

From: Justin McCarthy, (The Partnership Project)
To: Environmental and other progressive groups
Date: October 13, 2019
Re: NEPA Regulatory Reform

BACKGROUND

Passed by an overwhelming bipartisan majority in Congress and signed by President Nixon on January 1, 1970, the National Environmental Policy Act (NEPA) requires government agencies to engage in a review process designed to identify and publicly disclose any significant environmental, social, economic, or public health impacts a federal action may have before a decision is made.

NEPA is one of the most broadly applicable laws in the entire federal government and applies to every “major federal action” the government takes, but the actual law (the statute) is very short – the real substance of NEPA is largely contained in its implementing procedures outlined in the White House Council on Environmental Quality’s (CEQ) regulations.

NEPA’s implementing regulations were first established by CEQ – the office tasked with oversight of NEPA – in 1978 and have since remained effectively unchanged.

NEPA REGULATORY REFORM – ANPRM

On June 20, 2018, the White House Council on Environmental Quality (CEQ) officially announced in an Advance Notice of Proposed Rulemaking (ANPRM) that the Trump administration would be re-examining CEQ’s longstanding NEPA regulations. The ANPRM initially offered 30 days for public comment (later extended to 60 days). No public hearings were scheduled.

Although both legislative and administrative attacks on NEPA are by no means new, the scope of this potential rollback is without precedent. Many agencies, most prominently the Department of Interior, have moved forward with proposed rollbacks to their own agency specific NEPA regulations, but CEQ’s NEPA implementing regulations provide a hard backstop; that is, every agency must still meet minimum standards as required by CEQ. CEQ’s regulatory reform process carries the potential to roll back NEPA across every federal agency at once.

Potential rollbacks to NEPA include:

- **Restrictions on public input:** The right of citizens to meaningfully weigh in on federal decisions impacting their communities is the most important guarantee of the current CEQ regulations. The breadth of this notice indicates that CEQ is even contemplating changing the public’s ability to participate in federal decision-making.
- **Narrowing the scope of NEPA review and limiting consideration of project alternatives:** The consideration of project alternatives is often called “the heart of the environmental impact statement.” Consideration of a range of project alternatives often results in the identification of easily implemented mitigation measures and saves taxpayer money and makes a project more likely to be approved. This notice contemplates changing this requirement.
- **Inappropriate categorical exclusions and waivers on environmental review:** When used correctly, Categorical Exclusions (CEs) can streamline the approval of actions that a federal agency has researched and demonstrated do not individually or cumulatively have a significant effect on the quality of the human environment. When used inappropriately, CE’s can be used

to steamroll public concerns and capitulate to corporate interests that elevate their profits over the public interest.

- **Imposition of hard deadlines for project approval:** Establishing hard deadlines for project approval regardless of project size, complexity, and impact or the degree of public controversy over a proposal.
- **Furthering the Trump administration's denial of climate science:** NEPA provides an adaptive framework empowering federal agencies to address the climate impacts of their actions. The Trump administration, however, has aggressively undermined climate action. CEQ's notice, read in conjunction with other actions by the Trump administration, indicates that it could weaken science-based analytical requirements to obscure climate impacts as a means of extending the life of antiquated fossil fuel infrastructure and boosting fossil fuels development on our public lands and waters.
- **Potential Conflicts of Interest:** Applicants could be allowed to prepare their own environmental impact statements, thus eliminating objective analyses about the environmental and related social and economic effects of their proposal.

These proposed rollbacks are not only unprecedented, they are completely unnecessary. As CEQ itself has acknowledged in its own recent guidance, the regulations already provide ample flexibility and a wide array of tools to meet the goal of high quality, efficient, and timely reviews.

The strength and flexibility of NEPA and its implementing regulations are one of the reasons it is the United States most widely imitated law, with over 160 other countries adopting laws modeled after NEPA. Once again, the Trump administration is proposing to retreat from policies where the U.S. was once a leader.

NEPA REGULATORY REFORM – NPRM AND RECOMMENDED PREPARATIONS

CEQ sent the draft rule to OIRA for interagency review and is expected to be released to the public within the next 2-6 weeks. The NEPA campaign expects a **60-90-day public comment** period accompanied by **1-3 public hearings**, at least one of which CEQ Chair Mary Neumayr has said will be held in the Mid-Atlantic.

Coalition groups are asked to do the following ahead of the release of the NPRM:

- Begin reporter outreach and message framing
- Block off space in their calendars for action alerts sometime in the fall/winter.
- Inform field staff of the possibility of public hearings in the fall/winter of 2019
- Please send requests for resources/materials to jmccarthy@partnershipproject.org (NEPA campaign is working on a website and toolkit that includes talking points, social media, graphics, LTEs and op-eds)