FOR THE STATE OF MARYLAND

BRIAN E. FROSH
Attorney General

By: _____

LEAH J. TULIN
Assistant Attorney General
200 Saint Paul Place
Baltimore, MD 21202
(410) 576-6962
ltulin@oag.state.md.us

FOR THE COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY
Attorney General of Massachusetts

By: _____

CHRISTOPHE COURCHESNE
Assistant Attorney General and Chief
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
(617) 727-2200
christophe.courchesne@state.ma.us

FOR THE STATE OF NEW JERSEY

GURBIR S. GREWAL
Attorney General

By: _____

DAVID C. APY
Assistant Attorney General
KRISTINA MILES
Deputy Attorney General
R.J. Hughes Justice Complex
25 Market Street
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(609) 376-2804
david.apy@law.njoag.gov
kristina.miles@law.njoag.gov

FOR THE STATE OF NEW YORK

BARBARA D. UNDERWOOD
Attorney General

By: _____

MICHAEL MYERS
Senior Counsel
CLAIBORNE E. WALTHALL
Assistant Attorney General
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 776-2380
Claiborne.Walthall@ag.ny.gov

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FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM
Attorney General

By: _____

PAUL GARRAHAN
Attorney-In-Charge
Natural Resources Section
STEVE NOVICK
Special Assistant Attorney General
1162 Court St. NE
Salem, OR 97301-4096
(503) 947-4520
paul.garrahan@doj.state.or.us
steve.novick@doj.state.or.us

RE: Comment - CEQ-2018-001

From: "Janke, Aurora (ATG)" <auroraj@atg.wa.gov>

To: "Green, Mary A. EOP/CEQ" <(b) (6) [redacted]

Cc: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

Date: Thu, 05 Jul 2018 11:16:05 -0400

Thank you very much for your help.

Best regards,

Aurora Janke

From: Green, Mary A. EOP/CEQ <(b) (6) [redacted]
Sent: Thursday, July 5, 2018 6:53 AM
To: Janke, Aurora (ATG) <AuroraJ@ATG.WA.GOV>
Cc: Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Comment - CEQ-2018-001

Got It! Will route it out to COS Neumayr and Associate Director, Ted Boling.
Ms. Green

From: Janke, Aurora (ATG) <AuroraJ@ATG.WA.GOV>
Sent: Tuesday, July 3, 2018 3:38 PM
To: Green, Mary A. EOP/CEQ <(b) (6) [redacted]
Subject: FW: Comment - CEQ-2018-001

Ms. Green,

I just spoke with you on the phone concerning filing a request for an extension of time to comment on CEQ's Advance Notice of Proposed Rulemaking – Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.

We would like to ensure that Chief of Staff Neumayr receives the attached letter from several State Attorneys General requesting an extension of time to comment on the Advance Notice. However, the email to ksmith@ceq.eop.gov, whom I understand to be Chief of Staff Neumayr's special assistant, bounced back. Could you please ensure that Chief of Staff Neumayr receives the attached letter?

Thank you for your assistance.

Best regards,

Aurora R. Janke

Special Assistant Attorney General
Counsel for Environmental Protection
Washington State Attorney General's Office
800 5th Ave Suite 2000, TB-14
Seattle, WA 98104-3188
Office: (206) 233-3391
Email: auroraj@atg.wa.gov

From: Kealy, Tricia (ATG)
Sent: Tuesday, July 3, 2018 11:44 AM
To: (b) (6) [redacted] ksmith@ceq.eop.gov
Cc: Janke, Aurora (ATG) <AuroraJ@ATG.WA.GOV>
Subject: Comment - CEQ-2018-001

Greetings,

Attached please find a letter Re: Advance Notice of Proposed Rulemaking – Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28591 (June 20, 2018) Docket ID No. CEQ-2018-001 from Attorneys General of Washington, Maryland, Massachusetts, New Jersey, New York, and Oregon. This was submitted today on regulations.gov.

Thank you,

Tricia Kealy
Legal Assistant 3/Lead
Counsel for Environmental Protection
Office of the Attorney General
800 5th Ave, Suite 2000
Seattle, WA 98104
Phone 206-326-5494
TriciaK@atg.wa.gov

RE: Comment - CEQ-2018-001

From: "Green, Mary A. EOP/CEQ" <(b) (6) [redacted]

To: "Janke, Aurora (ATG)" <auroraj@atg.wa.gov>

Cc: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

Date: Thu, 05 Jul 2018 09:53:13 -0400

Got It! Will route it out to COS Neumayr and Associate Director, Ted Boling.
Ms. Green

From: Janke, Aurora (ATG) <AuroraJ@ATG.WA.GOV>
Sent: Tuesday, July 3, 2018 3:38 PM
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Seattle, WA 98104
Phone 206-326-5494
TriciaK@atg.wa.gov

RE: Comment - CEQ-2018-001

From: "Drummond, Michael R. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=a0bc62c0a5454e6fb7a1be504b7d284a-dr">

To: "Green, Mary A. EOP/CEQ" <(b) (6) [redacted]

Date: Thu, 05 Jul 2018 09:44:58 -0400

Thanks Mary, this email was also received in the (b) (6) [redacted] account and I forwarded it along to Mary and others on Tuesday.

If you are responding to Aurora, would you please cc me on that reply.

Thank you,

Michael

From: Green, Mary A. EOP/CEQ
Sent: Thursday, July 5, 2018 9:42 AM
To: Neumayr, Mary B. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Cc: Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Subject: FW: Comment - CEQ-2018-001

From: Janke, Aurora (ATG) <AuroraJ@ATG.WA.GOV>
Sent: Tuesday, July 3, 2018 3:38 PM
To: Green, Mary A. EOP/CEQ <(b) (6) [redacted]
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TriciaK@atg.wa.gov

RE: Comment - CEQ-2018-001

From: "Green, Mary A. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=d79121883fd849f2977381ecaf99c413-gr">

To: "Janke, Aurora (ATG)" <auroraj@atg.wa.gov>

Date: Thu, 05 Jul 2018 09:46:24 -0400

Got it! Will route it out to COS Neumayr and Associate Director of NEPA, Ted Boling.
Ms. Green

From: Janke, Aurora (ATG) <AuroraJ@ATG.WA.GOV>
Sent: Tuesday, July 3, 2018 3:38 PM
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Seattle, WA 98104
Phone 206-326-5494
TriciaK@atg.wa.gov

[EXTERNAL] SCHEDULED: Document Number - 2018-14821

From: noreply@fedreg.gov

To: FN-Chair <(b) (6) [redacted]

Date: Fri, 06 Jul 2018 12:10:46 -0400

Please *do not reply directly* to this e-mail. If you have any questions or comments regarding this email, please contact Dominique Nathan.

Attention : Howard Sun, (CEQ) Council on Environmental Quality

Document 2018-14821, Category PROPOSED RULES has been scheduled to publish on 07-11-2018.
This document will be placed on public inspection on 07-10-2018 08:45:00.

The subject of this document is Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.
The submitting Agency is (CEQ) Council on Environmental Quality.
The Docket Id is Docket No. CEQ-2018-0001.
The RIN is 0331-AA03.
This document has an effective date of NA.
The comments due date is 08-20-2018.
The separate part # for this document is NA.
Agency/CFR Title/CFR Part:
(CEQ) Council on Environmental Quality, CFR Title is 40, CFR Part is
1500,1501,1502,1503,1504,1505,1506,1507,1508
[3225-F8-P]
COUNCIL ON ENVIRONMENTAL QUALITY
40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508
[Docket No. CEQ-2018-0001]
RIN: 0331-AA03
Update to the Regulations for Implementing the Procedural Provisions of the
National Environmental Policy Act
AGENCY: Council on Environmental Quality (CEQ).
ACTION: Advance Notice of Proposed Rulemaking; extension of comment period

Agenda Review Reports for CEQ-0331

From: Elizabeth Harris-Marshall - M1V1E <liz.harris-marshall@gsa.gov>

To: "Szabo, Aaron L. EOP/CEQ" <(b) (6)[redacted]

Date: Wed, 01 Aug 2018 09:33:22 -0400

Attachments: 0331-CEQ Spring 2018 Preamble.docx (14.94 kB); ARR CEQ-0331 as of 08012018.pdf (72.69 kB)

Good morning:

Attached are the agenda review reports for your agency in need of your attention. These RINs are currently in a "No Stage" of rulemaking which indicates that the timetable needs to be updated. You will need to supply a projected next action of 10/00/2018 or greater. Please take a moment and provide the projected next action and any other changes required. Also attached is the spring 2018 preamble that may need your attention. I will need this information emailed to me ***NLT Friday, August 3, 2018 or sooner.***

If you have questions or need additional information, please call me.

U.S. General Services Administration

Liz Harris-Marshall
Program Analyst
Regulatory Information Service Center
Office of Government-wide Policy
Office 202-482-7340 | Direct 202-501-8971

1800 F Street, NW
Washington, DC 20405
>www.gsa.gov<

TITLE:

Freedom of Information Act (FOIA) and Privacy Act Regulations Update

RIN: 0331-AA02 (No Stage) **# Paper Print:** No

 # REGULATORY PLAN: No

PRIORITY: Substantive, Nonsignificant
Major status under 5 USC 801 is undetermined

 # UNFUNDED MANDATES: No

EO 13771 Designation : Not subject to, not significant

LEGAL AUTHORITY:

5 U.S.C. 552 et seq.

CFR CITATION:

40 CFR 1515; 40 CFR 1516

LEGAL DEADLINE: None

None

OVERALL DESCRIPTION OF DEADLINE:

ABSTRACT:

The Council on Environmental Quality (CEQ) is developing a proposal to revise its Freedom of Information Act (FOIA) regulations, in order to comply with the FOIA Improvement Act of 2016; to reflect CEQ's business process; and to correct or remove obsolete information. CEQ is also revising its Privacy Act implementation regulations due to changes of address and other administrative issues.

STATEMENT OF NEED:

SUMMARY OF LEGAL BASIS:

ALTERNATIVES:

ANTICIPATED COSTS AND BENEFITS:

RISKS:

TIMETABLE:

ACTION	DATE	FR CITE
NPRM	07/00/2018	

REGULATORY FLEXIBILITY ANALYSIS REQUIRED: No

 # SMALL ENTITIES AFFECTED:

GOVERNMENT LEVELS AFFECTED: None

 # FEDERALISM AFFECTED: No

ENERGY AFFECTED:

INTERNATIONAL IMPACTS: No

USER SORT CODES:

* - Missing data

\# - Will not print in agenda

ADDITIONAL INFORMATION:

URL FOR MORE INFORMATION:

URL FOR PUBLIC COMMENTS:

RELATED RIN:

RELATED AGENCY:

AGENCY CONTACT:

Viktoria Z. Seale,
Council on Environmental Quality,
730 Jackson Place NW,
Washington, DC 20506
PHONE: 202 395-5750

* - Missing data

- Will not print in agenda

TITLE:

Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

RIN: 0331-AA03 (No Stage) **# Paper Print:** No

 # REGULATORY PLAN: No

PRIORITY: Other Significant

 # UNFUNDED MANDATES: No

 # MAJOR: No **EO 13771 Designation :** Other

LEGAL AUTHORITY:

42 U.S.C. 4371 et seq.

CFR CITATION:

40 CFR 1500 to 1508

LEGAL DEADLINE: None

None

OVERALL DESCRIPTION OF DEADLINE:

ABSTRACT:

On August 15, 2017, President Trump issued Executive Order 13807, titled "Establishing Discipline and Accountability in the Environment Review and Permitting Process for Infrastructure." Section 5(e) of Executive Order 13807 directed the Council on Environmental Quality (CEQ) to develop an initial list of actions it will take to enhance and modernize the Federal environmental review and authorization process. CEQ published its initial list of actions in the Federal Register on September 14, 2017, (82 FR 43226) and stated that CEQ intends to review existing CEQ regulations implementing the procedural requirements of the National Environmental Policy Act in order to identify changes needed to update and clarify those regulations. The regulations were issued in 1978, were amended in 1986, and have never been comprehensively revised. While CEQ has issued memoranda and guidance documents over the years, CEQ believes it is appropriate at this time to consider updating the implementing regulations.

STATEMENT OF NEED:

SUMMARY OF LEGAL BASIS:

ALTERNATIVES:

ANTICIPATED COSTS AND BENEFITS:

RISKS:

TIMETABLE:

ACTION	DATE	FR CITE
ANPRM	05/00/2018	

REGULATORY FLEXIBILITY ANALYSIS REQUIRED: Undetermined

 # SMALL ENTITIES AFFECTED:

GOVERNMENT LEVELS AFFECTED: Undetermined

 # FEDERALISM AFFECTED: No

ENERGY AFFECTED:

* - Missing data

\# - Will not print in agenda

INTERNATIONAL IMPACTS: No

USER SORT CODES:

ADDITIONAL INFORMATION:

URL FOR MORE INFORMATION:

URL FOR PUBLIC COMMENTS:

RELATED RIN:

RELATED AGENCY:

AGENCY CONTACT:

Ted Boling,
Council on Environmental Quality,
730 Jackson Place NW,
Washington, DC 20506
PHONE: 202 395-5750

* - Missing data

- Will not print in agenda

RE: EO 12866 comments to docket?

From: "Whiteman, Chad S. EOP/OMB" <(b) (6) [redacted]

To: "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted]

Date: Mon, 06 Aug 2018 10:45:15 -0400

Okay, thanks

From: Szabo, Aaron L. EOP/CEQ
Sent: Monday, August 6, 2018 10:43 AM
To: Whiteman, Chad S. EOP/OMB <(b) (6) [redacted]
Subject: Re: EO 12866 comments to docket?

No.

Sent from my iPhone

On Aug 6, 2018, at 10:40 AM, Whiteman, Chad S. EOP/OMB <(b) (6) [redacted] wrote:

> Aaron,
> Is CEQ required to post the EO 12866 comments on the NEPA ANPRM to the public docket? I'm only aware of the CAA 307(d) docketing requirements. Are there equivalent docketing requirements for NEPA? Got a question from one of the agencies.
> Chad

Re: EO 12866 comments to docket?

From: "Szabo, Aaron L. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=f93a8d1dd2b4420ca81e53ff8199b780-sz">

To: "Whiteman, Chad S. EOP/OMB" <(b) (6) [redacted]

Date: Mon, 06 Aug 2018 10:43:03 -0400

No.

Sent from my iPhone

On Aug 6, 2018, at 10:40 AM, Whiteman, Chad S. EOP/OMB <(b) (6) [redacted] wrote:

Aaron,
Is CEQ required to post the EO 12866 comments on the NEPA ANPRM to the public docket? I'm only aware of the CAA 307(d) docketing requirements. Are there equivalent docketing requirements for NEPA? Got a question from one of the agencies.
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From: "Whiteman, Chad S. EOP/OMB" <(b) (6) [redacted]

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Date: Mon, 06 Aug 2018 10:40:24 -0400

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RE: Agenda Review Reports for CEQ-0331

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To: Elizabeth Harris-Marshall - M1V1E <liz.harris-marshall@gsa.gov>

Date: Tue, 07 Aug 2018 09:16:43 -0400

Attachments: DRAFT - Council on Environmental Quality Agenda Entries_Fall 2018.docx (20.5 kB)

Please find CEQ's draft agenda attached.

From: Elizabeth Harris-Marshall - M1V1E <liz.harris-marshall@gsa.gov>
Sent: Monday, August 6, 2018 11:11 PM
To: Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted]
Subject: Re: Agenda Review Reports for CEQ-0331

Aaron,

Since you have not taken ROCIS agenda training, you will have to send the updates to me for inputting into ROCIS. Thank you for replying.

U.S. General Services Administration

Liz Harris-Marshall

Program Analyst

Regulatory Information Service Center

Office of Government-wide Policy

Office 202-482-7340 | Direct 202-501-8971

1800 F Street, NW

Washington, DC 20405

>>www.gsa.gov<<

On Mon, Aug 6, 2018 at 5:46 PM, Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted] wrote:

Hi Liz,

Where do I provide the information for the revised regulatory agenda? Is there a website that I need to do or do can I send it to you?

Thanks.

From: Elizabeth Harris-Marshall - M1V1E <liz.harris-marshall@gsa.gov>
Sent: Wednesday, August 1, 2018 9:44 AM
To: Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted]
Subject: Re: Agenda Review Reports for CEQ-0331

Aaron:

You will have to update these RINs within the base date of 10/00/2018-09/00/2018 in order to place them in an active stage of rulemaking. No a season is not allowed as an update.

U.S. General Services Administration

Liz Harris-Marshall

Program Analyst

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1800 F Street, NW

Washington, DC 20405

>>>www.gsa.gov<<<

On Wed, Aug 1, 2018 at 9:38 AM, Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted] wrote:

Hi Liz, to what extent do we need to provide a date for an action we may be taking within the next year? Can we put a season in or just have the year?

We did not receive the data call until very late, so we are running behind on getting this done.

Sent from my iPhone

On Aug 1, 2018, at 9:34 AM, Elizabeth Harris-Marshall - M1V1E <liz.harris-marshall@gsa.gov> wrote:

> Good morning:
>
> Attached are the agenda review reports for your agency in need of your attention. These RINs are currently in a "No Stage" of rulemaking which indicates that the timetable needs to be updated. You will need to supply a projected next action of 10/00/2018 or greater. Please take a moment and provide the projected next action and any other changes required. Also attached is the spring 2018 preamble that may need your attention. I will need this information emailed to me ***NLT Friday, August 3, 2018 or sooner.***
>
> If you have questions or need additional information, please call me.

U.S. General Services Administration

Liz Harris-Marshall

Program Analyst

Regulatory Information Service Center

Office of Government-wide Policy

Office 202-482-7340 | Direct 202-501-8971

1800 F Street, NW

Washington, DC 20405

>>>>www.gsa.gov<<<<

<0331-CEQ Spring 2018 Preamble.docx>

<ARR CEQ-0331 as of 08012018.pdf>

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR 1500

Semiannual Regulatory Agenda

AGENCY: Council on Environmental Quality.

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice provides the semiannual agenda of the Council on Environmental Quality (CEQ) rules scheduled for review or development between fall 2018 and fall 2019. The Regulatory Flexibility Act and Executive Order 12866 require publication of the agenda.

ADDRESSES: All agency contacts are located at the Council on Environmental Quality, 730 Jackson Place Northwest, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Please direct all comments and inquiries about these rules to the appropriate agency contact. Please direct general comments relating to the agenda to Aaron L. Szabo, at the address above or at (202) 395-5750.

SUPPLEMENTARY INFORMATION: With this publication, CEQ meets the requirement of Executive Order 12866 that CEQ publish an agenda of rules that CEQ has issued or expects to issue and of currently effective rules that CEQ has scheduled for review. Additionally, CEQ meets the requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to publish an agenda in April and October of each year, as necessary, identifying rules that may have significant economic effects on a substantial number of small entities. The complete Unified Agenda will be published at *www.reginfo.gov*, in a format that offers users enhanced ability to obtain information from the Agenda database. Agenda information is also available at www.regulations.gov, the government-wide website for submission of comments on proposed regulations.

[APG]

NAME Mary Neumayr,

Chief of Staff,

Council on Environmental Quality.

Council on Environmental Quality—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1	Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act	0331–AA03

Council on Environmental Quality—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
2	Freedom of Information Act (FOIA) and Privacy Act Regulations Update	0331–AA02

Council on Environmental Quality (CEQ)	**Prerule Stage**

[APG]

1. • UPDATE TO THE REGULATIONS FOR IMPLEMENTING THE PROCEDURAL PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Other

Legal Authority: 42 U.S.C. 4371 et seq.

CFR Citation: 40 CFR Parts 1500 to 1508

Legal Deadline: None

Abstract: On August 15, 2017, President Trump issued Executive Order 13807, titled Establishing Discipline and Accountability in the Environment Review and Permitting Process for Infrastructure." Section 5(e) of Executive Order 13807 directed the Council on Environmental Quality (CEQ) to develop an initial list of actions it will take to enhance and modernize the Federal environmental review and authorization process. CEQ published its initial list of actions in the Federal Register on September 14, 2017 (82 FR 43226) and stated that CEQ intends to review existing CEQ regulations implementing the procedural requirements of the National Environmental Policy Act (NEPA) in order to identify changes needed to update and clarify those regulations. The regulations were issued in 1978, were amended in 1986, and have never been comprehensively revised. While CEQ has issued memoranda and guidance documents over the years, CEQ believes it is appropriate at this time to consider updating the implementing regulations. On June 20, 2018, CEQ published an advance notice of proposed rulemaking (ANPRM) requesting public comments on questions related to CEQ's regulations implementing the procedural requirements of NEPA. On July, 22, 2018, CEQ extended the ANPRM comment period until August 20, 2018. CEQ will review the comments provided in response to the ANPRM as CEQ considers development of a proposed rule.

Timetable:

[APG]

Action	Date	FR Cite
ANPRM	06/20/18	83 FR 28591
Comment Extension	7/11/2018	83 FR 32071
NPRM	02/00/2019	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ted Boling, Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20506

Phone: 202 395–5750

RIN: 0331–AA03

Council on Environmental Quality (CEQ)	Proposed Rule Stage

2. • FREEDOM OF INFORMATION ACT (FOIA) AND PRIVACY ACT REGULATIONS UPDATE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Not subject to, not significant

Legal Authority: 5 U.S.C. 552 et seq.

CFR Citation: 40 CFR 1515; 40 CFR 1516

Legal Deadline: None

[APG]

Abstract: The Council on Environmental Quality (CEQ) is developing a proposal to revise its Freedom of Information Act (FOIA) regulations, in order to comply with the FOIA Improvement Act of 2016; to reflect CEQ's business process; and to correct or remove obsolete information. CEQ is also revising its Privacy Act implementation regulations due to changes of address and other administrative issues.

Timetable:

Action	Date	FR Cite
NPRM	01/00/19	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Viktoria Z. Seale, Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20506

Phone: 202 395–5750

RIN: 0331–AA02

[FR Doc. Filed 01–01–01; 0:00 AM]

[APG]

FW: Draft

From: "Pettigrew, Theresa L. EOP/CEQ" <(b) (6) [redacted]

To: "Neumayr, Mary B. EOP/CEQ" <(b) (6) [redacted]

Date: Wed, 08 Aug 2018 15:14:31 -0400

Attachments: DRAFT Response to Senator Carper 8-8-18.docx (15.02 kB); DRAFT Response to Senator Carper letter Appendix 8 8 18.docx (61.1 kB)

From: Smith, Katherine R. EOP/CEQ
Sent: Wednesday, August 8, 2018 2:45 PM
To: Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted]
Subject: Draft

Katherine Smith
Special Assistant
Council on Environmental Quality
(b) (6) [redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

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(b) (5)

[redacted]

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[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

FW: Quick question re EO 12866

From: "Smith, Katherine R. EOP/CEQ" <(b) (6) [redacted]

To: "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted]

Date: Thu, 09 Aug 2018 15:12:23 -0400

-----Original Message-----
From: Boling, Ted A. EOP/CEQ
Sent: Thursday, August 9, 2018 3:05 PM
To: Smith, Katherine R. EOP/CEQ <(b) (6) [redacted] Neumayr, Mary B. EOP/CEQ <(b) (6) [redacted]
Subject: FW: Quick question re EO 12866

OIRA is updating the record of meetings on the ANPRM. RegInfo.gov currently shows only:

06/13/2018 11:30 AM 0331-AA03 0331-CEQ Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act Prerule Stage Completed
06/12/2018 03:00 PM 0331-AA03 0331-CEQ Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act Prerule Stage Completed
06/07/2018 04:00 PM 0331-AA03 0331-CEQ Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act Prerule Stage Completed

-----Original Message-----
From: Whiteman, Chad S. EOP/OMB
Sent: Thursday, August 9, 2018 2:43 PM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Quick question re EO 12866

Ted,
We're just now getting the EO meetings posted on reginfo.gov. Three of the meeting records have been posted so far. The remainder should be up soon. Mabel talked to me today about how to spell Chris P.'s name so she is actively uploading some of them today. Here is the link: https://www.reginfo.gov/public/do/eom12866Search

Let me know if you have any questions.
Chad

-----Original Message-----
From: Boling, Ted A. EOP/CEQ
Sent: Thursday, August 9, 2018 2:39 PM
To: Whiteman, Chad S. EOP/OMB <(b) (6) [redacted]
Subject: Quick question re EO 12866

Chad - could you point me to where you post information about our meetings on the ANPRM? Or call me on (b) (6) [redacted]

Sent from my iPhone

RE: Minutes

From: "Szabo, Aaron L. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=f93a8d1dd2b4420ca81e53ff8199b780-sz">

To: "Barnett, Steven W. EOP/CEQ" <(b) (6) [redacted]

Date: Fri, 10 Aug 2018 12:31:28 -0400

Attachments: CEQ NEPA Implementing Regulation Working Group 8.7.2018_als.docx (31.4 kB)

Looks good. My suggestions in RLSO. Let me know if you would like to chat about it.

From: Barnett, Steven W. EOP/CEQ
Sent: Friday, August 10, 2018 10:38 AM
To: Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted]
Subject: Minutes

Sorry about the delay on these—in the future, I'll shoot for EOB Wednesday.

(b) (5) [redacted]

After your review, let me know if there's changes you'd like me to make to format or content going forward. Thanks.

Steven

CEQ NEPA Implementing Regulation Working Group

Meeting Minutes

Date: August 7, 2018

Time: 4:00 PM

Present: Aaron Szabo, Ted Boling, Viktoria Seale, Dan Schneider, Mario Loyola, Michael Drummond, Katherine Smith, Yardena Mansoor, Steven Barnett, Tom Sharp

(b) (5)

[redacted]

(b) (5)

[redacted]

Minutes

From: "Barnett, Steven W. EOP/CEQ" <(b) (6) [redacted]

To: "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted]

Date: Fri, 10 Aug 2018 10:38:09 -0400

Attachments: CEQ NEPA Implementing Regulation Working Group 8.7.2018.docx (19.61 kB)

Sorry about the delay on these—in the future, I'll shoot for EOB Wednesday.

