



Committee on Transportation and Infrastructure
U.S. House of Representatives

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Chairman

Washington, DC 20515

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Ranking Member

March 10, 2020

Katherine W. Dedrick, Staff Director

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The Honorable Mary B. Neumayr
Chairman
Council of Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

RE: *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Docket ID: CEQ-2019-003*

Dear Chairman Neumayr:

I write in strong opposition to the Council on Environmental Quality's (CEQ) proposed rule to fundamentally re-write the National Environmental Policy Act (NEPA) regulations. I urge you to reconsider and withdraw the proposal. In particular, I am concerned about the short comment period and limited public engagement given the broad scope of the proposed changes. In addition, the proposal to remove the requirement that Federal agencies account for cumulative environmental impacts and indirect effects is short-sighted and fails to protect Americans from the public health and economic impacts of climate change. Finally, the proposal fails to address the true source of delay in permitting infrastructure: lack of money.

When NEPA passed fifty years ago, it was by an overwhelming bipartisan majority in Congress and was signed into law by President Nixon. For the first time, NEPA required Federal agencies to identify and publicly disclose significant environmental impacts, as well as social, economic or public health impacts that may result from a Federal project or activity prior to final decision-making. Since its enactment, NEPA has served as America's "basic national charter for protection of the environment"¹ and has been used as a model for environmental protections all over the world.²

Inadequate Public Comment Period and Engagement

That's why I am particularly disappointed that CEQ denied my – and more than 160 Members of the House and Senate – request for an extension of the comment period. Further, CEQ simply chose to not respond to our request for additional public hearings. CEQ has proposed a massive overhaul to a set of keystone environmental regulations that have stood in place – largely unchanged – for almost half a century. By providing a mere 60-day comment period, and only two

¹ 40 C.F.R. § 1500.

² <https://ceq.doe.gov>.

public hearings (in Colorado and Washington, DC), CEQ appears uninterested in obtaining broadscale public input.

CEQ justified denying our request for an extension of the comment period by claiming the 60-day comment period was consistent with that of the original 1978 proposed regulations. However, that is disingenuous. During the development of the original 1978 regulations, CEQ held three public hearings in 1977 from June 6th through 8th, *prior to publishing the draft regulations* on how to best reform implementation of NEPA. At that time, CEQ invited testimony from a broad array of public officials, organizations and private citizens, affirmatively involving NEPA's critics as well as its friends. CEQ "sought the views of almost 12,000 private organizations, individuals, State and local agencies, and Federal agencies".³

After the hearings, CEQ then organized the problems and solutions into a 38-page "NEPA Hearing Questionnaire," published in the Federal Register. This questionnaire was sent to all witnesses, every State governor, all Federal agencies, and everyone who responded to the Federal Register notice. These responses were collated and used to draft the regulations. In addition, CEQ met with every agency in the executive branch and circulated for comment an early draft of the regulations in December 1977. Further one-on-one consultation continued with a fourth draft of the full NEPA regulations sent to NEPA contacts for comment. At that same time, CEQ continued to meet with and brief members of the public, including representatives of business, labor, State and local governments, environmental groups, and others, all whose views were considered during the early stages of the rulemaking. Then, after this *extensive* process, the comment period on the draft regulations ran for 73 days (May 30, 1978 to August 11, 1978), with the final regulations effective July 30, 1979.

The publication of the Trump administration's proposed regulations was not preceded by an extensive outreach effort similar to the one during the development of the 1978 regulations and claiming the current 60-day comment period is consistent with the 1978 process is simply not true.

Trump Administration's Proposal Underscores Continued Denial of Climate Change

Much to the detriment of American taxpayers, the Trump administration's proposed NEPA regulatory changes will leave our nation ill-prepared to meet the challenges of climate change. The proposed revisions remove consideration of cumulative environmental impacts and indirect effects from current regulations. In addition, the proposal revises NEPA regulations further to state that "effects should not be considered significant if they are remote in time, geographically remote, or the product of a lengthy cause chain" and that "effects do not include effects that the agency had no authority to prevent... or would occur regardless of the proposed action." These proposed changes will result in climate change no longer being considered a potential environmental impact prior to beginning Federal projects or other major activities.

The courts have already spoken on this matter and determined that when Federal agencies assess cumulative impacts during the NEPA process, the agencies must look at whether greenhouse gas (GHG) emissions from a federally-funded project may impact climate change, and whether that project will be able to withstand the potential impacts of climate change.⁴ Extreme weather events,

³ Available at <https://ceq.doe.gov/docs/laws-regulations/FR-1978-11-29-43-FR-55978-CEQ-NEPA-Regulations-NOFR.pdf>.

⁴ See, e.g., *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F. 3d 508 (2007).

flooding, stronger hurricanes, drought, and wildfires seem increasingly commonplace. As the climate continues to change, it is likely we will see these extreme weather events occur more frequently and with greater intensity.

