



# Association of State Floodplain Managers, Inc.

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Federal register notice: <https://www.federalregister.gov/documents/2020/01/10/2019-28106/update-to-the-regulations-implementing-the-procedural-provisions-of-the-national-environmental>

Date: March 10

Council on Environmental Quality  
730 Jackson Place  
Washington, DC 20503

Re: Docket ID no. CEQ-2019-0003 Proposed changes to NEPA

The Association of State Floodplain Managers (ASFPM) is a national not-for-profit scientific and educational organization whose mission is to reduce flooding and to recognize the inherently important functions, both flood storage/conveyance and environment of our natural floodplains. The ASFPM and its 37 chapters also represent more than 20,000 local and state officials, private sector, academia, and other professionals engaged in all aspects of flood risk management and flood hazard mitigation, including management of local floodplain ordinances, flood risk mapping, engineering, planning, community development, hydrology, forecasting, emergency response, water resources development, protection of important and valuable floodplain functions and flood insurance. All ASFPM members are concerned with reducing our nation's flood-related losses. For more information on the association, our website is: [www.floods.org](http://www.floods.org). The Association appreciates the opportunity to provide these comments for the record in Docket CEQ-2019-0003.

We believe that the proposed overhaul of regulations for federal environmental reviews as provided in this Docket, poses a significant and needless threat to efforts to make the nation's communities safer and more resilient. By eliminating the consideration of the cumulative impact of projects on climate change, these rules would make projects more expensive to taxpayers by failing to take significant future conditions into account in planning processes, while at the same time making people and property more vulnerable.

Americans need not choose between effective infrastructure development and resiliency. That is a false choice. Far from expediting projects, the proposed approach would only add cost, uncertainty, and risk. We share the goal of making project reviews timelier and more efficient. This can be achieved while maintaining the ability to make thoughtful, informed decisions that don't saddle taxpayers with repeated disaster and rebuilding costs and escalating climate impacts.

ASFPM urges the Trump Administration to take a different course — one that supports state and local innovation in evaluating the impact of development projects and adequately protects the public from the fiscal, environmental, and health consequences of climate change and natural disasters. The proposed course of ignoring the future impact of climate change as part of the nation's core environmental review law will only increase costs of development and future disaster recovery on taxpayers and communities, while making us all more vulnerable to its already apparent effects.

The National Environmental Policy Act is the major environmental law in the United States that requires federal agencies to take a “hard look” at the environmental and public health impacts of major projects and actions. The law requires that agencies request and consider input from members of the public before deciding how to proceed. In many cases, the public process required by NEPA is the only opportunity that stakeholders including states, local and tribal agencies, the public, and impacted communities have to provide input into projects and action that may have an adverse impact on them.

About 25 to 40 million people live in the U.S. floodplains that have so far been mapped, and many more are at risk of flooding, with ever increasing numbers at risk is this changing climate. The proposed revisions to NEPA regulations are extremely broad and change the underlying purpose and application of the law. These revisions will reduce the ability of these communities to ensure that federal agencies evaluate the potential impacts a project or action may have on their flood risk, as well as the ability of those communities to provide input on the proposed project or action.

ASFPM specific concerns on the proposed NEPA rule include:

- 1) Changes the definition of Major Federal Action and eliminates the environmental review process for some projects. Current NEPA regulations require agencies to conduct environmental review of federal actions that are “major” or that significantly affect the environment. This ensures that even if a federal agency has a minor role in a project that will have a significant environmental impact, a NEPA review will be completed. The proposed regulations narrow the scope of projects that are required to undergo environmental reviews. This change will limit the ability of the public to provide public comment on projects that will have a significant impact on their personal safety and safety of their homes and businesses or the threat to their local environment and society.
- 2) Eliminates analysis of cumulative effects, including climate impacts. The proposed regulations remove requirements to analyze cumulative effects, stating “analysis of cumulative effects is not required.” The elimination of a requirement to consider cumulative effects is deeply concerning, because while individual actions in floodplains may have marginal impacts on flood heights, numerous similar and cumulative actions in floodplains may have a significant combined impact on flood heights resulting in major and damaging impacts to property owners, and communities. In fact, floodplain management regulations across the nation require verification that floodplain development must not impact flood heights, precisely because of concerns about the cumulative impacts that extensive development in the floodplains will have. ASFPM is also concerned that despite not specifically mentioning “climate,” the proposed changes seem to specifically direct agencies not to consider climate change by stating that “Effects should not be considered significant if they are remote in time, geographically remote, or the product of a lengthy causal chain.” (p. 189). Many areas of the country are and will continue to experience more frequent and extreme flooding events due to sea level rise and changes in precipitation trends. These hydrologic changes are directly relevant to how major projects can impact flooding and how floods impact homes, businesses and communities in and out of the special flood hazard area. It is critical that future flooding conditions be considered, whether caused by watershed development or by climate change, or any other relevant factors.

