



NATIONAL STONE, SAND
& GRAVEL ASSOCIATION

How the Biden Administration's Phase 1 NEPA Changes Will Impact the Aggregates Industry

Overview

On Wednesday, April 20, the Council on Environmental Quality (CEQ) published a final rule that revised certain provisions of the National Environmental Policy Act's (NEPA) 2020 implementing regulations, reverting to the 1978 regulation. The Phase 1 Final Rule did not significantly deviate from the proposed rule CEQ released for public comment last October. ***NSSGA [joined in comments and meetings with White House staff to express concern with these proposed changes that are now incorporated into the Phase 1 Final Rule. NSSGA also engaged with Capitol Hill to support legislation that would codify in statute many of the positive regulatory reforms gained in 2020.](#)***

Recap of 2020 Rule

In 2020, the previous administration overhauled the CEQ NEPA regulations for the first time since their inception in 1978. NSSGA supported this rulemaking, as it streamlined agency actions to speed up permit approvals and limit opportunities for environmental groups to litigate to stop projects. It was estimated the changes in the 2020 Rule would reduce the timeline for permit approval for large infrastructure projects from an [average of 7 to 2 years](#). Further, prior to the 2020 update, Environmental Impact Statements (EIS), averaged almost 600 pages in length and agencies would work from multiple different permitting documents. The 2020 Rule required agencies to work with one document and this significantly reduced unnecessary paperwork.

2020 Rule Benefits to Aggregates Industry

The reforms included in the 2020 Rule were significant to the aggregates industry. There have been [countless examples of projects](#) that have been bogged down by environmental review and with litigation due to NIMBY and environmental groups. Look no further than the [current examples of road projects](#) being litigated over NEPA review concerns in an effort to stop construction altogether. The 2020 reforms (that were just rolled back by CEQ) reduced the scope of federal action and limited opportunities for advantageous groups to litigate.

Breakdown of Phase 1 Changes

The current administration, encouraged by a vast array of environmental groups, clearly disagreed with many of the changes established in 2020 and embarked on a two-step review process. In Phase 1, CEQ revised certain provisions to revert to the previous regulatory language and intent:

- **Definition of "effects" or "impacts"**: One of the most controversial components of the 2020 Final Rule was CEQ's changes to the definition of "effects" or "impacts" to remove the requirement to assess "cumulative impacts," i.e., the "impacts to the environment resulting from the incremental impacts of the proposed action added to other past, present, and reasonably foreseeable future actions." The Phase 1 Final Rule



restores the prior definition of “effects” or “impacts,” including the sub-definition of “cumulative impacts.” ***Expanding to cumulative impacts will give agencies the latitude to take into consideration a vast number of environmental, social, and economic impacts, into permitting decisions that will increase red tape and provide more avenues for litigation.***

- ***Definition of “purpose and need”:*** The 2020 Final Rule required federal agencies to base the purpose and need of an environmental impact statement on the applicant’s goals and the applicable agency’s authority. CEQ reverted to the previous definition of “purpose and need” to avoid the potential for federal agencies to prioritize an applicant’s goals over other factors such as the public interest. Similarly, CEQ revised the definition of “reasonable alternatives” in 40 C.F.R. Section 1508.1(z) to remove a reference to the applicant’s goals.
- ***Federal agency NEPA procedures:*** As the coordinating agency for NEPA implementation, CEQ oversees every federal agency’s NEPA procedures. The 2020 Final Rule required federal agencies to revise their NEPA procedures if those procedures were “inconsistent” with the CEQ regulations. This change prohibited federal agencies from imposing procedures and requirements beyond those required in the CEQ regulations, deeming the CEQ regulations the “ceiling” for NEPA compliance. The Phase 1 Final Rule revised 40 C.F.R. Section 1507.3 to remove the ceiling requirement and restore flexibility, allowing federal agencies to adopt procedures beyond the CEQ’s regulatory requirements.

Phase 2 Rulemaking

The Phase 1 Final Rule reversed some of the prior administration’s actions to streamline the NEPA review process. However, in its Fall 2021 Regulatory Agenda, CEQ stated it plans to propose “broader changes” to the NEPA regulations in the Phase 2 rulemaking to meet environmental, climate change and environmental justice goals, as well as to ensure public involvement in the NEPA process and promote decision making more consistent with NEPA’s statutory mandate. While CEQ has not published a proposed rule for Phase 2, project proponents should be prepared for further changes. NSSGA will be engaged on Capitol Hill and with the administration to continue to oppose efforts to make permit decisions more complicated and burdensome.

Additional Resources

Berkeley NIMBY Battle Revives Debate Over NEPA: <https://www.bloomberg.com/news/features/2022-04-20/the-landmark-environmental-law-inside-a-nimby-firestorm>

Detailed Summary of the Changes implemented by the Administration’s new NEPA Action: https://image.uschamber.com/lib/fe3911727164047d731673/m/21/CEQ+NOPR+Summary+-+10_13_2021.pdf?utm_medium=Email&utm_source=SFMC&utm_campaign=&utm_content=

Example of Highway project delayed by NEPA lawsuit: <https://www.ldsupra.com/legalnews/i-30-widening-reconstruction-national-5240440/>

Wall Street Journal editorial: https://www.wsj.com/articles/how-to-kill-infrastructure-on-the-sly-white-house-biden-council-on-environmental-policy-nepa-11650481710?mod=opinion_lead_pos3

