Early on Friday, the White House's Council on Environmental Quality (CEQ) released the proposed Phase II revisions of its NEPA regulations. The CEQ proposal deftly threads the needle, streamlining the NEPA process while protecting the environment and disadvantaged communities.

The proposal is a clear improvement over both earlier versions: 1978 rules issued by the Carter Administration, and 2020 rules issued by the Trump Administration. "Phase II "revisions were already in the works when Congress played a wildcard at the beginning of June: rewriting NEPA itself as part of the debt ceiling bill. That made redoing the NEPA rules trickier.

Streamlining.

In terms of streamlining the process, the new rules incorporate the deadlines and page limits found in the Financial Responsibility Act. The inclusion of these statutory requirements is not notable in itself, but CEQ did not provide support for using possible ways to bene the rules.

The new rules also have several provisions that are intended to improve efficiency. Here are some of the important examples:

- The proposal allow agencies to create categorical exclusions in planning documents rather than requiring a separate administrative process. (Categorical exclusions allow agencies to skip environmental analysis for actions that typically don't harm the environment.) This will make it easier to exclude actions that really don;'t merit environmental assessments.
- The proposal encourages agencies to develop innovative approaches to NEPA compliance to deal with "extreme environmental threats" such as sea level rise or increased wildfire risks. This should encourage agencies to find more efficient ways of analyzing responses to these mounting challenges.
- The proposal emphasizes the importance of transparency and early engagement with stakeholder communities, other agencies, and state government. Experience has shown that early consultation can increase buy-in and allow objections to a project to be accommodated more easily. This can prevent gumming up the process later and will hopefully reduce the likelihood of litigation.

Environmental values.

The proposed rules contain numerous provisions promoting fuller consideration of environmental impacts. For example:

- The proposal emphasizes that environmental assessments and impact statements are not merely paperwork requirements. Rather, they are intended to promote the agency's consideration of the environment in its decision-making process.
- The proposal restores language from the 1978 regulations that ensure the agencies consider the indirect and cumulative effects of their actions. This is likely to be controversial. The House attempted to limit the types of environmental effects covered by NEPA, but that part of the House bill did not make it into the final law.
- Climate change examples appear repeatedly, making it clear that climate-related effects must be considered. This, too, will undoubtedly be controversial.
- Mitigation will only be considered to reduce the significance of environmental effects when mitigation commitments are enforceable, and the proposal encourages monitoring of the success of the mitigation efforts.
- Categorical exclusions will continue to have exceptions for extraordinary circumstances, something that was not clear from the language of the debt ceiling bill.

Environmental justice.

The Biden Administration has worked to increase the focus on the environmental woes of disadvantaged communities. Attention to environmental justice is a theme of the proposed rules:

- Impacts on disadvantaged communities are flagged as objects of concern having the potential to require deeper analysis, and the effects of all alternatives on those communities must be disclosed. Mitigation measures may be needed to deal with those effects.
- There are also repeated calls for engagement with disadvantaged communities throughout the process.
- In addition, the proposal contains several provisions addressed to the needs of Indian tribes. There are special provisions about their participation in the NEPA process, and one that exempts the Tribe's own activities from NEPA.

Striking a balance.

There is a broad consensus that the NEPA process is badly needs streamlining. Conservatives and industry have taken that position for years. That view is now shared, however, by advocates of clean energy and climate resilience. The current proposal pursues streamlining with minimal impact on environmental protection and environmental justice.

The Trump Administration used streamline as an excuse to curtail analysis of environmental impacts, focusing only on the most immediate and downplaying issues like climate change. The current proposal rejects that philosophy. It requires only that impacts be reasonably foreseeable. Streamlining efforts are focused on the process rather than the substance of environmental assessment.

We are likely to see complaints on both sides— but especially from those who want more streamlining regardless of the impacts on the environment or disadvantaged communities. We may also see complaints from groups that feel the current system gives them more leverage to protect the environment or the interests of disadvantaged communities.

CEQ wisely refrained from pursuing streamlining at all cost, jettisoning the value of honestly examining environmental consequences. CEQ was also aware that, unless the permit process for clean energy projects is streamlined, both the environmental and disadvantaged communities will be more exposed to the ravages of climate change. This was not an easy balance to strike, and the inept drafting of the most recent NEPA amendments only made it harder.

To my mind, the proposal is an important step forward. This is not to say that I think it’s perfect. I will discuss some initial thoughts about possible improvements in my next post. But the CEQ proposal will improve the NEPA process in tangible ways,.