

ISSUE BRIEF

Improve, Don't Weaken, the National Environmental Policy Act (NEPA)

ACRA Position

The Administration should issue new NEPA rules that fix the many problems with the 2020 revisions that could threaten historic and environmentally sensitive resources.

Background

The National Environmental Protection Act (NEPA) is the nation's cornerstone law ensuring that federal agencies consider the impacts on the environment of any major action. The NEPA review process often works in tandem with the National Historic Preservation Act (NHPA) Section 106 process for considering the impacts of federally-back projects on cultural resources.

NEPA requires detailed assessments of the environmental impact of major federal actions, unavoidable negative environmental consequences, alternate options, long-term impacts, and irreversible use of resources. Under NEPA, the public must be given the chance to raise concerns about federal actions. As with the Sec. 106 process, public engagement is essential to ensure that those who may be affected by federal actions have a voice in them.

In 2020, the Trump Administration released its revisions to how CEQ will implement NEPA. The rule exempts classes of federal actions from NEPA review and restricts the types of project effects that are examined during the NEPA review process. For example, the rule directs agencies to exclude projects with "minimal federal funding" or "where the agency does not exercise sufficient control" from review. Because the rule does not define "minimal" or "control," agencies will have wide latitude to define them without public scrutiny.

In addition, the rule allows agencies to exclude projects from a NEPA review if they determine another process or statute will cover stakeholder concerns. This gives agencies unilateral discretion over which projects merit review under NEPA, limiting the public's ability to raise concerns about impacts to historic properties. The new rule also significantly expedites the NEPA review process, bypassing or reducing time arbitrarily to implement many of the steps that allowed agencies to listen to, address, and remedy public objections to a project's impacts. As a result, the ability of the public to have a say in major actions is severely restricted.

The rule also imposes an ill-defined and arbitrary limit on the number of alternatives that agencies can analyze. Further, even if agencies determine a project qualifies for NEPA review, the new rule effectively excludes consideration of any impacts that do not occur as a direct result of the project or in its immediate vicinity. Many impacts of major actions are indirect or happen over time; under the new rule, such impacts would be ignored.

The NEPA process is not perfect, and ACRA supports efforts to make it work effectively. However, by placing arbitrary deadlines and limitations on the review process and leaving important considerations at the discretion of agencies without public input, the 2020 rule is likely to invite more litigation, delay projects, prevent the public from engaging in the process, and threaten historic and cultural sites without recourse to consider how federal actions impact them.