(b) (5) [redacted]

After your review, let me know if there's changes you'd like me to make to format or content going forward. Thanks.

Steven

CEQ NEPA Implementing Regulation Working Group

Meeting Minutes

Date: August 7, 2018

Time: 4:00 PM

Present: Aaron Szabo, Ted Boling, Viktoria Seale, Dan Schneider, Mario Loyola, Michael Drummond, Katherine Smith, Yardena Mansoor, Steven Barnett, Tom Sharp

(b) (5)

[redacted]

(b) (5)

[redacted]

Comment previously unavailable due to "Internal Server Error" is now available

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Loyola, Mario A. EOP/CEQ" (b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" (b) (6) [redacted]

Date: Mon, 20 Aug 2018 12:36:03 -0400

Attachments: 0534 John Young.pdf (108.25 kB)

Comment 0534, attached, from John Young is now available.

Regulations.gov is very quick to respond to requests for assistance.

From: Mansoor, Yardena M. EOP/CEQ
Sent: Monday, August 20, 2018 12:23 PM
To: 'regulations@erulemakinghelpdesk.com' <regulations@erulemakinghelpdesk.com>
Subject: Requesting assistance re "Internal Server Error"

The attachment to the comments of John Young, at https://www.regulations.gov/document?D=CEQ-2018-0001-0534, is unavailable. When I select the pdf icon, the complete text of the resulting page is:

> **Internal Server Error**
>
> The server encountered an internal error or misconfiguration and was unable to complete your request.
>
> Please contact the server administrator at regulations@erulemakinghelpdesk.com to inform them of the time this error occurred, and the actions you performed just before this error.
>
> More information about this error may be available in the server error log.

I would appreciate your assistance in retrieving this attachment. (On 8/13, you quickly solved my similar request regarding a different submittal by replacing an illegal character in the attachment name.)

Thanks,

Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) [redacted] / (b) (6) [redacted]

Regarding CEQ–2018–0001

Just stumbled on this 07-19-2018 while researching Federal Energy Regulatory Commission challenges in the permitting of proposed LNG projects in which reference was made to FAST-41 which, in turn led me to the Council on Environmental Quality's interest in overhauling the National Environmental Policy Act.

I believe that our nation desperately needs a thorough NEPA reworking – but not until after the 2020 presidential election and not along the lines proposed by the Advance Notice of Proposed Rulemaking accompanying the request for comments on CEQ-2018-0001.

Politics should not be the major factor here, but planet-wide catastrophic climate change/chaos has become an existential political issue. Delaying immediate and substantial reductions in our Greenhouse Gas emissions places our lands and people at perilous and unacceptable risk -- both here and to all the corners of our globe [pun intended, even though the peril could not be greater].

Nothing wrong with streamlining – as long as you carefully avoid and protect against streamlining death sentences and mass executions of populations (including animal and plant populations essential to our food security). Nothing wrong with transparency – as long as it doesn't make such populations invisible etc.

Full disclosure: My wife and I have been members of SAVE RGV from LNG since it was formed in May 2014 to fight the threat of proposed LNG export operations at our local Port of Brownsville, next door to South Padre Island, TX. Check out the groups Facebook page at https://www.facebook.com/saveRGVfromLNG/. I am also registered as a FERC Intervenor in regards to NextDecade's proposed Rio Grande LNG and Rio Bravo Pipeline projects, the proposed Annova LNG and Texas LNG projects, and Enbridge's Valley Crossing Pipeline Border Crossing Project. All of these projects continue to face strong local opposition and all except the Valley Crossing Pipeline remain heavily contested (Valley Crossing having prevailed in obtaining FERC approval). More personally, I am a 76 year old Texas native who, before I retired this year, was a mental health professional (holding masters degrees in psychology and social work and state licensed as a Professional Counselor, Marriage and Family Therapist, and Clinical Social Worker).

THE CENTRAL CHALLENGES TO NEPA REVISION:

Challenge Number 1: Adequately Defining and Protecting Our "Public Interest"

Overall, I favor efficiency, responsible budgeting, and responsible and timely action.

HOWEVER, I cannot agree to arbitrary time limits for the completion of evaluations and issuing of permits for proposed projects that pose significant dangers to our health and to our natural environment on which our niceties for life depend (including clean air with sufficient oxygen levels; adequate supplies of clean water; biologically manageable temperature rages; and manageable body burdens of harmful chemicals and organisms).

Those seeking permission to build such projects quite reasonably want to transfer all the risks and costs involved from a) themselves to b) taxpayers to the general population as a whole. The primary purpose of our National Environmental Protection Act is to protect our Public Interest by preventing them from doing this to their advantage against our reasonable and desirable best interests.

There are situations in which the Public Interest can include dangerous projects that result in fatalities, illness, disabilities, pain, suffering, and loss. The greatest challenge to reworking NERA is the difficulty of achieving a consensus definition of the term "Public Interest" and consensus process for determining when, where, under what conditions, and for how long particular projects are to be permitted consistent with this definition.

Consider, for example, how the inadequacy (lack?) of Public Interest definition within NEPA has allowed Natural Gas Act language that privileges the exporting of natural gas to other countries. Exporting natural gas to other counties is to be considered to be in our Public Interest unless it can be shown to be "inconsistent with the public interest." Our US Department of Energy (DOE) has stated that the presumption that natural gas exports is "rebuttable" on a number of grounds including but not limited to "economic impacts, international impacts, security of natural gas supply, and environmental impacts" (https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-13427.pdf). However, the possibility of showing such proposed projects are contrary to our Public Interest has remained theoretical. To date, DOE has never found the arguments against such exports sufficient. Especially our environmental arguments against such exports are dismissed as "hypothetical," "speculative," "unforeseeable," and/or "unknowable" by DOE, by our Federal Energy Regulatory Commission, and by our federal courts.

Challenge Number 2: Achieving A Balance Between Conflicting Public Interests

NEPA is suppose to protect our Environmental Public Interests (including the protection of our health as a people and the preservation and conservation of our public lands). But other interests such as national defense and economic stability are also Public Interest concerns.

Claiming to protect our economic, national security, and other interests, those pushing forward enterprises that negatively impact our environment are increasingly demanding that they be freed from "burdensome" regulations that threaten the building, expansion, continuation, and profitability of their commercial operations. They are insisting on tight time limits and a relaxation of regulatory constraints to get everything streamlined, expedited, fast tracked, and green lighted to release their potential to create jobs, expand our economy, and maintain our ability to meet all our domestic energy needs 7/24/365 – etc.

They insist that their Economic Impact Studies and Economic Case Studies solid, realistic, and reliable while independent climate science and medical science studies that contradict their claims are unreliable. Their industry-standard bought and paid for cradle to grave EISs are based on proprietary computer programs that lack adequate empirical validation, are not amenable to peer review, and claim upstream, midstream, and downstream direct, indirect, and induced impacts that are augmented by multiplier, ripple, and synergistic effects that are remarkably and consistently all positive. Meanwhile they claim for example, that ground level, ambient ozone emission limits of 70 parts per billion are unneeded, unnecessary, and economically burdensome even though the American Academy of Pediatrics, American College of Preventative Medicine, American Heart Association, American Lung Association, American Medical Association, American Public Health Association, American Thoracic Society, Asthma and Allergy Foundation of America, Children's Environmental Health Network, National Association of County and City Health Officials, National Association for Medical Direction of Respiratory Care, Health Care Without Harm, and Trust for America's Health agree that the research indicates that no more than 60 ppm should be allowed to "best protect public health."

Meanwhile, those pushing forward operations that threaten our health and our environment have infiltrated our regulatory agencies, have waged heavily funded public opinion campaigns (reminiscent of psychological warfare, in my professional opinion), and have heavily funded political campaigns and lobbying operations to achieve their objectives. For example, the Railroad Commission of Texas (which regulates pipelines, not railroads) and the Texas Commission for Environmental Quality issued expedited permits "by rule" for the Valley Crossing Pipeline without any prior Public Notices or Public Meetings. For example, TCEQ was all set to issue the air quality permits requested by Rio Grande LNG March 2018 before local communities (Port Isabel and Laguna Vista, TX) and groups (Vecinos Para el Bienestar de la Comunidad Costera, Shrimpers and Fishermen of the RGV, and Save RGV from LNG) filed requests for Contested Hearings on the requested permits.

All while our many of our Superfund Sites remain continuing threats (as evidenced by the leakage of such sites in Houston, TX, last year due to Hurricane Harvey), many abandoned oil and gas wells remain unaccounted for and uncapped, Puerto Rico remains a disaster area, forest fires rage ever hotter and destructive, our arctic ice cap melts away (destabilizing our norther jet air streams), and our gulf currents become sluggish – etc.

Accommodate the needs of companies and industry, yes. But not in ways that shift onerous economic burdens to the public in terms of wrecked health and a world wrecked beyond repair. Set time limit goals, yes – but not time limits that automatically result in the permitting of proposed projects no matter what their impacts on our health and environment. When the time limits are reached, those seeking permits should no longer be able to pursue them if they have not yet found a credible way to meet the regulatory requirements protecting our immediate and long-term health and environmental Public Interests.

Challenge Number 3: Including The Public In Determining Public Interest Issues

This is a magnificent challenge – possibly greater than that of reaching any consensus on defining of the term "Public Interest" in any meaningful, actionable sense.

The present system of obtaining adequate public input on such matters is outdated and inadequate. Those pushing these projects forward often want to limit and/or manipulate public input. Regular folks who want to know what's headed their way and want to stop it or want to make sure its done the right way are at a disadvantage in numerous respects.

For example, LNG started heading our way in the Port of Brownsville area in June 2012 via the Panama Canal Stakeholders Working Group out of the Texas Department of Transportation. Our county judge was the vice chair of the group and was one of more than twenty of our locally elected representatives and self-appointed business leaders who sent Letters of Recommendation to DOE on behalf of the now defunct Gulf Coast LNG project in September 2012. We didn't know until May 2014 that we were to be the beneficiaries of jobs and economic growth due to LNG export operations at our local Port. We didn't find out that we could submit comments to DOE opposing the projects until after the comment deadline had passed.

For example, I happened upon a report that Mexico had put out a Request for Proposals for a Nueces-Brownsville pipeline to take natural gas from the Nueces County area (near Corpus Christi, TX) down to our border city of Brownsville, TX, where it was to connect with a Sur de Texas-Tuxpan Pipeline to take the gas as far south as Veracruz, Mexico. But we couldn't find any information about it enabling us to effectively stop it or influence it's pathway. We had no clue that its name was changed to Valley Crossing Pipeline. As related above, construction was started without any prior Public Notice or Public Meeting by the Railroad Commission of

Texas and TCEQ.

For example, I just happened upon this opportunity to comment on the reworking of the National Environmental Protection Act yesterday, the deadline for comments is today, and I'm out of time and having problems with my computer – even though I have much more to say doubly especially about the need for improved public input into the determination and implementation of Public Interest issues and the permitting of NEPA related projects. I'll just add that pushing these projects forward minus adequate public input ferments civil unrest, especially when local and state law enforcement is used to force eminent domain pipeline construction etc. And give overly brief responses to the first three questions listed. I haven't even had time to open the document folder to look at the information and comments it contains.

Q1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

A: Sure, as long as time limits automatically permitting proposed projects are not part of the process.

Q2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?

A: No. At least not in ways that prioritize efficiency over well grounded decisions or that serve to perpetuate compromised prior findings made on the basis of insufficient or outdated information etc. Precedent is important but being up-to-date and correcting past mistakes and/or injustices are also important. One of the several ways the Texas Commission for Environmental Quality's air permit regulations have been severely compromised is the consideration of emission levels already permitted for similar projects by TCEQ or by the Environmental Protection Agency.

Q3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

Q4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

Q5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decisionmakers and the public, and if so, how?
Q6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

John Young, MA, MSW
San Benito, TX
ForJohnAndBarbara@gmail.com

[EXTERNAL] U.S. Chamber of Commerce Comments - CEQ NEPA NOPR

From: "Tyner, Jake" <jtyner@uschamber.com>

To: "Tyner, Jake" <jtyner@uschamber.com>

Cc: "Mortimer, Edward" <emortimer@uschamber.com>

Date: Mon, 20 Aug 2018 17:03:20 -0400

Attachments: 082018-U.S. Chamber of Commerce-NEPA NOPR.pdf (205.22 kB)

All,

I have attached a copy of the U.S. Chamber of Commerce's comments regarding CEQ's NEPA NOPR.

Please let us know if you have any questions.

Best,

Jake Tyner
Manager & Associate Policy Counsel
U.S. Chamber of Commerce
W: 202-463-5344 | (b) (6) [redacted]
JTyner@USChamber.com

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

NEIL L. BRADLEY
EXECUTIVE VICE PRESIDENT &
CHIEF POLICY OFFICER

1615 H STREET, NW
WASHINGTON, DC 20062
(202) 463-5310

August 20, 2018

VIA ELECTRONIC FILING

Mr. Edward Boling
Council on Environmental Quality
730 Jackson Place, N.W.
Washington, D.C. 20503

RE: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 32,071 (July 11, 2018); Docket No. CEQ-2018-0001

Dear Mr. Boling,

The U.S. Chamber of Commerce ("the Chamber") appreciates the opportunity to comment on the Council of Environmental Quality's ("CEQ") advance notice of proposed rulemaking ("ANPR")[1] as CEQ considers revising its regulations concerning the National Environmental Policy Act ("NEPA").

The Chamber supports CEQ's interest in revising the NEPA regulations to ensure a more efficient, timely, and effective process consistent with NEPA's important purpose and mission. In the 40 years since CEQ promulgated its NEPA regulations,[2] there has been a tremendous transformation in how agencies review projects and how information is developed, shared, and analyzed in support of agency NEPA decisions. The Chamber's comments focus on revising the regulations to bolster the efficiency and efficacy of NEPA reviews.

Environmental reviews and authorizations – including NEPA reviews – often become untethered to the scope and requirements for review and instead serve as unnecessary barriers to important projects. Environmental review statements can run several thousand pages,[3] take over a

[1] Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28,591 (June 20, 2018) ("ANPR").

[2] Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 43 Fed. Reg. 55,978 (Nov. 29, 1978).

[3] The Bayonne Bridge elevation project – an infrastructure improvement project that was considered to have minimal impacts as compared to the alternative of building a new bridge – resulted in 20,000 pages of analysis and exhibits and at a cost of millions of dollars. Sam Roberts, High Above the Water, but Awash in Red Tape: Long Review of Bayonne

decade to complete,[4] prevent the rebuilding and expanding of infrastructure, and are an unnecessary drain on the economy.[5] The Chamber encourages improvements to the federal permitting process to improve transparency and predictability, and encourages coordination among federal agencies.

I. CEQ's Revisions Should Reflect Core Principles That Re-Focus Agency Analysis on Information That Is Meaningful and Significant

In revisiting its NEPA regulations, CEQ should advance revisions that re-focus agency analysis on information that is significant and meaningful. Such direction will help realign NEPA reviews with the purpose of the statute to provide meaningful insight to agencies and the public while reducing unnecessary information gathering and analysis.

A. NEPA Review Should Focus on Information that is Meaningful to the Agency[6]

CEQ should pursue revisions that direct agencies in gathering and analyzing information that is meaningful to carrying out their decisions.

NEPA's purpose is to impose a framework by which federal agencies can understand the environmental impacts of their decisions, allowing them to consider actions that might mitigate such impacts.[7] Agencies can only achieve this purpose if the information considered meaningfully informs the agency's action. An analysis is only meaningful if the information is relevant to the agency's decision-making discretion within the bounds of the action statute. The action statute authorizes the major federal action that triggers the NEPA review.

The action statute prescribes the parameters for agency decision-making and thus limits the agency's discretion to act. NEPA "imposes only procedural requirements" to ensure that agencies are well informed under the action statute.[8] NEPA does not expand the parameters of the agency's decision-making beyond consideration of information the agency has the discretion to act on. CEQ's regulations should reflect this limitation.

Bridge Project Is Assailed, The New York Times, Jan. 2, 2014, https://www.nytimes.com/2014/01/03/nyregion/long-review-of-bayonne-bridge-projectis-assailed.html.

[4] The environmental review for the Port of Savannah took 14 years. Philip K. Howard, Common Good, Two Years Not Ten Years, Redesigning Infrastructure Approvals, September 2015, https://commongood.3cdn.net/c613b4cfda258a5fcb_e8m6b5t3x.pdf.

[5] *See, id.*

[6] ANPR at 28591 (Question 5)

[7] *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 756 (2004) (citing 42 U.S.C.§ 4321) (NEPA "was intended to reduce or eliminate environmental damage and to promote 'the understanding of the ecological systems and natural resources important to' the United States.'").

[8] *Id.* at 756.

B. NEPA Review Should Focus on Significant Environmental Impacts[9]

NEPA recognizes the value in focusing agency resources and requires agencies to consider "detailed information concerning significant environmental impacts."[10] However, agencies and the public have increasingly come to expect project applicants to provide comprehensive and detailed analyses of all issues, without regard to significance. NEPA inappropriately becomes a statute that generates insignificant or irrelevant information, rather than aids agency decision-making. CEQ should advance revisions that bring the agencies back to assessments of significance.

Not all environmental impacts are significant. The comprehensiveness of the NEPA analysis should depend on the significance of the potential impact.[11] However, agencies feel constant pressure to provide comprehensive analysis of all impacts, regardless of significance or relevance.[12] Refocusing agencies towards significant environmental impacts will narrow information requests and streamline the NEPA process.

To achieve this focus, the revisions to the regulations should promote flexible information collection methods. Agencies should rely on available information that is sufficient to be informative of significance, rather than require new project-specific information in all instances. For example, agencies can leverage information generated from prior surveys in similar circumstances as the proposed project to inform the extent of the agency's information gathering. CEQ's regulations should encourage or mandate reuse of relevant analysis and data.

In addition, the regulations should accommodate the use of advanced technologies such as remote sensing to replace more costly and labor-intensive work. For example, data analytics and aerial review efficiently and effectively provide information to agencies of potential impacts.

II. CEQ's Revisions Should Focus On Issues That Are Frequently Litigated to Improve Predictability and Efficiency in NEPA Reviews

NEPA's central role in agency decision-making has made it a preferred vehicle for challenging those decisions. Courts adjudicating these challenges seldom provide broadly applicable legal standards, often applying Supreme Court precedent on key issues in ways that invite further legal challenges. The constant threat of litigation encourages agencies to increase the amount of information considered, as a defensive measure.

The Chamber encourages CEQ to focus on revisions to the regulations that address frequently litigated issues and make regulatory improvements consistent with the key principles identified above.

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[9] ANPR at 28591 (Questions 2, 5, and 15)

[10] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

[11] 40 C.F.R. § 1502.2(b).

[12] *See e.g.*, *Protect Our Communities Foundation v. Jewell*, 825 F.3d 571, 583 (9th Cir. 2016) (rejecting argument that the Bureau of Land Management was required to comprehensively review the effects of noise on birds at all stages of life).

A. Adherence to Interagency Coordination[13]

The existing NEPA regulations encourage interagency coordination early in the process. However, without accountability or metrics for measuring coordination, breakdowns are common and can significantly delay reviews.

The Administration has recognized that interagency coordination is a critical component in ensuring transparent and efficient review of infrastructure projects. Executive Order 13807 requires that federal agencies implement a unified environmental review and authorization process for major infrastructure projects.[14] Referred to as "One Federal Decision," a single lead agency directs this unified process to navigate the project through all federal authorizations.

In support of the One Federal Decision concept, the Administration recently released a Memorandum of Understanding ("MOU") providing guidance to agencies on carrying out their One Federal Decision responsibilities.[15] The MOU clarifies agency roles and procedures with the goal of timely NEPA process coordination and implementation. To promote the coordination of agencies, CEQ should consider incorporating the following elements into its revisions:

- Lead and Cooperating Agencies: The MOU provides expanded guidance on the roles and responsibilities of lead and cooperating agencies to ensure efficient coordination among parties.[16]
- Project Timeline: Preparing a multi-agency project timeline improves the likelihood of a more timely process.[17]
- Scoping and Concurrence Points: The requirements that agencies sign off on scoping and concurrence points ensures early and continued coordination at key points.[18]

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[13] ANPR at 28591-92 (Questions 1, 3, and 16).

[14] *Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects* (signed Aug. 15, 2017), 82 Fed. Reg. 40463 (Aug. 24, 2017).

[15] Memorandum for Heads of Federal Departments and Agencies from Mick Mulvaney, Director, Office of Management and Budget and Mary Neumayr, Chief of Staff, Council on Environmental Quality, March 20, 2018 at Attachment A ("MOU").

[16] *Id.* at A-6 – A-8.

[17] *Id.* at A-5-A-6.

[18] *Id.* at A-9 – A-11

- Delays and Dispute Resolution: Providing a mechanism for resolving inter-agency disagreements encourages resolution of disputes in a timely and consistent manner.[19]

B. Tailor the Purpose and Need Statement to the Decision Before the Agency

The framework that NEPA provides to federal agencies to understand the environmental outcomes of their decisions imposes requirements on agencies, but it does not define the analytical parameters. The substantive criteria of the agency's analysis must reflect the purpose and need of the decision for the analysis to effectively inform the agency.

Broadly defining "purpose and need" under NEPA is a frequent challenge in NEPA implementation. This often transforms NEPA from a decision-making tool into an obstacle that delays those decisions. CEQ should consider revisions to the regulations that require agencies to tailor the purpose and need to the decision the agency is considering.[20]

C. Consideration of Environmental Impacts Must be Within NEPA's Boundaries of Foreseeability and Causation

Agencies must consider the direct, indirect, and cumulative effects of a proposed action.[21] The scope of review is limited to "reasonably foreseeable" effects of a proposed action.[22] NEPA further requires a "reasonably close causal relationship" between the proposed action and the indirect and cumulative effects to warrant the agency's consideration.[23] The connection between the federal action and the impact should be proximate.[24] This framework must limit consideration of broad environmental impacts – including greenhouse gas emissions and climate change.

As CEQ considers revisions to its regulations, it should retain NEPA's flexible analytical framework centered on foreseeability, causation, and the availability of probative information.

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[19] *Id.* at A-11 – A-12

[20] In the case where multiple federal agencies have authorization authority over a project under different statutes, CEQ should again look to the MOU, which requires that the lead federal agency develop the purpose and need to support a single, coordinated NEPA review among agencies. *See* MOU at A-7.

[21] 40 C.F.R. §§ 1508.7-1508.8.

[22] *Id.* § 1508.8

[23] *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 754 (2004) (quoting *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

[24] *Id.*

D. Connect the Alternatives Analysis to the Purpose and Need[25]

The breadth and depth of alternatives analyses that agencies routinely consider demonstrates that the analysis has become untethered from the purpose of NEPA. Agencies must tailor alternative analysis to the purpose of the proposal; otherwise, it leads to excessive analysis of irrelevant or infeasible projects that the agency is not reviewing.

NEPA does not require agencies to consider an endless number of alternatives. Instead, the statute limits such analysis to a reasonable number of alternatives that meet the purpose and need of the agency's decision.[26] When this is tailored to the agency's decision, agencies ensure that the analysis generates information that is meaningful. The breadth of the analyses has increased to analyze an unreasonable number of unnecessarily detailed alternatives. Clear standards that reasonably limit the scope of the alternative analyses would benefit agencies.

E. Limit Cumulative Impacts Analysis to Those Impacts That Are Reasonably Foreseeable and Provide Meaningful Insight[27]

The cumulative impact analysis seeks to ensure that an agency considers how the effects of its own actions interact with other impacts. Existing regulations and guidance instruct agencies on the appropriate bounds of the cumulative impacts analysis.[28] Despite existing regulations and guidance, the cumulative impact analysis has become a target for those seeking to expand the scope of NEPA. Clear and practical limits on the scope of the cumulative impacts analysis in the regulations would help head off some of this litigation and advocacy:

- First, the agency identifies the resources, geographic area, and the timeframe over which a decision is likely to create effects.[29]

- Next, the agency identifies other expected actions affecting the resources within the identified geographic area and timeframe. What the agency knows and can reasonably foresee as well as what is significant to the environment limits this second step.[30]

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[25] ANPR at 28,592 (Question 13).

[26] *City of Alexandria, Va. v. Slater*, 198 F.3d 862, 869 (D.C. Cir. 1999) (stating that "a reasonable alternative is defined by reference to a project's objectives.") (citation omitted).

[27] ANPR at 28,592 (Question 17).

[28] 40 C.F.R. § 1508.7; Council on Environmental Quality, *Considering Cumulative Effects Under the National Environmental Policy Act* (Jan. 1997) ("CEQ Guidance"), *available at* https://ceq.doe.gov/publications/cumulative_effects.html.

[29] CEQ Guidance at 15.

[30] 40 C.F.R. § 1508.7.

Employing this analytical framework focuses the agency's cumulative impacts analysis on information meaningful to its decision. Incorporating this framework into the regulations can provide agencies with clear and practical analytical limits.

F. Set Clear Timing and Page Length Expectations[31]

The preparation time and length of documents for Environmental Assessments and Environmental Impact Statements has grown longer. In 2016, the average length of time to prepare a Final EIS across all federal agencies was 5.1 years – the highest since 1997.[32] The Department of Energy took over 4 years for an average NEPA review.[33] NEPA documents routinely exceed the regulatory expectations on page limits[34] – EISs should normally be less than 150 pages, up to 300 pages for proposals of unusual scope or complexity.[35] Even when agencies find no significant impact, those documents can be over a thousand pages.[36] Although the vast majority of projects do not require such lengthy and prolonged analysis,[37] large-scale infrastructure (such as energy projects) are subject to review by multiple agencies are often disproportionately long.[38]

If CEQ adheres to the principles above and focuses on critical issues that are significant and likely to provide meaningful input to the agency, they can achieve brevity and focus in the review

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[31] ANPR at 28591 (Questions 4 and 10).

