

National Environmental Policy Act - Counsel on Environmental Quality Proposed Rule Revisions: Examples of Opponent/Proponent Comments



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As noted in a previous post (see previous post [here](#)), the Council on Environmental Quality (“CEQ”) on January 10th published a Federal Register Notice promulgating for the first time in 40 years revisions to the regulations that implement the National Environmental Policy Act (“NEPA”). See 85 Fed. Reg. 1684.

CEQ’s stated rationale for issuing the revisions is its belief that there is a need for more modernization and clarification of the regulations.

The regulations, in whatever form, are important because other federal agencies typically utilize them in interpreting NEPA’s procedural requirements. Such Federal agencies themselves typically have in place regulations that address NEPA requirements applicable to its activities. However, such agency regulations also take their lead from CEQ.

Note, however, CEQ’s interpretations and the federal agencies themselves, through their regulation and guidance, are sometimes superseded by judicial decisions. Regardless of CEQ and the federal agencies’ rules, courts have not infrequently disagreed with CEQ/federal agency regulation interpretations.

The CEQ’s proposed revisions have engendered significant opposition and support from an array of organizations.

Four examples of the thousands of comments that were filed during the public comment period include:

1. Santa Fe Forest Coalition and Wild Watershed
 1. . . . proposed revisions. . . are deeply flawed, violate the letter and intent of NEPA and will not satisfy the objectives of this revision as articulated in the preamble.
 2. CEQ has violated its own regulations for this proposed revision and must prepare an Environmental Impact Statement
 3. CEQ’s proposed revision triggers the need for consultation under Section 7 of the Endangered Species Act
 4. The proposed revisions are fundamentally inconsistent with the purpose of NEPA and Congressional intent
 5. The proposed revisions would illegally eliminate cumulative effects analysis

6. The proposed revisions would illegally eliminate indirect effects analysis
 7. The proposed revisions would elevate the role of the private sector while diminishing the role of the public
2. Utility Water Act Group
1. . . . welcomes this opportunity to express its support for the proposal and offer further suggestions to strengthen the final rule, in keeping with the Act and prevailing case law
 2. . . . supports the efficient and effective implementation of NEPA
 3. NEPA review should be streamlined and focused to provide efficient reviews of critical energy projects and effectively achieve NEPA's goals
 4. The proposed rule appropriately recognizes limits on the scope of the Effects Analysis, and Supreme Court precedent supports further modifications
 5. . . . urges CEQ to clarify that effects should be measured against actual conditions that would exist without the major federal action
 6. The proposed rule properly limits the range of alternatives agencies must consider when conducting alternatives analyses
 7. The proposed rule improves the NEPA regulations by revising key definitions and provisions
 8. . . . supports, with clarification, CEQ's proposed changes to FONSI provision
 9. The proposed rule includes procedural changes to the NEPA process that will increase coordination and efficiency
3. National Wildlife Federation
1. The NPRM is fundamentally inconsistent with the language and purpose of NEPA
 2. The NPRM improperly eliminates NEPA's applicability to a wide variety of federal actions
 3. The NPRM improperly eliminates analysis and consideration of a vast array of impacts
 4. The NPRM improperly limits the review of alternatives
 5. The NPRM creates improper barriers to public engagement and input, and encourages agencies to ignore public input
4. Portland Cement Association
1. . . . strongly supports the proposed rule modernizing and streamlining NEPA Implementing Regulations
 2. Proposed revisions will facilitate more efficient and timelier NEPA reviews for infrastructure projects across the nation, many of which use cement and concrete, that will enhance economic growth while also ensuring environmental protection
 3. NEPA and the Implementing Regulations have slowed and impeded the development of needed infrastructure as NEPA reviews average four and a half years to complete and seven years for federal highway projects
 4. Streamlining NEPA will be particularly important to combating climate change as key pipeline infrastructure will be needed for manufacturing facilities in rural areas to

have access to lower-emitting natural gas and enable transport of carbon dioxide captured at industrial sources for ultimate sequestration or utilization

5. . . . does not think the draft GHG Guidance should be incorporated into the Implementing Regulations for this proposed rule
6. Agrees that it is not appropriate to address a single category of impacts, such as climate change, in this proposed rule revising the Implementing Regulations

A copy of the referenced comments can be downloaded below.

Santa Fe Forest Coalition and Wild Watershed comments [here](#).

Utility Water Act Group comments [here](#).

National Wildlife Federation comments [here](#).

Portland Cement Association comments [here](#).