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## **What Trump's proposed NEPA rollback could mean for the climate**

- [Review](#)

By [Bruce Lieberman](#) on Feb 20, 2020

## The National Environmental Policy Act is a landmark law that governs environmental impact statements for projects involving federal funds.

By [Bruce Lieberman](#)

Thursday, February 20, 2020

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**"We just need to cut through all the pesky government red tape."**

The Trump administration is proposing to break new ground in its efforts to de-emphasize climate change, in this case involving the landmark 1970 National Environmental Policy Act (NEPA) and its provisions requiring environmental impact statements. A Trump Council on Environmental Quality (CEQ) proposal would allow review of environmental impact statements without consideration of projected impacts of greenhouse gas emissions and effects on the global climate.

It's still early days for the proposed rollback of the statute, considered by many to be at the heart of the modern environmental era since it was first signed into law by President Nixon on January 1, 1970. Since then, a wide-ranging series of court and appellate court decisions have given the law oomph far beyond what was initially envisioned when it was enacted.

It's fair, in fact, to wonder if the president's plan ultimately will succeed, given the virtual certainty of legal challenges and more uncertainties surrounding the outcome of November's presidential and congressional elections.

### The proposed changes

On January 9, President Trump [announced](#) his “modernization” of NEPA, which involves changes to federal regulations that govern environmental reviews by nearly 80 federal agencies. If adopted, [the revisions](#), addressed in 47 pages, would be the most substantive since the late 1970s.

## Trump 'modernization' of NEPA goes at heart of modern environmental movement in U.S.

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The president, well before his election and as a real estate developer, has long indicated that he thinks federal environmental reviews take too long. NEPA litigation certainly has stalled controversial infrastructure projects such as the Keystone XL pipeline. The proposed overhaul would limit most federal environmental reviews to two years, while also limiting the number of pages for environmental impact statements.

“We want to build new roads, bridges, tunnels, highways bigger, better, faster,” the president said in [announcing](#) the proposal at the White House. “These endless delays waste money, keep projects from breaking ground, and deny jobs to our nation’s incredible workers.”

### Critics were quick to pounce ...

Analyzing the proposal soon after it was announced, Jessica Wentz and Michael Burger of the Sabin Center for Climate Change Law at Columbia Law School [wrote](#) that it “aims to curtail environmental analyses, limit disclosures to the public, and expedite federal approvals for major projects, including fossil fuel supply infrastructure.”

The proposal does not explicitly bar environmental reviews from considering a project’s impact on the nation’s greenhouse gas emissions – that is, on climate change. Instead, it would eliminate requirements to evaluate the cumulative effects of projects, and possibly indirect effects too. Wentz and Burger see that, in effect, as a distinction without meaning.

“The indirect and cumulative effect requirements have played a major role in recent litigation involving federal agency obligations to account for climate change when reviewing the impact of fossil fuel extraction leases and approvals for infrastructure such as pipelines,” they wrote.

The proposed overhaul would also create a new definition for “effects,” so that a proposed action would be evaluated based on impacts that are reasonably foreseeable and have a close causal relationship to the action.

Limiting analyses to reasonably foreseeable effects is consistent with past agency practice and case law, according to Wentz and Burger. However, “the requirement that there be a ‘reasonably close causal relationship’ appears aimed at limiting analysis and disclosure of certain indirect impacts.” These include upstream and downstream emissions from fossil fuel projects, and any on-the-ground effects of climate change, they wrote.

What’s more, permissive language in the proposed revisions specifies that the effects to be analyzed may include those that happen in the future or are farther removed geographically. In other words, such analysis would be optional. “As a result, both provisions could be used to justify the omission of GHG emissions and climate-related considerations from NEPA reviews for a broad range of projects,” Wentz and Burger wrote.

“Most of the environmental challenges we face today are in fact cumulative and interconnected,” they continued. “Climate change is a prime example. To ignore this reality is not only irrational – it is also detrimental to the public interest and a flagrant violation of NEPA’s policy. Any future changes to the NEPA regulations should be aimed at improving consideration of indirect and cumulative effects rather than curtailing it. The proposed revisions represent a major step in the wrong direction.”

### Opposition to NEPA proposal takes shape

President Trump’s proposal is now the subject of a 60-day comment period that ends on March 10. But a coalition of 320 groups, including the Sierra Club and Earthjustice, have sent the CEQ [a letter](#) asking for an extension of the public comment period.

In addition, 141 lawmakers led by Democratic Colorado Congresswoman Diana DeGette in the House of Representatives submitted [a letter](#) to CEQ opposing the revisions – echoing others who have argued that President Trump’s overhaul actually could delay projects – rather than speeding them up – by tying them up in the courts.

“The federal courts have repeatedly ordered agencies to consider the effects of climate change in their environmental reviews,” the lawmakers wrote. “Hampering agencies’ ability to account for climate change could delay much-needed projects from taking place.”

Congresswoman Debbie Dingell (D-MI) – whose deceased husband and long-serving Congressman John Dingell was a principal sponsor of NEPA – [has called](#) the proposed rule “a serious assault on the environment.”

Michael Gerrard, founder and director of Columbia’s Sabin Center, [has told InsideClimate News](#) that future environmental reviews by the federal government will likely face legal challenges if they fail to consider a project’s impact on climate change. “There’s a good chance the courts will ... say it needs to be considered and an [environmental impact statement] could well be struck down for failure to consider it regardless of what this guidance says,” Gerrard said. “Rational planning involves looking at foreseeable conditions, and arguably it’s malpractice for an architect or engineer to ignore foreseeable considerations when designing a project.”

The American Planning Association and the Association of State Floodplain Managers appear to agree with Gerrard.

“The Trump administration’s proposed overhaul of regulations for federal environmental reviews poses a significant and needless threat to efforts to make the nation’s communities safer and more resilient,” the leaders of those groups have said in [a joint statement](#).

“By eliminating the consideration of the cumulative impact of projects on climate change, these rules would make projects more expensive to taxpayers while making people and property more vulnerable. ... 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.”

### **Potential legal challenges and responses by states**

California’s North Coast is one place where the fight over NEPA’s future may play out in the courts and in state legislatures. [There](#), the NEPA overhaul could accelerate moves to build offshore oil rigs and open federally administered waters to oil and gas exploration.

Indeed, federal officials [have been reported](#) in the Sacramento Bee as saying interstate pipeline and offshore oil drilling projects would be more likely to receive federal approval with the overhaul.

In California, there is talk in Sacramento, the state capitol, about strengthening the California Environmental Quality Act (CEQA), which governs environmental reviews of projects within the state, to “ensure that things stay even, if you will, so that any reduction in rights on the NEPA side gets picked up by CEQA,” according to David Pettit, senior attorney with the Natural Resources Defense Council’s Climate & Clean Energy Program.

It’s still unclear, however, whether or how California and other states could make up for the regulatory vacuum left by a rollback of NEPA – especially on federal lands in states where the president has wanted to accelerate mining and fossil fuel exploration.

“You’re basically concentrating the chances of the project proponents’ getting what they want,” Congressman Jared Huffman, D-CA, said of the proposed overhaul to NEPA in [remarks](#) to the Press Democrat in Santa Rosa, California. “It’s taking the NEPA process and, instead of having a trusted government body evaluate the impacts, it turns into an honor system for polluters.”

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*[Tom Toro](#) is an independent cartoonist and writer whose work includes more than 200 cartoons published in *The New Yorker* since 2010.*

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