[32] National Association of Environmental Professionals, Annual NEPA Report 2016 at 12.

[33] United States Department of Energy, Lessons Learned Quarterly Report, Mar. 2016, http://energy.gov/nepa/downloads/lessonslearned-quarterly-report-march-2016.

[34] As of August 14, 2018, the last eight Final EIS documents contained in the U.S. Environmental Protection Agency's EIS database averaged 560 pages. Although these pages numbers reflect the Final EIS documents in their entirety (excluding appendices), it appears that only one comes close to complying with the 300 page limit for the text of EIS documents. *See* EPA EIS Database, July 20, 2018-August 3, 2018, https://cdxnodengn.epa.gov/cdx-enepa-II/public/action/eis/search/search?searchCriteria.endCommentLetterDate=&d-446779-p=1&searchCriteria.title=&searchRecords=Search&searchCritera.primaryStates=&searchCriteria.endFRDate=08%2F14%2F2018&searchCriteria.startCommentLetterDate=&searchCriteria.startFRDate=07%2F20%2F2018#results.

[35] 40 C.F.R. § 1502.7.

[36] *See* James W. Coleman, Fixing the National Environmental Policy Act, U.S. House of Representatives, House Committee on Natural Resources, at 3 April 28, 2018 (identifying the "Finding of No Significant Impact" for the Dakota Access Pipeline as over one thousand pages), https://naturalresources.house.gov/uploadedfiles/testimony_coleman.pdf.

[37] In the past, CEQ has estimated that about 95 percent of NEPA analyses are categorical exclusions, less than 5 percent are Environmental Assessments, and less than 1 percent are EISs. U.S. Government Accountability Office, National Environmental Policy Act, Little Information Exists on NEPA Analyses, at 1 April 2014, https://www.gao.gov/assets/670/662543.pdf.

[38] Across agencies, the average length of time from notice to final EIS is 1,864 days, whereas the average length of time for projects at the U.S. Department of Energy and the Department of Transportation and the Federal Highway Administration are 2,709 days and 3,586 respectively. National Association of Environmental Professionals, Annual NEPA Report 2016 at 13.

process. CEQ should also consider revisions that achieve the Administration's expectations for short, effective NEPA reviews.

The regulations should incorporate the recent government-wide goal of an average of two years for environmental reviews and authorization decisions.[39][40] CEQ can accomplish this by identifying the factors that agencies should consider in developing expected decision timelines, and by encouraging default timelines for typical decisions.

The current regulations do not set universal time limits for the entire NEPA process, and instead encourage federal agencies to set limits on an individual basis.[41] Without a requirement to set a project-specific timetable or a mechanism to encourage compliance, NEPA reviews often languish – especially when multiple agencies are involved – leading to an unnecessarily lengthy and unpredictable process. CEQ should consider revisions requiring the development of project-specific timelines and provide mechanisms for compliance. CEQ could accomplish this by codifying concepts from the MOU on the development of permitting timetables, scoping and concurrence points, and elevation of delays and dispute resolution.[42]

CEQ should revise the regulations that help agencies achieve the expected page lengths. CEQ should consider identifying the factors that agencies should consider in setting appropriate benchmark lengths for typical decisions.

G. More Clearly Define Regulatory Terms[43]

The existing definitions fail to provide the clarity critical for an effective regulatory program. Definitions omit key terms such as "alternatives," "purpose and need," and "reasonably foreseeable." Definitions for defined terms often create more confusion than clarity.[44] In the absence of clarity, courts have attempted to provide their own interpretations, but often in conflicting or confusing ways that invite further legal challenges. A clear, simple, comprehensive set of regulatory definitions can improve NEPA implementation. CEQ should review the existing definitions and identify revisions and additions that provide this clarity.

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[39] An average time period of two years for the review of infrastructure projects is aligned with other industrialized countries, and even longer than some. For example, under a proposed expansion, Canada's reviews would be completed in 300 days. *Id.* at 2.

[40] Memorandum for Heads of Federal Departments and Agencies from Mick Mulvaney, Director, Office of Management and Budget and Mary Neumayr, Chief of Staff, Council on Environmental Quality, March 20, 2018 at 1.

[41] 40 C.F.R. § 1501.8.

[42] OFD MOU at A-4 – A-5.

[43] ANPR at 28,591-92 (Questions 7 and 8).

[44] For example, the definition of "Major Federal action" is lengthy, conflates Federal actions with Major Federal actions, and is circular with the meaning of "significant." 40 C.F.R. § 1508.18.

III. Conclusion

The Chamber appreciates the opportunity to comment on the ANPR. If you have any questions or need more information please do not hesitate to contact me at (202) 463-5310 or at nbradley@uschamber.com.

Sincerely,

Neil L. Bradley

[EXTERNAL] Comment submission

From: Marina Micic <marina@cg-la.com>

To: "McLaurin, Juschelle D. EOP/CEQ" <(b) (6) [redacted]

Date: Mon, 20 Aug 2018 16:53:33 -0400

Attachments: Proposed NEPA Changes 8-20-18 for filing (2).pdf (1.41 MB)

Hello,

We tried to submit our comment by mailing it to the address noted on the filing instructions, but the delivery was not possible. Could you please help us deliver the attached document to the right person/department?

Thank you so much for your assistance!

Marina

The CEQ is extending the comment period on the ANPRM, which was scheduled to close on July 20, 2018, for 31 days until August 20, 2018. The CEQ is making this change in response to public requests for an extension of the comment period.

DATES: Comments should be submitted on or before August 20, 2018. **ADDRESSES:** Submit your comments, identified by docket identification number CEQ–2018–0001 through the Federal eRulemaking portal at *https:// >www.regulations.gov<*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https:// >www.regulations.gov<*. CEQ may publish

any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (*e.g.*, audio, video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

Comments may also be submitted by mail. Send your comments to: Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503, Attn: Docket No. CEQ–2018–0001.

FOR FURTHER INFORMATION CONTACT:

Edward A. Boling, Associate Director for the National Environmental Policy Act, Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503. Telephone: (202) 395–5750.

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BLUEPRINT 2025

[3225-F8]

August 20, 2018

Comments of Blueprint 2025

Re: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

AGENCY: Council on Environmental Quality (CEQ).
ACTION: Advance Notice of Proposed Rulemaking.

Docket No. CEQ-2018-0001 - RIN: 0331-AA03

The Blueprint 2025 ("BP2025") initiative is collaboration among infrastructure professionals, leading infrastructure development companies and public sector project managers, which advances and supports plans and policies to restore the U.S. position as the country with the world's best, most efficient and most productive infrastructure. A central tenet of BP 2025's policy is the recognition that reform of the permitting process for major infrastructure projects is absolutely essential if the U.S. is to modernize its infrastructure in time to allow development of the new technologies which will enable us to keep pace with the modernization programs of our major global competitors. As outlined in our recently updated position paper on modernization of the NEPA process (Annex A attached), the current process is cumbersome, inefficient and antiquated, it needs to be modernized and brought into the 21st century through better use of available technology.

A major reason for the failure, up to this point, to optimize the NEPA process lies in the facts, outlined in Annex A, that no one knows what NEPA review costs the government and the private sector and there are no performance metrics to evaluate the government's performance. In this context, there has been no incentive to make the process more efficient or to reduce its cost. These deficiencies should be addressed as priority subjects pursuant to this ANPR as it is clear that the NEPA process imposes very direct and substantial costs on both government and the private sector. Perhaps more important, costs arising from NEPA delays may increase project costs by 50% or more and, for cutting edge projects, may substantially reduce the useful life between startup and technical obsolescence.

Against that background, we have the following comments in response to the specific questions presented in the advance notice:

1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

Both the FAST 41 efforts and those pursuant to the President's "One Federal Action" order have operated on the basis of consensus among agencies and, as a result, have yielded complex and convoluted compromise procedures. An appropriate environmental

review procedure would adopt the "one window" approach mandated by laws such as the Deepwater Port Act and the Deep Seabed Hard Mineral Resources Act in which the lead agency is, in fact, the lead agency, with final decision making authority. Other affected agencies should be required to participate and exercise only the authorities granted by the laws which they are responsible for implementing. Experience shows that, by this approach, complex and controversial environmental reviews can be completed in less than a year.

As noted above, the time delay associated with the current NEPA review process not only imposes substantial costs on both government and the private sector, it impedes the development of the technology of the future and handicaps our Country's efforts to maintain its global leadership position. [1]

2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions , and if so, how?

Yes. As noted in the attached Update, the use of modern technologies can facilitate the development and maintenance of a National Environmental Database which can be drawn upon as necessary and relevant. Modern Data analytics can speed and regularize the environmental review process, minimize opportunities for agency bias and make judicial review more expeditious and predictable.

3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

Yes. See response to Question 1 above.

Scope of NEPA Review:

4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

The current suggested page limits seem appropriate, but should be enforced through appropriate entry software. To the extent necessary, supporting data can be included in

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[1] As we have noted on a number of occasions, the Congress used to identify and "put its shoulder behind" projects which it believed to be of national importance and the agencies were by and large responsive to directives under laws such as the Trans Alaska Pipeline System Act, the Deepwater Port Act, the Deep Seabed Hard Mineral Resources Act and the Alaska Natural Gas Transportation System Act. In recent years, there has been more reluctance to address specific projects and projects which have been high on BP 2025's top fifty list, such as the Cadiz Water Project in California, the Clean Line Transmission Project, the Texas Central Rail Project the SeaOne Energy Transportation Project have languished and a few have been stalled by opposition from a very small number of members. President Trump's Executive Order 13766, directing priority processing of critical infrastructure projects has largely been ignored. If we are to keep pace with "Made in China" this situation must be remedied.

searchable and linked data attachments. A digitized process would allow more expeditious review and enforcement of hard time limits.

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public, and if so, how?

In accordance with the existing statutes and regulations, NEPA analysis should address only the direct and indirect effects which are subject to regulation by the lead or participating agencies, NEPA documents should not address federal actions which are non-discretionary or impacts which are not subject to federal regulation. Agencies should participate in the lead agency process throughout the life of the project and their input should be limited to matters within their jurisdiction.[2]

6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

Public involvement regulations should be predicated on an assumed basic level of computer literacy, should be developed with a view towards maintenance of efficient digital processes and should have timing requirements consistent with the capabilities of digital processes. Software protocols should seek to enforce basic requirements regarding relevance and supporting references.

7. Should definition s of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?

a. Major Federal Action;

The existing formulation—a federal action which will have a direct or indirect effect which is within federal jurisdiction and which has the potential for significant environmental impacts – is appropriate but often not followed The "within federal jurisdiction" element is too often ignored. Agencies often interpret the "no action" alternative to mean "no project" and thus allow them to expand their jurisdiction to cover the entire project rather than only the aspect, such as an air or water discharge, over which they exercise jurisdiction. It needs to be made clear that NEPA does not expand agency jurisdiction but only permits agencies to consider effects within their jurisdiction. It should also be made clear that "categorical exclusion" is not the first step in the environmental review process. The CATEX

[2] The Deepwater Port Act provides for a perpetual license which functions to provide all authorizations required for the construction and operation of the Ports and put in place a continuous environmental review process to assure that the Ports continue to utilize best available technology to minimize impacts on the marine environment. EPA participates in the licensing process and issues Clean Water Act Permits for the very minor domestic and cooling water discharges associated with Port Operations. Some EPA officials have taken the position that since the Ports are originally "new sources" and since water permits expire every five years, new and separate environmental reviews addressing the Ports' operations are required at five year intervals PS.

review should only take place after the decision maker has concluded that a federal action has the potential to significantly affect the environment.

b. Effects;

Again, the effect must be within federal jurisdiction. NEPA does not expand federal jurisdiction and an interpretation which would, for example, allow consideration of the construction of a facility which is beyond the agency's jurisdiction would be contrary to the clear intention that agencies' jurisdiction should not be affected. A proper interpretation of this requirement would be consistent with NEPA's original intent and would greatly simplify its application.

c. Cumulative Impact;

Effects to be considered in cumulative impact analysis must be subject to federal regulatory authority. For example, if the federal government is prohibited from restricting the export of crude oil, crude oil exports should not be the subject of cumulative impact analysis. Cumulative effects, like other effects, must be within in an agency's jurisdiction in order to merit consideration in the environmental review process.

d. Significantly;

Under the Act, the decision maker must exercise discretion, subject to judicial review, to decide whether the a proposed federal action may have an effect, within her or his agency's jurisdiction, which has the potential to be "significant" As noted above, limitation of this requirement through improper application of the "categorical exclusion" is inappropriate and counterproductive. The "significantly" definition might be amended to make clear that the decision maker retains this authority.

e. Scope;

Environmental reviews must focus precisely on the foreseeable direct and indirect effects subject to federal regulation of the proposed federal action or reasonable alternatives to the federal action. Alternatives which are not within federal jurisdiction need not be assessed. The No Federal Action alternative need not be addressed unless the agency has discretion to take no action.

8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?

a. Alternatives;

b. Purpose and Need;

c. Reasonably Foreseeable;

d. Trivial Violation; and

f. Other NEPA terms.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?

a. Notice of Intent;

b. Categorical Exclusions Documentation;

As noted above, the "categorical exclusion" methodology is being misapplied in many agencies to impose additional limits on decision makers' discretion rather than to provide a "safe harbor" to be relied upon by decision makers facing decisions on close questions. It needs to be made clear that categorical exclusions do not preclude the exercise of agency discretion regarding the question of whether a "major federal action" is proposed and that extensive documentation and public comment is not required. Otherwise the CATEX functions essentially as a redundant environmental assessment. The millions and perhaps billions that have been spent by agencies in adopting CATEX regulations will have been wasted. Finally the exception in many agencies' CATEX regulations for matters involving substantial public interest or opposition essentially defeats the purpose of CATEXs. Those exceptions should be eliminated.

c. Environmental Assessments;

We need to know what Environmental Assessments cost, in both federal and private sector dollars and in project delay costs. Since nearly all EAs result in FONSIs the cost benefit ratio of this process may be subject to question. Fortunately, the EA process should be amenable to radical attenuation through the application of modern technology. That potential should be explored intensively.

d. Findings of No Significant Impact;

c. Environmental Impact Statements;

e. Records of Decision;

As noted in the attached report, all of these elements of the NEPA review process have become unnecessarily complex and stylized. Digitization of the review process will provide an opportunity to enhance clarity and predictability. CEQ must take full advantage of that opportunity; and

f. Supplements;

The role of supplements should be clarified. There is no need for supplementation where there is no continuing federal oversight or periodic permitting. Where there is continued oversight or regulatory engagement, periodic updating should be a matter of course. Scoping and public participation requirements for supplements are likely very different from those for original EISs and should be tailored accordingly.

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?

Addressing at the earliest practicable date is important and should be rigorously enforced. Particularly in adjudicatory proceedings, environmental documentation should be available prior to finding and application to be complete, certainly prior to commencement of the proceeding. Any necessary environmental review should be integrated into the proceeding and certainly should not be a basis for reopening a proceeding after the record is closed. There is no need for FEIS or ROD when a judicial decision is issued after a trial type proceeding. Time limits for final approval should be provided.

11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

Existing procedures for third party preparation of environmental review documents are cumbersome, create perverse incentives and should be eliminated. Reasoned review of applicant prepared documents should be a fully accepted protocol.

12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?

Programmatic documentation is extremely useful and should be more effectively utilized. It should be made clear, however, that there is not a moratorium on permit issuance during the pendency of programmatic review and reviews should be completed within a reasonable time period. Digitization and data analytics will allow continuous input to programmatic review processes and would greatly improve the usefulness of this tool.

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

Alternatives which are not within the regulatory purview of the reviewing agencies should be eliminated. Where an agency lacks authority to withhold action based on public interest considerations, the "no action" alternative is not available. Agency regulations restricting consideration of "mitigation" in choosing among alternatives or requiring selection of the "least impact" alternative should be examined to determine their statutory basis.

General:

1. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.

As noted above, the NEPA regulations require a comprehensive overhaul to enable full utilization of modern technology.

2. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

As noted, we believe a comprehensive review of the entire process is required.

3. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions , such as combining NEPA analysis and other decision documents, and if so, how?

Reliance on relevant State Environmental Review Documents should be mandatory.

4. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

The Regulations should include a specific expedited review procedure with time limits for priority projects identified pursuant to E.O. 13766.

5. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?

6. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?

Although it is clear that delays in permit issuance can have environmental consequences as adverse and severe as those of imprudent permit issuance, there are few consequences or disincentives for unnecessary or unreasonable delays in permit issuance. CEQ should work to provide appropriate performance metrics, cost monitoring and related mechanisms for providing a more appropriate balance.

7. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

While the basic concept of mitigation may be relatively well understood, the details are not. Is it appropriate to require mitigation when the statute does not allow for a broad "public interest" determination? (We think the answer should be "No"). Should mitigation be taken into account in determining the "best" environmental alternative? [3]*(We think the answer must be "Yes".) There are a number of these kinds of questions which must be answered in order to achieve fair and predictable results in this context.*

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[3] In circumstances where environmental review is linked with a substantive finding such as the Corps of Engineers LEDPA determination on water projects the question of how mitigation should be taken into account is critical. The provision in the Corps' guidance to the effect that mitigation cannot be taken into account in LEDPA determinations is unauthorized by law and counterproductive. In general, the basis for agency authority to require mitigation need to be clarified.

Blueprint 2025 greatly appreciates the opportunity to submit these comments and is, of course, available to clarify or expand upon them at your convenience.

Respectfully Submitted,

Norman Anderson
President

BLUEPRINT 2025

Summer, 2018

Blueprint 2025 Position Paper
Modernizing the NEPA Environmental Review Process

Over the last fifty or so years (since enactment of the National Environmental Policy Act "NEPA") serious deficiencies have developed in the way the U.S. Government goes about the planning and authorization of infrastructure projects. This unnecessarily burdensome administrative process delays decisions on critical infrastructure projects, severely restricting our country's ability to modernize infrastructure to enable the technologies of the future or even to maintain the infrastructure which is now in place.

China and our other competitors have in place not only programs to plan and prioritize the infrastructure to be built, but highly efficient computer aided approaches for individual projects beginning with the early planning stages and continuing throughout their development. Though the governance systems of these major competitors might be more conducive to efficient management of the development process than is our "rule of law" system, it should be possible to at least narrow the gap by simplifying and improving the U.S. system as it has evolved (or devolved) over the last 50 years and enabling the use of modern technology to make the authorization process work more efficiently. This note outlines possible steps toward that end.

The Process for Achieving NEPA's Goals is Outmoded and Inefficient

Despite the well-intentioned goals of NEPA to help public officials make decisions based on an informed understanding of environmental consequences, there is a large and growing number of actors in both the public and private sectors that feel the Act has evolved into an unintended project-stalling process of administrative hurdles. What was originally designed to encourage simple informed decision making has become a burdensome and expensive process resulting in undue delays, loss of investment and, perhaps, even environmental harm.[1]

According to this view:

- Environmental analyses are routinely conducted for actions that reasoned judgment would conclude are not major and should not be subject to such onerous agency oversight.
- Though the act was intended to facilitate public input and participation, the environmental review process as it currently exists is esoteric and inaccessible to the average citizen who might like to weigh in. Data on the average length of an EIS is lacking, but it is not uncommon for these reports to span in excess of 1,000, 2,000, and

[1] *See Modernizing NEPA for the 21st Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115th Cong. (2017) (statement of Philip Howard, Chairman Common Good).

even 3,000 pages, though CEQ regulations state that the text of final EIS reports should "normally be less than 150 pages and for proposals of unusual scope or complexity … be less than 300 pages."[2] This added complexity often means that participation only comes from well-funded organizations or experts in a particular field. While expert comments are appreciated, and encouraged, the process was meant to invite participation on a much broader scale.

- While agencies do not routinely track data on the cost of completing NEPA analyses, it is clear that the cost of an environmental review process for a single project can run into the millions of dollars. For instance, the Department of Energy (DOE) tracks limited cost data associated with NEPA analyses, specifically, funds the agency pays to contractors to prepare NEPA analyses. According to DOE data, the average payment to a contractor to prepare an EIS from calendar year 2003 through calendar year 2012 was $6.6 million, with the range being a low of $60,000 and a high of $85 million.[3] DOE's median EIS contractor cost was $1.4 million over that time period.[4]

Though the extent and impact of these problems may be subject to debate, it seems clear that there is a great deal of room for improvement in order to mitigate what many interpret to be excessive delay, cost, and complexity.

As a recent House Natural Resources Committee hearing on the need to modernize NEPA highlighted, there remains broad support for the act's basic objective of informing agency decision makers.[5] However, there seems to be a consensus that the process is plagued by the kinds of problems outlined here and that as a result, NEPA has failed to fulfill the basic purpose for which it was enacted, resulting in unintended adverse impacts on the U.S. economy, the quality of our infrastructure, and in fact, on the environment itself. Solutions like those suggested at the hearing, by former CEQ General Counsel, Dinah Bear, that more and better-trained federal employees are needed—are both unrealistic and rooted in the past.[6] NEPA, like other elements of our infrastructure, needs to be updated and brought into the 21st century. New tools including data analysis, artificial intelligence, and even virtual reality modeling can and should be effectively utilized to expedite and simplify the NEPA process, making it more accessible to ordinary citizens and yielding superior analytical results.

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[2] 40 C.F.R. § 1502.7.

[3] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-14-370, NATIONAL ENVIRONMENTAL POLICY ACT: LITTLE INFORMATION EXISTS ON NEPA ANALYSES 13 (2014) (According to DOE, the cost for the $85 million Hanford Tank Closure and Waste Management EIS includes the costs for three major EISs—waste management, high-level waste tank closure, and disposition of a nuclear reactor—that were started separately and ultimately integrated into one document spanning 3,600+ pages including agency responses to public comments).

[4] *Id.*

[5] *See* 42 U.S.C. § 4321 (NEPA's congressional declaration of purpose states that the purposes of the act are "to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.").

[6] *See Modernizing NEPA for the 21st Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115th Cong. (2017) (statement of Dinah Bear, Former General Counsel, Council on Environmental Quality).

Current Process Dynamics

NEPA requires federal agencies to analyze both the nature and the extent of a project's potential environmental effects and, in many cases, document these analyses.[7] While much has been said about the merits of this process in furthering a public dialogue and improving the quality of decision making at the federal level, CEQ regulations make explicit the need for a level of analysis that is timely, efficient, and genuinely useful. For instance, under the CEQ's own articulation of NEPA's purpose, "NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail."[8] "NEPA's purpose is *not* to generate paperwork— even excellent paperwork— but to foster excellent action."[9] "Ultimately, it is not better documents but better decisions that count."[10] The regulations go on to include specific instructions targeted at two additional goals: (i) to reduce paperwork and (ii) reduce delay.[11] These instructions highlight the needs for agencies to reduce the length of environmental impact statements (EIS); emphasize the portions of the EIS that are useful to decision makers and the public; integrate NEPA requirements with other environmental review and consultation requirements; require comments to be as specific as possible; eliminate duplication with state and local procedures by providing for joint preparation; emphasize interagency cooperation before the EIS is prepared; establish appropriate time limits for the EIS process; and use accelerated procedures for proposals for legislation.[12]

Title 41 of the "Fixing America's Surface Transportation" Act ("FAST Act") --- establishes a new interagency committee (the Federal Permitting Improvement Steering Council "FPISC"), which is directed to ensure use of most efficient and timely processes for environmental review, and establishment of performance schedules for the completion of the environmental reviews. Title 41 thus both confirms the basic principles outlined above and augments them by a requirement that the Council established by the Act must ensure that "best technology" will be fully utilized in the environmental review process. The Title 41 mandate requires timely action to integrate modern technology into the NEPA process. An approach to such an effort is roughly outlined below.

The Process Now in Place

NEPA is primarily a procedural statute. It does not require an agency to pursue the least environmentally harmful alternative, only that the agency give adequate consideration to the potential benefits and harms of the proposed action in order to demonstrate informed decision making.[13]

Over the last 50 years, NEPA practitioners and the courts have developed a well choreographed set of procedures designed to fulfill these procedural requirements.[14]

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[7] Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ regulations), 40 C.F.R. Parts 1500-1508, set out the level of analysis and documentation for complying with NEPA. The scope and form of these analyses can take the form of a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

[8] 40 C.F.R. § 1500.1(b).

[9] *Id.* at § 1500.1(c) (emphasis added).

[10] *Id.*

[11] *See* 40 C.F.R. §§ 1500.4-1500.5.

[12] *Id.*

[13] *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978).

- Identify the need for action in connection with a proposal.

- Determine whether the action is a federal action subject to NEPA review.

- Determine whether the proposed action is a "major federal action" i.e. could it have direct or indirect effects which have the *potential* to significantly affect the quality of the human environment.[15]

    - If "yes," determine whether the project qualifies for a categorical exclusion (CE).

    - If significant environmental effects are uncertain and the action fails to qualify for a CE, then agencies must move forward with an environmental assessment (EA) providing for public involvement to the extent practicable.[16]

- Determine whether the EA reveals a potential for significant environmental effects.

    - If "no," then agencies must issue a Finding of No Significant Impact explaining the reasoning for their decision.

    - If, however, in the process of completing the EA, it is determined that significant environmental effects *are* likely to result, a notice must be published in the federal register of intent to prepare an Environmental Impact Statement (EIS).

- A public process to determine the "scope" of the EIS must be conducted.

- A draft EIS will be prepared and published, with a minimum 90-day period for public review and further comment.

- After addressing public input, a final EIS is published (no time limit).

- Finally, a Record of Decision is issued by the lead agency detailing its decision to move forward with the proposal or not.

