



Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503
Attn: Docket No. CEQ-2019-0003

March 10, 2020

Dear Council on Environmental Quality Chair Mary Neumayr,

The Wyoming Wilderness Association is writing on behalf of our 3,000 supporters, in collaboration with the Jackson Hole Conservation Alliance and their 2,500 supporters, the Wyoming Wildlife Advocates and their 10,000 supporters, and the of Northern Rockies Conservation Cooperative and their 1,300 supporters, to oppose the Trump Administration's [draft proposed changes](#) to the regulations that guide the National Environmental Policy Act (NEPA). As conservation-based organizations, our missions would be seriously undermined by the changes presently being proposed to one of our most necessary tools. NEPA is the only law that requires the federal government to consider the environmental impacts of its decisions and gives the public a voice in federal decision making. It is foundational to the health of our nation's environment and people. The changes presently being considered would eliminate the many safeguards in avoiding harm to our natural world while silencing the voice of concerned American citizens. This is not an effort to "modernize" the review process. It is clearly an effort to allow pipelines, energy projects and unchecked development to bulldoze communities and public wildlands with less public input and less disclosure of potential impacts to public health, the environment, and climate change.

Taken from the 194-page document, the following is an outline of five specific changes that we adamantly oppose and that we ask are not implemented:

- 1. Removing any analysis of climate impacts through changes to "cumulative impacts" or "effects:"** The draft proposed changes to NEPA, considered in this comment, would remove the requirement that agencies analyze cumulative impacts under NEPA; in fact, the proposed regulatory language states that, "Analysis of cumulative effects is not required." This would

allow more polluting projects to occur across the country. Federal agencies would not be required to analyze how these projects would either pollute over time or contribute to climate change. Furthermore, the proposed regulatory language essentially directs agencies not to consider climate change, without ever using the word “climate”: “Effects should not be considered significant if they are remote in time, geographically remote, or the product of a lengthy causal chain.”

Notably, both CEQ and EPA have underscored how cumulative effects can ultimately be the most severe. In a [25th anniversary report](#) in 1997, CEQ wrote “perhaps the most significant environmental impacts result from the combination of existing stresses on the environment with the individually minor, but cumulatively major, effects of multiple actions over time.” The EPA wrote in [a report in 1999](#), “while they may be insignificant by themselves, cumulative impacts accumulate over time, from one or more sources, and can result in the degradation of important resources.”

Please note the page numbers that specify the remarks made above:

- P. 63: “CEQ proposes...to strike the paragraph on ‘cumulative actions.’”
- P. 98: “...CEQ proposes to make amendments to simplify the definition of effects by consolidating the definition into a single paragraph and striking the specific references to direct, indirect, and cumulative effects.”
- P. 99: “CEQ proposes to strike the definition of cumulative impacts and strike the terms “direct” and “indirect” in order to focus agency time and resources on considering whether an effect is caused by the proposed action rather than on categorizing the type of effect...” (more)
- P. 99: In addition, CEQ proposes a change in position to state that analysis of cumulative effects, as defined in CEQ’s current regulations, is not required under NEPA.
- P. 99: “With this proposed change and the proposed elimination of the definition of cumulative impacts, it is CEQ’s intent to focus agencies on analysis of effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action.”
- Proposed regulatory amendments, P. 189: “A “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should not be considered significant if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action. Analysis of cumulative effects is not required.”

- 2. Ignoring “indirect” effects:** The current regulations require agencies to account for both “direct” and “indirect” effects in their analyses. The new proposed regulations will allow agencies and fossil fuel companies to completely disregard potential “indirect” effects of

federal actions, as well. For example, downstream water pollution from a coal mine or drilling operation would not be assessed. The administration leaves open the door to narrowing the scope of effects that are considered even further: “CEQ invites comment on the proposed revisions to the definition of effects, including whether CEQ should affirmatively state that consideration of indirect effects is not required” (p. 100).

Here is the page number to aid in finding the specifics of this concern within the draft:

- P. 98: “ While NEPA refers to environmental impacts and environmental effects, it does not subdivide the terms into direct, indirect, or cumulative...CEQ proposes to make amendments to simplify the definition of effects by consolidating the definition into a single paragraph and striking the specific references to direct, indirect, and cumulative effects.”

- 3. Blurring the lines on conflicts of interest:** A major change that is proposed would allow companies to conduct their own environmental reviews. Currently, reviews (environmental assessments and impact statements) are [prepared](#) by federal agencies and agencies can contract with an outside consulting firm when needed due to limited capacity. However, the current [regulations](#) ensure that any [conflicts of interest](#) for these companies are avoided by requiring financial and interest disclosures. Lines on this requirement are being blurred; for the first time companies would be allowed to “assume a greater role in contributing information and material to the preparation of environmental documents, subject to the supervision of the agency.”

