



March 7, 2020

The Honorable Mary B. Neumayr, Chairman
Council on Environmental Quality
730 Jackson Place, N.W.
Washington, DC 20503

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

Dear Chairman Neumayr:

The American Highway Users Alliance (the “Highway Users” or “we” or “our”) recommends adoption of the proposed rule in this docket. See Notice of Proposed Rulemaking (NPRM), 85 Federal Register 1684 et seq. (January 10, 2020).

The Highway Users is the united voice of the motoring public -- promoting safe, uncongested highways and enhanced mobility for people and business. The Highway Users is a non-profit organization with approximately 300 member organizations, including companies, trade associations, safety advocacy groups, and motoring clubs. Our members represent or support millions of road users from the truck, bus, auto, RV, and motorcycling modes. Such users pay the bulk of the fees deposited into the Federal Highway Trust Fund.

Both Transportation Secretary Chao and the Council on Environmental Quality (CEQ) have commented this January that environmental impact statements for highways average seven (7) years to complete and, for other projects, such as energy projects or other transportation infrastructure projects, approaching five (5) years.

Seven years is far too long for EIS review of a class of projects with characteristics and impacts that are extremely well understood and used directly or indirectly by nearly all Americans every day. Such delays add to the cost of such projects that are approved and go forward.

More insidious, a slow review process discourages project proponents and can result in meritorious projects being set aside by their supporters. A long process is not necessary to protect the public’s interest in environmental review, but a long process thwarts the completion of beneficial projects that would boost the economy, provide jobs, and improve mobility for people and commerce, whether highway infrastructure projects, energy infrastructure projects or other projects. America needs additional infrastructure investment and should not let outdated review processes stand in the way of the public interest when a prompter process can still identify the key issues for decisionmakers. Responsible NEPA process reform, as proposed in this docket, can “unlock” needed investment in infrastructure, transportation, energy and other areas, both public and private, that will ultimately benefit the public.

The Proposed Rule Would Properly Reduce Red Tape, and Would Enable Prompt but not Rushed Decisions on Infrastructure and Other Beneficial Projects

These comments respond to the thoughtful and carefully crafted notice published by CEQ on January 10, 2020, inviting comment on a proposed rule to modernize and clarify the over 40 years old Federal rules regarding the process for environmental review of projects.

As noted at the outset, the Highway Users supports adoption of the proposed rule. Without addressing all issues in the docket, we highlight several points.

NEPA is a procedural statute. In the NPRM, CEQ properly concludes, after thorough discussion, that NEPA is a procedural statute that requires agencies to consider environmental impacts but does not mandate particular results. NPRM at 1693. Any claim that adoption of the proposed rule would weaken environmental protection does not reflect appreciation that NEPA is a procedural statute. For a highway project, it is hard to imagine a truly concerning environmental feature that could not be identified in 2 years for consideration but would need a process of 7 years to be found and called to the attention of decisionmakers.

Numerous Steps to Streamline the Environmental Review Process. CEQ also properly proposes various reforms to ensure that the environmental review process is not a source of needless delay, including the following.

Clarifying that the lead agency is responsible for determining the purpose and need for a project and project alternatives – in consultation with cooperating agencies (NPRM at 1698).

Clarifying that the lead agency is responsible for determining the schedule for review under NEPA and with respect to any other authorizations required for a proposed action (following through on the One Federal Decision concept), again after certain consultations (NPRM at 1699).

The scope of the scheduling provision is important because sometimes unnecessary delay is the result of an agency's consideration regarding a required "authorization" (proposed 40 CFR 1508.1(c)) under an environmental statute other than NEPA. The proposed rule properly includes the schedule for completion of such other authorizations in the schedule to be developed by the lead agency. See NPRM at 1699 and proposed 1501.7(i).

Setting presumptive time limits (2 years for an EIS, one year for completion of an environmental assessment) and page limits (NPRM at 1699-1700).

We note that the time and page limits are not absolute but can be exceeded when determined appropriate. This represents fair and careful balancing in the process in order to ensure appropriate consideration of environmental issues. It would be unusual that it should take more than a year or two to review and understand the environmental impacts of a proposed highway project; so, the one- and two-year presumptive deadlines are sound. But an exception is made available for the potential unusual cases where some additional time may be needed to ensure appropriate review.

Review focused on reasonably foreseeable effects with reasonably close causal relationship to the proposed action. The NPRM correctly points out that NEPA, the statute, refers to environmental impacts and effects, but does not refer to “direct,” “indirect,” or “cumulative” effects. The proposed revisions would delete those distinctions in the rules. Instead, CEQ would focus agencies’ analysis on reasonably foreseeable effects with a reasonably close causal relationship to the proposed action. See NPRM at 1707-1708.

These and other features of the proposed rule comprise a skillful and balanced effort to ensure review that is more expeditious but still appropriate and not hasty.

Other Benefits of the Proposal. To the extent that a needlessly slow process thwarts or discourages investments that would modernize and improve the Nation’s infrastructure, local areas and the country are deprived of more modern and efficient infrastructure, and of jobs in construction and from post-construction efficiencies. All of these benefits are needed to help the United States compete more successfully in the world economy.

Additionally, speeding up the process to start projects will allow Americans to have access to safer roads sooner. New or updated roadways will likely include the latest roadway safety features like guardrails, brighter and wider pavement markings and brighter signs. All of these roadway design improvements can help drive down the approximately 37,000 fatalities that occur on our roadways each year.

Further, when added capacity eases congestion, the freer flowing traffic can result in reduced emissions. Getting projects done faster will help reduce congested bottlenecks and reduce wasted fuel and time sitting in traffic. Today’s roadway projects use modern solutions and technologies that are more respectful of environmental considerations than they were decades ago.

Conclusion

For the reasons set forth above and in the NPRM itself, the Highway Users strongly supports adoption of the proposed rule in this docket.

Sincerely,

Laura C. Perrotta

Laura C. Perrotta, CAE
President & CEO