NEPA for the 21st Century

Clearly there is ample room for this process to benefit from the economies and efficiencies associated with the digitization, data analytics and networking available to us in 2018, but, unfortunately, much of the analysis and "streamlining" attempted to date, whether pursuant to the FAST Act or the several Trump Administration executive orders in furtherance of those objectives,

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[14] *See* COUNCIL ON ENVIRONMENTAL QUALITY, A CITIZEN'S GUIDE TO THE NEPA: HAVING YOUR VOICE HEARD 8 (2007).

[15] *See* 40 C.F.R. § 1508.27.

[16] There is no statutory basis for the position taken by some agencies that there must be environmental review unless there is an applicable categorical exclusion. The mandatory C.E exercise is unduly cumbersome and unduly restricts the exercise of reasoned judgment by the agency head in determining whether an action is "major" An intelligent computer aided approach to this analysis could provide the equivalent of reasoned judgment based on the thousands of relevant factors which might affect a reasoned human decision.

has been developed by consensus among multiple agencies and predicated on traditional "paper trail' oriented administrative processes. It has failed to take into account the advances achievable through use of modern technology.

As a result, the environmental review process has yet to embrace the efficiencies associated with software development and technological integration. While people who wish to comment on a draft EIS can now do so through online portals instead of having to mail in written comments, there are additional opportunities to take the choreographed stages of review and introduce coordination that is currently missing.

Under the framework of a modern, digital, analytic protocol, there would be opportunities to introduce disciplines for reviewing some of the mistakes and inefficiencies embedded in the existing regulations and guidance, and perhaps even codify and replace the countless pages of existing guidance proven to be redundant or unnecessary. Just as important, broad use of interactive digital platforms would enable the development of a broadly accessible national environmental data network which would limit the need to "reinvent the wheel" in environmental reviews of previously studied areas. The result might be creation of a comprehensive environmental database that includes subject specific information capable of being drawn upon to inform future projects. For example, U.S. Fish and Wildlife has a rudimentary system for archiving conservation plans across the country. It's not terribly user-friendly but it does allow landowners and developers a chance to see what's been done before and what they might reasonably expect going forward in similar situations. Artificial intelligence and networking capabilities ought to be employed to compile something that is (i) informative; (ii) comprehensive; (iii) user-friendly; and (iv) capable of cutting down redundancy with previous work.

In addition to introducing efficiencies that could cut down on delay and associated development costs, there is reason to believe that digitization and analytics could not only provide a quality of analysis currently lacking in NEPA review but could also substantially reduce Government costs. Two NEPA-related studies completed by federal agencies show clearly that there is no current "handle" on the total governmental cost of NEPA compliance. A 2007 Forest Service report on competitive sourcing for NEPA compliance stated that it is "very difficult to track the actual cost of performing NEPA. Positions that perform NEPA-related activities are currently located within nearly every staff group, and are funded by a large number of budget line items.

There is no single budget line item or budget object code to follow in attempting to calculate the costs of doing NEPA."[17] Similarly, a 2003 study funded by the Federal Highway Administration evaluating the performance of environmental "streamlining" noted that NEPA cost data would be difficult to segregate for analysis."[18] Since, as noted the *outside contractor cost* of environmental review of a single proposal can range to $85 million or beyond it is clear that the overall cost of NEPA review is very, very substantial. , Digitization could introduce analytics that break down the silos of knowledge described in the Forest Service report and allow us to know, at least, what NEPA is costing.

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[17] U.S. FOREST SERVICE, COMPETITIVE SOURCING PROGRAM OFFICE, *Feasibility Study of Activities Related to National Environmental Policy Act (NEPA) Compliance* (Washington, D.C., Aug. 10, 2007).

[18] U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, *Evaluating the Performance of Environmental Streamlining: Phase II* (Washington, D.C. 2003).

Even more important, the use of modern communications and analytical technologies can allow us to obtain more effective reviews, more expeditiously and at a much lower cost.. Witnesses at a recent hearing before the Senate Environment and Public Works Committee estimated that NEPA related delays in permitting processes may be inflating our nation's infrastructure costs by as much as 50% and there is at least some evidence to suggest that estimate is on the low side. There is little doubt that inefficiencies in environmental review processes, in addition to handicapping our country's ability to keep pace with global competition, are resulting in costs well into the billions and possibly beyond.

Conclusion

Over the past several decades, we've split the atom, we've spliced the gene, and we've harnessed the modern electron. New science and new technology is fostering change at a breakneck pace and we are at a crossroads. The need to bring NEPA — arguably one of the most influential pieces of environmental legislation ever enacted — up to speed in a way that's attendant to the needs of 21st century development is not a partisan issue. This was recognized in the FAST Act by specifically including a title designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects.[19] President Trump has issued executive orders which further support the FAST 41 objectives and has targeted nearly a trillion dollars in infrastructure packages across the country given the state of our bridges, highways, and waterways. We are in a unique position to leverage knowledge available from actors in both the public and private sectors to bring to bear the full measure of our know-how on environmental review. Now is the time to bring the full resources of the federal government and the full reach of our collective expertise to this fundamental goal: we must modernize the NEPA environmental review process.

[19] *See* 42 U.S.C. § 4370m *et seq*.

FW: First batch of ANOPR comments ready for review

From: "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted]

To: "Neumayr, Mary B. EOP/CEQ" <(b) (6) [redacted]

Date: Tue, 21 Aug 2018 21:18:23 -0400

Mary,

I would usually not send these to you, but want to provide to you for your awareness.

From: Szabo, Aaron L. EOP/CEQ
Sent: Tuesday, August 21, 2018 9:15 PM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted] Barnett, Steven W. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Loyola, Mario A. EOP/CEQ <(b) (6) [redacted] Osterhues, Marlys A. EOP/CEQ <(b) (6) [redacted] Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted] Sharp, Thomas L. EOP/CEQ <(b) (6) [redacted] Smith, Katherine R. EOP/CEQ <(b) (6) [redacted]
Cc: Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted]
Subject: RE: First batch of ANOPR comments ready for review

Yardena,

(b) (5) [redacted]

(b) (5)
[redacted]

Thank you very much and please let me know if you have any questions.

From: Mansoor, Yardena M. EOP/CEQ
Sent: Friday, August 17, 2018 4:09 PM
To: Barnett, Steven W. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Loyola, Mario A. EOP/CEQ <(b) (6) [redacted] Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted] Osterhues, Marlys A. EOP/CEQ <(b) (6) [redacted] Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted] Sharp, Thomas L. EOP/CEQ <(b) (6) [redacted]
Cc: Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted]
Subject: First batch of ANOPR comments ready for review

(b) (5)
[redacted]

Let me know if you are having difficulties handling the pdf files or have other questions.

Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) [redacted] / (b) (6) [redacted]

Fwd: Dept. of the Interior Comments on CEQ's ANPRM "Update to the Regulations for Implementing the Procedural Provisions of the NEPA"

From:	"Neumayr, Mary B. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=4e618ec0a8d749c29c9f64889897f4bb-ne">
To:	"Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted]
Date:	Tue, 21 Aug 2018 20:22:23 -0400
Attachments:	DOI Comments on CEQ ANPRM.pdf (382.2 kB)

Sent from my iPhone

Begin forwarded message:

From: Justin Abernathy <justin_abernathy@ios.doi.gov>
Date: August 21, 2018 at 6:29:08 PM EDT
To: <(b) (6) [redacted] <(b) (6) [redacted]
Cc: James Voyles <james_voyles@ios.doi.gov>
Subject: Dept. of the Interior Comments on CEQ's ANPRM "Update to the Regulations for Implementing the Procedural Provisions of the NEPA"

Ms. Neumayr and Mr. Barnett,

Comments from the Department of the Interior (Department) in response to the Council on Environmental Quality's (CEQ) Advanced Notice of Proposed Rulemaking, titled "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act," are attached for your consideration. The Department looks forward to assisting CEQ with this and other efforts that achieve the goals of Executive Order 13807.

Thank you,

Justin Abernathy
Policy and Regulatory Affairs Supervisor
Office of the Executive Secretariat and Regulatory Affairs
Office of the Secretary
U.S. Department of the Interior
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E-mail: justin_abernathy@ios.doi.gov
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Dept. of the Interior Comments on CEQ's ANPRM "Update to the Regulations for Implementing the Procedural Provisions of the NEPA"

From:	Justin Abernathy <justin_abernathy@ios.doi.gov>
To:	"Neumayr, Mary B. EOP/CEQ" <(b) (6) [redacted] "Barnett, Steven W. EOP/CEQ" <(b) (6) [redacted]
Cc:	James Voyles <james_voyles@ios.doi.gov>
Date:	Tue, 21 Aug 2018 18:29:08 -0400
Attachments:	DOI Comments on CEQ ANPRM.pdf (382.2 kB)

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[redacted]

FW: First batch of ANOPR comments ready for review

From: "Szabo, Aaron L. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=f93a8d1dd2b4420ca81e53ff8199b780-sz">

To: "Daniel J. EOP/CEQ Schneider ([redacted]
<[redacted]

Date: Tue, 21 Aug 2018 21:18:57 -0400

FYI

From: Szabo, Aaron L. EOP/CEQ
Sent: Tuesday, August 21, 2018 9:15 PM
To: Mansoor, Yardena M. EOP/CEQ <[redacted] Barnett, Steven W. EOP/CEQ <[redacted] Boling, Ted A. EOP/CEQ <[redacted] Drummond, Michael R. EOP/CEQ <[redacted] Loyola, Mario A. EOP/CEQ <[redacted] Osterhues, Marlys A. EOP/CEQ <[redacted] Seale, Viktoria Z. EOP/CEQ <[redacted] Sharp, Thomas L. EOP/CEQ <[redacted] Smith, Katherine R. EOP/CEQ <[redacted]
Cc: Szabo, Aaron L. EOP/CEQ <[redacted]
Subject: RE: First batch of ANOPR comments ready for review

Yardena,

[redacted]

(b) (5) [redacted]

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Sent: Friday, August 17, 2018 4:09 PM
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Cc: Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted]
Subject: First batch of ANOPR comments ready for review

(b) (5) [redacted]

Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) [redacted] / (b) (6) [redacted]

FW: [EXTERNAL] Comment submission

From: "McLaurin, Juschelle D. EOP/CEQ" <(b) (6)[redacted]

To: "Drummond, Michael R. EOP/CEQ" (b) (6)[redacted]

Date: Wed, 22 Aug 2018 08:51:07 -0400

Attachments: Proposed NEPA Changes 8-20-18 for filing (2).pdf (1.41 MB)

Good Morning,

Michael this was sent to my email on yesterday , and as you know it's my day off.

Juschelle

From: Marina Micic <marina@cg-la.com>
Sent: Monday, August 20, 2018 4:54 PM
To: McLaurin, Juschelle D. EOP/CEQ <(b) (6)[redacted]
Subject: [EXTERNAL] Comment submission

Hello,

We tried to submit our comment by mailing it to the address noted on the filing instructions, but the delivery was not possible. Could you please help us deliver the attached document to the right person/department?

Thank you so much for your assistance!

Marina

The CEQ is extending the comment period on the ANPRM, which was scheduled to close on July 20, 2018, for 31 days until August 20, 2018. The CEQ is making this change in response to public requests for an extension of the comment period.

DATES: Comments should be submitted on or before August 20, 2018. **ADDRESSES:** Submit your comments, identified by docket identification number CEQ–2018–0001 through the Federal eRulemaking portal at *https://* >*www.regulations.gov*<. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://* >*www.regulations.gov*<. CEQ may publish

any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (*e.g.*, audio, video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

Comments may also be submitted by mail. Send your comments to: Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503, Attn: Docket No. CEQ–2018–0001.

FOR FURTHER INFORMATION CONTACT:

Edward A. Boling, Associate Director for the National Environmental Policy Act, Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503. Telephone: (202) 395–5750.

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BLUEPRINT 2025

[3225-F8]

August 20, 2018

Comments of Blueprint 2025

Re: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

AGENCY: Council on Environmental Quality (CEQ).
ACTION: Advance Notice of Proposed Rulemaking.

Docket No. CEQ-2018-0001 - RIN: 0331-AA03

The Blueprint 2025 ("BP2025") initiative is collaboration among infrastructure professionals, leading infrastructure development companies and public sector project managers, which advances and supports plans and policies to restore the U.S. position as the country with the world's best, most efficient and most productive infrastructure. A central tenet of BP 2025's policy is the recognition that reform of the permitting process for major infrastructure projects is absolutely essential if the U.S. is to modernize its infrastructure in time to allow development of the new technologies which will enable us to keep pace with the modernization programs of our major global competitors. As outlined in our recently updated position paper on modernization of the NEPA process (Annex A attached), the current process is cumbersome, inefficient and antiquated, it needs to be modernized and brought into the 21st century through better use of available technology.

A major reason for the failure, up to this point, to optimize the NEPA process lies in the facts, outlined in Annex A, that no one knows what NEPA review costs the government and the private sector and there are no performance metrics to evaluate the government's performance. In this context, there has been no incentive to make the process more efficient or to reduce its cost. These deficiencies should be addressed as priority subjects pursuant to this ANPR as it is clear that the NEPA process imposes very direct and substantial costs on both government and the private sector. Perhaps more important, costs arising from NEPA delays may increase project costs by 50% or more and, for cutting edge projects, may substantially reduce the useful life between startup and technical obsolescence.

Against that background, we have the following comments in response to the specific questions presented in the advance notice:

1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

Both the FAST 41 efforts and those pursuant to the President's "One Federal Action" order have operated on the basis of consensus among agencies and, as a result, have yielded complex and convoluted compromise procedures. An appropriate environmental

review procedure would adopt the "one window" approach mandated by laws such as the Deepwater Port Act and the Deep Seabed Hard Mineral Resources Act in which the lead agency is, in fact, the lead agency, with final decision making authority. Other affected agencies should be required to participate and exercise only the authorities granted by the laws which they are responsible for implementing. Experience shows that, by this approach, complex and controversial environmental reviews can be completed in less than a year.

As noted above, the time delay associated with the current NEPA review process not only imposes substantial costs on both government and the private sector, it impedes the development of the technology of the future and handicaps our Country's efforts to maintain its global leadership position. [1]

2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions , and if so, how?

Yes. As noted in the attached Update, the use of modern technologies can facilitate the development and maintenance of a National Environmental Database which can be drawn upon as necessary and relevant. Modern Data analytics can speed and regularize the environmental review process, minimize opportunities for agency bias and make judicial review more expeditious and predictable.

3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

Yes. See response to Question 1 above.

Scope of NEPA Review:

4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

The current suggested page limits seem appropriate, but should be enforced through appropriate entry software. To the extent necessary, supporting data can be included in

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[1] As we have noted on a number of occasions, the Congress used to identify and "put its shoulder behind" projects which it believed to be of national importance and the agencies were by and large responsive to directives under laws such as the Trans Alaska Pipeline System Act, the Deepwater Port Act, the Deep Seabed Hard Mineral Resources Act and the Alaska Natural Gas Transportation System Act. In recent years, there has been more reluctance to address specific projects and projects which have been high on BP 2025's top fifty list, such as the Cadiz Water Project in California, the Clean Line Transmission Project, the Texas Central Rail Project the SeaOne Energy Transportation Project have languished and a few have been stalled by opposition from a very small number of members. President Trump's Executive Order 13766, directing priority processing of critical infrastructure projects has largely been ignored. If we are to keep pace with "Made in China" this situation must be remedied.

searchable and linked data attachments. A digitized process would allow more expeditious review and enforcement of hard time limits.

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public, and if so, how?

In accordance with the existing statutes and regulations, NEPA analysis should address only the direct and indirect effects which are subject to regulation by the lead or participating agencies, NEPA documents should not address federal actions which are non-discretionary or impacts which are not subject to federal regulation. Agencies should participate in the lead agency process throughout the life of the project and their input should be limited to matters within their jurisdiction.[2]

6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

Public involvement regulations should be predicated on an assumed basic level of computer literacy, should be developed with a view towards maintenance of efficient digital processes and should have timing requirements consistent with the capabilities of digital processes. Software protocols should seek to enforce basic requirements regarding relevance and supporting references.

7. Should definition s of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?

a. Major Federal Action;

The existing formulation—a federal action which will have a direct or indirect effect which is within federal jurisdiction and which has the potential for significant environmental impacts – is appropriate but often not followed The "within federal jurisdiction" element is too often ignored. Agencies often interpret the "no action" alternative to mean "no project" and thus allow them to expand their jurisdiction to cover the entire project rather than only the aspect, such as an air or water discharge, over which they exercise jurisdiction. It needs to be made clear that NEPA does not expand agency jurisdiction but only permits agencies to consider effects within their jurisdiction. It should also be made clear that "categorical exclusion" is not the first step in the environmental review process. The CATEX

[2] The Deepwater Port Act provides for a perpetual license which functions to provide all authorizations required for the construction and operation of the Ports and put in place a continuous environmental review process to assure that the Ports continue to utilize best available technology to minimize impacts on the marine environment. EPA participates in the licensing process and issues Clean Water Act Permits for the very minor domestic and cooling water discharges associated with Port Operations. Some EPA officials have taken the position that since the Ports are originally "new sources" and since water permits expire every five years, new and separate environmental reviews addressing the Ports' operations are required at five year intervals PS.

review should only take place after the decision maker has concluded that a federal action has the potential to significantly affect the environment.

b. Effects;

Again, the effect must be within federal jurisdiction. NEPA does not expand federal jurisdiction and an interpretation which would, for example, allow consideration of the construction of a facility which is beyond the agency's jurisdiction would be contrary to the clear intention that agencies' jurisdiction should not be affected. A proper interpretation of this requirement would be consistent with NEPA's original intent and would greatly simplify its application.

c. Cumulative Impact;

Effects to be considered in cumulative impact analysis must be subject to federal regulatory authority. For example, if the federal government is prohibited from restricting the export of crude oil, crude oil exports should not be the subject of cumulative impact analysis. Cumulative effects, like other effects, must be within in an agency's jurisdiction in order to merit consideration in the environmental review process.

d. Significantly;

Under the Act, the decision maker must exercise discretion, subject to judicial review, to decide whether the a proposed federal action may have an effect, within her or his agency's jurisdiction, which has the potential to be "significant" As noted above, limitation of this requirement through improper application of the "categorical exclusion" is inappropriate and counterproductive. The "significantly" definition might be amended to make clear that the decision maker retains this authority.

e. Scope;

Environmental reviews must focus precisely on the foreseeable direct and indirect effects subject to federal regulation of the proposed federal action or reasonable alternatives to the federal action. Alternatives which are not within federal jurisdiction need not be assessed. The No Federal Action alternative need not be addressed unless the agency has discretion to take no action.

8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?

a. Alternatives;

b. Purpose and Need;

c. Reasonably Foreseeable;

d. Trivial Violation; and

f. Other NEPA terms.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?

a. Notice of Intent;

b. Categorical Exclusions Documentation;

As noted above, the "categorical exclusion" methodology is being misapplied in many agencies to impose additional limits on decision makers' discretion rather than to provide a "safe harbor" to be relied upon by decision makers facing decisions on close questions. It needs to be made clear that categorical exclusions do not preclude the exercise of agency discretion regarding the question of whether a "major federal action" is proposed and that extensive documentation and public comment is not required. Otherwise the CATEX functions essentially as a redundant environmental assessment. The millions and perhaps billions that have been spent by agencies in adopting CATEX regulations will have been wasted. Finally the exception in many agencies' CATEX regulations for matters involving substantial public interest or opposition essentially defeats the purpose of CATEXs. Those exceptions should be eliminated.

c. Environmental Assessments;

We need to know what Environmental Assessments cost, in both federal and private sector dollars and in project delay costs. Since nearly all EAs result in FONSIs the cost benefit ratio of this process may be subject to question. Fortunately, the EA process should be amenable to radical attenuation through the application of modern technology. That potential should be explored intensively.

d. Findings of No Significant Impact;

c. Environmental Impact Statements;

e. Records of Decision;

As noted in the attached report, all of these elements of the NEPA review process have become unnecessarily complex and stylized. Digitization of the review process will provide an opportunity to enhance clarity and predictability. CEQ must take full advantage of that opportunity; and

f. Supplements;

The role of supplements should be clarified. There is no need for supplementation where there is no continuing federal oversight or periodic permitting. Where there is continued oversight or regulatory engagement, periodic updating should be a matter of course. Scoping and public participation requirements for supplements are likely very different from those for original EISs and should be tailored accordingly.

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?

Addressing at the earliest practicable date is important and should be rigorously enforced. Particularly in adjudicatory proceedings, environmental documentation should be available prior to finding and application to be complete, certainly prior to commencement of the proceeding. Any necessary environmental review should be integrated into the proceeding and certainly should not be a basis for reopening a proceeding after the record is closed. There is no need for FEIS or ROD when a judicial decision is issued after a trial type proceeding. Time limits for final approval should be provided.

11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

Existing procedures for third party preparation of environmental review documents are cumbersome, create perverse incentives and should be eliminated. Reasoned review of applicant prepared documents should be a fully accepted protocol.

12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?

Programmatic documentation is extremely useful and should be more effectively utilized. It should be made clear, however, that there is not a moratorium on permit issuance during the pendency of programmatic review and reviews should be completed within a reasonable time period. Digitization and data analytics will allow continuous input to programmatic review processes and would greatly improve the usefulness of this tool.

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

Alternatives which are not within the regulatory purview of the reviewing agencies should be eliminated. Where an agency lacks authority to withhold action based on public interest considerations, the "no action" alternative is not available. Agency regulations restricting consideration of "mitigation" in choosing among alternatives or requiring selection of the "least impact" alternative should be examined to determine their statutory basis.

General:

1. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.

As noted above, the NEPA regulations require a comprehensive overhaul to enable full utilization of modern technology.

2. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

As noted, we believe a comprehensive review of the entire process is required.

3. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions , such as combining NEPA analysis and other decision documents, and if so, how?

Reliance on relevant State Environmental Review Documents should be mandatory.

4. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

The Regulations should include a specific expedited review procedure with time limits for priority projects identified pursuant to E.O. 13766.

5. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?

6. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?

Although it is clear that delays in permit issuance can have environmental consequences as adverse and severe as those of imprudent permit issuance, there are few consequences or disincentives for unnecessary or unreasonable delays in permit issuance. CEQ should work to provide appropriate performance metrics, cost monitoring and related mechanisms for providing a more appropriate balance.

7. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

While the basic concept of mitigation may be relatively well understood, the details are not. Is it appropriate to require mitigation when the statute does not allow for a broad "public interest" determination? (We think the answer should be "No"). Should mitigation be taken into account in determining the "best" environmental alternative? [3]*(We think the answer must be "Yes".) There are a number of these kinds of questions which must be answered in order to achieve fair and predictable results in this context.*

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[3] In circumstances where environmental review is linked with a substantive finding such as the Corps of Engineers LEDPA determination on water projects the question of how mitigation should be taken into account is critical. The provision in the Corps' guidance to the effect that mitigation cannot be taken into account in LEDPA determinations is unauthorized by law and counterproductive. In general, the basis for agency authority to require mitigation need to be clarified.

Blueprint 2025 greatly appreciates the opportunity to submit these comments and is, of course, available to clarify or expand upon them at your convenience.

Respectfully Submitted,

Norman Anderson
President

BLUEPRINT 2025

Summer, 2018

Blueprint 2025 Position Paper
Modernizing the NEPA Environmental Review Process

Over the last fifty or so years (since enactment of the National Environmental Policy Act "NEPA") serious deficiencies have developed in the way the U.S. Government goes about the planning and authorization of infrastructure projects. This unnecessarily burdensome administrative process delays decisions on critical infrastructure projects, severely restricting our country's ability to modernize infrastructure to enable the technologies of the future or even to maintain the infrastructure which is now in place.

China and our other competitors have in place not only programs to plan and prioritize the infrastructure to be built, but highly efficient computer aided approaches for individual projects beginning with the early planning stages and continuing throughout their development. Though the governance systems of these major competitors might be more conducive to efficient management of the development process than is our "rule of law" system, it should be possible to at least narrow the gap by simplifying and improving the U.S. system as it has evolved (or devolved) over the last 50 years and enabling the use of modern technology to make the authorization process work more efficiently. This note outlines possible steps toward that end.

The Process for Achieving NEPA's Goals is Outmoded and Inefficient

Despite the well-intentioned goals of NEPA to help public officials make decisions based on an informed understanding of environmental consequences, there is a large and growing number of actors in both the public and private sectors that feel the Act has evolved into an unintended project-stalling process of administrative hurdles. What was originally designed to encourage simple informed decision making has become a burdensome and expensive process resulting in undue delays, loss of investment and, perhaps, even environmental harm.[1]

According to this view:

- Environmental analyses are routinely conducted for actions that reasoned judgment would conclude are not major and should not be subject to such onerous agency oversight.
- Though the act was intended to facilitate public input and participation, the environmental review process as it currently exists is esoteric and inaccessible to the average citizen who might like to weigh in. Data on the average length of an EIS is lacking, but it is not uncommon for these reports to span in excess of 1,000, 2,000, and

[1] *See Modernizing NEPA for the 21st Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115th Cong. (2017) (statement of Philip Howard, Chairman Common Good).

even 3,000 pages, though CEQ regulations state that the text of final EIS reports should "normally be less than 150 pages and for proposals of unusual scope or complexity … be less than 300 pages."[2] This added complexity often means that participation only comes from well-funded organizations or experts in a particular field. While expert comments are appreciated, and encouraged, the process was meant to invite participation on a much broader scale.

- While agencies do not routinely track data on the cost of completing NEPA analyses, it is clear that the cost of an environmental review process for a single project can run into the millions of dollars. For instance, the Department of Energy (DOE) tracks limited cost data associated with NEPA analyses, specifically, funds the agency pays to contractors to prepare NEPA analyses. According to DOE data, the average payment to a contractor to prepare an EIS from calendar year 2003 through calendar year 2012 was $6.6 million, with the range being a low of $60,000 and a high of $85 million.[3] DOE's median EIS contractor cost was $1.4 million over that time period.[4]

Though the extent and impact of these problems may be subject to debate, it seems clear that there is a great deal of room for improvement in order to mitigate what many interpret to be excessive delay, cost, and complexity.

