UTILITY and TRANSPORTATION CONTRACTORS ASSOCIATION OF NEW JERSEY

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March 5, 2020

Council on Environmental Quality
730 Jackson Place NW
Washington, D.C. 20503

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

Dear Sir/Madam:

On January 10, 2020, the Council on Environmental Quality issued a Notice of Proposed Rulemaking to update the National Environmental Policy Act (NEPA) Regulations. The proposed rule would modernize and clarify the regulations to facilitate more efficient, effective, and timely NEPA reviews by Federal agencies in connection with proposals for agency action.

The Utility and Transportation Contractors Association (UTCA) of New Jersey is a non-profit trade association representing over 1,000 member firms in the public and private sectors, active in all phases of heavy, highway, utility, and marine construction, as well as site work including remediation of brownfields and contaminated sites. On behalf of its member firms, UTCA strives to improve working conditions for the construction industry through its efforts in legislative and regulatory matters, safety training, labor relations, specifications development, group cost savings programs, and individual problem solving.

Our members have experienced significant delays in our ability to bid on infrastructure projects based on unnecessarily lengthy NEPA reviews. While our members certainly appreciate the thorough review of potential environmental consequences to a project, drawn-out reviews make it difficult to forecast work for the coming year, impacting everything from asset management to employment to, ultimately, anticipated and realized revenues.

The UTCA generally supports the proposal and believes the proposed changes will result in a thorough – but efficient – review process that acknowledges current environmental standards. The UTCA offers the below comments addressing specific improvements.

AFFILIATIONS
American Road & Transportation Builders Association
Clean Water Construction Coalition

Clarification of Definitions and Projects requiring NEPA Review

The UTCA supports the proposed amendments to clarify the types of projects subject to NEPA review. Clarifying key definitions and moving operative language from definitions to relevant regulatory decisions will make it easier to interpret and navigate requirements. The exclusion of non-federal projects and those with "minimal federal involvement" reasonably narrows reviews to those projects which truly warrant federal engagement and review, removing an unnecessarily burdensome level of administrative oversight. Also, clarifying that the "effects" of a project must be "reasonably foreseeable and have a close causal relationship to the proposed action" further narrows reviews to those projects which would really benefit from this additional administrative oversight.

One Federal Decision Policy

The UTCA supports the CEQ's proposed revisions to make the NEPA regulations consistent with the One Federal Decision policy ("OFD policy") established by Executive Order 13807. Certain elements of the OFD, including development by the lead agency of a joint schedule, procedures to elevate delays or disputes, and a two-year goal for completion of environmental reviews will help move projects through the regulatory approval phase to the bid phase, allowing for quicker and more sustainable infrastructure improvements. Also, the designation of a lead agency and the issuance of one formal decision will centralize communication and organization, allowing the process to be more predictable and engaging for parties subject to the NEPA process.

Timing of Judicial Review

The UTCA supports amendments to the regulations regarding the timing of judicial review. The option of judicial review should be reserved for after a final agency action has been taken, rather than leaving judicial review as a premature roadblock to a potentially beneficial project. Modeling the timeline for judicial review after the framework of the Administrative Procedures Act will allow projects to move through a thorough analysis and provide an opportunity for more thorough and efficient review at the judicial review stage.

Time Limits

The UTCA also supports proposed amendments to the regulations that would establish presumptive time limits for Environmental Assessments (EA) and for Environmental Impact Statements (EIS). Lengthy timelines and costs of environmental reviews are means for further delay of environmental reviews, and agencies may use the allotted time to "wait out" application processes for projects that would, substantively, move through the process otherwise.

Request to Build Smarter

Finally, the UTCA insists that the CEQ maintain its goal of streamlining environmental reviews by, in part, striving for the use of the best available technology to build smarter infrastructure for current and future conditions.

Conclusion

The UTCA generally supports the proposed amendments to the NEPA regulations. We believe streamlined procedures and clearer requirements will allow projects to proceed through a thorough and efficient review. This proposal should lead to more projects moving to bid faster than in NEPA review's current form, thereby providing for faster and longer-lasting improvements to highway and utility infrastructure throughout the United States.

Thank you for the opportunity to comment on this proposal.

Sincerely,

Dan Kennedy, PP / AICP, MCRP
Director, Environmental and Utility Operations