

**ATTORNEYS GENERAL OF WASHINGTON, CALIFORNIA, THE DISTRICT OF
COLUMBIA, NEW YORK, DELAWARE, THE TERRITORY OF GUAM, ILLINOIS,
MARYLAND, MASSACHUSETTS, NEW JERSEY, NORTH CAROLINA, OREGON,
PENNSYLVANIA, AND VERMONT**

January 27, 2020

BY EMAIL AND REGULATIONS.GOV

Edward A. Boling

Associate Director for the National Environmental Policy Act

Viktoria Z. Seale, Chief of Staff

Council on Environmental Quality

730 Jackson Place NW

Washington, DC 20503

NEPA-Update@ceq.eop.gov

Re: Notice of Proposed Rulemaking – Update to the Regulations for Implementing
the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg.
1684 (January 10, 2020)
Docket ID No. CEQ-2019-0003

Dear Associate Director Boling and Chief of Staff Seale:

On January 10, 2020, the Council on Environmental Quality (CEQ) published in the Federal Register (85 Fed. Reg. 1684) a notice of proposed rulemaking (NPRM) for updating regulations implementing the National Environmental Policy Act (NEPA). The NPRM and request for public comment provide for written comments to be submitted to CEQ on or before March 10, 2020 (a 60-day public comment period). The undersigned State Attorneys General write to express our concern about the NPRM to substantially rewrite the regulations implementing NEPA. For the following reasons we ask that you extend the public comment period by at least 90 days, for a total of 150 days at the minimum, to provide a sufficient opportunity for states, territories, the public, and other stakeholders to comment on this wide-ranging and significant proposal to rewrite the NEPA regulations that have long served to protect public health and our shared environment.

NEPA is one of our nation's bedrock environmental laws. CEQ's implementing regulations provide the guiding principles for administering NEPA across the federal government and federal agencies, courts, states, territories, the public, and other stakeholders rely heavily on them. The impact of the CEQ's NEPA regulations thus extends into every state and territory of the union. In addition, many states, including California, Massachusetts, New York, and Washington, have adopted their own environmental review laws that often must be administered in conjunction with NEPA. Our states thus have a strong interest in ensuring that the proposed revisions to CEQ's

NEPA regulations continue to require, consistent with NEPA, that federal agencies always take a “hard look” at the environmental and public health consequences of major federal actions.

As the NPRM states, CEQ proposes to “comprehensively update and substantially revise” the regulations. 85 Fed. Reg. 1684 (Jan. 10, 2020). CEQ’s proposed changes are so extensive that they affect every section of the implementing regulations. The NPRM summarizing the changes runs over 45 pages. Due to the magnitude of CEQ’s proposed changes and the far-reaching impacts of NEPA throughout the nation, it is necessary to allow an appropriate amount of time for states, the public, and other stakeholders to consider and weigh in on the potential impacts of the proposed changes.

It is important to note that it is common practice for agencies, including CEQ, to make a pre-publication version of a proposed rulemaking available shortly after signing a Notice of Proposed Rulemaking. For example, when the CEQ’s Chief of Staff signed the Advance Notice of Proposed Rulemaking for CEQ’s Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act on June 15, 2018, a pre-publication version of the proposed rulemaking was circulated for review on the same day. This practice provides interested parties with as much time as possible to prepare comments and to participate meaningfully in the rulemaking process. CEQ deviated from this common practice with regard to the NPRM. Although the CEQ Chairman signed the NPRM on December 23, 2019, CEQ did not make a pre-publication version of the proposed rulemaking available until January 9, 2020, one day before publishing the notice. In so doing, CEQ denied states, territories and the public an additional two-week period to review the proposed rulemaking and fashion responsive comments.

Other federal agencies have historically extended comment periods for particularly significant regulatory changes. For example, when the Environmental Protection Agency (EPA) considered a similarly impactful regulatory change, the 2014 rulemaking regarding the definition of “waters of the United States” under the Clean Water Act, the agency accepted comments for over 200 days. 80 Fed. Reg. 37057 (June 29, 2015). The length of this comment period reflected the significant impact that the rulemaking would have across the nation. Similarly, EPA granted an extension request for public comments on its proposed rule for National Primary Drinking Water Regulation for lead and copper, which will have substantial impacts for state water programs. 84 Fed. Reg. 69695 (Dec. 19, 2019). CEQ’s NEPA regulations are fundamental to the daily functioning of numerous agencies and thus any revisions to these regulations are exceedingly impactful and must be carefully and deliberately considered. As stated in the NPRM, CEQ’s NEPA regulations have remained mostly unaltered since their promulgation in 1978. 85 Fed. Reg. at 1685. Should CEQ wait another forty years before updating these regulations, the contemplated changes will impact the environmental review process for federal projects for decades.

Given the significant impact that the proposed revisions would have on states, territories, and the public, the extensive nature of the proposed revisions, and the uncharacteristically short pre-publication review period, we ask that you extend the comment period by at least 90 days to

provide an adequate amount of time for meaningful public participation and thorough responses to the proposed rulemaking. The current 60-day comment period does not provide the affected public sufficient opportunity to participate in the rulemaking and comment on the proposal, as required by the Administrative Procedure Act, 5 U.S.C. § 553(c). Under section 2(b) of Executive Order 13,563, a standard comment period should be at least 60 days, but the significance of this proposal to change longstanding and far-reaching NEPA regulations and the sheer number of significant changes that are under consideration demand additional time to ensure an opportunity for meaningful public involvement in the review process.

Additionally, we request public hearings beyond those announced for Denver, Colorado and Washington, DC. The hearing scheduled in Denver is already at capacity showing that these two hearings are insufficient. Because of the far-reaching implications of the proposed changes, CEQ must hold multiple public hearings in geographically diverse locations in order to provide a meaningful opportunity for public involvement in the consideration of the proposed revisions.

We therefore request that CEQ extend the comment period to June 8, 2020 or later. We also request that CEQ hold several public hearings in addition to those already scheduled on the proposal in different regions of the country during the comment period.

We appreciate your consideration of this important matter.

Respectfully submitted,

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON
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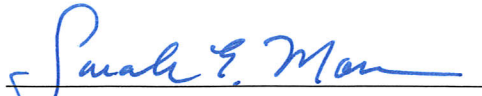
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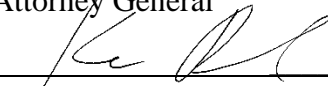
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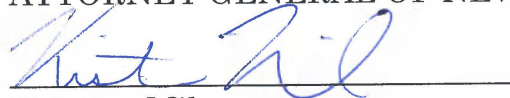
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