As a recent House Natural Resources Committee hearing on the need to modernize NEPA highlighted, there remains broad support for the act's basic objective of informing agency decision makers.[5] However, there seems to be a consensus that the process is plagued by the kinds of problems outlined here and that as a result, NEPA has failed to fulfill the basic purpose for which it was enacted, resulting in unintended adverse impacts on the U.S. economy, the quality of our infrastructure, and in fact, on the environment itself. Solutions like those suggested at the hearing, by former CEQ General Counsel, Dinah Bear, that more and better-trained federal employees are needed—are both unrealistic and rooted in the past.[6] NEPA, like other elements of our infrastructure, needs to be updated and brought into the 21st century. New tools including data analysis, artificial intelligence, and even virtual reality modeling can and should be effectively utilized to expedite and simplify the NEPA process, making it more accessible to ordinary citizens and yielding superior analytical results.

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[2] 40 C.F.R. § 1502.7.

[3] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-14-370, NATIONAL ENVIRONMENTAL POLICY ACT: LITTLE INFORMATION EXISTS ON NEPA ANALYSES 13 (2014) (According to DOE, the cost for the $85 million Hanford Tank Closure and Waste Management EIS includes the costs for three major EISs—waste management, high-level waste tank closure, and disposition of a nuclear reactor—that were started separately and ultimately integrated into one document spanning 3,600+ pages including agency responses to public comments).

[4] *Id.*

[5] *See* 42 U.S.C. § 4321 (NEPA's congressional declaration of purpose states that the purposes of the act are "to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.").

[6] *See Modernizing NEPA for the 21st Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115th Cong. (2017) (statement of Dinah Bear, Former General Counsel, Council on Environmental Quality).

Current Process Dynamics

NEPA requires federal agencies to analyze both the nature and the extent of a project's potential environmental effects and, in many cases, document these analyses.[7] While much has been said about the merits of this process in furthering a public dialogue and improving the quality of decision making at the federal level, CEQ regulations make explicit the need for a level of analysis that is timely, efficient, and genuinely useful. For instance, under the CEQ's own articulation of NEPA's purpose, "NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail."[8] "NEPA's purpose is *not* to generate paperwork— even excellent paperwork— but to foster excellent action."[9] "Ultimately, it is not better documents but better decisions that count."[10] The regulations go on to include specific instructions targeted at two additional goals: (i) to reduce paperwork and (ii) reduce delay.[11] These instructions highlight the needs for agencies to reduce the length of environmental impact statements (EIS); emphasize the portions of the EIS that are useful to decision makers and the public; integrate NEPA requirements with other environmental review and consultation requirements; require comments to be as specific as possible; eliminate duplication with state and local procedures by providing for joint preparation; emphasize interagency cooperation before the EIS is prepared; establish appropriate time limits for the EIS process; and use accelerated procedures for proposals for legislation.[12]

Title 41 of the "Fixing America's Surface Transportation" Act ("FAST Act") --- establishes a new interagency committee (the Federal Permitting Improvement Steering Council "FPISC"), which is directed to ensure use of most efficient and timely processes for environmental review, and establishment of performance schedules for the completion of the environmental reviews. Title 41 thus both confirms the basic principles outlined above and augments them by a requirement that the Council established by the Act must ensure that "best technology" will be fully utilized in the environmental review process. The Title 41 mandate requires timely action to integrate modern technology into the NEPA process. An approach to such an effort is roughly outlined below.

The Process Now in Place

NEPA is primarily a procedural statute. It does not require an agency to pursue the least environmentally harmful alternative, only that the agency give adequate consideration to the potential benefits and harms of the proposed action in order to demonstrate informed decision making.[13]

Over the last 50 years, NEPA practitioners and the courts have developed a well choreographed set of procedures designed to fulfill these procedural requirements.[14]

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[7] Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ regulations), 40 C.F.R. Parts 1500-1508, set out the level of analysis and documentation for complying with NEPA. The scope and form of these analyses can take the form of a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

[8] 40 C.F.R. § 1500.1(b).

[9] *Id.* at § 1500.1(c) (emphasis added).

[10] *Id.*

[11] *See* 40 C.F.R. §§ 1500.4-1500.5.

[12] *Id.*

[13] *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978).

- Identify the need for action in connection with a proposal.

- Determine whether the action is a federal action subject to NEPA review.

- Determine whether the proposed action is a "major federal action" i.e. could it have direct or indirect effects which have the *potential* to significantly affect the quality of the human environment.[15]

    - If "yes," determine whether the project qualifies for a categorical exclusion (CE).

    - If significant environmental effects are uncertain and the action fails to qualify for a CE, then agencies must move forward with an environmental assessment (EA) providing for public involvement to the extent practicable.[16]

- Determine whether the EA reveals a potential for significant environmental effects.

    - If "no," then agencies must issue a Finding of No Significant Impact explaining the reasoning for their decision.

    - If, however, in the process of completing the EA, it is determined that significant environmental effects *are* likely to result, a notice must be published in the federal register of intent to prepare an Environmental Impact Statement (EIS).

- A public process to determine the "scope" of the EIS must be conducted.

- A draft EIS will be prepared and published, with a minimum 90-day period for public review and further comment.

- After addressing public input, a final EIS is published (no time limit).

- Finally, a Record of Decision is issued by the lead agency detailing its decision to move forward with the proposal or not.

NEPA for the 21st Century

Clearly there is ample room for this process to benefit from the economies and efficiencies associated with the digitization, data analytics and networking available to us in 2018, but, unfortunately, much of the analysis and "streamlining" attempted to date, whether pursuant to the FAST Act or the several Trump Administration executive orders in furtherance of those objectives,

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[14] *See* COUNCIL ON ENVIRONMENTAL QUALITY, A CITIZEN'S GUIDE TO THE NEPA: HAVING YOUR VOICE HEARD 8 (2007).

[15] *See* 40 C.F.R. § 1508.27.

[16] There is no statutory basis for the position taken by some agencies that there must be environmental review unless there is an applicable categorical exclusion. The mandatory C.E exercise is unduly cumbersome and unduly restricts the exercise of reasoned judgment by the agency head in determining whether an action is "major" An intelligent computer aided approach to this analysis could provide the equivalent of reasoned judgment based on the thousands of relevant factors which might affect a reasoned human decision.

has been developed by consensus among multiple agencies and predicated on traditional "paper trail' oriented administrative processes. It has failed to take into account the advances achievable through use of modern technology.

As a result, the environmental review process has yet to embrace the efficiencies associated with software development and technological integration. While people who wish to comment on a draft EIS can now do so through online portals instead of having to mail in written comments, there are additional opportunities to take the choreographed stages of review and introduce coordination that is currently missing.

Under the framework of a modern, digital, analytic protocol, there would be opportunities to introduce disciplines for reviewing some of the mistakes and inefficiencies embedded in the existing regulations and guidance, and perhaps even codify and replace the countless pages of existing guidance proven to be redundant or unnecessary. Just as important, broad use of interactive digital platforms would enable the development of a broadly accessible national environmental data network which would limit the need to "reinvent the wheel" in environmental reviews of previously studied areas. The result might be creation of a comprehensive environmental database that includes subject specific information capable of being drawn upon to inform future projects. For example, U.S. Fish and Wildlife has a rudimentary system for archiving conservation plans across the country. It's not terribly user-friendly but it does allow landowners and developers a chance to see what's been done before and what they might reasonably expect going forward in similar situations. Artificial intelligence and networking capabilities ought to be employed to compile something that is (i) informative; (ii) comprehensive; (iii) user-friendly; and (iv) capable of cutting down redundancy with previous work.

In addition to introducing efficiencies that could cut down on delay and associated development costs, there is reason to believe that digitization and analytics could not only provide a quality of analysis currently lacking in NEPA review but could also substantially reduce Government costs. Two NEPA-related studies completed by federal agencies show clearly that there is no current "handle" on the total governmental cost of NEPA compliance. A 2007 Forest Service report on competitive sourcing for NEPA compliance stated that it is "very difficult to track the actual cost of performing NEPA. Positions that perform NEPA-related activities are currently located within nearly every staff group, and are funded by a large number of budget line items.

There is no single budget line item or budget object code to follow in attempting to calculate the costs of doing NEPA."[17] Similarly, a 2003 study funded by the Federal Highway Administration evaluating the performance of environmental "streamlining" noted that NEPA cost data would be difficult to segregate for analysis."[18] Since, as noted the *outside contractor cost* of environmental review of a single proposal can range to $85 million or beyond it is clear that the overall cost of NEPA review is very, very substantial. , Digitization could introduce analytics that break down the silos of knowledge described in the Forest Service report and allow us to know, at least, what NEPA is costing.

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[17] U.S. FOREST SERVICE, COMPETITIVE SOURCING PROGRAM OFFICE, *Feasibility Study of Activities Related to National Environmental Policy Act (NEPA) Compliance* (Washington, D.C., Aug. 10, 2007).

[18] U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, *Evaluating the Performance of Environmental Streamlining: Phase II* (Washington, D.C. 2003).

Even more important, the use of modern communications and analytical technologies can allow us to obtain more effective reviews, more expeditiously and at a much lower cost.. Witnesses at a recent hearing before the Senate Environment and Public Works Committee estimated that NEPA related delays in permitting processes may be inflating our nation's infrastructure costs by as much as 50% and there is at least some evidence to suggest that estimate is on the low side. There is little doubt that inefficiencies in environmental review processes, in addition to handicapping our country's ability to keep pace with global competition, are resulting in costs well into the billions and possibly beyond.

Conclusion

Over the past several decades, we've split the atom, we've spliced the gene, and we've harnessed the modern electron. New science and new technology is fostering change at a breakneck pace and we are at a crossroads. The need to bring NEPA — arguably one of the most influential pieces of environmental legislation ever enacted — up to speed in a way that's attendant to the needs of 21st century development is not a partisan issue. This was recognized in the FAST Act by specifically including a title designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects.[19] President Trump has issued executive orders which further support the FAST 41 objectives and has targeted nearly a trillion dollars in infrastructure packages across the country given the state of our bridges, highways, and waterways. We are in a unique position to leverage knowledge available from actors in both the public and private sectors to bring to bear the full measure of our know-how on environmental review. Now is the time to bring the full resources of the federal government and the full reach of our collective expertise to this fundamental goal: we must modernize the NEPA environmental review process.

[19] *See* 42 U.S.C. § 4370m *et seq*.

[EXTERNAL] RE: National Hydropower Association Comments on NEPA ANOPR

From: "Jeff Leahey (NHA)" <jeff@hydro.org>

To: "Sensiba, Charles R." <charles.sensiba@troutmansanders.com>, "Herrgott, Alex H. EOP/CEQ" <(b) (6)[redacted]

Date: Thu, 23 Aug 2018 10:08:44 -0400

Thanks Chuck. And yes, Alex, let us know if there is any follow-up you would like to do.

From: Sensiba, Charles R. <Charles.Sensiba@troutmansanders.com>
Sent: Tuesday, August 21, 2018 11:33 PM
To: Herrgott, Alex H. EOP/CEQ <(b) (6)[redacted]
Cc: Jeff Leahey (NHA) <jeff@hydro.org>
Subject: National Hydropower Association Comments on NEPA ANOPR

Alex,

Jeff Leahey asked that I forward you the attached comment letter, which the National Hydropower Association filed with CEQ yesterday in response to the NEPA Advance Notice of Proposed Rulemaking.

NHA appreciates the opportunity to comment on the ANOPR. Please let us know if you have any questions or wish to discuss.

Best regards,
Chuck

Charles R. Sensiba
Direct: 202.274.2850 | Mobile: (b) (6)[redacted]
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RE: DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

From: "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted]

To: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

Cc: "Sharp, Thomas L. EOP/CEQ" <(b) (6) [redacted]

Date: Thu, 30 Aug 2018 09:02:54 -0400

Hahaha.

From: Drummond, Michael R. EOP/CEQ
Sent: Thursday, August 30, 2018 8:58 AM
To: Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted]
Cc: Sharp, Thomas L. EOP/CEQ <(b) (6) [redacted]
Subject: RE: DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

Do Outs? Don't you mean Due Outs? Or Dew Outs (if copious amounts of Mountain Dew are required to accomplish said Dew Outs)?

From: Szabo, Aaron L. EOP/CEQ
Sent: Wednesday, August 29, 2018 5:22 PM
To: Barnett, Steven W. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Loyola, Mario A. EOP/CEQ <(b) (6) [redacted] Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted] Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted] Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted] Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted] Sharp, Thomas L. EOP/CEQ <(b) (6) [redacted] Smith, Katherine R. EOP/CEQ <(b) (6) [redacted]
Cc: Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted]
Subject: DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

WG,

As discussed in the meeting today, I will try and provide "Do Outs" for everyone in writing by close of business of the day of our WG meeting.

For the meeting, I have the following Do Outs:

(b) (5) [redacted]

(b) (5)

[redacted]

Thank you very much. If you need additional time on your Do Outs, please let me know as soon as possible.

Aaron L. Szabo
Senior Counsel
Council on Environmental Quality
(b) (6) [redacted] (Desk)
(b) (6) [redacted] (Cell)
(b) (6) [redacted]

RE: DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

From: "Drummond, Michael R. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=a0bc62c0a5454e6fb7a1be504b7d284a-dr">

To: "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted]

Cc: "Sharp, Thomas L. EOP/CEQ" <(b) (6) [redacted]

Date: Thu, 30 Aug 2018 08:58:00 -0400

Do Outs? Don't you mean Due Outs? Or Dew Outs (if copious amounts of Mountain Dew are required to accomplish said Dew Outs)?

From: Szabo, Aaron L. EOP/CEQ
Sent: Wednesday, August 29, 2018 5:22 PM
To: Barnett, Steven W. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Loyola, Mario A. EOP/CEQ <(b) (6) [redacted] Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted] Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted] Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted] Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted] Sharp, Thomas L. EOP/CEQ <(b) (6) [redacted] Smith, Katherine R. EOP/CEQ <(b) (6) [redacted]
Cc: Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted]
Subject: DO OUTS for August 28, 2018 NEPA Implementing Regulations Working Group Meeting

WG,

As discussed in the meeting today, I will try and provide "Do Outs" for everyone in writing by close of business of the day of our WG meeting.

For the meeting, I have the following Do Outs:

(b) (5) [redacted]

(b) (5)

[redacted]

Thank you very much. If you need additional time on your Do Outs, please let me know as soon as possible.

Aaron L. Szabo
Senior Counsel
Council on Environmental Quality
(b) (6) [redacted] (Desk)
(b) (6) [redacted] (Cell)
(b) (6) [redacted]

Blueprint 2025

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6)[redacted]

To: "Mansoor, Yardena M. EOP/CEQ" <(b) (6)[redacted]

Date: Thu, 30 Aug 2018 12:46:19 -0400

Attachments: Proposed NEPA Changes 8-20-18 for filing (2).pdf (1.41 MB); Blueprint 2025.pdf (1.41 MB)

From: Drummond, Michael R. EOP/CEQ
Sent: Wednesday, August 22, 2018 9:03 AM
To: Boling, Ted A. EOP/CEQ <(b) (6)[redacted] Mansoor, Yardena M. EOP/CEQ <(b) (6)[redacted]
Subject: Fwd: [EXTERNAL] Comment submission

Ted,

Shall we scan and post this late entry? I have a feeling they attempted to send via fedex or similar and were turned away due to our security protocols.

Michael Drummond
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6)[redacted]

Begin forwarded message:

From: "McLaurin, Juschelle D. EOP/CEQ" <(b) (6)[redacted]
Date: August 22, 2018 at 8:51:07 AM EDT
To: "Drummond, Michael R. EOP/CEQ" <(b) (6)[redacted]
Subject: FW: [EXTERNAL] Comment submission

Good Morning,

Michael this was sent to my email on yesterday , and as you know it's my day off.

Juschelle

From: Marina Micic <marina@cg-la.com>
Sent: Monday, August 20, 2018 4:54 PM

To: McLaurin, Juschelle D. EOP/CEQ <(b) (6)[redacted]
Subject: [EXTERNAL] Comment submission

Hello,

We tried to submit our comment by mailing it to the address noted on the filing instructions, but the delivery was not possible. Could you please help us deliver the attached document to the right person/department?

Thank you so much for your assistance!

Marina

The CEQ is extending the comment period on the ANPRM, which was scheduled to close on July 20, 2018, for 31 days until August 20, 2018. The CEQ is making this change in response to public requests for an extension of the comment period.

DATES: Comments should be submitted on or before August 20, 2018. **ADDRESSES:** Submit your comments, identified by docket identification number CEQ–2018–0001 through the Federal eRulemaking portal at *https:// >www.regulations.gov<*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https:// >www.regulations.gov<*. CEQ may publish

any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (*e.g.*, audio, video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

Comments may also be submitted by mail. Send your comments to: Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503, Attn: Docket No. CEQ–2018–0001.

FOR FURTHER INFORMATION CONTACT:

Edward A. Boling, Associate Director for the National Environmental Policy Act, Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503. Telephone: (202) 395–5750.

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MARINA MICIC
Office Manager
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BLUEPRINT 2025

[3225-F8]

August 20, 2018

Comments of Blueprint 2025

Re: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

AGENCY: Council on Environmental Quality (CEQ).
ACTION: Advance Notice of Proposed Rulemaking.

Docket No. CEQ-2018-0001 - RIN: 0331-AA03

The Blueprint 2025 ("BP2025") initiative is collaboration among infrastructure professionals, leading infrastructure development companies and public sector project managers, which advances and supports plans and policies to restore the U.S. position as the country with the world's best, most efficient and most productive infrastructure. A central tenet of BP 2025's policy is the recognition that reform of the permitting process for major infrastructure projects is absolutely essential if the U.S. is to modernize its infrastructure in time to allow development of the new technologies which will enable us to keep pace with the modernization programs of our major global competitors. As outlined in our recently updated position paper on modernization of the NEPA process (Annex A attached), the current process is cumbersome, inefficient and antiquated, it needs to be modernized and brought into the 21st century through better use of available technology.

A major reason for the failure, up to this point, to optimize the NEPA process lies in the facts, outlined in Annex A, that no one knows what NEPA review costs the government and the private sector and there are no performance metrics to evaluate the government's performance. In this context, there has been no incentive to make the process more efficient or to reduce its cost. These deficiencies should be addressed as priority subjects pursuant to this ANPR as it is clear that the NEPA process imposes very direct and substantial costs on both government and the private sector. Perhaps more important, costs arising from NEPA delays may increase project costs by 50% or more and, for cutting edge projects, may substantially reduce the useful life between startup and technical obsolescence.

Against that background, we have the following comments in response to the specific questions presented in the advance notice:

1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

Both the FAST 41 efforts and those pursuant to the President's "One Federal Action" order have operated on the basis of consensus among agencies and, as a result, have yielded complex and convoluted compromise procedures. An appropriate environmental

review procedure would adopt the "one window" approach mandated by laws such as the Deepwater Port Act and the Deep Seabed Hard Mineral Resources Act in which the lead agency is, in fact, the lead agency, with final decision making authority. Other affected agencies should be required to participate and exercise only the authorities granted by the laws which they are responsible for implementing. Experience shows that, by this approach, complex and controversial environmental reviews can be completed in less than a year.

As noted above, the time delay associated with the current NEPA review process not only imposes substantial costs on both government and the private sector, it impedes the development of the technology of the future and handicaps our Country's efforts to maintain its global leadership position. [1]

2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions , and if so, how?

Yes. As noted in the attached Update, the use of modern technologies can facilitate the development and maintenance of a National Environmental Database which can be drawn upon as necessary and relevant. Modern Data analytics can speed and regularize the environmental review process, minimize opportunities for agency bias and make judicial review more expeditious and predictable.

3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

Yes. See response to Question 1 above.

Scope of NEPA Review:

4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

The current suggested page limits seem appropriate, but should be enforced through appropriate entry software. To the extent necessary, supporting data can be included in

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[1] As we have noted on a number of occasions, the Congress used to identify and "put its shoulder behind" projects which it believed to be of national importance and the agencies were by and large responsive to directives under laws such as the Trans Alaska Pipeline System Act, the Deepwater Port Act, the Deep Seabed Hard Mineral Resources Act and the Alaska Natural Gas Transportation System Act. In recent years, there has been more reluctance to address specific projects and projects which have been high on BP 2025's top fifty list, such as the Cadiz Water Project in California, the Clean Line Transmission Project, the Texas Central Rail Project the SeaOne Energy Transportation Project have languished and a few have been stalled by opposition from a very small number of members. President Trump's Executive Order 13766, directing priority processing of critical infrastructure projects has largely been ignored. If we are to keep pace with "Made in China" this situation must be remedied.

searchable and linked data attachments. A digitized process would allow more expeditious review and enforcement of hard time limits.

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public, and if so, how?

In accordance with the existing statutes and regulations, NEPA analysis should address only the direct and indirect effects which are subject to regulation by the lead or participating agencies, NEPA documents should not address federal actions which are non-discretionary or impacts which are not subject to federal regulation. Agencies should participate in the lead agency process throughout the life of the project and their input should be limited to matters within their jurisdiction.[2]

6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

Public involvement regulations should be predicated on an assumed basic level of computer literacy, should be developed with a view towards maintenance of efficient digital processes and should have timing requirements consistent with the capabilities of digital processes. Software protocols should seek to enforce basic requirements regarding relevance and supporting references.

7. Should definition s of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?

a. Major Federal Action;

The existing formulation—a federal action which will have a direct or indirect effect which is within federal jurisdiction and which has the potential for significant environmental impacts – is appropriate but often not followed The "within federal jurisdiction" element is too often ignored. Agencies often interpret the "no action" alternative to mean "no project" and thus allow them to expand their jurisdiction to cover the entire project rather than only the aspect, such as an air or water discharge, over which they exercise jurisdiction. It needs to be made clear that NEPA does not expand agency jurisdiction but only permits agencies to consider effects within their jurisdiction. It should also be made clear that "categorical exclusion" is not the first step in the environmental review process. The CATEX

[2] The Deepwater Port Act provides for a perpetual license which functions to provide all authorizations required for the construction and operation of the Ports and put in place a continuous environmental review process to assure that the Ports continue to utilize best available technology to minimize impacts on the marine environment. EPA participates in the licensing process and issues Clean Water Act Permits for the very minor domestic and cooling water discharges associated with Port Operations. Some EPA officials have taken the position that since the Ports are originally "new sources" and since water permits expire every five years, new and separate environmental reviews addressing the Ports' operations are required at five year intervals PS.

review should only take place after the decision maker has concluded that a federal action has the potential to significantly affect the environment.

b. Effects;

Again, the effect must be within federal jurisdiction. NEPA does not expand federal jurisdiction and an interpretation which would, for example, allow consideration of the construction of a facility which is beyond the agency's jurisdiction would be contrary to the clear intention that agencies' jurisdiction should not be affected. A proper interpretation of this requirement would be consistent with NEPA's original intent and would greatly simplify its application.

c. Cumulative Impact;

Effects to be considered in cumulative impact analysis must be subject to federal regulatory authority. For example, if the federal government is prohibited from restricting the export of crude oil, crude oil exports should not be the subject of cumulative impact analysis. Cumulative effects, like other effects, must be within in an agency's jurisdiction in order to merit consideration in the environmental review process.

d. Significantly;

Under the Act, the decision maker must exercise discretion, subject to judicial review, to decide whether the a proposed federal action may have an effect, within her or his agency's jurisdiction, which has the potential to be "significant" As noted above, limitation of this requirement through improper application of the "categorical exclusion" is inappropriate and counterproductive. The "significantly" definition might be amended to make clear that the decision maker retains this authority.

e. Scope;

Environmental reviews must focus precisely on the foreseeable direct and indirect effects subject to federal regulation of the proposed federal action or reasonable alternatives to the federal action. Alternatives which are not within federal jurisdiction need not be assessed. The No Federal Action alternative need not be addressed unless the agency has discretion to take no action.

8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?

a. Alternatives;

b. Purpose and Need;

c. Reasonably Foreseeable;

d. Trivial Violation; and

f. Other NEPA terms.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?

a. Notice of Intent;

b. Categorical Exclusions Documentation;

As noted above, the "categorical exclusion" methodology is being misapplied in many agencies to impose additional limits on decision makers' discretion rather than to provide a "safe harbor" to be relied upon by decision makers facing decisions on close questions. It needs to be made clear that categorical exclusions do not preclude the exercise of agency discretion regarding the question of whether a "major federal action" is proposed and that extensive documentation and public comment is not required. Otherwise the CATEX functions essentially as a redundant environmental assessment. The millions and perhaps billions that have been spent by agencies in adopting CATEX regulations will have been wasted. Finally the exception in many agencies' CATEX regulations for matters involving substantial public interest or opposition essentially defeats the purpose of CATEXs. Those exceptions should be eliminated.

c. Environmental Assessments;

We need to know what Environmental Assessments cost, in both federal and private sector dollars and in project delay costs. Since nearly all EAs result in FONSIs the cost benefit ratio of this process may be subject to question. Fortunately, the EA process should be amenable to radical attenuation through the application of modern technology. That potential should be explored intensively.

d. Findings of No Significant Impact;

c. Environmental Impact Statements;

e. Records of Decision;

As noted in the attached report, all of these elements of the NEPA review process have become unnecessarily complex and stylized. Digitization of the review process will provide an opportunity to enhance clarity and predictability. CEQ must take full advantage of that opportunity; and

f. Supplements;

The role of supplements should be clarified. There is no need for supplementation where there is no continuing federal oversight or periodic permitting. Where there is continued oversight or regulatory engagement, periodic updating should be a matter of course. Scoping and public participation requirements for supplements are likely very different from those for original EISs and should be tailored accordingly.

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?

