

CEQ Issues Draft Guidance on Improving NEPA Review Process

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The White House Council on Environmental Quality (CEQ) recently released draft guidance to improve the efficiency and timeliness of environmental reviews under the National Environmental Policy Act (NEPA). The draft guidance is of potential interest to natural resource industries and project developers, among others, that would benefit from a more coordinated, streamlined NEPA process with clear timelines for the NEPA review.

The guidance highlights existing regulatory strategies, such as integrating planning and environmental reviews, coordinating multi-agency or multi-governmental reviews and approvals, and setting schedules. It was released as part of the CEQ's review of existing regulations under Executive Order 13563 and the President's August 2011 Memorandum on "Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review."

CEQ's guidance first clarifies that many of the CEQ regulations applicable to Environmental Impact Statement (EIS) preparation, the most intensive type of NEPA review, should also be applied to all types of NEPA reviews, including less-intensive Environmental Assessments (EAs). For example, the agencies should conduct a scoping analysis of the full range of actions, alternatives, and impacts for all environmental reviews, including both EAs and EISs. Also, for actions initiated by private or non-federal governmental entities, the guidance encourages the agencies to require the applicant, whenever possible and not already required, to submit an environmental report with its application or request for agency action.

The guidance next provides several principles for agencies to follow in conducting environmental reviews, including that:

- NEPA encourages simple, straightforward, and concise reviews and documentation that are proportionate to and effectively convey the relevant considerations in a timely manner to the public and decision-makers while comprehensively addressing the issues presented;
- NEPA should be integrated into project planning rather than be an after-the-fact add-on;
- NEPA reviews should coordinate and take appropriate advantage of existing documents and studies, including through adoption and incorporation by reference;
- Early and well-defined scoping can assist in focusing environmental

reviews to appropriate issues that would be meaningful to a decision on the proposed action;

- Agencies are encouraged to develop meaningful and expeditious timelines for environmental reviews; and
- Agencies should respond to comments in proportion to the scope and scale of the environmental issues raised.

While setting out several basic NEPA principles established in practice over the years, the guidance nevertheless may be helpful in emphasizing the need and avenues for timely and efficient NEPA review process. Projects can experience delay in the NEPA process for a variety of reasons. The CEQ's draft guidance (and as it may be finalized) cannot reasonably be expected to address all of these instances, but for some, it may be helpful. For example, long linear projects, such as interstate pipelines and transmission lines, that involve multiple federal and state agencies may benefit from the guidance's emphasis on intergovernmental coordination and concurrent environmental reviews. In addition, for projects where delay is the result of the actual drafting of the NEPA analysis, the guidance may provide additional support, or a policy emphasis from CEQ where needed or helpful, to streamline the NEPA process through incorporation by reference and proportionate responses to public comments. Furthermore, the draft guidance emphasizes the benefits of establishing clear timelines on a project-by-project basis, which may help provide some measure of predictability to the process.

CEQ is providing for a 45-day public comment period on the draft guidance. Natural resource project developers and others requiring federal permits or approvals for their operations that would trigger NEPA reviews may wish to submit comments to CEQ describing their own experiences with the NEPA review process and the need to improve the efficiency and timeliness of the process. Providing specific examples of NEPA streamlining processes that have been successful, as well as examples of where the absence of such approaches have resulted in inefficient or delayed NEPA processes, may be helpful to CEQ in formulating the final guidance. The comment period for the draft guidance expires on January 27, 2012. The draft guidance can be found [here](#) and the Council's press release can be found [here](#).

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