**Comments of Environmental Defense Fund at CEQ Public Hearing on Proposed Rule Entitled "Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act," 85 Fed. Reg. 1684 (January 10, 2020)**

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Good afternoon and thank you for the opportunity to speak. My name is Dena Adler and I am a legal fellow at the Environmental Defense Fund. I am here today on behalf of EDF and our over 2.5 million supporters, whose well-being is threatened by the increased pollution, climate change impacts, and environmental degradation this proposal would enable.

Today, we face a growing climate crisis where raging wildfires, devastating floods, and record-breaking temperatures are becoming the new normal. In 1970, Congress responded to another era of environmental crisis by enacting NEPA, explicitly noting that "it is the continuing responsibility of the Federal Government to use all practicable means…[to carry out NEPA to] fulfill the responsibilities of each generation as trustee of the environment for succeeding generations" and to "assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings."[1]

The proposed regulatory changes to NEPA would abdicate these responsibilities, contradict NEPA's statutory purpose, and radically depart from CEQ's prior interpretation of NEPA, longstanding agency practice, and established case law. Especially in this moment of climate crisis, CEQ has a responsibility to ensure that the more than 100,000 federal actions annually subject to NEPA are: 1) carefully evaluated for their impacts on greenhouse gas emissions and climate change, and 2) adequately account for future impacts of climate change, like flooding and sea level rise, on the actions. Instead, the proposal does exactly the opposite: potentially allowing major federal projects and actions to move forward without adequate climate change consideration or disclosure, while frustrating public access to information.

I want to now focus on three aspects of the proposal that pose particular concern for consideration of climate change under NEPA:

First, CEQ must not eliminate requirements to evaluate "cumulative effects," or "indirect effects."[2] Such changes contradict the Supreme Court's recognition that agencies must consider cumulative effects as part of NEPA's statutory mandate and procedural requirements[3] and run contrary to court decisions requiring federal agencies to account for projects' indirect and cumulative climate change effects.[4]

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[1] 42 U.S.C. § 4331.
[2] *See* 85 Fed. Reg. 1729 (Jan. 10, 2020).
[3] *Kleppe v. Sierra Club*, 427 U.S. 390 (1976).
[4] *See* Michael Burger & Jessica Wentz, Evaluating the Effects of Fossil Fuel Supply Projects on Greenhouse Gas Emissions and Climate Change under NEPA (September 11, 2019), Columbia Public Law Research Paper No. 14-634; Columbia Law School, Sabin Center for Climate Change Law; Michael Burger & Jessica Wentz, Downstream

Second, CEQ should abandon its proposed redefinitions of "effects" and the "significance" of environmental impacts which could constrain consideration to only direct effects or effects with a "reasonably close causal relationship"[5]—this change rests on a fundamental misapplication of law and could lead agencies to arbitrarily disregard important climate-related impacts.

Third, CEQ should not limit the consideration of alternatives to a proposed action[6] which would arbitrarily curtail sound decision-making and frustrate NEPA's objectives.

For these reasons, EDF strongly opposes the proposed rule and urges CEQ to extend the period for written public comments and provide additional opportunities for public testimony.

and Upstream Greenhouse Gas Emissions: The Proper Scope of NEPA Review, 41 HARV. ENVTL. L. REV. 109, 137 (2017).

[5] *See* 85 Fed. Reg. 1729 (Jan. 10, 2020) at 1710, 1729.

[6] *See* 85 Fed. Reg. 1729 (Jan. 10, 2020) at 1702.