Instead of heeding the courts, Mother Nature, and common sense, the Trump administration is proposing changes that have already been found to be illegal. The proposal directs Federal agencies to disregard indirect effects and cumulative impacts in the NEPA process, thereby eliminating the established legal requirement to consider climate change in the Federal decision-making process.

According to the National Oceanic and Atmospheric Administration (NOAA), since 1980 the cumulative costs of extreme weather and climate events in the United States is \$1.75 trillion,⁵ with costs exceeding \$800 billion over the decade. The majority of last year's economic damages from extreme weather events was the result of flooding across Missouri, Arkansas, and Mississippi that cost farmers their livelihoods and the American people \$20 billion in damages.⁶

According to the Government Accountability Office (GAO), our communities, national security, and economy are put at high risk when we fail to account for climate change when building our nation's infrastructure. The proposed NEPA regulatory changes are another example of the Trump administration's continued denial of climate change and science, and it puts our economy and communities at risk. In GAO's 2019 High Risk List report, GAO found the Trump administration has "revoked policies that had identified addressing climate change as a priority" and in doing so, "potentially increases the federal government's fiscal exposure to climate change."⁷

Given that Federal actions and projects can impact generations, it is imperative that cumulative environmental impacts, and direct and indirect climate effects more broadly, are included in the NEPA environmental review process. We cannot ignore climate change. We should be improving laws like NEPA to help us rise to the challenge of ensuring our precious dollars are well-spent as we plan and design Federal infrastructure that is well-made and resilient to extreme weather events.

Lack of Justification for NEPA Regulatory Overhaul

In recent news articles, CEQ suggests that the NEPA rulemaking is "long overdue"⁸ and that environmental review is the main cause for delay in building infrastructure. However, the Federal Government has issued reports that tell a different story.

A 2016 report from the U.S. Department of Treasury found "a lack of funds is by far the most common challenge to completing" major infrastructure projects "(including those that have commenced but since been delayed)."⁹ The report went on to list three additional challenges to largescale infrastructure projects as: 1) a lack of consensus when multiple public and private entities

⁵ <https://www.climate.gov/news-features/blogs/beyond-data/2010-2019-landmark-decade-us-billion-dollar-weather-and-climate>.

⁶ <https://www.climate.gov/news-features/blogs/beyond-data/2010-2019-landmark-decade-us-billion-dollar-weather-and-climate>.

⁷ <https://www.gao.gov/assets/700/697245.pdf>.

⁸ Friedman, Lisa. New York Times, "Trump Rule Would Exclude Climate Change in Infrastructure Planning" (Jan. 3, 2020).

⁹ Toni Horst, et al. "Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance," AECOM, (2016), available at <https://www.treasury.gov/connect/blog/Documents/final-infrastructure-report.pdf>.

and jurisdictions are involved; 2) capital costs increasing at a greater rate than inflation; and 3) the smallest challenge, by far, the environmental review and permitting process. The Department of Treasury explained that this small challenge could be addressed through successful implementation of recently passed legislation addressing the permitting processes under NEPA, and that no additional changes to the NEPA process were necessary.

The Congressional Research Service (“CRS”) has also concluded multiple times that NEPA is not the primary cause of delay in project review. Rather, these delays are due to causes unrelated to NEPA. In one report, CRS concluded that for transportation projects, the lack of funding, securing community consensus, and accommodating affected stakeholders account for the vast majority of delays.¹⁰ In another report, CRS determined: “[T]here is little data available to demonstrate that NEPA currently plays a significant role in delaying federal actions” and “factors outside the NEPA process were identified as the cause of delay between 68% and 84% of the time.”¹¹ The administration’s proposal claims to fix our nation’s infrastructure problem, but it fails to recognize or address one of the major roadblocks to infrastructure projects—a lack of funding.

I am disappointed that after a history of extensive public engagement when the first NEPA regulations were promulgated, the Trump administration is embarking on a re-write of the regulations with minimal public engagement and a 60-day comment period. We need to consider our changing climate when planning Federal infrastructure in order to protect the American people, their tax dollars, and infrastructure for future generations. Instead, this proposal puts industry ahead of the long-term needs of the American people.

Sincerely,



PETER A. DEFAZIO

Chairman

Committee on Transportation and Infrastructure

¹⁰ Congressional Research Service (CRS), “Accelerating Highways and Transit Project Delivery: Issues and Options for Congress” (Aug. 3, 2011), available at <https://crsreports.congress.gov/product/pdf/R/R41947>.

¹¹ CRS, “The National Environmental Policy Act: Background and Implementation” (Feb. 29, 2008), available at <https://crsreports.congress.gov/product/pdf/RL/RL33152>.