

LWV UMRR Comments on the NEPA NPRM
March 10, 2020

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Mary B. Neumayr, Chair
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Re: Docket No. CEQ-2019-0003, Notice of Proposed Rulemaking, Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NPRM)

Dear Ms. Neumayr:

Access to information and the ability of the public to participate in decision making is a central tenet of the League of Women Voters. We are concerned that the proposed changes to the regulations implementing National Environmental Policy Act will reduce the opportunity for public involvement in decisions relating to environment-altering activities like mining, pipelines and other large industrial developments. Our comments here reflect that concern, and we urge you to ensure that the regulations continue to allow for effective public participation.

1. First, we will note that some of the changes are geared to improving public access and participation. These changes, summarized by the Council on Environmental Quality (CEQ) thus:

CEQ also includes provisions to promote informed decision making and to inform the public about the decision-making process. In parts 1500, 1501, 1502, and 1503, CEQ proposes amendments to ensure agencies solicit and consider relevant information early in the development of the draft EIS. In particular, CEQ proposes to direct agencies in the notice of intent (NOI) to request public comment on potential alternatives and impacts, and identification of any relevant information and analyses concerning impacts affecting the quality of the human environment. Additionally, CEQ proposes to direct agencies to include a new section in the draft and final EIS summarizing all alternatives, information, and analyses submitted by the public and to request comment on the completeness of the summary included in the draft EIS.

are a move in the right direction. The inclusion of potential alternatives and impacts in public notices, as well as the inclusion of alternatives, information and analyses submitted by the public in the draft and final EIS, will aid the public in both commenting and seeing the impact of their comments.

2. Changes proposed to Section 1501.2, described in the NPRM summary of changes thus:

§ 1501.2, “Apply NEPA early in the process,” to change “shall” to “should” and “possible” to “reasonable.” Agencies need the discretion to structure the timing of their NEPA processes to align with their decision-making processes, consistent with their statutory authorities. Agencies need flexibility to determine the appropriate time to start the NEPA process, based on the context of the particular proposed action and governed by the rule of reason, so that the NEPA analysis meaningfully informs the agency’s decision. The appropriate time to begin the NEPA process is dependent on when the agency has sufficient information and how it can most effectively integrate the NEPA review into the agency’s decision-making process. Further, some have viewed this provision as a legally enforceable standard, rather than an opportunity for agencies to integrate NEPA into their decision-making programs and processes.

are more problematic. By increasing the discretion of agencies through use of the advisory term “should” rather than the directive term “shall”, CEQ is allowing agencies to filter NEPA requirements through a lens of what’s “reasonable” in some undefined way. These changes should not be made, and the current strong language of section 1501.2, below, should be retained:

§ 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.

2. Changes proposed to requirements for Environmental Assessments (EAs) Section 1501.5, also impact public participation. These changes are described in the NPRM summary of changes thus (emphasis added):

Under both the current and proposed regulations, an agency should list the “agencies, applicants, and the public” involved in preparing the EA to document agency compliance with the requirement to “involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments.” 40 CFR 1501.4(b); see also 1508.9(b). This may include incorporation by reference to the records related to compliance with other environmental laws such as the National Historic Preservation Act, Clean Water Act, Endangered Species Act, or Clean Air Act.

*CEQ proposes to **move the public involvement requirements for EAs from the current 40 CFR 1501.4(b) to proposed § 1501.5(d)** and change “environmental” to “relevant” agencies to include all agencies that may contribute information that is relevant to the development of an EA. **Consistent with the current CEQ regulations, the proposed rule would not specifically require publication of a draft EA for public review and comment.** The proposed CEQ regulations would continue to require that agencies reasonably involve relevant agencies, the applicant, and the public prior to completion of the EA, so that they may provide meaningful input on those subject areas that the agency must consider in preparing the EA. See also 40 CFR 1506.6(b) and 1508.9(a). Depending on the circumstances, the agency could provide adequate information through public meetings or by a detailed scoping notice, for example. **There is no single correct approach for public involvement. Rather, agencies should consider the circumstances and have discretion to conduct public involvement tailored to the interested public, to available means of communications to reach the interested and affected parties, and to the particular circumstances of each proposed action.***

The current language of the regulation is:

§ 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

- (a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which: (1) Normally requires an environmental impact statement, or*
- (2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).*

*(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). **The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments** required by § 1508.9(a)(1).*

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§ 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in § 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(ii) The nature of the proposed action is one without precedent.

The proposed language, now in Section 1501.5(d) is:

§ 1501.5

Environmental assessments.

(a) An agency shall prepare an environmental assessment for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown unless the agency finds that a categorical exclusion (§ 1501.4) is applicable or has decided to prepare an environmental impact statement.

(b) An agency may prepare an environmental assessment on any action in order to assist agency planning and decision making.

(c) An environmental assessment shall:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact; and

(2) Briefly discuss the purpose and need for the proposed action, alternatives as required by section 102(2)(E) of NEPA, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(d) Agencies shall involve relevant agencies, applicants, and the public, to the extent practicable in preparing environmental assessments.

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(e) The text of an environmental assessment shall be no more than 75 pages, not including appendices, unless a senior agency official approves in writing an assessment to exceed 75 pages and establishes a new page limit.

(f) Agencies may apply the following provisions to environmental assessments:

(1) Section 1502.22 Incomplete or unavailable information;

(2) Section 1502.24 Methodology and scientific accuracy; and

(3) Section 1502.25 Environmental review and consultation requirements.

While we agree that there are a number of appropriate ways to solicit public review, we do not concur with removing the current language that requires making the finding of no significant impact and the possibility of a public comment period on that finding from the regulation. **These provisions, currently in the regulation at § 1501.4 parts E 1 and 2, should be retained to ensure that the public continues to be notified.**

Thank you for this opportunity to comment. We recognize that you will receive a great number of comments on other areas of this proposed change, and so chose to focus on these aspects relating to public involvement.

League of Women Voters is a non-partisan organization which takes advocacy positions based on input from our member Leagues across the United States. Our positions on public participation in environmental decision making are found on page 64 of the "League of Women Voters of the United State 2018-2020 Impact on Issues; A Guide to Public Policy Decisions" found at this link:

<https://www.lwv.org/sites/default/files/2019-04/LWV%202018-20%20Impact%20on%20Issues.pdf>

Sincerely,

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