



OPPORTUNITY: CEQ Requests Comments on Ways to Modernize NEPA Process

JUNE 21, 2018

THE OPPORTUNITY

For the first time in over three decades, the [Council on Environmental Quality](#) (CEQ) has begun the process of revising its procedural regulations on federal agency implementation of the [National Environmental Policy Act of 1969](#) (NEPA). Given the broad range of actions covered by NEPA—including federal permit applications, federal land management decisions, and more—this rulemaking process provides an important opportunity for energy infrastructure developers, utilities, federal land users, and others to help shape how federal agencies will implement NEPA in the future.

On June 19th, CEQ issued an Advance Notice of Proposed Rulemaking entitled “[Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act](#),” published in the [Federal Register](#) at 83 FR 28591. The notice seeks public comment on how CEQ can modernize the NEPA review process so that it is more efficient, timely, and effective. **Comments are due by July 20, 2018.**

THE ADVANCE NOTICE OF PROPOSED RULEMAKING

This rulemaking is part of a series of efforts by the Administration to make the federal environmental permitting system more efficient and timely. On August 15, 2017, the President issued [Executive Order 13807](#), entitled “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.” Section 5(e) of that order directed CEQ to develop an initial list of actions to enhance and modernize the federal environmental review and authorization process. One of those initial actions identified by CEQ at 82 FR 43226 (September 14, 2017) was a review of its NEPA regulations to identify any needed changes. The June 19th notice marks the official beginning of this review.

The notice requests responses to, and suggestions regarding, a series of questions about the basic NEPA process, the scope of NEPA review, and ways that implementation of the NEPA process can be modernized and made more efficient and effective. Examples of some of the questions for which CEQ seeks responses include:

- “Should CEQ’s NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?”
- “Should CEQ’s NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?”
- “Should definitions of any key NEPA terms in CEQ’s NEPA regulations . . . be revised, and if so, how?”
- “Should the provisions in CEQ’s NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?”
- “Are there additional ways for CEQ’s NEPA regulations related to mitigation to be revised, and if so, how?”

HOW VAN NESS FELDMAN CAN HELP

Van Ness Feldman has extensive experience and expertise with regard to NEPA and associated federal permitting and land management processes. In January 2018, the firm helped a client achieve the [first Memorandum of Understanding \(MOU\) between the federal government and a state government implementing the FAST-Act](#) and the terms of the President's August 15, 2017, Executive Order to expedite the permitting of a major environmental restoration project. The MOU has proven to be very helpful in expediting the permitting of the project. The implementation of the MOU has included efficiencies in the application of the NEPA process that CEQ may wish to incorporate into revised NEPA regulations.

Our team is exceptionally qualified to provide counsel regarding participation in CEQ's process of revising its procedural regulations on the application of NEPA. For more information on this CEQ initiative or the firm's expertise with regard to the NEPA process, please don't hesitate to contact any professional of the firm, including [Rick Agnew](#), [Joe Nelson](#), [Jonathan Simon](#), [Matt Love](#), [Stephen Fotis](#), [Janet Anderson](#), [Scott Nuzum](#), or [Bob Szabo](#).

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