

INSIGHTS

Executive Order Aims to Improve Environmental Review of Infrastructure Projects

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On August 15, 2017, President Trump signed an [executive order](#) (EO) entitled “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.” As part of the Administration’s goal to improve domestic infrastructure, the purpose of the EO is to promote agency coordination, efficiency, and accountability with respect to environmental reviews of infrastructure projects.

Given that the EO’s “infrastructure project” definition specifically includes pipelines, the EO has a direct impact on how agencies are instructed to approach pipeline permitting. The EO is supported by the pipeline industry, as it aims to streamline the project approval and environmental review process by removing duplicative authorization requirements and shortening the length of time needed to obtain authorization as explained further below.

Agency Performance Accountability

The EO has two primary goals. The first is to promote agency performance accountability. It requires the Office of Management and Budget (OMB)—in consultation with the Federal Permitting Improvement Steering Council (FPISC)—to establish a Cross-Agency Priority (CAP) Goal on Infrastructure Permitting Modernization seeking to (1) promote a “consistent, coordinated, predictable” federal environmental review process, and (2) reduce the average environmental review and authorization period for major infrastructure projects to approximately two years. “Major infrastructure projects” are those where multiple federal authorizations are required, where the lead federal agency determines an environmental impact statement (EIS) is necessary, and where the project sponsor has identified reasonable availability of sufficient funds.

In furtherance of the CAP Goal, the EO requires OMB and the FPISC to issue guidance addressing tracking of major infrastructure projects, scoring of agency performance, and best practices. The EO also requires federal agencies with environmental review, authorization, or consultation responsibilities for infrastructure projects to modify their strategic plans and annual performance plans to include performance goals for completing environmental reviews and authorizations in accordance with the CAP Goal.

Process Enhancements

The EO's second primary goal is to enhance and consolidate the environmental review and authorization process. It proposes to establish the "One Federal Decision" policy. One Federal Decision directs lead and cooperating agencies to approach environmental reviews of major infrastructure projects in a more coordinated manner. This includes issuing environmental review decisions for major infrastructure projects in a single, joint Record of Decision (ROD). The EO further requires all federal authorization decisions for construction of major infrastructure projects to be completed within 90 days of an ROD's issuance. The Council on Environmental Quality (CEQ) and OMB—in consultation with the FPISC—are tasked with developing the One Federal Decision implementation framework, which must include guidance on developing permitting timetables.

CEQ is also tasked with developing an initial list of actions it will take to modernize and enhance the environmental review and authorization process. The actions must include regulations, guidance, and directives that CEQ deems necessary to, among other things, (1) optimize interagency coordination, (2) ensure that environmental reviews are conducted in a "concurrent, synchronized, timely, and efficient" manner, and (3) ensure that agencies apply NEPA in a way "that reduces unnecessary burdens and delays as much as possible" CEQ must develop and submit this list within thirty days of the EO's issuance.

The EO further tasks an interagency working group comprised of CEQ and the OMB Director, among others, to review NEPA's implementation regulations "to identify impediments to efficient and effective environmental reviews and authorizations for infrastructure projects." Based on this review, the EO instructs agencies to develop and submit action plans for addressing identified impediments to CEQ and OMB for comment.

The EO is yet another move to ease regulatory burdens and to simplify the process for obtaining project approvals. The U.S. House has also recently passed legislation with [similar aims](#). In order to implement this EO, it is likely that regulatory and other changes will need to be made. Updates regarding the EO's directives will be provided as they are made available.