

2/11/20 Denver, Colorado Public Hearing Testimony to Council for Environmental Quality on 1/10/20 Proposed Rule, Docket CEQ-2019-003, RIN 0331-AA03

My name is Carol Campbell and I am a 33 year retired employee of the USEPA. I was part of the Denver Regional USEPA office from 1981-2011, with NEPA supervisory responsibilities from 1995-2011. My last position with USEPA R8 was as the Assistant Regional Administrator for Ecosystems Protection and Remediation which included the NEPA Program .

The stated purpose of this new rule is to increase the efficiency, effectiveness and timeliness of NEPA implementation. Agencies already have all of rules, regulations, policies, case law and Executive Orders needed to perform NEPA effectively. **In my experience the biggest reason for delays is lack of resources (\$, FTE, expertise) across Agencies as well as poor coordination/communication. These rule changes will not help this underlying problem.**

I think there are significant concerns with the proposed changes and have the following specific comments:

NEPA's purpose is mischaracterized (1500.1)

NEPA is not just a procedural statute. More substantively, its purpose is to implement national environmental policies in order to foster excellent action.

The role of the public is not just to "be informed", but to be a participant.

Public Involvement Is Minimized

Fewer projects will undergo environmental review through NEPA after major action screening and other opt out provisions thus eliminating the public's ability to participate in decisionmaking. (1501.8(a)(2))

Documents and Hearing/meetings are to be through electronic communication unless another format is required by law in the proposed rule. This is a big problem for Environmental Justice Communities who also may have limited access to electronic communications- eg Tribes. An example is TAT Refinery EIS- EPA/BIA/COE had 6 public hearings in different parts of the reservation in order to ensure adequate information got out to affected public. It is important to consider the public's ability to access information and ensure a process that provides good access. (1506.6(c))

Bonds or other financial requirements are imposed for NEPA challenges. This could limit the public's ability to effect important changes in NEPA outcomes. There is no detail on how the amount will be determined. (1500.3(c))

Specificity of comments should not apply to the public (1503.3).This is too big of a burden to place on the public, especially for minority and low-income communities.

Costs for obtaining environmental statements and underlying documents should be minimized for the public. The existing regulations say the public should not be charged to the extent practicable or only for actual costs. The proposed rule eliminates this, and thus could adversely effect the public's ability to participate, especially for low-income minority and indigenous communities.

Reduces the scope of NEPA applicability

At present only EPA has functional equivalency as agency processes are essentially the same as NEPA. This proposed rule allows all agencies to use functional equivalency to avoid NEPA compliance (1507.3(b)(6)). This may eliminate NEPA for actions such as planning documents.

The rule narrows the scope to "major" federal action as the only actions requiring NEPA. (1501.1(1), 1508.1(q))

The rule allows agencies to adopt other agency's categorical exclusions (CEs). These CEs are specific to Agency's missions and expertise and this could cause serious misuse of the CE provision.

Decreases the Scope of Analysis

Analysis of Cumulative Impacts is not required. (1501.8(a)(2)). The NEPA statute places no limitation on types of impacts to be considered. Cumulative Impacts are extremely critical as a project could be the tipping point or a contributor to environmental noncompliance. Examples are air quality and water quality standard exceedances as well as large effects on greenhouse gas emissions/climate change. Oil and gas Projects such as Pinedale Anticline, Jonah 2, in Wyoming etc. affected air quality in a negative way. Wintertime ozone exceedances, NOX, etc are the result of ignoring cumulative impacts and performing inadequate mitigation.

The proposed rule eliminates the requirement to analyze effects that the agency has no ability to prevent or would occur regardless of the proposed action. This is especially concerning with regard to climate change. If all sources of greenhouse gases used this same argument, we would never be able to stop or minimize climate change, mitigate or plan for its effects. On infrastructure projects this could be very costly due to the need to rebuild continuously due to floods, rising sea levels and other natural disasters exacerbated by climate change.

