

Good evening. My name is Dan Ress. I am a legal intern with the Environmental Defense Fund in Boulder, on whose behalf I am speaking today.

NEPA is America's environmental Magna Carta, and the existing regulations have served our nation's interests well in requiring federal agencies to pause to consider the environmental impacts of their actions, possible alternatives and mitigation strategies, and input from impacted communities. The Notice of Proposed Rulemaking proposed sweeping changes to the entire set of NEPA's implementing regulations, which are applicable to more than 100,000 federal actions each year ranging from energy development decisions on our public lands and waters to the construction of industrial facilities and major transportation infrastructure that release vast quantities of air and water pollution that will affect our planet's future.

The public has a strong interest in ensuring NEPA continues to serve these important values, and we urge CEQ to ensure the public has a meaningful opportunity to provide comment on these consequential proposed changes – both by extending the period for written public comments and by providing additional opportunities for public testimony, given that, within minutes after they became available, there were no remaining speaking slots at either hearing.

Substantively, the proposal will have many adverse consequences on agency decision making, though I would like to focus on climate change-related impacts.

First, the proposal would eliminate requirements to evaluate “cumulative effects,” and possibly “indirect effects,” as well.<sup>1</sup> Cumulative and indirect effects have played a major role in requiring agencies to consider climate impacts of their actions, so this change will facilitate more emissions and intensify climate change.

Second, the proposal redefines the statutory term “significantly” and may prohibit consideration of indirect effects in agency determination of whether to conduct environmental review at all.<sup>2</sup> NEPA requires agencies to prepare a comprehensive environmental impact statement only for proposals that may “significantly” affect the environment. In striking, without replacement, a fulsome, ten-point analysis of significance, the proposal greatly expands agencies' already considerable discretion. But, at the same time, it requires that “[e]ffects should not be considered significant if they are remote in time, geographically remote, or the product of a lengthy causal chain.”<sup>3</sup> Climate change will often have its most serious effects further in the future, globally, and through complex causal chains,

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<sup>1</sup> 85 FR 1729 (Jan. 10, 2020).

<sup>2</sup> *Id.* at 1710.

<sup>3</sup> *Id.* at 1729.

so, paradoxically, contributions to the global climate crisis would be marginalized as insignificant.

Third, CEQ is considering limiting the consideration of alternatives.<sup>4</sup> Under NEPA, agencies must consider less environmentally damaging alternatives to proposed actions, but the proposal requests comment on limiting the number of alternatives an agency considers to, for example, three, which would significantly curtail sound decision-making by foreclosing other options. Furthermore, the alternatives would have to be based on achieving the applicants' goals, even when the applicants are non-federal and private actors, whose goals may be at odds with the broader public interest.

Taken together, these proposed changes would potentially allow agencies to approve major federal projects without adequate consideration or disclosure of greenhouse gas emissions and climate change impacts. They would also frustrate public access to this important information. Fundamentally, such a result would undermine the environmental policy set forth in NEPA. For these reasons, the Environmental Defense Fund opposes the proposed rule.

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<sup>4</sup> *Id.* at 1702.