Addressing at the earliest practicable date is important and should be rigorously enforced. Particularly in adjudicatory proceedings, environmental documentation should be available prior to finding and application to be complete, certainly prior to commencement of the proceeding. Any necessary environmental review should be integrated into the proceeding and certainly should not be a basis for reopening a proceeding after the record is closed. There is no need for FEIS or ROD when a judicial decision is issued after a trial type proceeding. Time limits for final approval should be provided.

11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

Existing procedures for third party preparation of environmental review documents are cumbersome, create perverse incentives and should be eliminated. Reasoned review of applicant prepared documents should be a fully accepted protocol.

12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?

Programmatic documentation is extremely useful and should be more effectively utilized. It should be made clear, however, that there is not a moratorium on permit issuance during the pendency of programmatic review and reviews should be completed within a reasonable time period. Digitization and data analytics will allow continuous input to programmatic review processes and would greatly improve the usefulness of this tool.

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

Alternatives which are not within the regulatory purview of the reviewing agencies should be eliminated. Where an agency lacks authority to withhold action based on public interest considerations, the "no action" alternative is not available. Agency regulations restricting consideration of "mitigation" in choosing among alternatives or requiring selection of the "least impact" alternative should be examined to determine their statutory basis.

General:

1. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.

As noted above, the NEPA regulations require a comprehensive overhaul to enable full utilization of modern technology.

2. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

As noted, we believe a comprehensive review of the entire process is required.

3. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions , such as combining NEPA analysis and other decision documents, and if so, how?

Reliance on relevant State Environmental Review Documents should be mandatory.

4. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

The Regulations should include a specific expedited review procedure with time limits for priority projects identified pursuant to E.O. 13766.

5. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?

6. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?

Although it is clear that delays in permit issuance can have environmental consequences as adverse and severe as those of imprudent permit issuance, there are few consequences or disincentives for unnecessary or unreasonable delays in permit issuance. CEQ should work to provide appropriate performance metrics, cost monitoring and related mechanisms for providing a more appropriate balance.

7. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

While the basic concept of mitigation may be relatively well understood, the details are not. Is it appropriate to require mitigation when the statute does not allow for a broad "public interest" determination? (We think the answer should be "No"). Should mitigation be taken into account in determining the "best" environmental alternative? [3]*(We think the answer must be "Yes".) There are a number of these kinds of questions which must be answered in order to achieve fair and predictable results in this context.*

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[3] In circumstances where environmental review is linked with a substantive finding such as the Corps of Engineers LEDPA determination on water projects the question of how mitigation should be taken into account is critical. The provision in the Corps' guidance to the effect that mitigation cannot be taken into account in LEDPA determinations is unauthorized by law and counterproductive. In general, the basis for agency authority to require mitigation need to be clarified.

Blueprint 2025 greatly appreciates the opportunity to submit these comments and is, of course, available to clarify or expand upon them at your convenience.

Respectfully Submitted,

Norman Anderson
President

BLUEPRINT 2025

Summer, 2018

Blueprint 2025 Position Paper
Modernizing the NEPA Environmental Review Process

Over the last fifty or so years (since enactment of the National Environmental Policy Act "NEPA") serious deficiencies have developed in the way the U.S. Government goes about the planning and authorization of infrastructure projects. This unnecessarily burdensome administrative process delays decisions on critical infrastructure projects, severely restricting our country's ability to modernize infrastructure to enable the technologies of the future or even to maintain the infrastructure which is now in place.

China and our other competitors have in place not only programs to plan and prioritize the infrastructure to be built, but highly efficient computer aided approaches for individual projects beginning with the early planning stages and continuing throughout their development. Though the governance systems of these major competitors might be more conducive to efficient management of the development process than is our "rule of law" system, it should be possible to at least narrow the gap by simplifying and improving the U.S. system as it has evolved (or devolved) over the last 50 years and enabling the use of modern technology to make the authorization process work more efficiently. This note outlines possible steps toward that end.

The Process for Achieving NEPA's Goals is Outmoded and Inefficient

Despite the well-intentioned goals of NEPA to help public officials make decisions based on an informed understanding of environmental consequences, there is a large and growing number of actors in both the public and private sectors that feel the Act has evolved into an unintended project-stalling process of administrative hurdles. What was originally designed to encourage simple informed decision making has become a burdensome and expensive process resulting in undue delays, loss of investment and, perhaps, even environmental harm.[1]

According to this view:

- Environmental analyses are routinely conducted for actions that reasoned judgment would conclude are not major and should not be subject to such onerous agency oversight.
- Though the act was intended to facilitate public input and participation, the environmental review process as it currently exists is esoteric and inaccessible to the average citizen who might like to weigh in. Data on the average length of an EIS is lacking, but it is not uncommon for these reports to span in excess of 1,000, 2,000, and

[1] *See Modernizing NEPA for the 21st Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115th Cong. (2017) (statement of Philip Howard, Chairman Common Good).

even 3,000 pages, though CEQ regulations state that the text of final EIS reports should "normally be less than 150 pages and for proposals of unusual scope or complexity … be less than 300 pages."[2] This added complexity often means that participation only comes from well-funded organizations or experts in a particular field. While expert comments are appreciated, and encouraged, the process was meant to invite participation on a much broader scale.

- While agencies do not routinely track data on the cost of completing NEPA analyses, it is clear that the cost of an environmental review process for a single project can run into the millions of dollars. For instance, the Department of Energy (DOE) tracks limited cost data associated with NEPA analyses, specifically, funds the agency pays to contractors to prepare NEPA analyses. According to DOE data, the average payment to a contractor to prepare an EIS from calendar year 2003 through calendar year 2012 was $6.6 million, with the range being a low of $60,000 and a high of $85 million.[3] DOE's median EIS contractor cost was $1.4 million over that time period.[4]

Though the extent and impact of these problems may be subject to debate, it seems clear that there is a great deal of room for improvement in order to mitigate what many interpret to be excessive delay, cost, and complexity.

As a recent House Natural Resources Committee hearing on the need to modernize NEPA highlighted, there remains broad support for the act's basic objective of informing agency decision makers.[5] However, there seems to be a consensus that the process is plagued by the kinds of problems outlined here and that as a result, NEPA has failed to fulfill the basic purpose for which it was enacted, resulting in unintended adverse impacts on the U.S. economy, the quality of our infrastructure, and in fact, on the environment itself. Solutions like those suggested at the hearing, by former CEQ General Counsel, Dinah Bear, that more and better-trained federal employees are needed—are both unrealistic and rooted in the past.[6] NEPA, like other elements of our infrastructure, needs to be updated and brought into the 21st century. New tools including data analysis, artificial intelligence, and even virtual reality modeling can and should be effectively utilized to expedite and simplify the NEPA process, making it more accessible to ordinary citizens and yielding superior analytical results.

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[2] 40 C.F.R. § 1502.7.

[3] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-14-370, NATIONAL ENVIRONMENTAL POLICY ACT: LITTLE INFORMATION EXISTS ON NEPA ANALYSES 13 (2014) (According to DOE, the cost for the $85 million Hanford Tank Closure and Waste Management EIS includes the costs for three major EISs—waste management, high-level waste tank closure, and disposition of a nuclear reactor—that were started separately and ultimately integrated into one document spanning 3,600+ pages including agency responses to public comments).

[4] *Id.*

[5] *See* 42 U.S.C. § 4321 (NEPA's congressional declaration of purpose states that the purposes of the act are "to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.").

[6] *See Modernizing NEPA for the 21st Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115th Cong. (2017) (statement of Dinah Bear, Former General Counsel, Council on Environmental Quality).

Current Process Dynamics

NEPA requires federal agencies to analyze both the nature and the extent of a project's potential environmental effects and, in many cases, document these analyses.[7] While much has been said about the merits of this process in furthering a public dialogue and improving the quality of decision making at the federal level, CEQ regulations make explicit the need for a level of analysis that is timely, efficient, and genuinely useful. For instance, under the CEQ's own articulation of NEPA's purpose, "NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail."[8] "NEPA's purpose is *not* to generate paperwork— even excellent paperwork— but to foster excellent action."[9] "Ultimately, it is not better documents but better decisions that count."[10] The regulations go on to include specific instructions targeted at two additional goals: (i) to reduce paperwork and (ii) reduce delay.[11] These instructions highlight the needs for agencies to reduce the length of environmental impact statements (EIS); emphasize the portions of the EIS that are useful to decision makers and the public; integrate NEPA requirements with other environmental review and consultation requirements; require comments to be as specific as possible; eliminate duplication with state and local procedures by providing for joint preparation; emphasize interagency cooperation before the EIS is prepared; establish appropriate time limits for the EIS process; and use accelerated procedures for proposals for legislation.[12]

Title 41 of the "Fixing America's Surface Transportation" Act ("FAST Act") --- establishes a new interagency committee (the Federal Permitting Improvement Steering Council "FPISC"), which is directed to ensure use of most efficient and timely processes for environmental review, and establishment of performance schedules for the completion of the environmental reviews. Title 41 thus both confirms the basic principles outlined above and augments them by a requirement that the Council established by the Act must ensure that "best technology" will be fully utilized in the environmental review process. The Title 41 mandate requires timely action to integrate modern technology into the NEPA process. An approach to such an effort is roughly outlined below.

The Process Now in Place

NEPA is primarily a procedural statute. It does not require an agency to pursue the least environmentally harmful alternative, only that the agency give adequate consideration to the potential benefits and harms of the proposed action in order to demonstrate informed decision making.[13]

Over the last 50 years, NEPA practitioners and the courts have developed a well choreographed set of procedures designed to fulfill these procedural requirements.[14]

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[7] Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ regulations), 40 C.F.R. Parts 1500-1508, set out the level of analysis and documentation for complying with NEPA. The scope and form of these analyses can take the form of a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

[8] 40 C.F.R. § 1500.1(b).

[9] *Id.* at § 1500.1(c) (emphasis added).

[10] *Id.*

[11] *See* 40 C.F.R. §§ 1500.4-1500.5.

[12] *Id.*

[13] *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978).

- Identify the need for action in connection with a proposal.

- Determine whether the action is a federal action subject to NEPA review.

- Determine whether the proposed action is a "major federal action" i.e. could it have direct or indirect effects which have the *potential* to significantly affect the quality of the human environment.[15]

    - If "yes," determine whether the project qualifies for a categorical exclusion (CE).

    - If significant environmental effects are uncertain and the action fails to qualify for a CE, then agencies must move forward with an environmental assessment (EA) providing for public involvement to the extent practicable.[16]

- Determine whether the EA reveals a potential for significant environmental effects.

    - If "no," then agencies must issue a Finding of No Significant Impact explaining the reasoning for their decision.

    - If, however, in the process of completing the EA, it is determined that significant environmental effects *are* likely to result, a notice must be published in the federal register of intent to prepare an Environmental Impact Statement (EIS).

- A public process to determine the "scope" of the EIS must be conducted.

- A draft EIS will be prepared and published, with a minimum 90-day period for public review and further comment.

- After addressing public input, a final EIS is published (no time limit).

- Finally, a Record of Decision is issued by the lead agency detailing its decision to move forward with the proposal or not.

NEPA for the 21st Century

Clearly there is ample room for this process to benefit from the economies and efficiencies associated with the digitization, data analytics and networking available to us in 2018, but, unfortunately, much of the analysis and "streamlining" attempted to date, whether pursuant to the FAST Act or the several Trump Administration executive orders in furtherance of those objectives,

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[14] *See* COUNCIL ON ENVIRONMENTAL QUALITY, A CITIZEN'S GUIDE TO THE NEPA: HAVING YOUR VOICE HEARD 8 (2007).

[15] *See* 40 C.F.R. § 1508.27.

[16] There is no statutory basis for the position taken by some agencies that there must be environmental review unless there is an applicable categorical exclusion. The mandatory C.E exercise is unduly cumbersome and unduly restricts the exercise of reasoned judgment by the agency head in determining whether an action is "major" An intelligent computer aided approach to this analysis could provide the equivalent of reasoned judgment based on the thousands of relevant factors which might affect a reasoned human decision.

has been developed by consensus among multiple agencies and predicated on traditional "paper trail' oriented administrative processes. It has failed to take into account the advances achievable through use of modern technology.

As a result, the environmental review process has yet to embrace the efficiencies associated with software development and technological integration. While people who wish to comment on a draft EIS can now do so through online portals instead of having to mail in written comments, there are additional opportunities to take the choreographed stages of review and introduce coordination that is currently missing.

Under the framework of a modern, digital, analytic protocol, there would be opportunities to introduce disciplines for reviewing some of the mistakes and inefficiencies embedded in the existing regulations and guidance, and perhaps even codify and replace the countless pages of existing guidance proven to be redundant or unnecessary. Just as important, broad use of interactive digital platforms would enable the development of a broadly accessible national environmental data network which would limit the need to "reinvent the wheel" in environmental reviews of previously studied areas. The result might be creation of a comprehensive environmental database that includes subject specific information capable of being drawn upon to inform future projects. For example, U.S. Fish and Wildlife has a rudimentary system for archiving conservation plans across the country. It's not terribly user-friendly but it does allow landowners and developers a chance to see what's been done before and what they might reasonably expect going forward in similar situations. Artificial intelligence and networking capabilities ought to be employed to compile something that is (i) informative; (ii) comprehensive; (iii) user-friendly; and (iv) capable of cutting down redundancy with previous work.

In addition to introducing efficiencies that could cut down on delay and associated development costs, there is reason to believe that digitization and analytics could not only provide a quality of analysis currently lacking in NEPA review but could also substantially reduce Government costs. Two NEPA-related studies completed by federal agencies show clearly that there is no current "handle" on the total governmental cost of NEPA compliance. A 2007 Forest Service report on competitive sourcing for NEPA compliance stated that it is "very difficult to track the actual cost of performing NEPA. Positions that perform NEPA-related activities are currently located within nearly every staff group, and are funded by a large number of budget line items.

There is no single budget line item or budget object code to follow in attempting to calculate the costs of doing NEPA."[17] Similarly, a 2003 study funded by the Federal Highway Administration evaluating the performance of environmental "streamlining" noted that NEPA cost data would be difficult to segregate for analysis."[18] Since, as noted the *outside contractor cost* of environmental review of a single proposal can range to $85 million or beyond it is clear that the overall cost of NEPA review is very, very substantial. , Digitization could introduce analytics that break down the silos of knowledge described in the Forest Service report and allow us to know, at least, what NEPA is costing.

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[17] U.S. FOREST SERVICE, COMPETITIVE SOURCING PROGRAM OFFICE, *Feasibility Study of Activities Related to National Environmental Policy Act (NEPA) Compliance* (Washington, D.C., Aug. 10, 2007).

[18] U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, *Evaluating the Performance of Environmental Streamlining: Phase II* (Washington, D.C. 2003).

Even more important, the use of modern communications and analytical technologies can allow us to obtain more effective reviews, more expeditiously and at a much lower cost.. Witnesses at a recent hearing before the Senate Environment and Public Works Committee estimated that NEPA related delays in permitting processes may be inflating our nation's infrastructure costs by as much as 50% and there is at least some evidence to suggest that estimate is on the low side. There is little doubt that inefficiencies in environmental review processes, in addition to handicapping our country's ability to keep pace with global competition, are resulting in costs well into the billions and possibly beyond.

Conclusion

Over the past several decades, we've split the atom, we've spliced the gene, and we've harnessed the modern electron. New science and new technology is fostering change at a breakneck pace and we are at a crossroads. The need to bring NEPA — arguably one of the most influential pieces of environmental legislation ever enacted — up to speed in a way that's attendant to the needs of 21st century development is not a partisan issue. This was recognized in the FAST Act by specifically including a title designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects.[19] President Trump has issued executive orders which further support the FAST 41 objectives and has targeted nearly a trillion dollars in infrastructure packages across the country given the state of our bridges, highways, and waterways. We are in a unique position to leverage knowledge available from actors in both the public and private sectors to bring to bear the full measure of our know-how on environmental review. Now is the time to bring the full resources of the federal government and the full reach of our collective expertise to this fundamental goal: we must modernize the NEPA environmental review process.

[19] *See* 42 U.S.C. § 4370m *et seq*.

BLUEPRINT 2025

[3225-F8]

August 20, 2018

Comments of Blueprint 2025

Re: Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

AGENCY: Council on Environmental Quality (CEQ).
ACTION: Advance Notice of Proposed Rulemaking.

Docket No. CEQ-2018-0001 - RIN: 0331-AA03

The Blueprint 2025 ("BP2025") initiative is collaboration among infrastructure professionals, leading infrastructure development companies and public sector project managers, which advances and supports plans and policies to restore the U.S. position as the country with the world's best, most efficient and most productive infrastructure. A central tenet of BP 2025's policy is the recognition that reform of the permitting process for major infrastructure projects is absolutely essential if the U.S. is to modernize its infrastructure in time to allow development of the new technologies which will enable us to keep pace with the modernization programs of our major global competitors. As outlined in our recently updated position paper on modernization of the NEPA process (Annex A attached), the current process is cumbersome, inefficient and antiquated, it needs to be modernized and brought into the 21st century through better use of available technology.

A major reason for the failure, up to this point, to optimize the NEPA process lies in the facts, outlined in Annex A, that no one knows what NEPA review costs the government and the private sector and there are no performance metrics to evaluate the government's performance. In this context, there has been no incentive to make the process more efficient or to reduce its cost. These deficiencies should be addressed as priority subjects pursuant to this ANPR as it is clear that the NEPA process imposes very direct and substantial costs on both government and the private sector. Perhaps more important, costs arising from NEPA delays may increase project costs by 50% or more and, for cutting edge projects, may substantially reduce the useful life between startup and technical obsolescence.

Against that background, we have the following comments in response to the specific questions presented in the advance notice:

1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

Both the FAST 41 efforts and those pursuant to the President's "One Federal Action" order have operated on the basis of consensus among agencies and, as a result, have yielded complex and convoluted compromise procedures. An appropriate environmental

review procedure would adopt the "one window" approach mandated by laws such as the Deepwater Port Act and the Deep Seabed Hard Mineral Resources Act in which the lead agency is, in fact, the lead agency, with final decision making authority. Other affected agencies should be required to participate and exercise only the authorities granted by the laws which they are responsible for implementing. Experience shows that, by this approach, complex and controversial environmental reviews can be completed in less than a year.

As noted above, the time delay associated with the current NEPA review process not only imposes substantial costs on both government and the private sector, it impedes the development of the technology of the future and handicaps our Country's efforts to maintain its global leadership position. [1]

2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions , and if so, how?

Yes. As noted in the attached Update, the use of modern technologies can facilitate the development and maintenance of a National Environmental Database which can be drawn upon as necessary and relevant. Modern Data analytics can speed and regularize the environmental review process, minimize opportunities for agency bias and make judicial review more expeditious and predictable.

3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

Yes. See response to Question 1 above.

Scope of NEPA Review:

4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

The current suggested page limits seem appropriate, but should be enforced through appropriate entry software. To the extent necessary, supporting data can be included in

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[1] As we have noted on a number of occasions, the Congress used to identify and "put its shoulder behind" projects which it believed to be of national importance and the agencies were by and large responsive to directives under laws such as the Trans Alaska Pipeline System Act, the Deepwater Port Act, the Deep Seabed Hard Mineral Resources Act and the Alaska Natural Gas Transportation System Act. In recent years, there has been more reluctance to address specific projects and projects which have been high on BP 2025's top fifty list, such as the Cadiz Water Project in California, the Clean Line Transmission Project, the Texas Central Rail Project the SeaOne Energy Transportation Project have languished and a few have been stalled by opposition from a very small number of members. President Trump's Executive Order 13766, directing priority processing of critical infrastructure projects has largely been ignored. If we are to keep pace with "Made in China" this situation must be remedied.

searchable and linked data attachments. A digitized process would allow more expeditious review and enforcement of hard time limits.

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public, and if so, how?

In accordance with the existing statutes and regulations, NEPA analysis should address only the direct and indirect effects which are subject to regulation by the lead or participating agencies, NEPA documents should not address federal actions which are non-discretionary or impacts which are not subject to federal regulation. Agencies should participate in the lead agency process throughout the life of the project and their input should be limited to matters within their jurisdiction.[2]

6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

Public involvement regulations should be predicated on an assumed basic level of computer literacy, should be developed with a view towards maintenance of efficient digital processes and should have timing requirements consistent with the capabilities of digital processes. Software protocols should seek to enforce basic requirements regarding relevance and supporting references.

7. Should definition s of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?

a. Major Federal Action;

The existing formulation—a federal action which will have a direct or indirect effect which is within federal jurisdiction and which has the potential for significant environmental impacts – is appropriate but often not followed The "within federal jurisdiction" element is too often ignored. Agencies often interpret the "no action" alternative to mean "no project" and thus allow them to expand their jurisdiction to cover the entire project rather than only the aspect, such as an air or water discharge, over which they exercise jurisdiction. It needs to be made clear that NEPA does not expand agency jurisdiction but only permits agencies to consider effects within their jurisdiction. It should also be made clear that "categorical exclusion" is not the first step in the environmental review process. The CATEX

[2] The Deepwater Port Act provides for a perpetual license which functions to provide all authorizations required for the construction and operation of the Ports and put in place a continuous environmental review process to assure that the Ports continue to utilize best available technology to minimize impacts on the marine environment. EPA participates in the licensing process and issues Clean Water Act Permits for the very minor domestic and cooling water discharges associated with Port Operations. Some EPA officials have taken the position that since the Ports are originally "new sources" and since water permits expire every five years, new and separate environmental reviews addressing the Ports' operations are required at five year intervals PS.

review should only take place after the decision maker has concluded that a federal action has the potential to significantly affect the environment.

b. Effects;

Again, the effect must be within federal jurisdiction. NEPA does not expand federal jurisdiction and an interpretation which would, for example, allow consideration of the construction of a facility which is beyond the agency's jurisdiction would be contrary to the clear intention that agencies' jurisdiction should not be affected. A proper interpretation of this requirement would be consistent with NEPA's original intent and would greatly simplify its application.

c. Cumulative Impact;

Effects to be considered in cumulative impact analysis must be subject to federal regulatory authority. For example, if the federal government is prohibited from restricting the export of crude oil, crude oil exports should not be the subject of cumulative impact analysis. Cumulative effects, like other effects, must be within in an agency's jurisdiction in order to merit consideration in the environmental review process.

d. Significantly;

Under the Act, the decision maker must exercise discretion, subject to judicial review, to decide whether the a proposed federal action may have an effect, within her or his agency's jurisdiction, which has the potential to be "significant" As noted above, limitation of this requirement through improper application of the "categorical exclusion" is inappropriate and counterproductive. The "significantly" definition might be amended to make clear that the decision maker retains this authority.

e. Scope;

Environmental reviews must focus precisely on the foreseeable direct and indirect effects subject to federal regulation of the proposed federal action or reasonable alternatives to the federal action. Alternatives which are not within federal jurisdiction need not be assessed. The No Federal Action alternative need not be addressed unless the agency has discretion to take no action.

8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?

a. Alternatives;

b. Purpose and Need;

c. Reasonably Foreseeable;

d. Trivial Violation; and

f. Other NEPA terms.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?

a. Notice of Intent;

b. Categorical Exclusions Documentation;

As noted above, the "categorical exclusion" methodology is being misapplied in many agencies to impose additional limits on decision makers' discretion rather than to provide a "safe harbor" to be relied upon by decision makers facing decisions on close questions. It needs to be made clear that categorical exclusions do not preclude the exercise of agency discretion regarding the question of whether a "major federal action" is proposed and that extensive documentation and public comment is not required. Otherwise the CATEX functions essentially as a redundant environmental assessment. The millions and perhaps billions that have been spent by agencies in adopting CATEX regulations will have been wasted. Finally the exception in many agencies' CATEX regulations for matters involving substantial public interest or opposition essentially defeats the purpose of CATEXs. Those exceptions should be eliminated.

c. Environmental Assessments;

We need to know what Environmental Assessments cost, in both federal and private sector dollars and in project delay costs. Since nearly all EAs result in FONSIs the cost benefit ratio of this process may be subject to question. Fortunately, the EA process should be amenable to radical attenuation through the application of modern technology. That potential should be explored intensively.

d. Findings of No Significant Impact;

c. Environmental Impact Statements;

e. Records of Decision;

As noted in the attached report, all of these elements of the NEPA review process have become unnecessarily complex and stylized. Digitization of the review process will provide an opportunity to enhance clarity and predictability. CEQ must take full advantage of that opportunity; and

f. Supplements;

The role of supplements should be clarified. There is no need for supplementation where there is no continuing federal oversight or periodic permitting. Where there is continued oversight or regulatory engagement, periodic updating should be a matter of course. Scoping and public participation requirements for supplements are likely very different from those for original EISs and should be tailored accordingly.

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?

Addressing at the earliest practicable date is important and should be rigorously enforced. Particularly in adjudicatory proceedings, environmental documentation should be available prior to finding and application to be complete, certainly prior to commencement of the proceeding. Any necessary environmental review should be integrated into the proceeding and certainly should not be a basis for reopening a proceeding after the record is closed. There is no need for FEIS or ROD when a judicial decision is issued after a trial type proceeding. Time limits for final approval should be provided.

11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

Existing procedures for third party preparation of environmental review documents are cumbersome, create perverse incentives and should be eliminated. Reasoned review of applicant prepared documents should be a fully accepted protocol.

12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?

Programmatic documentation is extremely useful and should be more effectively utilized. It should be made clear, however, that there is not a moratorium on permit issuance during the pendency of programmatic review and reviews should be completed within a reasonable time period. Digitization and data analytics will allow continuous input to programmatic review processes and would greatly improve the usefulness of this tool.

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

Alternatives which are not within the regulatory purview of the reviewing agencies should be eliminated. Where an agency lacks authority to withhold action based on public interest considerations, the "no action" alternative is not available. Agency regulations restricting consideration of "mitigation" in choosing among alternatives or requiring selection of the "least impact" alternative should be examined to determine their statutory basis.

General:

1. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.

As noted above, the NEPA regulations require a comprehensive overhaul to enable full utilization of modern technology.

2. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

As noted, we believe a comprehensive review of the entire process is required.

3. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions , such as combining NEPA analysis and other decision documents, and if so, how?

Reliance on relevant State Environmental Review Documents should be mandatory.

4. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

The Regulations should include a specific expedited review procedure with time limits for priority projects identified pursuant to E.O. 13766.

5. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?

6. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?

Although it is clear that delays in permit issuance can have environmental consequences as adverse and severe as those of imprudent permit issuance, there are few consequences or disincentives for unnecessary or unreasonable delays in permit issuance. CEQ should work to provide appropriate performance metrics, cost monitoring and related mechanisms for providing a more appropriate balance.

7. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

While the basic concept of mitigation may be relatively well understood, the details are not. Is it appropriate to require mitigation when the statute does not allow for a broad "public interest" determination? (We think the answer should be "No"). Should mitigation be taken into account in determining the "best" environmental alternative? [3]*(We think the answer must be "Yes".) There are a number of these kinds of questions which must be answered in order to achieve fair and predictable results in this context.*

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[3] In circumstances where environmental review is linked with a substantive finding such as the Corps of Engineers LEDPA determination on water projects the question of how mitigation should be taken into account is critical. The provision in the Corps' guidance to the effect that mitigation cannot be taken into account in LEDPA determinations is unauthorized by law and counterproductive. In general, the basis for agency authority to require mitigation need to be clarified.

Blueprint 2025 greatly appreciates the opportunity to submit these comments and is, of course, available to clarify or expand upon them at your convenience.

Respectfully Submitted,

Norman Anderson
President

BLUEPRINT 2025

Summer, 2018

Blueprint 2025 Position Paper
Modernizing the NEPA Environmental Review Process

Over the last fifty or so years (since enactment of the National Environmental Policy Act "NEPA") serious deficiencies have developed in the way the U.S. Government goes about the planning and authorization of infrastructure projects. This unnecessarily burdensome administrative process delays decisions on critical infrastructure projects, severely restricting our country's ability to modernize infrastructure to enable the technologies of the future or even to maintain the infrastructure which is now in place.

China and our other competitors have in place not only programs to plan and prioritize the infrastructure to be built, but highly efficient computer aided approaches for individual projects beginning with the early planning stages and continuing throughout their development. Though the governance systems of these major competitors might be more conducive to efficient management of the development process than is our "rule of law" system, it should be possible to at least narrow the gap by simplifying and improving the U.S. system as it has evolved (or devolved) over the last 50 years and enabling the use of modern technology to make the authorization process work more efficiently. This note outlines possible steps toward that end.

The Process for Achieving NEPA's Goals is Outmoded and Inefficient

Despite the well-intentioned goals of NEPA to help public officials make decisions based on an informed understanding of environmental consequences, there is a large and growing number of actors in both the public and private sectors that feel the Act has evolved into an unintended project-stalling process of administrative hurdles. What was originally designed to encourage simple informed decision making has become a burdensome and expensive process resulting in undue delays, loss of investment and, perhaps, even environmental harm.[1]

According to this view:

- Environmental analyses are routinely conducted for actions that reasoned judgment would conclude are not major and should not be subject to such onerous agency oversight.
- Though the act was intended to facilitate public input and participation, the environmental review process as it currently exists is esoteric and inaccessible to the average citizen who might like to weigh in. Data on the average length of an EIS is lacking, but it is not uncommon for these reports to span in excess of 1,000, 2,000, and

[1] *See Modernizing NEPA for the 21st Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115th Cong. (2017) (statement of Philip Howard, Chairman Common Good).

even 3,000 pages, though CEQ regulations state that the text of final EIS reports should "normally be less than 150 pages and for proposals of unusual scope or complexity … be less than 300 pages."[2] This added complexity often means that participation only comes from well-funded organizations or experts in a particular field. While expert comments are appreciated, and encouraged, the process was meant to invite participation on a much broader scale.

- While agencies do not routinely track data on the cost of completing NEPA analyses, it is clear that the cost of an environmental review process for a single project can run into the millions of dollars. For instance, the Department of Energy (DOE) tracks limited cost data associated with NEPA analyses, specifically, funds the agency pays to contractors to prepare NEPA analyses. According to DOE data, the average payment to a contractor to prepare an EIS from calendar year 2003 through calendar year 2012 was $6.6 million, with the range being a low of $60,000 and a high of $85 million.[3] DOE's median EIS contractor cost was $1.4 million over that time period.[4]

Though the extent and impact of these problems may be subject to debate, it seems clear that there is a great deal of room for improvement in order to mitigate what many interpret to be excessive delay, cost, and complexity.

As a recent House Natural Resources Committee hearing on the need to modernize NEPA highlighted, there remains broad support for the act's basic objective of informing agency decision makers.[5] However, there seems to be a consensus that the process is plagued by the kinds of problems outlined here and that as a result, NEPA has failed to fulfill the basic purpose for which it was enacted, resulting in unintended adverse impacts on the U.S. economy, the quality of our infrastructure, and in fact, on the environment itself. Solutions like those suggested at the hearing, by former CEQ General Counsel, Dinah Bear, that more and better-trained federal employees are needed—are both unrealistic and rooted in the past.[6] NEPA, like other elements of our infrastructure, needs to be updated and brought into the 21st century. New tools including data analysis, artificial intelligence, and even virtual reality modeling can and should be effectively utilized to expedite and simplify the NEPA process, making it more accessible to ordinary citizens and yielding superior analytical results.

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[2] 40 C.F.R. § 1502.7.

[3] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-14-370, NATIONAL ENVIRONMENTAL POLICY ACT: LITTLE INFORMATION EXISTS ON NEPA ANALYSES 13 (2014) (According to DOE, the cost for the $85 million Hanford Tank Closure and Waste Management EIS includes the costs for three major EISs—waste management, high-level waste tank closure, and disposition of a nuclear reactor—that were started separately and ultimately integrated into one document spanning 3,600+ pages including agency responses to public comments).

[4] *Id.*

[5] *See* 42 U.S.C. § 4321 (NEPA's congressional declaration of purpose states that the purposes of the act are "to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.").

[6] *See Modernizing NEPA for the 21st Century: Oversight Hearing Before the H. Comm. on Natural Resources*, 115th Cong. (2017) (statement of Dinah Bear, Former General Counsel, Council on Environmental Quality).

Current Process Dynamics

NEPA requires federal agencies to analyze both the nature and the extent of a project's potential environmental effects and, in many cases, document these analyses.[7] While much has been said about the merits of this process in furthering a public dialogue and improving the quality of decision making at the federal level, CEQ regulations make explicit the need for a level of analysis that is timely, efficient, and genuinely useful. For instance, under the CEQ's own articulation of NEPA's purpose, "NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail."[8] "NEPA's purpose is *not* to generate paperwork— even excellent paperwork— but to foster excellent action."[9] "Ultimately, it is not better documents but better decisions that count."[10] The regulations go on to include specific instructions targeted at two additional goals: (i) to reduce paperwork and (ii) reduce delay.[11] These instructions highlight the needs for agencies to reduce the length of environmental impact statements (EIS); emphasize the portions of the EIS that are useful to decision makers and the public; integrate NEPA requirements with other environmental review and consultation requirements; require comments to be as specific as possible; eliminate duplication with state and local procedures by providing for joint preparation; emphasize interagency cooperation before the EIS is prepared; establish appropriate time limits for the EIS process; and use accelerated procedures for proposals for legislation.[12]

Title 41 of the "Fixing America's Surface Transportation" Act ("FAST Act") --- establishes a new interagency committee (the Federal Permitting Improvement Steering Council "FPISC"), which is directed to ensure use of most efficient and timely processes for environmental review, and establishment of performance schedules for the completion of the environmental reviews. Title 41 thus both confirms the basic principles outlined above and augments them by a requirement that the Council established by the Act must ensure that "best technology" will be fully utilized in the environmental review process. The Title 41 mandate requires timely action to integrate modern technology into the NEPA process. An approach to such an effort is roughly outlined below.

The Process Now in Place

NEPA is primarily a procedural statute. It does not require an agency to pursue the least environmentally harmful alternative, only that the agency give adequate consideration to the potential benefits and harms of the proposed action in order to demonstrate informed decision making.[13]

Over the last 50 years, NEPA practitioners and the courts have developed a well choreographed set of procedures designed to fulfill these procedural requirements.[14]

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[7] Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ regulations), 40 C.F.R. Parts 1500-1508, set out the level of analysis and documentation for complying with NEPA. The scope and form of these analyses can take the form of a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

[8] 40 C.F.R. § 1500.1(b).

[9] *Id.* at § 1500.1(c) (emphasis added).

[10] *Id.*

[11] *See* 40 C.F.R. §§ 1500.4-1500.5.

[12] *Id.*

[13] *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978).

- Identify the need for action in connection with a proposal.

- Determine whether the action is a federal action subject to NEPA review.

- Determine whether the proposed action is a "major federal action" i.e. could it have direct or indirect effects which have the *potential* to significantly affect the quality of the human environment.[15]

    - If "yes," determine whether the project qualifies for a categorical exclusion (CE).

    - If significant environmental effects are uncertain and the action fails to qualify for a CE, then agencies must move forward with an environmental assessment (EA) providing for public involvement to the extent practicable.[16]

- Determine whether the EA reveals a potential for significant environmental effects.

    - If "no," then agencies must issue a Finding of No Significant Impact explaining the reasoning for their decision.

    - If, however, in the process of completing the EA, it is determined that significant environmental effects *are* likely to result, a notice must be published in the federal register of intent to prepare an Environmental Impact Statement (EIS).

- A public process to determine the "scope" of the EIS must be conducted.

- A draft EIS will be prepared and published, with a minimum 90-day period for public review and further comment.

- After addressing public input, a final EIS is published (no time limit).

- Finally, a Record of Decision is issued by the lead agency detailing its decision to move forward with the proposal or not.

NEPA for the 21st Century

Clearly there is ample room for this process to benefit from the economies and efficiencies associated with the digitization, data analytics and networking available to us in 2018, but, unfortunately, much of the analysis and "streamlining" attempted to date, whether pursuant to the FAST Act or the several Trump Administration executive orders in furtherance of those objectives,

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[14] *See* COUNCIL ON ENVIRONMENTAL QUALITY, A CITIZEN'S GUIDE TO THE NEPA: HAVING YOUR VOICE HEARD 8 (2007).

[15] *See* 40 C.F.R. § 1508.27.

[16] There is no statutory basis for the position taken by some agencies that there must be environmental review unless there is an applicable categorical exclusion. The mandatory C.E exercise is unduly cumbersome and unduly restricts the exercise of reasoned judgment by the agency head in determining whether an action is "major" An intelligent computer aided approach to this analysis could provide the equivalent of reasoned judgment based on the thousands of relevant factors which might affect a reasoned human decision.

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Under the framework of a modern, digital, analytic protocol, there would be opportunities to introduce disciplines for reviewing some of the mistakes and inefficiencies embedded in the existing regulations and guidance, and perhaps even codify and replace the countless pages of existing guidance proven to be redundant or unnecessary. Just as important, broad use of interactive digital platforms would enable the development of a broadly accessible national environmental data network which would limit the need to "reinvent the wheel" in environmental reviews of previously studied areas. The result might be creation of a comprehensive environmental database that includes subject specific information capable of being drawn upon to inform future projects. For example, U.S. Fish and Wildlife has a rudimentary system for archiving conservation plans across the country. It's not terribly user-friendly but it does allow landowners and developers a chance to see what's been done before and what they might reasonably expect going forward in similar situations. Artificial intelligence and networking capabilities ought to be employed to compile something that is (i) informative; (ii) comprehensive; (iii) user-friendly; and (iv) capable of cutting down redundancy with previous work.

In addition to introducing efficiencies that could cut down on delay and associated development costs, there is reason to believe that digitization and analytics could not only provide a quality of analysis currently lacking in NEPA review but could also substantially reduce Government costs. Two NEPA-related studies completed by federal agencies show clearly that there is no current "handle" on the total governmental cost of NEPA compliance. A 2007 Forest Service report on competitive sourcing for NEPA compliance stated that it is "very difficult to track the actual cost of performing NEPA. Positions that perform NEPA-related activities are currently located within nearly every staff group, and are funded by a large number of budget line items.

There is no single budget line item or budget object code to follow in attempting to calculate the costs of doing NEPA."[17] Similarly, a 2003 study funded by the Federal Highway Administration evaluating the performance of environmental "streamlining" noted that NEPA cost data would be difficult to segregate for analysis."[18] Since, as noted the *outside contractor cost* of environmental review of a single proposal can range to $85 million or beyond it is clear that the overall cost of NEPA review is very, very substantial. , Digitization could introduce analytics that break down the silos of knowledge described in the Forest Service report and allow us to know, at least, what NEPA is costing.

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[17] U.S. FOREST SERVICE, COMPETITIVE SOURCING PROGRAM OFFICE, *Feasibility Study of Activities Related to National Environmental Policy Act (NEPA) Compliance* (Washington, D.C., Aug. 10, 2007).

[18] U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, *Evaluating the Performance of Environmental Streamlining: Phase II* (Washington, D.C. 2003).

Even more important, the use of modern communications and analytical technologies can allow us to obtain more effective reviews, more expeditiously and at a much lower cost.. Witnesses at a recent hearing before the Senate Environment and Public Works Committee estimated that NEPA related delays in permitting processes may be inflating our nation's infrastructure costs by as much as 50% and there is at least some evidence to suggest that estimate is on the low side. There is little doubt that inefficiencies in environmental review processes, in addition to handicapping our country's ability to keep pace with global competition, are resulting in costs well into the billions and possibly beyond.

Conclusion

Over the past several decades, we've split the atom, we've spliced the gene, and we've harnessed the modern electron. New science and new technology is fostering change at a breakneck pace and we are at a crossroads. The need to bring NEPA — arguably one of the most influential pieces of environmental legislation ever enacted — up to speed in a way that's attendant to the needs of 21st century development is not a partisan issue. This was recognized in the FAST Act by specifically including a title designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects.[19] President Trump has issued executive orders which further support the FAST 41 objectives and has targeted nearly a trillion dollars in infrastructure packages across the country given the state of our bridges, highways, and waterways. We are in a unique position to leverage knowledge available from actors in both the public and private sectors to bring to bear the full measure of our know-how on environmental review. Now is the time to bring the full resources of the federal government and the full reach of our collective expertise to this fundamental goal: we must modernize the NEPA environmental review process.

[19] *See* 42 U.S.C. § 4370m *et seq*.

South Dakota Dept Game, Fish and Parks

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6)[redacted]

To: "Mansoor, Yardena M. EOP/CEQ" <(b) (6)[redacted]

Date: Thu, 30 Aug 2018 09:56:02 -0400

Attachments: 20180830092045535.pdf (1.15 MB); South Dakota Dept Game, Fish and Parks.pdf (1.1 MB)

-----Original Message-----
From: (b) (6)[redacted] <(b) (6)[redacted]
Sent: Thursday, August 30, 2018 9:21 AM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6)[redacted]
Subject: Message from "RNP00267332FCE5"

This E-mail was sent from "RNP00267332FCE5" (C9155).

Scan Date: 08.30.2018 09:20:45 (-0400)
Queries to: (b) (6)[redacted]

SOUTH DAKOTA DEPARTMENT OF
GAME, FISH AND PARKS
523 EAST CAPITOL AVENUE | PIERRE, SD 57501

August 21, 2018

Edward A. Boling
Associate Director for NEPA
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

Re:	Advanced Notice of Proposed Rulemaking
e-mail Subject:	Docket ID number CEQ-2018-0001
e-mail:	Portal though htpps://www.regulations.gov

Dear Mr. Boling,

The South Dakota Department of Game, Fish and Parks (SDGFP) submits comments on the above-referenced matter. We appreciate the opportunity to respond to the Council on Environmental Quality's (CEQ) 18 questions and proposal to review the National Environmental Policy Act's (NEPA) procedural provisions. CEQ's intent is to review NEPA and identify if any changes may be needed to update and clarify regulations.

Our participation in environmental review of federal documents through National Environmental Policy Act (NEPA) is critical to our State's outdoor heritage, trust resources, and our citizens. If CEQ elects to streamline NEPA, we advocate that requirements for effects analyses on natural resources and processes remain accurate and robust through mandatory use of local and applicable science. In general, States have broad trustee and management authority of fish and wildlife within their borders, including species which occur on federal lands. Therefore, our relationship with federal agencies subject to NEPA is central to ensure that projects consider all impacts to wildlife, fisheries, and the ecological services they provide to our citizens.

Please continue to send future correspondence to the SDGFP.

Sincerely,

Kelly R Hepler

Kelly R. Hepler
Cabinet Secretary

605.773.3718 | GFP.SD.GOV
WILDINFO@STATE.SD.US | PARKINFO@STATE.SD.US

South Dakota Department of Game, Fish and Parks
Responses are Enumerated Identical to CEQ's questions

NEPA is an essential public input process, which influences environmental management of our nation's treasured resources. NEPA is the foundation for environmental review, which requires transparency to the citizens of this country. NEPA should be afforded every opportunity to survive either as it is, or have thoughtful revisions, which do not weaken NEPA's intent. Federal agencies interpret and apply NEPA differently. Courts add another level of interpretations. The SDGFP has considerable experience reviewing federal agency NEPA but CEQ's questions will be interpreted by us according to the NEPA with we are most familiar: USDI Fish and Wildlife Service and Bureau of Land Management, or USDA Forest Service.

SDGFP struggled to provide useful, insightful responses to the CEQ questions. The results are that we cannot provide the types of responses we prefer. It is the SDGFP's opinion that some CEQ's questions may not lead to rigorous, methodical analyses of the current NEPA process. Therefore, we are concerned that CEQ's assessment may not accurately portray how publics understand and engage in NEPA. For example, we found both leading and ambiguous questions. Terminology is central to understanding and participating in the NEPA process and yet terms were not defined within the notice. Some Federal agency's interpretation of NEPA has resulted in a culture of putting an excessive burden on the public to research regulations and interpret terminology. Environmental review can become over whelming for publics. The irony, in our opinion, is that this same culture of assuming publics know these critical details is prevalent within this scoping notice.

It would have been useful to commenters if CEQ had included term definitions and corresponding 40 CFR 1500+ and other regulations within this notice. NEPA documents offer a strategy of how projects will be assessed. This notice should also inform publics how inquiries will be assessed and the possible thresholds which could trigger change. Therefore, we kindly suggest that CEQ re-scope questions and provide the missing information.

NEPA Process

1. Should CEQ's NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

We assume this question implies multiple *federal* agencies, which have a single NEPA document due to overlapping federal jurisdictions. The multiple federal agency NEPA proposals we have reviewed have not been at issue.

2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?

One definition of efficiency includes operations as measured by a comparison of production with costs such as energy, time, personnel, and budgets. Efficiency is about the best possible use of resources. Efficiency is also a level of performance that employs the least amount of input to achieve the highest amount of output. Please describe how CEQ is defines efficiency and the metrics to be measured.

A citation to this regulation would have been helpful. Having none, SDGFP opines that NEPA regulations absolutely should not demand page length. NEPA should not be reduced to subjective page length, rather held to a standard of substantive content. Some topics require little coverage while others, such as effects analysis on endangered species, climate change, water, and air could be quite detailed, as they should be. Science should not be abbreviated. CEQ should entrust the NEPA preparers to write a concise and thorough document. Some topics are controversial and to shorten the information, could lead to unnecessary objections and court litigation, which again, can be unnecessary and inefficient.

Clarification is needed by CEQ to define *"time limits for completion"*. If this is related to public commenting periods, these should absolutely not be shortened but lengthened. If this is related to timing *between* public commenting periods and the federal agency's preparation timing, again, no. We witness the extreme pressure on federal employees to conduct day-to-day tasks, which include implementation of previously approved NEPA projects as well as preparation of new NEPA. Without additional personnel and sufficient budgets, federal agencies are under pressure to implement NEPA-approved projects or plans while preparing new NEPA. Federal agencies should have the discretion and be trusted to determine how much time is needed for NEPA within current CEQ guidelines. In addition, if cooperators are not forthcoming in their agreed-upon deliverables, it will jeopardize exceeding CEQ imposed deadlines. Until CEQ provides clarification on this question, we reserve additional comments.

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision--makers and the public, and if so, how?

Clarification: define *"significant issues"*. Under CEQ regulation, significance is determined through NEPA identification teams using specific issue identification processes. Therefore, *"significant issues"* terminology is defined much differently than the average public's definition. CEQ's definition should be within this question and not left open to interpretation. Until it is defined in this potential rule revision, we reserve additional comments.

Suggested revised CEQ regulations: How federal identification teams determine significance is often shortsighted to only considering federal processes and procedures, an incomplete picture of the environment and social values. By collaborating with non-federal cooperators on NEPA projects and planning, holistic perspectives are gained.

6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

See our previous comments and responses to questions 7-9.

7 – 9. Questions on key terms and documents used in NEPA.
CEQ should revise and re-scope this notice. CEQ requires NEPA documents to be forthcoming and transparent which are achieved, in part, by including glossaries and explanations of certain terms. It is unnecessarily burdensome for publics, and inefficient, to research the 16 terms and uses in questions 7-9. We reserve comment until such time CEQ provides current definitions and uses.

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Biased alternatives do not accurately consider an expanse of mitigation, design measures, or holistic public input. Two alternatives should be eliminated in favor of at least three.

General

14. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.

Unknown at this time.

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SOUTH DAKOTA DEPARTMENT OF
GAME, FISH AND PARKS
523 EAST CAPITOL AVENUE | PIERRE, SD 57501

August 21, 2018

Edward A. Boling
Associate Director for NEPA
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

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e-mail Subject:	Docket ID number CEQ-2018-0001
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RE: Draft background for NPRM

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Loyola, Mario A. EOP/CEQ" <(b) (6) [redacted]

Date: Tue, 04 Sep 2018 13:22:21 -0400

Attachments : FR Document Drafting Handbook May 2018.pdf (2.94 MB); DOE NOPR Jan 3, 2011.pdf (280.79 kB)

(b) (5) [redacted]

From: Loyola, Mario A. EOP/CEQ
Sent: Tuesday, September 4, 2018 1:02 PM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Draft background for NPRM

(b) (5) [redacted] Thank you.

Mario Loyola
Associate Director, Regulatory Reform
White House Council on Environmental Quality
(o) (b) (6) [redacted] | (c) (b) (6) [redacted]

From: Mansoor, Yardena M. EOP/CEQ
Sent: Tuesday, September 4, 2018 12:59 PM
To: Loyola, Mario A. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Draft background for NPRM

(b) (5) [redacted]

[redacted]

From: Loyola, Mario A. EOP/CEQ
Sent: Tuesday, September 4, 2018 12:46 PM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Draft background for NPRM

Yardena thank you. (b) (5) [redacted]

Mario Loyola
Associate Director, Regulatory Reform
White House Council on Environmental Quality
(o) (b) (6) [redacted] | (c) (b) (6) [redacted]

From: Mansoor, Yardena M. EOP/CEQ
Sent: Tuesday, September 4, 2018 12:27 PM
To: Loyola, Mario A. EOP/CEQ <(b) (6) [redacted]
Cc: Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: Draft background for NPRM

Here is the draft responding to the task list item due today, for your review.

Some notes:

(b) (5) [redacted]

(b) (5) [redacted]

Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) [redacted] / (b) (6) [redacted]

RE: Can you fill this out for tomorrow?

From: "Barnett, Steven W. EOP/CEQ" <(b) (6)[redacted]

To: "Szabo, Aaron L. EOP/CEQ" <(b) (6)[redacted]

Date: Wed, 05 Sep 2018 17:52:38 -0400

Attachments: Draft Agenda_09062018.docx (15.72 kB)

-----Original Message-----
From: Szabo, Aaron L. EOP/CEQ
Sent: Wednesday, September 5, 2018 3:06 PM
To: Barnett, Steven W. EOP/CEQ <(b) (6)[redacted]
Subject: Can you fill this out for tomorrow?

Thanks and let me know if you have any questions.

(b) (5)

[redacted]

RE: Updated Version of Spring Agenda

From: "Seale, Viktoria Z. EOP/CEQ" <(b) (6)[redacted]

To: "Szabo, Aaron L. EOP/CEQ" <(b) (6)[redacted] "Neumayr, Mary B. EOP/CEQ" <(b) (6)[redacted] "Boling, Ted A. EOP/CEQ" <(b) (6)[redacted]

Date: Mon, 05 Mar 2018 11:32:24 -0500

Attachments: CEQ Unified Agenda Entries--Spring 2018 vzs edit.docx (27.61 kB)

A few minor suggested edits.

(b) (5)[redacted]

From: Szabo, Aaron L. EOP/CEQ
Sent: Monday, March 5, 2018 10:59 AM
To: Neumayr, Mary B. EOP/CEQ <(b) (6)[redacted] Seale, Viktoria Z. EOP/CEQ <(b) (6)[redacted] Boling, Ted A. EOP/CEQ <(b) (6)[redacted]
Subject: Updated Version of Spring Agenda

All,

Please find attached for an updated version that takes into account the comments from earlier this morning.

Please let me know if you have any additional comments.

Thank you very much.

Aaron L. Szabo
Senior Counsel
Council on Environmental Quality
(b) (6)[redacted] (Desk)
(b) (6)[redacted] (Cell)
(b) (6)[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

[APG]

RE: Revised ANPR

From: "Seale, Viktoria Z. EOP/CEQ" <(b) (6) [redacted]

To: "Loyola, Mario A. EOP/CEQ" (b) (6) [redacted] "Neumayr, Mary B. EOP/CEQ" <(b) (6) [redacted] "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted] "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted] "Smith, Katherine R. EOP/CEQ" <(b) (6) [redacted]

Date: Thu, 29 Mar 2018 11:15:57 -0400

Attachments: FR Notice for ANPRM - 3-28-2018 VZS edits.DOCX (52.84 kB)

Mario,

Attached please find suggested edits to conform with the Document Drafting Handbook, correct citations, and address a few other minor issues.