Narrows the requirement to analyze reasonable alternatives

Deletes the requirement to analyze reasonable alternatives outside of agencies jurisdiction. (1502.14) Sometimes this allows for more partners to help mitigate the environmental concerns.

The rule emphasizes the applicants goals over compliance with the law.

Eliminates Conflict of Interest Disclosures

The proposal allows contractors and applicants to prepare EIS's without disclosing in the NEPA documents that this was done. This lack of disclosure makes it potentially questionable as to whether there is an objective federal analysis to inform the decisionmaker and the public. (1506.5(c), 1507.2).

It is unclear why this is eliminated as it doesn't slow the process down at all.

Attacks Litigation and Injunctive Relief

The rule states that the "regulation creates no cause of action".(1500.3(d))

The rule would allow pre NEPA review expenditures such as land purchases that could then drive the proposed action.

The proposed rule undercuts or eliminates injunctive relief prior to full compliance with the statute (1500.3(d)).

It encourages agencies to impose bond or other financial requirements in the context of a NEPA challenge (1500.3(c)).

Limits page length and timeframes as well as sets up difficult exceptions process (1502.7)

All projects are not created equal. Limiting and enforcing page lengths and time frames will not necessarily increase effectiveness, efficiency and timeliness. Extremely complex projects that may cause significant environmental harm need the resources and time to evaluate them effectively and page length is not an important indicator of quality. The July 2019 CEQ report did not conclude that document length had any correlation with a longer process. In 2016, a GAO report concluded that where delays occurred, most were due to quality of information received, changes to proposed projects, and/or limited staffing and resources at the field office level.

Requiring exceptions requests through the Assistant Secretary or equivalent level will not decrease the timeline of document production, and will instead cause quality problems as federal agencies try to avoid this escalation.

Limits comments from cooperating agencies to those they have jurisdiction or expertise on (1503.2)

EPA has Section 309A of the Clean Air Act which grants it review authority over all other Federal Agency actions. EPA should not be limited to only talking about the environmental laws that EPA administers or oversees. Environmental Justice issues for example do not fall into any one agencies purview, and should be considered as many of the NEPA projects could affect minority populations disproportionately. Noise issues are another example.

Limits Agencies to using existing data for analysis (1502.24)

In this proposal, Agencies shall ensure scientific integrity of their environmental documents but 'are not required to undertake new scientific and technical research to inform their analyses.' In many cases existing information is inadequate, out of date, and/or incomplete and new analyses are needed. It is hard to ensure informed decisionmaking without adequate information.

I am unclear if this limitation to new information includes new modeling. When you have potential air or water quality impacts, it may be necessary to do modeling in order to understand the potential impacts. In R8, we formed the Federal Leadership Forum and developed an Air Quality MOU which set up additional air quality monitoring, a data repository and guidelines for when modelling was needed to minimize costs, and share information in order to prevent air quality exceedances in a tri-State area(Colorado, Wyoming, Utah).

Sometimes as part of the mitigation, studies are required especially in tiered documents so that as projects get more specific the data they need to make good decisions are available.

Funding not discussed for Monitoring, Mitigation and Follow Up required post NEPA (1505.2)

I did not see anything about funding for these activities which are often critical post NEPA to ensure compliance with the Record of Decision. This was used in the Missouri River operations, Powder River Basin CBM activities, the Jonah developments, etc. My experience is that mitigation and monitoring often don't occur long term.

Lack of EJ analysis for rule (Preamble, Section IIIF, p 1712)

The preamble states this proposed rule will not cause disproportionately high and adverse human health or environmental effects on minority and low income populations. This rule will limit what actions undergo NEPA processes, and minimize public participation and potential injunctive relief. Past experience has shown EJ communities suffer disproportionately from federal actions. It is not enough to say that specific actions versus the proposed rule are where environmental justice should be considered. If there is more analysis available that demonstrates this conclusion, please provide.