

CEQ's revamping of NEPA regulations: who, what, why, and where?

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Who is CEQ?

The Council on Environmental Quality (CEQ) is part of the Executive Office of the President and is charged with overseeing the executive branch's implementation of the National Environmental Policy Act (NEPA), a law which requires the review of environmental impacts resulting from major activities authorized, funded, or approved by the federal government. The kind of projects subject to NEPA review run the gamut, such as major transportation projects, oil and gas leasing plans, offshore wind projects, to pipelines, and transmission line networks.

What is CEQ doing?

Earlier this month, CEQ announced its plan to conduct a review of the NEPA regulations to update and streamline the process for conducting NEPA review. The regulations were issued in 1978, were amended in 1986, and have never been comprehensively revised. CEQ's "Advanced Notice of Proposed Rulemaking" will be followed by a public notice and comment process where CEQ will publish a proposed revision to the regulations and invite public comment to inform its decisions about how to amend the existing regulations.

Why is CEQ revising the NEPA Regulations?

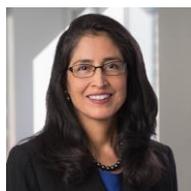
On August 15, 2017, the president signed Executive Order 13807 titled "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects," which was published on August 24, 2017 (82 Fed Reg 40463). The executive order directs CEQ to undertake a number of actions, including an assessment of the NEPA regulations to find ways to minimize delay and burdens in the environmental review process.

To this end, CEQ and the Office of Management and Budget (OMB) recently announced in April 2018 the issuance of a Memorandum of Understanding implementing the "One Federal Decision" policy established in Executive Order 13807, whereby the federal agency primarily responsible for the review and approval of a "major infrastructure project" must issue a single Environmental Impact Statement (EIS) under NEPA and a single Record of Decision under a designated time schedule. The revision of the regulations is the next major component for reforming the executive branch's approach to NEPA reviews.

Where do I get involved?

The key form of engagement in a rulemaking effort is to submit written comments into the agency's record to ensure that your views are considered as part of the federal government's decision making process. Courts will closely examine the written record offered by the federal agency in support of its rulemaking effort. It also is important to understand the current state of NEPA law in the courts and the statutory provisions of NEPA to ensure that what you want to achieve in this new rulemaking will withstand legal challenge in the courts. We at Hogan Lovells are prepared to provide counsel as to the current state of the law and what opportunities exist for revising the current regulatory regime to achieve your goals of permitting efficiency and timeliness.

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