

KIRKLAND & ELLIS

Blog Post

Trump Administration Proposes Revisions to NEPA Rules

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Recently, the White House's Council on Environmental Quality announced a proposed rulemaking that would represent a dramatic overhaul of the National Environmental Policy Act ("NEPA") implementing regulations. The stated goal of the proposed changes is to streamline the environmental review process to reduce the time and costs federal agencies expend in advancing projects and permits. These new regulations could have significant impacts on a broad spectrum of infrastructure and energy development projects, among others. Comments on the proposed rule are due March 10, 2020, and they can be submitted [here](#).

This proposal, once finalized, is almost certain to be contested in the courts.

Key Takeaways

- **Federal agencies will be expected to complete their environmental reviews within set time frames and page limits.** The proposal sets a presumptive time limit of two years for completion of an environmental impact statement (EIS) and one year for an environmental assessment (EA). The proposal also seeks to scale back the size of EISs. Agencies will be limited to 150 pages for typical projects and 300 pages for proposals of unusual scope or complexity.
- **The definitions of direct and indirect effects and cumulative impacts would be eliminated; agencies would be required to study "effects."** NEPA requires federal agencies to evaluate the effects of projects on the environment. The implementing regulations currently divide effects into the direct (impacts of the action) and indirect (separated in time or distance) effects and the cumulative impacts (incremental impacts of the action combined with other actions). The proposal removes the requirement to evaluate cumulative impacts as currently defined,

explaining that the categorization and determination of the scope of cumulative impacts has been difficult in practice. Environmental groups contend that this move is an attempt to eliminate analysis of climate change in the review process. If the change is ultimately adopted, we can expect that this change, in particular, may be one of the aspects of the proposed rule that environmental groups focus on in future litigation.

- **The proposal creates a new category for “non-major” projects that could exempt certain infrastructure projects from review.** Non-major projects would include projects with minimal federal involvement or funding, such as pipelines, bridges and roads that are largely funded by state, local or private sources. Although NEPA has always been required only for major federal actions, the proposal clarifies that non-major projects are exempt from environmental review.
- **The Lead Agency will be responsible for issuing a single federal decision for all permits and actions.** The new rules emphasize early cooperation among federal, state, local and Tribal agencies. For projects involving multiple agencies, the proposal implements Executive Order 13807’s directive known as “One Federal Decision,” which requires the Lead Agency to produce a single decision document on behalf of all agencies.
- **The proposal codifies case law regarding the threshold questions of whether environmental review is required.** The proposed language sets out a framework for agencies to consider in determining whether a project requires evaluation (or is exempt) and what level of NEPA review is appropriate, i.e., EIS, EA, Categorical Exclusion. This framework will assist agencies in the early planning stages and encourages the use of Categorical Exclusions where possible.

Interested and affected parties should monitor these developments with their environmental counsel.

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