



Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585
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The Council on Environmental Quality
ATTN: Horst Greczmiel
Associate Director for National Environmental Policy Act Oversight
722 Jackson Place NW
Washington, DC 20503

TxDOT appreciates this opportunity to comment on CEQ's draft guidance on improving the process for preparing efficient and timely environmental reviews. The guidance compiles a number of best practices already permitted by federal regulation for efficient processing of environmental reviews. The guidance does not impose any new requirements on federal agencies or applicants but provides clarification on how to effectively use the nine strategies it describes effectively. The guidance also clarifies that many requirements specific to an Environmental Impact Statement (EIS) may also be employed for an Environmental Assessment (EA).

Suggestions for four of the nine strategies presented in the guidance concerning ways to expand the guidance intended to promote consistency and clarity are summarized below.

2. **Early NEPA Integration in Planning** – The guidance encourages early consideration of NEPA in planning activities. The guidance recognizes that some federal actions may be initially planned by non-federal entities, and requires advanced planning for initially non-federal actions to ensure that a federal agency is able to initiate early coordination with the appropriate entities when federal involvement is reasonably foreseeable. Better integration of NEPA and planning is widely understood to be one of the most effective methods for streamlining the NEPA process.

Planning for transportation projects is almost always initiated by a non-federal entity, such as a metropolitan planning organization (MPO) or, in some cases, a rural planning organization (RPO). State departments of transportation (DOTs) often develop the transportation projects planned by MPOs and RPOs. The state DOT is typically the applicant under NEPA, thus planning activities for transportation are frequently outside of the control of either the federal agency or the applicant. Federal transportation agencies do recognize this situation in their regulations, as required by CEQ regulations; however, it would be beneficial if the CEQ guidance specifically called on federal agencies to work with planning organizations like MPOs.

Planning organizations frequently have the necessary expertise and access to the information essential to study issues, such as land development, that are important in the NEPA analysis process. If these studies are not done, not done properly, or not made available for use in NEPA, federal agencies and applicants must conduct or repeat the studies during the NEPA process at great expense of both time and money. Planning organizations also benefit from a timely NEPA process

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but may not recognize the role they can play in helping to move the process forward. Federal agencies are encouraged to integrate planning into NEPA whenever possible, but planning agencies are not explicitly encouraged to facilitate the process. Further guidance from CEQ may help planning organizations to understand their role in a smoother and more streamlined NEPA process.

5. Coordinating Reviews and Documents Under Other Applicable Laws – In practice, NEPA documents are often integrated with many other environmental requirements. This practice is generally efficient in terms of reducing documentation and avoiding redundancy; however, it is often not in keeping with the other recommended strategies. More discussion on this strategy and how to effectively implement it in combination with other strategies may be warranted.

Combining reviews and documents required by NEPA and other applicable laws frequently thwarts efforts to keep NEPA documents concise because more detailed information is often required to document compliance with other laws than with NEPA. The guidance mentions that agencies may set maximum timeframes for the NEPA process or components of it; in practice, the schedule for environmental work is most often driven by coordination requirements and other environmental compliance requirements rather than compliance with NEPA. More guidance is needed regarding combining recommended strategies, distinguishing between NEPA and other requirements, and appropriately implementing the recommended “concurrent” process.

The “concurrent” process that the guidance refers to when compliance with all environmental requirements is documented in the NEPA document is frequently a sequential process in practice. Federal agencies responsible for the environmental decision under NEPA frequently require that coordination with other agencies, as a result of other environmental compliance requirements, must be completed prior to the NEPA decision; therefore, this coordination is a prerequisite step to completion of the NEPA process. If a concurrent process is truly recommended, CEQ may wish to specify that federal agencies should not require meeting other environmental compliance requirements as a prerequisite for NEPA decisions.

Because compliance with NEPA and compliance with other environmental requirements are so often combined in one document, many stakeholders do not understand the distinctions between the various requirements. Stakeholders frequently view any environmental issues or delays as NEPA issues, which creates confusion.

6. Adoption – The guidance encourages federal agencies to adopt NEPA documents prepared by other agencies when it is appropriate to do so. This is a good practice, and CEQ should continue to encourage its use to avoid redundancy and duplication of effort.

Also, it would be beneficial for CEQ to stress the importance of the early determination of the lead federal agency in cases where multiple federal agencies are involved with a single project because NEPA implementing regulations vary substantially from agency to agency. Delays in determining the lead federal agency can lead to delays in the environmental process as a result of uncertainty

regarding the applicable requirements when the lead federal agency is not clearly identified at the outset of a project. In some cases, it has become necessary to redo environmental work because the lead federal agency was not identified in a timely manner, and project proponents chose to move forward based on an incorrect assumption regarding the most likely lead federal agency.

7. **Expediting Responses to Comments** – This strategy encourages addressing comments through errata sheets attached to a document rather than revising and recirculating the document. This allows the use of a draft environmental impact statement (DEIS) plus the comments and responses and errata sheets as the final environmental impact statement (FEIS). This is an efficient strategy, and could reduce costs.

8. **Clear Time Lines for NEPA Reviews** – It is important that stakeholders understand the distinction between the NEPA process and other environmental compliance activities because setting timelines on the NEPA process alone does not serve to constrain the overall environmental process. Potentially, CEQ could expand this recommendation, in order to encourage a more efficient environmental process as a whole, to apply to all federal agencies' permitting and review functions supporting the NEPA process.

TxDOT appreciates your consideration of these suggestions. Thank you for your time.

Sincerely,



Carlos Swonke, Director
Environmental Affairs Division
Texas Department of Transportation