Here are the page numbers needed to find this information in the proposed regulation:

- P. 86: “Applicants and contractors would be able to assume a greater role in contributing information and material to the preparation of environmental documents, subject to the supervision of the agency.”
- P. 172, proposed regulatory amendment: “(b) Environmental assessments. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.”

- 4. Redefining “Major Federal Action”:** The proposed regulations also change the definition of a “Major Federal Action” and in doing so create loopholes that polluting industries could exploit. Currently, agencies have to conduct environmental reviews for federal actions that are “major,” or that significantly affect the environment. For example, if a federal action is relatively minor but has a significant environmental impact, a review must be completed, or vice versa. This change, however, redefines what constitutes a “major” federal action by narrowing the scope of projects that require environmental review. For example, a permitting

decision might no longer require federal environmental review if the Federal Government is only one of several partners, despite potential for significant environmental impacts. Furthermore, by leaving “minimal federal funding” undefined in the current proposed regulations, as it relates to the definition of a major federal action, undue uncertainty is created regarding how projects would be assessed.

Use the page numbers below to reference this proposed change within the CEQ proposal:

- P. 102: “CEQ proposes to amend the first sentence of the definition to clarify that an action meets the definition if it is subject to federal control and responsibility, and it has effects that may be significant. CEQ proposes to replace “major” effects with “significant” in this sentence to align with the NEPA statute. CEQ proposes to strike the second sentence of the definition, which provides “Major reinforces but does not have a meaning independent of significantly.”
- P. 103: “CEQ proposes to add two sentences to the definition to make clear that this term does not include non-Federal projects with minimal Federal funding or minimal Federal involvement such that the agency cannot control the outcome on the project. In such circumstances, there is no practical reason for an agency to conduct a NEPA analysis because the agency could not influence the outcome of its action to address the effects of the project.”
- Proposed regulatory amendment (P. 190; Section 1508.1 (q)): “Major Federal action or action means an action subject to Federal control and responsibility with effects that may be significant. Major Federal action does not include non-discretionary decisions made in accordance with the agency’s statutory authority or activities that do not result in final agency action under the Administrative Procedure Act. Major Federal action also does not include non-Federal projects with minimal Federal funding or minimal Federal involvement where the agency cannot control the outcome of the project.”

5. Creating loopholes to ignore public comment: Finally, today’s proposed NEPA regulations also create loopholes that could enable Federal Agencies to ignore public comment. NEPA is the only law that gives the public a voice in federal decision making, so any attempt to limit public comment silences communities that could be harmed the most by federal actions. Through confusing language that would require public comment be “specific” and “timely,” as well as an “Exhaustion” clause, the proposed regulations place the burden on the public to list any and all possible impacts of a proposed project. The proposed regulations also require that comments be specific to the project at hand, a term that agencies may interpret differently. The combination of these changes would deter many who do not consider themselves an expert on an issue or the NEPA process from commenting on government actions that impact them greatly, while allowing the agencies to disregard comments voicing concern about the action being considered.

And once again, here are page numbers to help navigate this issue within the draft document:

- P. 33 “CEQ further proposes to make revisions to part 1503 to ensure that comments are timely submitted on the draft EIS and on the completeness of the summary of information submitted by the public, and that comments are as specific as possible.”
- P. 40: “CEQ proposes to add a new § 1500.3(b), “Exhaustion,” which would provide that agencies must request comments on potential alternatives and impacts and identification of any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment in the notice of intent to prepare an EIS. It would provide that comments on draft EISs and any information on environmental impacts or alternatives to a proposed action must be timely submitted to ensure informed decision making by Federal agencies. CEQ further proposes to provide that comments not timely raised and information not provided shall be deemed unexhausted and forfeited. This reinforces that parties may not raise claims based on issues they did not raise during the public comment period.”

It is only after a careful review that we write our comment today and oppose the concerning NEPA changes outlined above. NEPA is critical to the well-being of our nation’s public lands and waters, and if this draft of proposed changes were to move forward, as you have proposed, work to protect this nation’s wildlands and wildlife and elevate the voice of the American people would be seriously compromised. Please adhere to our opposition to this recent effort to dismantle a foundational law and streamline actions that would degrade the health of the environment across the United States of America. Be in touch with questions or concerns regarding what we have shared within our comment. We would be happy to discuss our position further at any point. Thank you for your consideration.

Sincerely,



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