

NEPA Draft Report Comments

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NEPA and other substantive laws

In cases where other environmental laws cover the same policy objectives as NEPA, we agree that the NEPA process is duplicative and counterproductive. However, NEPA allows for referencing and cross-referencing within text to avoid duplication (40 CFR part 1502.21). This practice should be encouraged to lessen the length of the overall documentation and to create a more reader-friendly document.

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Delays to the NEPA Process

The first paragraph states that delay is a function of the increasing length of NEPA documents. However, the time required to prepare an environmental document is often less than the time required for agency review of that document. Often times, agencies request specific wording and citations, along with requests for information, beyond the required NEPA documentation. Comments from agency reviewers are often stylistic rather than substantive. Furthermore, if the agency requires a second review to ensure their comments were appropriately responded to, they often view this as an opportunity to add additional comments. These examples always serve to delay the process. In addition, the type of comments and level of information required often differs between agencies. This leads to delays in responding to comments because conflicting comments between agencies must be resolved.

Question 35 “Time Required for the NEPA Process” in the “Forty Most Asked Questions Concerning CEQ’s NEPA Regulations” states that the entire EIS process should require only twelve months. To achieve this objective, shorter and simultaneous agency review periods would need to be required. Most likely, only one review of the document could be tolerated in order to meet a twelve month schedule. The process for public involvement (e.g., multiple public meetings and outreach activities) must also be lessened to meet this objective.

Page 20 (Delays to the NEPA Process cont.)

We disagree with the statement that “however long is needed to make an environmentally sound decision is time well spent.” Environmental data collected over the course of a project has a shelf life. Therefore, if projects are delayed, additional costs are accrued to update this data. In our experience, if new and updated data is made available during the process of completing a project, the project is often delayed because agencies want the most current information/data to be included in the document. For example, at the start of an EIS process, the assumption may be to use 2025 traffic data. However, if the local Metropolitan Planning Organization publishes 2030 travel data and the project is not yet complete, the travel model must be re-run with the new 2030 numbers and the relevant analyses revised. This has both schedule and budget implications.

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Public Participation

We concur with the final paragraph on page 23 which states that the increasing length and complexity of NEPA documents has a negative impact on public participation. The public tends to “lose interest” in a project if the project itself loses momentum. Those who push for increased public participation often have little in the way of time and resources to comment on NEPA documents. This is true, and should be the impetus for allowing more reader-friendly documents. A reader-friendly approach should be evaluated for its legal sufficiency, and if implemented, the existing process should be more flexible to allow for creativity in this approach.

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Group 1-Addressing Delays in the Process

Recommendation 1.2: The number and length of review periods should be shortened if federal agencies are to keep to the EIS and EA completion schedules. It is unlikely that an EA could be completed within 9 months under our state’s DOT NEPA Document Review Procedures. Our state DOT’s procedures allocate 11.5 months for document review, which excludes document preparation prior to that period. These state procedures must be amended if an EA is to be completed within 9 months and an EIS within 18 months.

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Group 2-Enhancing Public Participation

Recommendation 2.2: This provision would be added to NEPA to codify the concept that an EIS shall normally be less than 150 pages with a maximum of 300 pages for “complex” projects. The terminology “complex” needs to be defined by more specific criteria (i.e., number of potential alternatives, level of public controversy, etc.)

Group 4-Addressing Litigation Issues

Recommendation 4.1: The concept of standing must be further defined. It is unclear how a party gains standing in a NEPA process. The level of involvement required throughout the process should be clarified.

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Group 6-Better Federal Agency Coordination

Recommendation 6.1: We concur that more constructive dialogue among stakeholders during the NEPA process is important. However, this data sharing should be provided during the scoping process prior to conduct of the full environmental analysis. If the 9-month EA and 18-month EIS schedules are to be met, new data should not be introduced late in the process.

Group 7-Additional Authority for the Council on Environmental Quality

Recommendation 7.2: CEQ should not maintain the responsibility of controlling NEPA-related costs. Local and state agencies have a greater understanding of NEPA costs. Therefore, state DOTs and local agencies, as appropriate, should maintain responsibility for controlling costs. However, local and state agencies should be required to report NEPA costs to the CEQ for comprehensive nationwide documentation and development of a cost database - but for that purpose only.

Group 8-Clarify Meaning of “Cumulative Impacts”

Recommendation 8.1: We strongly agree with this recommendation to clarify how agencies evaluate the effect of past actions for assessing cumulative impacts. It is very difficult to document the effect of past actions, and therefore the assessment of cumulative impacts is often not useful or relevant. Correspondingly, it would help a great deal to understand the types of future actions that need to be documented (as stated in Recommendation 8.2), including guidance on the methodology to be used in this analysis.

Thank you for the opportunity to comment.