

CEQ NEPA Phase 2 Proposed Rule

Big Picture

Modernizing Federal Environmental Review & Permitting Processes

- Bipartisan focus on permitting modernization continues
- For the first time since the National Environmental Policy Act was signed into law, reforms were enacted to accelerate the environmental review and permitting process across the federal government
- A second NEPA rulemaking that seeks to weave the Biden Administration's policy priorities into regulations is moving forward – increase community engagement, meet climate and clean energy goals, advance environmental justice, roll back provisions of the 2020 rule
- NRECA is focused on ensuring bipartisan NEPA reforms are fully implemented and not undercut by new regulatory proposal

National Environmental Policy Act of 1969 (NEPA)

- Established the Council on Environmental Quality (CEQ), an agency and component of the Executive Office of the President
- Requires federal agencies to analyze the environmental consequences of their proposed actions
- Does not mandate particular results or substantive outcomes – “procedural statute”
- First major amendments to NEPA were included in the Fiscal Responsibility Act (Section 321, Builder Act) signed on June 3, 2023
- Included NRECA permitting reform priorities: time and page limits for NEPA reviews, greater applicant involvement, expanding use of categorical exclusions (most efficient level of NEPA review)

What Triggers NEPA?

- A federal agency's decision on proposed actions – funding, permitting, or approving projects and activities
- Examples of actions that trigger NEPA include:
 - Seeking a Rural Utilities Service loan
 - Seeking a right-of-way authorization from the U.S. Forest Service or Bureau of Land Management to construct, operate and maintain electric infrastructure on public lands and to conduct related vegetation management
- **“Umbrella” statute** – NEPA review process and documents integrate compliance with substantive environmental laws and other statutes (e.g., Clean Air Act, Endangered Species Act, National Historic Preservation Act)

CEQ NEPA Regulations

- **1978** – CEQ promulgated its NEPA regulations which apply to all federal agencies
- **1978 – 2020** – Regulations remain essentially unchanged for 40 years (guidance proliferated, review timelines lengthened, documents expanded, litigation increased)
- **2020** – CEQ issued a final rule comprehensively updating and modernizing the regulations
- **2021** – CEQ issued NEPA Phase 1 final rule rolling back several changes made in 2020
- **Over 85 Federal agencies and their subunits have their own agency NEPA procedures**

NEPA Phase 2 Proposed Rule

- Published July 31, 2023 (88 Fed. Reg. 49,924)
- Comments due **September 29, 2023** (60-day comment period)
- **Public meetings:** last meeting is Thursday, September 21st, 2-5 pm EDT
- **Resources:**
 - Regulatory Docket ID: [CEQ-2023-0003](#)
 - [CEQ NEPA Regulations Webpage](#)
- **Effective date:** Will immediately apply to any NEPA process begun after the effective date of the final rule and potentially apply to activities and environmental documents that are underway when the rule is finalized
- Anticipate CEQ will try to issue final rule by late Spring 2024

Overview of Proposed Rule

- **Not fully consistent with the National Environmental Policy Act, as amended by the Fiscal Responsibility Act**
 - Elevates Section 101 policy goals over the Section 102 procedural requirements – new EIS requirement to identify “environmentally preferable alternative or alternatives”
 - Threshold determinations (whether NEPA applies)
 - Establishment/application of categorical exclusions
- **Layers on additional requirements that will make NEPA reviews more complex and less focused – favoring certain types of projects, disfavoring others**
 - Requirements related to climate change-related effects and effects on environmental justice communities (including Tribal communities) – development of alternatives, environmental consequences, and expansion of scoping (potential global context)
 - Mitigation and monitoring compliance plans
- **Removes helpful elements of the existing regulations (2020 rule revisions)**
 - Resolving NEPA non compliance (reducing litigation risk) and specificity in commenting

Proposed Rule – NRECA Comment Development

- **Tuesday, August 22** – NRECA filed 45-day comment extension period request filed
- **Friday, September 8** – NRECA comment letter outline circulated
- **Friday, September 15** – Feedback due on initial outline from NRECA members
- **Thursday, September 21** – Draft comments circulated to NRECA members
- **Wednesday, September 27** – Feedback due on draft comments from NRECA members
- **Friday, September 29** – Comment deadline/NRECA submits comments