal’s time, length, and scope limits are at odds with the statute’s requirements and purpose.

The ultimate success in streamlining NEPA, however, is far from certain. The President’s 200-page proposal is just the first step in what would be a long process to finalize and litigate NEPA regulations. The proposal will first be available for public comment and will undoubtedly garner significant interest from stakeholders across the spectrum. The White House Council on Environmental Quality (CEQ) will then likely either respond to those comments and finalize rules, or issue a supplemental/revised proposal. If finalized, litigation involving major environmental and industry groups will follow – no matter *what* is finalized – and appeals as far as the Supreme Court are plausible. Therefore, it will likely be years before the regulations are settled.

If you have any questions about how the proposal might affect you or your project – or want assistance in providing comments to help craft the final regulations – our team of environmental law experts is standing by. Please contact Ian Shavitz (Environment & Energy Group Team Leader) at ishavitz@lippes.com or William Niebling at wniebling@lippes.com.

The full text of the proposal is available here: https://www.whitehouse.gov/wp-content/uploads/2020/01/NEPA-NPRM-01092020_Pre-publication-version.pdf.

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