



The Association of State Wetland Managers, Inc.

“Dedicated to the Protection and Restoration of the Nation’s Wetlands”

March 6, 2020

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Associate Director for the National Environmental Policy Act
Council on Environmental Quality
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Re: Update to the Regulations Implementing the Procedural Provisions
of the National Environmental Policy Act (Docket ID No. CEQ-2019-
0003)

Dear Associate Director Boling:

The Association of State Wetland Managers (ASWM) submits the following comments in response to the Council on Environmental Quality’s (CEQ) proposed rule, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, for inclusion in Docket ID No. CEQ-2019-0003.

ASWM is a nonprofit professional organization that supports the use of sound science, law, and policy in development and implementation of state and tribal wetland programs. Since 1983, our organization and our member states and tribes have had long standing positive and effective working relationships with federal agencies in the implementation of regulatory programs designed to protect our nation’s aquatic resources, including the National Environmental Policy Act (NEPA).

ASWM appreciates the opportunity to provide CEQ with our comments on the current rulemaking. Given the scope of the changes being proposed and the number of requests for comments included in the proposed rule, ASWM has decided to provide a brief summary of our reaction to the proposed rule in this comment letter with a few examples of areas of support or concern.

ASWM would first like to commend CEQ for proposing to elevate tribes to the same status as states and local agencies in NEPA procedural regulations and for removing regulations that limit tribal interests. ASWM also supports the clarification that State, Tribal, and local agencies can serve as cooperating agencies in the NEPA process. Engagement of relevant agencies as cooperating agencies will streamline communications and planning elements critical to completing the NEPA process in a timely and effective manner.

ASWM is fully supportive of an efficient review process, while allowing for public and agency comment as intended in NEPA. We believe that there are approaches to accomplish this without weakening the regulations.

Aside from these positive highlights, ASWM finds the overall breadth, potential impacts, and apparent intent of the proposed changes to be of great concern. The current NEPA regulations have proven themselves to be largely effective over an extensive time period, which has led to the development of a stable set of federal agencies' implementing policies that now serve the American public and decision makers very well. Although there may be room for small changes to improve the implementation of NEPA, the decision by CEQ to completely rewrite NEPA's procedural provisions and abandon all associated guidance seems arbitrary and unnecessary.

With a body of regulation and guidance as extensive and significant as NEPA's, the amount of change proposed in this notice is incredibly difficult to adequately review in a 60-day comment period. This effort is made even more challenging by the fact that the published notice includes errors to its own cited changes. For example, on page 1695 "CEQ proposes to move and simplify the operative language from 40CFR 1508.27, "Significantly" when in fact they strike the definition entirely. Later on page 1710, CEQ accurately describes its proposal to strike the definition of significance but states that the proposed regulations discuss significance in § 1501.4(b), when in fact it is addressed in § 1501.3(b). Such errors and inconsistencies may seem trivial, but they make an already difficult task even more arduous.

In addition, many of the changes proposed in the rule run counter to the original intent of the NEPA and likely will not result in improved decision making or more efficient outcomes. Some of the specific changes that concern ASWM are identified below.

- Replacing "circulate" or "circulation" with "publish" or "publication" creates concern that interested parties will have to check online for publications as opposed to being notified of updates.
- Assertion that NEPA creates procedural requirements but does not mandate substantive results weakens the actionable aspects of the original legislation.
- Language changes in § 1501.2, § 1502.5 weaken "early in the process" requirements.
- Requirement of an estimated cost of preparing an EIS does not support decision making and adds administrative burden.
- Changes to reasonable alternatives throughout the proposed regulations unnecessarily limit the scope of reasonable alternatives. Specifically, stating that agencies are not required to provide reasonable alternatives outside the jurisdiction of the lead could have significant implications on what agencies will and will not consider.
- Changes to the definition of effects with focus on the removal of "indirect" and "cumulative" impacts will have significant implications for reducing what effects trigger NEPA and as a result greatly reduce the environmental protections the regulation provides.

- Including states, tribes, and local governments in the definition of “Federal Agency” creates confusion around requirements on those entities and makes the term “Federal Agency” effectively meaningless.
- Changes proposed to the public comment process and timing and judicial review will restrict the ability of the public to participate in the NEPA process as intended.

Finally, the level of change proposed will likely cause many years of disruption, while federal, state, tribal, and local agencies take on the long process of revising their related NEPA implementing procedures and guidelines, and work to update long established processes. This will undoubtedly delay numerous NEPA processes and their associated actions.

In summary, ASWM believes that the proposed changes to the procedural provisions of NEPA will result in a weakening of environmental protections and will not result in better or more efficient outcomes. The current NEPA process works well as crafted and includes critical elements of analysis of alternatives, cumulative impacts, public comment, and judicial review that should not be reduced. Many of the proposed changes would weaken the role of NEPA in environmental review of proposed projects and could have potentially deleterious effects on the environment, including aquatic resources, as well as human health and safety. In particular, ASWM strongly urges CEQ to retain consideration of indirect and cumulative impacts and to retain the use of circulation rather than publication in regard to making material available to the public by electronic means.

ASWM appreciates the opportunity to comment on CEQ’s NEPA rulemaking. While these comments have been prepared by ASWM with input from the ASWM Board of Directors, they do not necessarily represent the individual views of all states and tribes; we therefore encourage your full consideration of the comments of individual states and tribes and other state associations. Please do not hesitate to contact me should you wish to discuss these comments.

Sincerely,



Marla J. Stelk
Executive Director