



AMERICAN PUBLIC WORKS ASSOCIATION

Your Comprehensive
Public Works Resource

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March 9, 2020

Ms. Mary B, Neumayr, Chair
Council on Environmental Quality
The White House
730 Jackson Place
Washington, DC 20503

RE: Update to the Regulations Implementing Procedural Provisions of the National Environmental Policy Act, Docket No. CEQ-2019-0003

Dear Ms. Neumayr:

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). APWA has participated in multiple events held by CEQ regarding these updates and these comments reflect the outlook of public works practitioners across the country.

The responsibilities of our nation's public works professionals include the planning, design, and construction of infrastructure. APWA's 30,000 members across North America must balance those tasks with protecting the environment and public health.

NEPA is the regulatory framework for protecting America's environment while allowing vital infrastructure projects to be undertaken. Signed into law in 1970, the 50 years in which NEPA has been active have seen environmental protection become a prime consideration in the planning, design, and construction of all infrastructure projects.

Like any policy that has been in place for five decades, NEPA needs modernizing. As found by CEQ, the average length of a final Environmental Impact Statement (EIS) being 645 pages and the average time to conduct NEPA reviews now being 7.3 years, it is important to consider efficiencies that can be helpful in reducing these burdens while protecting the environment. These figures and their growth in size can be attributed to administrative burdens placed on communities investing in their infrastructure. These burdens can be overwhelming for public works professionals in carrying out their responsibilities given the fact that the resources these professionals draw from are limited.

An important note to make is that our nation's infrastructure needs updating and maintenance, and in some cases full replacement. Roads, bridges, drinking water, wastewater, emergency management, sanitation, cybersecurity and much

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more need investment right now. While the federal government does appropriate funds for projects like these across the country, some communities are deciding against applying for federal funds due to the onerous nature of permitting requirements, including NEPA. As a result, communities are forced to find other funding sources in order to not be burdened with costly permitting processes that come with federal dollars. Yet some communities that cannot go to other funding or financing sources rely on federal funding and end up spending a large portion of the project dollars on permitting requirements rather than on infrastructure improvement. In the end, neither community is able to upgrade and maintain its infrastructure as needed, leading to a lower quality of life for residents, as well as lower environmental protections and higher public health risks.

Overall, public works practitioners are supportive of the efforts being proposed under CEQ's update to NEPA. Specifically, APWA supports:

- 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
- 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 for administrations of both parties. 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 these updates are intended to do.

APWA is also supportive of the Trump Administration's "One Federal Decision" process laid out under Executive Order 13807, providing a more predictable, transparent, and timely federal review and authorization process for delivering major infrastructure projects.

Our members are slightly concerned regarding the limited time the changes under the FAST Act (signed into law in 2015) and the processes laid out in Executive Order 13807 (issued by President Trump in August of 2017). APWA has stated its concerns regarding reworking the permit streamlining language instituted under the FAST Act to

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Congressional leadership and wishes to do the same here. These streamlining changes are still being implemented on many projects and making wholesale revisions before we know the full effects is inadvisable. Similarly, changes made under E.O. 13807, such as the creation and implementation of the Federal Permitting Improvement Steering Council (FPISC), are still being established. Indeed, while the Council was founded by E.O. 13807, leadership for the body was not appointed for more than a year. As a result, FPISC is still working to execute the needed permitting reforms for infrastructure projects across the country.

APWA would also like to recommend additional changes within the NEPA process that would allow infrastructure projects to be delivered faster to our nation's citizens. First, as these updates are trying to do, 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. Allowing state or even local standards to act in place of federal standards would allow for a reduction in reporting and better use of infrastructure resources. APWA is supportive of legislative efforts made to amend various environmental laws to reduce duplication of efforts, such as the Drinking Water Affordability Act of 2017 (H.R. 1653).

Second, make procedural changes to NEPA that would allow more flexibility to communities making investments in infrastructure. NEPA could 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.

Third, as previously mentioned, 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, NEPA language could 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.

One note that must be stated in these comments is that APWA places 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.

While these are changes that can be made to NEPA in order to speed up project delivery there are also elements of the regulations that are key and must be maintained in any modernization process. One such component is the requirement of analysis of cumulative effects of 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,

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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.

With regards to establishing time limits for completion of EA and EIS, our members are also concerned with any attempt to insert a so-called “shot-clock” regarding permit review. Our members have seen other federal agencies try to implement a time limit on review of certain permits, by which failure to review the permit results in its automatic approval. As previously stated, APWA places a high priority on protecting state and local control regarding infrastructure projects. It is our belief that an inability to meet federal stated timelines for completion of EA and EIS should not result in automatic approval. Rather, as “senior agency officials” can extend the one- or two-year completion period, further consultation with state and local agencies should be required to complete the necessary documentation.

Finally, our members expressed concern regarding resiliency of infrastructure and potential negative impacts these updates to NEPA may have going forward. In terms of cumulative reviews, infrastructure itself is being built and rebuilt on a consistent basis. We see this fact played out 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 withstand the next disaster. In terms of building standards, keeping 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, keeping those cumulative reviews would also allow for better accounting of the environmental impacts of rebuilding efforts in the wake of disasters.

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 the Agency on our common goal of providing clean drinking water throughout our country. If you have any questions, please contact Sean Garcia in our Washington, D.C. office at sgarcia@apwa.net or at 202-218-6734.

Sincerely,

William E. (Bill) Spearman III, P.E.
President

Scott D. Grayson, CAE
Chief Executive Officer

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