

Mike Keefe COO. INDY 01.07.15

NOW MIGHT BE
A GOOD TIME
TO BOOST THE
GAS TAX AND
INVEST IN
INFRASTRUCTURE.

WHAT? AND
TAKE ALL THE
FUN OUT OF
DRIVING?!



National Association of County Engineers

“The Voice of County Road Officials”

Transportation & Infrastructure Legislative Update

Minnesota Transportation Alliance



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Executive Director

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FAST ACT EXTENSION

- Additional \$13.6 billion added to the Highway Trust Fund (HTF) FAST Act extension within the CR provides obligation limitation through December 11, estimated to be \$9.1 billion for the Federal-aid Highway Program; a \$10.4 billion general fund transfer to the HTF's Highway Account and a \$3.2 billion transfer to the Mass Transit Account; an increase to the "multimodal cap" within the U.S. DOT's Infrastructure for Rebuilding America (INFRA) discretionary grant program from \$500 million to \$600 million; and an extension of 2017 and 2018 Better Utilizing Investments to Leverage Development (BUILD) grant program obligation deadlines through September 30, 2021.

NEW NEPA REFORMS

According to the Council on environmental Quality (CEQ), the average length of an EIS is over 600 pages, and that the average time for Federal agencies to conduct these NEPA reviews is four and a half years. However, reviews for some projects have taken much longer. NEPA analyses are frequently challenged in the courts, and while Federal agencies ultimately prevail in many cases, litigation can unnecessarily delay and increase costs for important projects such as needed transportation, water, and other infrastructure that benefit States, Tribes, and local communities. The increased costs and complexity of NEPA reviews and litigation make it very challenging for large and small businesses to plan, finance, and build projects in the United States.

On June 4, President Donald Trump signed an executive order (EO) to expedite the federal permitting process for infrastructure projects, including new mines, highways, pipelines and other projects, as a means to boost the economy.

“Accelerating the Nation’s Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities,” directs agencies including the U.S. Departments of Agriculture, Defense, Interior and the U.S. Army Corps of Engineers to fast-track the permitting processes required under the National Environmental Policy Act (NEPA), the Endangered Species Act and the Clean Water Act. The executive order declares an economic emergency due to the COVID-19 pandemic, which will allow the White House to side-step traditional regulatory requirements imposed under current laws.”

WHITE HOUSE NEPA REFORM

- *Presidential Executive Order on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure*
- *Process Enhancements. Federal agencies shall follow a more unified environmental review and authorization process.*
- *Processing of Major Infrastructure Projects. In processing environmental reviews and authorizations for major infrastructure projects, Federal agencies shall:*

WHITE HOUSE NEPA REFORM

Use “One Federal Decision” described in subsection (b) of this section;

- Develop and follow a permitting timetable, which shall be reviewed and updated at least quarterly by the lead Federal agency in consultation with Federal cooperating and participating agencies; and
- Follow an effective process that automatically elevates instances where a permitting timetable milestone is missed or extended, or is anticipated to be missed or extended, to appropriate senior agency officials of the lead Federal agency and the cooperating and participating Federal agency or agencies to which the milestone applies.

One Federal Decision

Each major infrastructure project shall have a lead Federal agency, which shall be responsible for navigating the project through the Federal environmental review and authorization process, including the identification of a primary Federal point of contact at each Federal agency. All Federal cooperating and participating agencies shall identify points of contact for each project, cooperate with the lead Federal agency point of contact, and respond to all reasonable requests for information from the lead Federal agency in a timely manner.

One Federal Decision

With respect to the applicability of NEPA to a major infrastructure project, the Federal lead, cooperating, and participating agencies for each major infrastructure project shall all record any individual agency decision in one Record of Decision (ROD), which shall be coordinated by the lead Federal agency unless the project sponsor requests that agencies issue separate NEPA documents, the NEPA obligations of a cooperating or participating agency have already been satisfied, or the lead Federal agency determines that a single ROD would not best promote completion of the project's environmental review and authorization process. The Federal lead, cooperating, and participating agencies shall all agree to a permitting timetable that includes the completion dates for the ROD and the federally required authorizations for the project.

One Federal Decision

All Federal authorization decisions for the construction of a major infrastructure project shall be completed within 90 days of the issuance of a ROD by the lead Federal agency, provided that the final EIS includes an adequate level of detail to inform agency decisions pursuant to their specific statutory authority and requirements. The lead Federal agency may extend the 90-day deadline if the lead Federal agency determines that Federal law prohibits the agency from issuing its approval or permit within the 90-day period, the project sponsor requests that the permit or approval follow a different timeline, or the lead Federal agency determines that an extension would better promote completion of the project's environmental review and authorization process.

NEPA REFORMS

- Clarifying that the definition of “cooperating agency” includes state, tribal and local governments to ensure greater involvement on behalf of counties in the NEPA process
- Limiting environmental impact statements to 150 pages and 300 pages for projects of “unusual scope or complexity”
- Expanding the use of categorical exclusion
- In some cases, allow state/local environmental assessments be permitted to serve as federal requirement assessment.

NEPA REFORMS

- Instituting a two-year deadline on environmental impact statements and a one-year deadline for less rigorous environmental assessments
- Establishing a distinction between a major federal action and projects that require minimal federal funding or involvement
- Requiring one lead agency for projects involving multiple agencies
- Requesting CEQ continue to study all potentially harmful environmental impacts

Overview of Key Elements of the Proposed Rule

Clarify Terms, Application and Scope of NEPA Review

- **Provide direction regarding the threshold consideration of whether NEPA applies to a particular action**
- **Require earlier solicitation of input from the public** to ensure informed decision making by Federal agencies
- **Require comments to be specific and timely** to ensure appropriate consideration
- **Require agencies** to summarize alternatives, analyses, and information submitted by commenters and to certify consideration of submitted information in the ROD
- **Simplify the definition of environmental “effects”** and clarify that effects must be reasonably foreseeable and have a reasonably close causal relationship to the proposed action
- State that analysis of cumulative effects is not required under NEPA
- Clarify that “major Federal action” does not include non-discretionary decisions and non-Federal projects (those with minimal Federal funding or involvement)
- Clarify that “reasonable alternatives” requiring consideration must be technically and economically feasible

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THANK YOU!

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