

SUMMARY

EPN Comments on CEQ Proposed Revisions of NEPA

March 10, 2020

On March 10, 2020, EPN submitted [comments](#) in response to the Council on Environmental Quality's (CEQ) [proposal](#) to update regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA). NEPA provides the foundation for national environmental policy, augments federal agency authority, and directs agencies to use all practicable means and measures to secure harmony between the human and natural environment, to reuse resources, and to avoid irreparable harm or irretrievable use of resources in consideration of future generations. It directs federal agencies to collaborate among themselves, state, local, and tribal governments and to take a "hard look" at potential environmental (i.e., air, water, and other shared resources), social, and economic impacts of major federal actions with potential for significant impacts on the human environment. NEPA's environmental reviews support federal agency consideration of reasonable alternatives to proposed actions in order to avoid harm or, if not, mitigate adverse impacts and enhance benefits before they approve, permit, license, lease or fund a project (such as a mine, timber harvest, oil/gas field or pipeline, renewable energy project, or resource management plan on public lands; dam construction; port expansions; and highway and transit projects, to name just a few).

EPN strongly opposes CEQ's proposed revisions, which are inconsistent with NEPA, congressional intent, and years of practice. The proposed changes would render NEPA a meaningless paper exercise, rather than the responsible force it was intended to be for integrating economic, environmental, and social concerns into federal government decision-making to protect the health and prosperity of future generations. Moreover, CEQ's stated purpose of reducing delays, costs, and uncertainty would certainly fail since it invites protracted litigation with proposals that overstep any reasonable bounds for interpreting what NEPA requires of federal agencies.

EPN raised concerns that the draft would:

- Remove NEPA's policy and mandate and limit the application of NEPA's environmental review requirements by changing key definitions and limiting alternatives, comments, and contributions by federal agencies to their statutory authority.
- Erode the integrity of federal agency environmental reviews, limit analysis to only information that is currently available, remove analysis of indirect and cumulative impacts, and remove conflict-of-interest prohibitions while expanding who can carry out the analysis for federal agencies.
- Ignore public and agency comments that do not come at the early stages of scoping and bypass required public comment periods by allowing agencies to adopt other agencies' environmental impact statements, findings of no significant impact, and categorical exclusions, also reducing both agency transparency and responsiveness to comments.
- Sacrifice quality for expediency by rigidly imposing a one-size-fits-all page count and schedule for both NEPA and authorizations.
- Weaken essential drivers for federal agencies to integrate environmental and long-term concerns into their decision-making. Referrals to CEQ for environmentally unsatisfactory or inadequate assessments would become closed-door complaint forums on behalf of project proponents based on costs of delay.
- Limit judicial review, especially citizen access to the courts, through agency self-certification and new requirements for bonds and stays favoring project proponents.

Background

Signed in 1970, NEPA establishes national environmental policy. In 1978, CEQ issued regulations for federal agencies to implement NEPA, which have stood the test of time by creating a process for efficient implementation of NEPA's mandates. There has been only one limited substantive amendment in its 50-year history, back in 1986. Many administrations have issued Executive Orders (EO) to improve on NEPA's implementation, including the Trump

administration's EO 13807 establishing a One Federal Decision Policy, which includes a two-year goal for completing environmental reviews for major infrastructure projects and a request for CEQ to consider revisions to modernize its regulations. In 2018, CEQ issued an Advance Notice of Proposed Rulemaking requesting comment on potential updates to its regulations, and received over 12,500 comments. CEQ has not made its analysis of comments available to the public, and has only provided 60 days for written comment and two public hearings for which registration was closed after less than 5 minutes. EPN joined other groups and many members of the US Congress in requesting additional opportunity for comment on such major changes to our foundational national environmental policy, to which CEQ has not responded.