Support NEPA Modernization: Make Your Voice Heard

On January 9, President Trump and the White House Council on Environmental Quality (CEQ) announced a major proposal to modernize regulations that implement the National Environmental Policy Act (NEPA). It would focus NEPA on its original intent – assessing environmental impacts of major projects and actions supported by the federal government – instead of being used as a mechanism for causing delays and uncertainty in planning and building projects, including those in the transportation sector.

The Trump Administration proposal represents a once-in-a-generation opportunity to modernize NEPA. The law first took effect 50 years ago, when communications, technology and public participation were in the virtual Stone Age compared to 2020. While NEPA is an essential tool for protecting the environment and ensuring meaningful feedback about projects, it has not been fundamentally improved in over three decades. Adversaries have weaponized NEPA’s outdated review procedures to delay – often for years – or to derail transportation improvement projects. Needless delays and uncertainties can add significant costs to these important projects, at a time when funding is constrained nationwide.

The proposed changes to NEPA will result in a more expeditious, while still thorough, review process, without impacting existing environmental standards. The new NEPA will not undermine environmental stewardship in planning transportation projects, which will still need to comply with the federal Clean Air Act, Clean Water Act, Endangered Species Act and other statutes.

NEPA modernization will not guarantee favorable decisions on projects, but will greatly improve the NEPA process’ reliability and timeline. As U.S. Secretary of Transportation Elaine Chao said at the White House announcement, “We all care about the environment. What we need to give, as regulators, is certainty to the regulated community…”

How to Submit Comments

CEQ has opened a public comment period on their proposal, ending Tuesday, March 10. ARTBA will submit comments and urges your firm or association to do so too. The most effective comments “tell a story” of cost increases, delays and jobs lost because of NEPA abuses. (The president and other speakers at the recent announcement cited several examples.) Conversely, “cookie cutter” submissions are usually discounted by federal policymakers. Opponents will be filling the docket and news stories with negative comments. So it’s critical that you make your voice heard.

Comments may be submitted online to CEQ at www.regulations.gov. The docket number is CEQ-2019-0003. Comments may also be mailed to: Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503, Attn: Docket No. CEQ-2019-0003. All comments must be received at CEQ by close of business on Tuesday, March 10, 2020.

If you have any questions, or need assistance in filing comments, please contact Nick Goldstein, ARTBA vice president of regulatory and legal issues, at (202) 683-1005 or ngoldstein@artba.org.
More Ways to Get Involved

CEQ will also be holding two public hearings on the proposed rule. The first will be on Tuesday, February 11, in Denver, Colorado, and the second will be on Tuesday, February 25, in Washington, D.C. ARTBA encourages members to attend these hearings and express their support for the rule. Further details on the hearings will be available in the coming weeks.

ARTBA is part of a NEPA reform coalition. Its website at www.unlockamericaninvestment.com includes helpful information and resources relating to the proposal. State coalitions are also being formed.

Details on the Proposal

The Trump Administration proposal would make the following improvements to NEPA:

➢ Set both page and time limits for an environmental impact statement (EIS) and environmental assessment (EA). Specifically, EISs must be completed in two years and have a maximum of 150 pages (300 pages for projects of “unusual scope or complexity”) and EAs must be completed in one year, at a maximum of 75 pages. (Agencies still have the discretion to extend the page limits.)

➢ Require a single, final environmental document for projects involving multiple agencies. This mirrors President Trump’s 2017 “One Federal Decision” executive order.

➢ Allow a lead agency to set a schedule for projects involving multiple agencies. The lead agency will also develop the “purpose and need” and “alternatives” for the project review.

➢ Require all issues in litigation be raised during the comment process.

➢ Clarify that the “effects” of a project must be “reasonably foreseeable and have a close causal relationship to the proposed action.” Further, the proposal does away with the idea of “cumulative effects,” meaning a project is only responsible for those impacts it directly causes, as opposed to potential impacts that might occur in the future.

➢ Require that alternatives to a project be “technically and economically feasible.”

➢ Allow for private entities to prepare an EIS under the supervision of a federal agency.

➢ Exclude non-federal projects and those with “minimal federal involvement” from NEPA review.

➢ Allow projects to “cure” NEPA violations while continuing to move forward, rather than be halted.

These are highlights of this lengthy and comprehensive proposal. To access the entire entry in the Federal Register, go to https://www.govinfo.gov/content/pkg/FR-2020-01-10/pdf/2019-28106.pdf.