



AMERICAN PUBLIC WORKS ASSOCIATION

Your Comprehensive
Public Works Resource

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November 19, 2021

The Honorable Brenda Mallory
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

**RE: Proposed Rule on National Environmental Policy Act Implementing Regulations Revisions –
Docket No. CEQ-2021-0002**

Dear Chair Mallory:

The American Public Works Association (APWA) appreciates the opportunity to submit comments on the Council on Environmental Quality's (CEQ) update to the regulations implementing procedural provisions of the National Environmental Policy Act (NEPA). These comments reflect the outlook of public works professionals across the country.

The responsibilities of our nation's public works professionals include the planning, design, operation, maintenance, and construction of infrastructure, as well as provision of essential services including delivery of drinking water and wastewater treatment. APWA's 30,000 members across North America must balance these important responsibilities with protecting the environment and public health.

APWA understands that NEPA is the regulatory framework for protecting America's environment while allowing vital infrastructure projects to be undertaken. In 2020, CEQ issued a final rule with the stated intent of modernizing and streamlining NEPA regulations. APWA issued comments on this rule that indicated our overall support for its provisions to speed up environmental reviews, while expressing concern regarding its restrictions on reviews of cumulative and environmental impacts.

APWA realizes that the current rulemaking and the upcoming 'Phase 2' rulemaking will seek to undo certain aspects of the 2020 NEPA revisions. Our comments provide the perspective of public works professionals on aspects of the 2020 NEPA revisions we hope to see preserved in CEQ's latest rulemakings, while also highlighting areas of concern we hope CEQ can now address.

An important note to make as further changes are considered to NEPA regulations is that our nation's infrastructure will be seeing a significant and much-needed \$1.2 trillion investment. This is a result of H.R. 3684, the Infrastructure Investment and Jobs Act (IIJA), signed into law by President Biden on November 15, 2021. Roads, bridges, drinking

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water, wastewater, emergency management, sanitation, cybersecurity, and much more will be set for long awaited upgrades and repairs, if federal aid can be appropriately and efficiently distributed. Historically, some communities have decided against applying for federal funds due to the onerous nature of permitting requirements, including NEPA. Our hope is revisions to NEPA procedures will ensure all communities can easily access federal funds, regardless of size and resources. As found by CEQ's own studies, the average length of a final Environmental Impact Statement (EIS) is 645 pages and the average time to conduct NEPA reviews is now 7.3 years. Ensuring communities can easily access federal funding will be key to guaranteeing the success of this historic investment in American infrastructure.

Public works professionals understand the need to protect our environment but have found that this must be effectively balanced with the need for timely delivery of critical infrastructure projects. The environmental benefits these projects can bring must also be considered when striking this delicate balance. Emission reductions from highway decongestion and improved public transit, improved water quality through effective wastewater treatment, and protection of limited drinking water supplies can only be achieved if transportation and water infrastructure projects are completed without unnecessary delays.

Below, we have outlined our continued support for streamlining of regulations and local government involvement. Additionally, we highlight our support for this rulemaking's restoration of cumulative environmental impact analysis, the need for clarity regarding designated 'environmental justice' terminology, and our concern regarding the rulemaking's establishment of NEPA regulations as a 'floor' for agency review procedures.

Streamlining & Local Government Involvement

APWA supported the following efforts in the 2020 revisions to streamline NEPA regulations. While the currently proposed rulemaking does not specifically address the following revisions, APWA urges CEQ to preserve these important provisions as the process continues

- Establishing time limits of two years for completion of Environmental Impact Statements (EIS) and one year for Environmental Assessments (EA);
- Establishing a 300-page limit for each EIS and a 75-page limit for each EA;
- Establishing a lead federal agency to develop a joint review schedule and preparation of a single EIS and joint record of decision for projects that require multi-agency reviews;
- Excluding non-federal projects (or those with minimal federal funding or involvement) from the NEPA review process; and

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- Reducing duplication between federal, state and local governments by facilitating the use of documentation required by other statutes to comply with NEPA.

APWA has been supportive of efforts to streamline the regulatory process related to infrastructure projects and has been vocal in that support to the past two administrations. APWA is supportive of streamlining efforts undertaken in the Fixing America's Surface Transportation (FAST) Act, and APWA members are supportive of carrying those streamlining efforts to infrastructure projects beyond the surface transportation sector.

As CEQ considers additional changes to NEPA regulations, APWA has recommendations to further improve the review process. APWA is also supportive of the interagency coordination process laid out under Executive Order 13807, providing a more predictable, transparent, and timely federal review and authorization process for delivering major infrastructure projects. This approach has earned bipartisan support and was included in the IJA.