- 3) Removes requirements for agencies to analyze indirect effects of a project. Proposed changes to the definition of “effects” would limit the types of impacts considered during environmental reviews. The proposed language eliminates all references to indirect effects, including those effects caused by the action but occur later in time or are farther removed, but still are reasonably foreseeable. Indirect effects include growth-inducing effects, changes in land use, population density or growth rates, and the related impacts on air, water and natural systems that those changes bring. Failing to consider indirect effects or impacts can be particularly harmful to businesses -- especially where indirect effects could interrupt supply chains, disrupt the ability of workers to be able to get to work and their places of business, and impacts on the physical and mental health of workers and citizens caused by major flooding events. ASFPM is concerned that this change could have significant adverse impacts on communities located in the floodplain from projects and actions that affect the hydrologic system and how quickly water flows downstream, or the impact of federally funded infrastructure such as roads bridges and other infrastructure that will induce added development or encroachment in the flood risk area, this increases flood levels on existing property owners and other communities. This change seemingly eliminates the need for agencies to consider the potential impacts that a project or action may have on flood risk of communities downstream. This is contrary to the floodplain management concept of “No Adverse Impact” on adjacent, upstream or downstream properties and communities, in order to protect the legal rights of all property owners.
- 4) Limits the alternatives that must be considered. The proposed changes would limit the alternatives that must be considered. Current NEPA regulations require agencies to “rigorously explore and objectively evaluate all reasonable alternatives.” The Administration proposes to change this to “evaluate reasonable alternatives to the proposed action.” This change would allow the agencies to reduce the number of alternatives they evaluate. It opens the door to arbitrary decision making and for agencies to ignore alternatives that may be practicable and may have lower long-term costs to taxpayers and communities.
- 5) Allows applicants to prepare their own environmental assessments. The proposed regulations would give developers and companies a greater role in contributing information and material to the preparation of environmental documents, an inherent conflict of interest. Companies proposing projects have a bias in favor of approving their preferred alternative. This proposed change gives them an increased ability to contribute information that would sway a decision in favor of their preferred alternative and opens the door to conflicts of interest that could be harmful to the public, the community or the environment.
- 6) Creates loopholes that will allow agencies to ignore public and scientific comments. While the focus of NEPA is often on the environmental impacts that a project could have, an overwhelming benefit of the NEPA process is that it is the only law that gives the public a voice in federal decision making: decisions that can alter the future safety and resilience of the community. It is imperative that public comment opportunities be robust. The proposed regulations would create loopholes that allow federal agencies to ignore public comments. The proposed language specifies that public comments be “specific” and “timely.” The proposed regulations propose a new “Exhaustion” clause which will deem any comments

not provided in a timely manner to be forfeited. This puts the public at a disadvantage in raising issues that may be harmful or life threatening if the knowledge of impacts was identified after public comment periods.

Once again, in summary, the Association of State Floodplain Managers continues to be concerned that the proposed rule presents both a significant and unnecessary threat to the major efforts underway across the nation to make the nation's communities safer and more resilient, and to protect our citizens, property, and businesses and environment safer by considering all reasonably foreseeable effects and impacts through the current NEPA planning process. We believe that the current NEPA rules should be retained as they are, and urge that these proposed changes be rejected. Thank you, once again, for providing an opportunity to comment on the proposed rules.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chad Berginnis', is positioned above a faint, light blue circular stamp. The signature is fluid and cursive.

**Chad Berginnis, CFM** | Executive Director | ASFPM  
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