APWA recommends additional changes within the NEPA process that would allow infrastructure projects to be delivered faster to our nation's citizens. First, modernize NEPA to cut burdensome red tape by looking at ways to remove duplicative reporting and paperwork requirements when state standards are equally stringent — or more so — than federal standards. Procedural changes should be made to NEPA that would allow more flexibility to communities making investments in infrastructure. NEPA could also be altered to allow for the acquisition of right-of-way prior to completion of federal NEPA requirements for projects that can demonstrate no significant adverse impact.

Additionally, projects that receive limited federal resources (either less than \$1,000,000 in federal funding or less than 25% of total project costs from federal funding) should be exempted from NEPA requirements. These levels should be set as “minimal federal funding or involvement”.

Finally, 40 CFR § 1501.2 should be clarified so that state and local projects do not become subject to federal laws and regulations until the project has been approved to receive federal funds, not retroactive to past project phases. APWA places a high priority on protecting state and local control regarding infrastructure projects. We strongly encourage the federal government and industry to coordinate with state and local governments on infrastructure projects. Under the current NEPA procedures there are additional costs required of public works professionals in order to remain in compliance. Our members are supportive of reducing those costs in any update to NEPA.

Cumulative Effects

APWA strongly supports the proposed rulemaking's revisions of 40 CFR § 1508.1(g). These revisions would restore consideration of cumulative and indirect environmental effects as a factor for NEPA reviews. The 2020 rulemaking

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disallowed consideration of these effects, which APWA opposed in our prior comments to CEQ. The analysis of cumulative effects is a key component to understanding the environmental impacts of infrastructure projects. NEPA requires the environmental review process to look at any proposed action not in isolation but within the context of past, present, and “reasonably foreseeable” future actions. APWA members are always conscious of the resiliency of the infrastructure they design, build, and maintain. In order to comprehensively view the resiliency of an infrastructure project in the context of extreme weather events, changing demographics, and increasing use of technology, a cumulative review is necessary.

Our members have expressed concern regarding resiliency of infrastructure and potential negative impacts from eliminating cumulative reviews. Infrastructure itself is being built and rebuilt on a consistent basis, particularly in the aftermath of natural disasters. In areas that are prone to such disasters, public works professionals strive to build and maintain infrastructure that will best withstand the next disaster. In terms of building standards, restoring cumulative reviews in place as a part of NEPA will aid in communities maintaining infrastructure that is of the highest caliber, as previous efforts will be included in any rebuilding. Additionally, restoring cumulative reviews would allow for better accounting of the environmental impacts of rebuilding efforts in the wake of disasters. APWA greatly appreciates CEQ’s action to swiftly restore consideration of these important factors.

Environmental Justice

APWA understands that environmental justice and equitable investment in infrastructure is a priority for CEQ, as demonstrated by references to this priority throughout the proposed rulemaking’s supplementary information. As public works professionals serve a diverse array of communities in terms of income, geography, population size, and more, we understand the need for ensuring infrastructure projects benefit all communities and do not unfairly burden others with environmental impacts. However, we would urge that CEQ clearly define the term ‘environmental justice’ as the agency formulates NEPA regulations. A clear understanding of which communities will be designated as environmental justice communities will be extremely important to providing permitting certainty to public works professionals as they seek to serve the citizens of their municipalities.

Agency NEPA Procedures

APWA has serious concerns regarding the proposed rulemaking’s changes to 40 CFR § 1507.3, which would allow agencies to develop NEPA procedures beyond CEQ regulatory requirements. This would effectively establish CEQ’s regulations as the ‘floor’ for environmental review requirements, allowing federal agencies to develop significantly different and more intensive procedures as they deem necessary.

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This could pose multiple problems for public works professionals as they seek to comply with NEPA regulations. Some agencies may use this flexibility to impose additional review standards that lead to unnecessary project delays. Additionally, differing agency interpretations of NEPA requirements may inhibit interagency coordination. Effective coordination is vital to ensuring that infrastructure projects are not held up by duplicative regulatory requirements. APWA urges that CEQ implement a final rule that promotes a uniform approach to NEPA procedures and promotes cooperation among federal agencies.

On behalf of public works professionals throughout the U.S., we thank you for the opportunity to comment and urge you to give serious consideration to the above comments. We are committed to working with CEQ on our common goal of protecting the environment, public health, and quality of life. If you have any questions, please contact APWA Director of Government and Public Affairs Andrea Eales at aeales@apwa.net or (202) 218-6730.

Sincerely,

A handwritten signature in blue ink that reads "Scott D. Grayson". The signature is written in a cursive style with a long horizontal flourish at the end.

Scott D. Grayson, CAE
Chief Executive Officer

Sincerely,

A handwritten signature in blue ink that reads "Stan Brown". The signature is written in a cursive style with a long horizontal flourish at the end.

Stan Brown, PE, PWLF
APWA President

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