Thanks

Viktoria

From: Loyola, Mario A. EOP/CEQ
Sent: Wednesday, March 28, 2018 2:25 PM
To: Neumayr, Mary B. EOP/CEQ <(b) (6) [redacted] Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted] Smith, Katherine R. EOP/CEQ <(b) (6) [redacted]
Subject: Revised ANPR

Dear friends – Please see attached a clean revised draft reflecting all changes so far. Please review and get back to me with any further suggested changes. Thank you.

(b) (5) [redacted]

Mario Loyola
Associate Director, Regulatory Reform
White House Council on Environmental Quality
(o) (b) (6) [redacted] | (c) (b) (6) [redacted]

(b) (5)

[redacted]

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[redacted]

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[redacted]

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[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

FW: EO 12866 Review of CEQ NEPA Procedural Provisions Prerule - (b) (5) [redacted] comments (b) (5) [redacted]

From: "Whiteman, Chad S. EOP/OMB" <(b) (6) [redacted]

To: "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted] "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted] "Barnett, Steven W. EOP/CEQ" <(b) (6) [redacted] "Sharp, Thomas L. EOP/CEQ" <(b) (6) [redacted] "Loyola, Mario A. EOP/CEQ" <(b) (6) [redacted] "Gignoux, Caroline M. EOP/CEQ (Intern)" <(b) (6) [redacted] "Smith, Katherine R. EOP/CEQ" <(b) (6) [redacted]

Date: Mon, 21 May 2018 10:26:54 -0400

Attachments: Docket Number CEQ-2018-0001.docx (18.49 kB)

Attached and below are (b) (5) [redacted] comments. (b) (5) [redacted]

In addition to the attached comments, we have the following general comments:
(b) (5) [redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Fwd: CEQ ANPRM

From:	"Schneider, Daniel J. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=70576341fcb44ab780c5f4d1ca218647-sc">
To:	"Pettigrew, Theresa L. EOP/CEQ" <(b) (6) [redacted]
Date:	Thu, 14 Jun 2018 17:24:41 -0400
Attachments:	Draft FINAL ANPRM Fact Sheet 6-15-18.docx (19.82 kB)

Sent from my iPhone

Begin forwarded message:

From: "Schneider, Daniel J. EOP/CEQ" <(b) (6) [redacted]
Date: June 14, 2018 at 5:15:15 PM EDT
To: "Love, Kelly A. EOP/WHO" <(b) (6) [redacted]
Cc: "Ditto, Jessica E. EOP/WHO" <(b) (6) [redacted]
Subject: CEQ ANPRM

FYI - Tomorrow, we're planning on posting the attached fact sheet on our NEPA Advanced Notice of Proposed Rulemaking to the CEQ page of the website. In this ANPRM, we're proposing a series of 20 questions for public comment on the NEPA process and the scope of NEPA review in an effort to solicit feedback on any potential future revisions to NEPA. Over the last four decades, CEQ has issued numerous guidance documents but has only substantially amended its regulations once. This ANPRM is part of our list of actions under E.O. 13807 to modernize the federal environmental review and authorization process. I don't foresee this generating much attention in that it's just an ANPRM but we may hear from EE News or another publication who pays particular attention to issues like this.

Let me know if you have any questions.

Dan

Dan Schneider
Associate Director for Communications
Council on Environmental Quality
Executive Office of the President
(b) (6) [redacted] (desk)
(b) (6) [redacted]
www.whitehouse.gov/ceq

(b) (5)

[redacted]

FW: FR 2018-13246_1644312 redline edit

From:	"Boling, Ted A. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=eae5b047f871428b9b46baf8afd1176a-bo">
To:	"Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]
Date:	Fri, 15 Jun 2018 13:58:23 -0400
Attachments:	FR 2018-13246_1644312 redline edit.docx (47.66 kB)

From: Seale, Viktoria Z. EOP/CEQ
Sent: Friday, June 15, 2018 1:34 PM
To: Neumayr, Mary B. EOP/CEQ <(b) (6) [redacted] Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted]
Cc: Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: FR 2018-13246_1644312 redline edit

Mary and Aaron,

(b) (5) [redacted]

Thank you,

Viktoria

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

FR 2018-13246_1644312 redline edit

From: "Seale, Viktoria Z. EOP/CEQ" <(b) (6) [redacted]

To: "Neumayr, Mary B. EOP/CEQ" <(b) (6) [redacted] "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted]

Cc: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Date: Fri, 15 Jun 2018 13:33:59 -0400

Attachments: FR 2018-13246_1644312 redline edit.docx (47.66 kB)

Mary and Aaron,

(b) (5) [redacted]

Thank you,

Viktoria

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

RE: Updates to NEPA.gov

From: "Carter, Marian (CONTR)" <marian.carter@hq.doe.gov>

To: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

Cc: "Alexander, Lillian" <lillian.alexander@hq.doe.gov>, "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted] "Adams, John (AU) (CONTR)" <john.adams@hq.doe.gov>

Date: Mon, 18 Jun 2018 13:56:27 -0400

Thank you, Yardena:

As always, we will not post until you provide confirmation by email that the FR is available. John will await your confirmation. I think we can address these changes by tomorrow as indicated.

Have a good afternoon,
Marian

Thank you,
Marian

Marian A. Carter
AU Web Support Team Manager
Highland Technology Services, Inc., Contractor
Office of Environment, Health, Safety and Security
(301) 903-3494 - Office
marian.carter@hq.doe.gov

The business of life is the acquisition of memories…

From: Mansoor, Yardena M. EOP/CEQ [mailto(b) (6) [redacted]
Sent: Monday, June 18, 2018 1:53 PM
To: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>
Cc: Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ

<(b) (6) [redacted] Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Subject: RE: Updates to NEPA.gov

This information is not for public release before Wednesday, until after I confirm the highlighted dates and that the notice is accessible in regulations.gov. Thanks!

1. If the banner is to be an image, we need the image to enable us having time to manipulate it;

   Not an image.

2. If the banner is to link to content, we need the content or URL identified;

   See 4 below.

3. If the banner is not going to contain an image, it will be a simple blue background. Please confirm;

   Blue would be fine.

4. The content or 2 sentences to be used in the banner.

   CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. See the Advance Notice of Proposed Rulemaking and related materials here. [Link to >https://ceq.doe.gov/laws-regulations/regulations.html<.]

5. For the Regulations web page, we need the Heading you want to use, the 3 sentences of text to be entered and the 2 hyperlinks referenced on the web page.

   On the CEQ NEPA Implementing Procedures page: >https://ceq.doe.gov/laws-regulations/regulations.html<, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

   Advance Notice of Proposed Rulemaking (20 June 2018). CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, >https://www.regulations.gov<. Comments should be submitted on or before July 20, 2018.

From: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>
Sent: Monday, June 18, 2018 1:23 PM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Cc: Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Subject: RE: Updates to NEPA.gov

Good Afternoon, Yardena:

I checked with John, and if you provide us with the following by COB today, Tuesday, June 18th, he anticipates that he can have these changes completed by tomorrow, COB, Tuesday, June 19, 2018:

1. If the banner is to be an image, we need the image to enable us having time to manipulate it;
2. If the banner is to link to content, we need the content or URL identified;
3. If the banner is not going to contain an image, it will be a simple blue background. Please confirm;
4. The content or 2 sentences to be used in the banner.
5. For the Regulations web page, we need the Heading you want to use, the 3 sentences of text to be entered and the 2 hyperlinks referenced on the web page.

Thank you,
Marian

Marian A. Carter
AU Web Support Team Manager
Highland Technology Services, Inc., Contractor
Office of Environment, Health, Safety and Security
(301) 903-3494 - Office
marian.carter@hq.doe.gov

The business of life is the acquisition of memories…

From: Mansoor, Yardena M. EOP/CEQ [mailto(b) (6) [redacted]
Sent: Monday, June 18, 2018 12:31 PM
To: Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Cc: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: Updates to NEPA.gov

Later this week: The time-sensitive updates I mentioned last week will be requested early Wednesday morning, when a CEQ Federal Register notice is expected to be published. The Wednesday changes will include:

- Adding a banner (two sentences) on the nepa.gov home page.
- Adding a heading, three sentences of text, and two links on the **CEQ NEPA Implementing Procedures** page: >>https://ceq.doe.gov/laws-regulations/regulations.html<<;.

Follow-up: Please let me know if you have any questions on the request I sent Friday at 1:37, on the NEPA Practice page (revising and alphabetizing the tab entries, new land page and file for "Agency Jurisdiction and Expertise."

New requests:

At >>https://ceq.doe.gov/laws-regulations/nepa_legislative_history.html<<;, please replace the following links with the corresponding attachments (filenames in parenthesis):

Congressional White Paper on a National Policy for the Environment (CongressWhitePaper.pdf)

House of Representatives Report on NEPA (House of Representatives Report on NEPA.pdf)

Senate Report on NEPA (Senate Report on NEPA.pdf)

Conference Report (Conference Report on NEPA.pdf)

At >>https://ceq.doe.gov/laws-regulations/agency_implementing_procedures.html<<;, please replace the linked file the corrected file attached.

Thanks, in advance, for your help.

Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality
[redacted] / [redacted]

Fwd: Draft Herrgott Testimony

From:	"Herrgott, Alex H. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=45656107f8dc4dc18bb681d14e44c8e9-he">
To:	"Pettigrew, Theresa L. EOP/CEQ" <(b) (6) [redacted]
Date:	Mon, 18 Jun 2018 20:37:58 -0400
Attachments:	Herrgott Testimony.6.27 Roundtable Senate SWBDRAFT.6.18.18.docx (37.41 kB); Herrgott Testimony CLEAN COPY.6.18.18.docx (32.48 kB)

Take a look at this one

Sent from my iPhone

Begin forwarded message:

From: "Barnett, Steven W. EOP/CEQ" <(b) (6) [redacted]
Date: June 18, 2018 at 5:44:49 PM EDT
To: "Herrgott, Alex H. EOP/CEQ" <(b) (6) [redacted]
Cc: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted] "Vandegrift, Scott F. EOP/CEQ" <(b) (6) [redacted] "Osterhues, Marlys A. EOP/CEQ" <(b) (6) [redacted]
Subject: Draft Herrgott Testimony

Alex,

Please find attached a red line and clean copy of your draft testimony.

Steven

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

FW: Draft Herrgott Testimony re 6.27 Senate Roundtable

From: "Barnett, Steven W. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=2e9fa21939394821b946485a90c4cb4e-ba">

To: "Sharp, Thomas L. EOP/CEQ" <(b) (6) [redacted]

Date: Tue, 19 Jun 2018 10:44:21 -0400

Attachments: Herrgott Testimony 6.27 Roundtable Senate FINAL.DOCX (28.39 kB)

From: Barnett, Steven W. EOP/CEQ
Sent: Tuesday, June 19, 2018 10:19 AM
To: Smith, Katherine R. EOP/CEQ <(b) (6) [redacted]
Cc: Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted] Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted] Vandegrift, Scott F. EOP/CEQ <(b) (6) [redacted] Herrgott, Alex H. EOP/CEQ <(b) (6) [redacted] Osterhues, Marlys A. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Patella, Michael A. EOP/CEQ <(b) (6) [redacted]
Subject: Draft Herrgott Testimony re 6.27 Senate Roundtable

All:

Please find attached a clean copy of Alex's draft testimony for the Senate roundtable.

Dan and Theresa: please take a quick look before we finalize this for Mary in the next 30 minutes or so (sorry!). Let me know if you have any other edits.

Best,

Steven

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Draft Herrgott Testimony

From: "Schneider, Daniel J. EOP/CEQ" <(b) (6) [redacted]

To: "Osterhues, Marlys A. EOP/CEQ" <(b) (6) [redacted]

Cc: "Barnett, Steven W. EOP/CEQ" <(b) (6) [redacted] "Neumayr, Mary B. EOP/CEQ" <(b) (6) [redacted] "Pettigrew, Theresa L. EOP/CEQ" <(b) (6) [redacted] "Herrgott, Alex H. EOP/CEQ" <(b) (6) [redacted] "Smith, Katherine R. EOP/CEQ" <(b) (6) [redacted]

Date: Tue, 19 Jun 2018 17:10:07 -0400

Attachments: Herrgott Testimony 6.27 Roundtable Senate FINAL DS V2 CLEAN.DOCX (29.55 kB); Herrgott Testimony 6.27 Roundtable Senate FINAL DS V2.DOCX (33.64 kB)

All – attached are both clean and marked up versions of Alex's statement that reflects Mary, Theresa, and I's edits. Please coordinate with FPISC in sending over the statements simultaneously.

Let me know if you have any questions,

Dan

Dan Schneider
Associate Director for Communications
Council on Environmental Quality
Executive Office of the President
(b) (6) [redacted] (desk)
(b) (6) [redacted]
www.whitehouse.gov/ceq

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Herrgott- 6/27 Roundtable

From:	"Smith, Katherine R. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=e45de0bbb5ca4e87a4c4528ec12a7b03-sm">
To:	"Neumayr, Mary B. EOP/CEQ" <(b) (6) [redacted]
Date:	Tue, 19 Jun 2018 12:09:58 -0400
Attachments:	Alexander Herrgott--Bio.docx (14.06 kB); Herrgott Testimony 6.27 Roundtable Senate FINAL.DOCX (28.67 kB)

Mary,

Drafts of Alex's bio and testimony for the June 27th Roundtable are attached for your review.

Thanks,
Katherine

Katherine Smith
Special Assistant
Council on Environmental Quality
(b) (6) [redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

RE: Updates to NEPA.gov

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Adams, John (AU) (CONTR)" <john.adams@hq.doe.gov>, "Carter, Marian (CONTR)" <marian.carter@hq.doe.gov>

Cc: "Alexander, Lillian" <lillian.alexander@hq.doe.gov>, "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

Date: Tue, 19 Jun 2018 16:12:06 -0400

Thanks, John.

Please also bold "implementing regulations" and end the sentence after "potential revisions" (and delete the remaining words).

From: Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Sent: Tuesday, June 19, 2018 4:07 PM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted] Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>
Cc: Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Updates to NEPA.gov

Good afternoon Yardena,

This request is ready to go once we receive the link for Advance Notice of Proposed Rulemaking (20 June 2018). Please note below the banner below. Due to banner size, below is the amount of text that could be fitted.

Regards,

John Adams
AU Web Support Team
Highland Technology Services, Inc. Contractor to the Office of Environment, Health, Safety and Security | Germantown Building
1000 Independence Avenue, SW
Washington, D.C. 20585-1290
Phone: 301.903.8162 | Email: john.adams@hq.doe.gov

From: Mansoor, Yardena M. EOP/CEQ [mailto[redacted]
Sent: Monday, June 18, 2018 1:53 PM
To: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>
Cc: Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <[redacted] Drummond, Michael R. EOP/CEQ <[redacted] Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Subject: RE: Updates to NEPA.gov

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1. If the banner is to be an image, we need the image to enable us having time to manipulate it;

   Not an image.

2. If the banner is to link to content, we need the content or URL identified;

   See 4 below.

3. If the banner is not going to contain an image, it will be a simple blue background. Please confirm;

   Blue would be fine.

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5. For the Regulations web page, we need the Heading you want to use, the 3 sentences of text to be entered and the 2 hyperlinks referenced on the web page.

   On the CEQ NEPA Implementing Procedures page: >https://ceq.doe.gov/laws-regulations/regulations.html<, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

   Advance Notice of Proposed Rulemaking (20 June 2018). CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, >https://www.regulations.gov<. Comments should be submitted on or before July 20, 2018.

From: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>
Sent: Monday, June 18, 2018 1:23 PM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Cc: Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Subject: RE: Updates to NEPA.gov

Good Afternoon, Yardena:

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2. If the banner is to link to content, we need the content or URL identified;
3. If the banner is not going to contain an image, it will be a simple blue background. Please confirm;
4. The content or 2 sentences to be used in the banner.
5. For the Regulations web page, we need the Heading you want to use, the 3 sentences of text to be entered and the 2 hyperlinks referenced on the web page.

Thank you,
Marian

Marian A. Carter

AU Web Support Team Manager
Highland Technology Services, Inc., Contractor
Office of Environment, Health, Safety and Security
(301) 903-3494 - Office
marian.carter@hq.doe.gov

The business of life is the acquisition of memories…

From: Mansoor, Yardena M. EOP/CEQ [mailto:(b) (6) [redacted]
Sent: Monday, June 18, 2018 12:31 PM
To: Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Cc: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: Updates to NEPA.gov

Later this week: The time-sensitive updates I mentioned last week will be requested early Wednesday morning, when a CEQ Federal Register notice is expected to be published. The Wednesday changes will include:

- Adding a banner (two sentences) on the nepa.gov home page.
- Adding a heading, three sentences of text, and two links on the **CEQ NEPA Implementing Procedures** page: >>https://ceq.doe.gov/laws-regulations/regulations.html<<;.

Follow-up: Please let me know if you have any questions on the request I sent Friday at 1:37, on the NEPA Practice page (revising and alphabetizing the tab entries, new land page and file for "Agency Jurisdiction and Expertise."

New requests:

At >>https://ceq.doe.gov/laws-regulations/nepa_legislative_history.html<<;, please replace the following links with the corresponding attachments (filenames in parenthesis):

Congressional White Paper on a National Policy for the Environment (CongressWhitePaper.pdf)

House of Representatives Report on NEPA (House of Representatives Report on NEPA.pdf)

Senate Report on NEPA (Senate Report on NEPA.pdf)

Conference Report (Conference Report on NEPA.pdf)

At >>https://ceq.doe.gov/laws-regulations/agency_implementing_procedures.html<<;, please replace the linked file the corrected file attached.

Thanks, in advance, for your help.

Yardena Mansoor
Deputy Associate Director for NEPA

Council on Environmental Quality
(b) (6) [redacted] / (b) (6) [redacted]

RE: Draft Herrgott Testimony

From: "Osterhues, Marlys A. EOP/CEQ" <(b) (6) [redacted]

To: Angela Colamaria - Y-D <angela.colamaria@fpisc.gov>

Cc: Karen Hanley - Y <karen.hanley@gsa.gov>, "Herrgott, Alex H. EOP/CEQ" <(b) (6) [redacted] "Pettigrew, Theresa L. EOP/CEQ" <(b) (6) [redacted] "Barnett, Steven W. EOP/CEQ" <(b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted] Amber Levofsky - Y <amber.levofsky@gsa.gov>, Janet Pfleeger - Y <janet.pfleeger@fpisc.gov>, "Smith, Katherine R. EOP/CEQ" <(b) (6) [redacted] Kavita Vaidyanathan - AY-DETAILEE <kavita.vaidyanathan@gsa.gov>, "Schneider, Daniel J. EOP/CEQ" <(b) (6) [redacted]

Date: Wed, 20 Jun 2018 17:46:35 -0400

Attachments: Herrgott Testimony 6.27 Roundtable Senate FINAL_6.20.DOCX (28.14 kB)

Angie –

Here is the final version of Alex's statement.

Thanks - Marlys

From: Schneider, Daniel J. EOP/CEQ
Sent: Wednesday, June 20, 2018 4:47 PM
To: Angela Colamaria - Y-D <angela.colamaria@fpisc.gov>; Osterhues, Marlys A. EOP/CEQ <(b) (6) [redacted]
Cc: Karen Hanley - Y <karen.hanley@gsa.gov>; Herrgott, Alex H. EOP/CEQ <(b) (6) [redacted] Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted] Barnett, Steven W. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Amber Levofsky - Y <amber.levofsky@gsa.gov>; Janet Pfleeger - Y <janet.pfleeger@fpisc.gov>; Smith, Katherine R. EOP/CEQ <(b) (6) [redacted] Kavita Vaidyanathan - AY-DETAILEE <kavita.vaidyanathan@gsa.gov>
Subject: RE: Draft Herrgott Testimony

Minor edits from Mary to Angie's statement attached.

From: Angela Colamaria - Y-D <angela.colamaria@fpisc.gov>
Sent: Wednesday, June 20, 2018 4:39 PM

To: Osterhues, Marlys A. EOP/CEQ <(b) (6) [redacted]
Cc: Karen Hanley - Y <karen.hanley@gsa.gov>; Herrgott, Alex H. EOP/CEQ <(b) (6) [redacted] Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted] Barnett, Steven W. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Amber Levofsky - Y <amber.levofsky@gsa.gov>; Janet Pfleeger - Y <janet.pfleeger@fpisc.gov>; Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted] Smith, Katherine R. EOP/CEQ <(b) (6) [redacted] Kavita Vaidyanathan - AY-DETAILEE <kavita.vaidyanathan@gsa.gov>
Subject: Re: Draft Herrgott Testimony

Adding Katherine, Kavita, and Dan to this chain as they were on the other email chain re my written statement. Feel free to ignore if not relevant to you!

On Wed, Jun 20, 2018 at 4:32 PM, Angela Colamaria - Y-D <angela.colamaria@fpisc.gov> wrote:

All here are my quick comments on Alex's testimony. In the interest of time, I didn't review the "agency action" section.

I will be offline for the next hour or so, but can send out both written statements once we are ready.

Angela F. Colamaria
Acting Executive Director
Office of the Executive Director (FPISC-OED)
Federal Permitting Improvement Steering Council
angela.colamaria@fpisc.gov
202.705.1639
1800 F St. NW
Washington, DC 20405

On Tue, Jun 19, 2018 at 5:32 PM, Osterhues, Marlys A. EOP/CEQ <(b) (6) [redacted] wrote:

Angie and Karen –

Attached is Alex's statement for next week's Roundtable. Please confirm that you will submit your and Alex's statements together for review/coordination with OMB. Let's touch base tomorrow morning.

Thanks - Marlys

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Re: Draft Herrgott Testimony

From: Angela Colamaria - Y-D <angela.colamaria@fpisc.gov>

To: "Osterhues, Marlys A. EOP/CEQ" <(b) (6) [redacted]

Karen Hanley - Y <karen.hanley@gsa.gov>, "Herrgott, Alex H. EOP/CEQ" <(b) (6) [redacted] "Pettigrew, Theresa L. EOP/CEQ" <(b) (6) [redacted] "Barnett, Steven W. EOP/CEQ" <(b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

Cc: Amber Levofsky - Y <amber.levofsky@gsa.gov>, Janet Pfleeger - Y <janet.pfleeger@fpisc.gov>, "Schneider, Daniel J. EOP/CEQ" <(b) (6) [redacted] "Smith, Katherine R. EOP/CEQ" <(b) (6) [redacted] Kavita Vaidyanathan - AY-DETAILEE <kavita.vaidyanathan@gsa.gov>

Date: Wed, 20 Jun 2018 16:38:30 -0400

Attachments: Herrgott Testimony 6.27 Roundtable Senate FINAL DS V2 CLEAN (3) AFC EDITS 6-20-18.DOCX (35.89 kB)

Adding Katherine, Kavita, and Dan to this chain as they were on the other email chain re my written statement. Feel free to ignore if not relevant to you!

On Wed, Jun 20, 2018 at 4:32 PM, Angela Colamaria - Y-D <angela.colamaria@fpisc.gov> wrote:

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Thanks - Marlys

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

RE: Advance Notice of Proposed Rulemaking

From: "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted]

To: "Schneider, Daniel J. EOP/CEQ" <(b) (6) [redacted] "Seale, Viktoria Z. EOP/CEQ" <(b) (6) [redacted] "Neumayr, Mary B. EOP/CEQ" <(b) (6) [redacted] "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted] "Smith, Katherine R. EOP/CEQ" <(b) (6) [redacted] "Pettigrew, Theresa L. EOP/CEQ" <(b) (6) [redacted]

Cc: "Sun, Howard C. EOP/CEQ" <(b) (6) [redacted]

Date: Wed, 20 Jun 2018 10:07:50 -0400

It is also available on regulations.gov at https://www.regulations.gov/docket?D=CEQ-2018-0001

From: Schneider, Daniel J. EOP/CEQ
Sent: Wednesday, June 20, 2018 9:30 AM
To: Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted] Neumayr, Mary B. EOP/CEQ <(b) (6) [redacted] Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Smith, Katherine R. EOP/CEQ <(b) (6) [redacted] Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted]
Cc: Sun, Howard C. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Advance Notice of Proposed Rulemaking

It has been published.

https://www.federalregister.gov/documents/2018/06/20/2018-13246/update-to-the-regulations-for-implementing-the-procedural-provisions-of-the-national-environmental#addresses

---

From: Seale, Viktoria Z. EOP/CEQ
Sent: Tuesday, June 19, 2018 9:11 AM
To: Neumayr, Mary B. EOP/CEQ <(b) (6) [redacted] Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Smith, Katherine R. EOP/CEQ <(b) (6) [redacted] Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted] Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted]

Cc: Sun, Howard C. EOP/CEQ <(b) (6)[redacted]
Subject: Advance Notice of Proposed Rulemaking

The Advance Notice of Proposed Rulemaking is available on the public inspection desk at https://www.federalregister.gov/documents/2018/06/20/2018-13246/implementation-of-the-procedural-provisions-of-the--national-environmental-policy-act. It will be published in tomorrow's Federal Register, June 20.

Viktoria Z. Seale
General Counsel
Executive Office of the President
Council on Environmental Quality
(b) (6)[redacted] **(direct)**
(b) (6)[redacted] **(cell)**

RE: Advance Notice of Proposed Rulemaking

From: "Schneider, Daniel J. EOP/CEQ" <(b) (6) [redacted]

To: "Seale, Viktoria Z. EOP/CEQ" <(b) (6) [redacted] "Neumayr, Mary B. EOP/CEQ" <(b) (6) [redacted] "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted] "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted] "Smith, Katherine R. EOP/CEQ" <(b) (6) [redacted] "Pettigrew, Theresa L. EOP/CEQ" <(b) (6) [redacted]

Cc: "Sun, Howard C. EOP/CEQ" <(b) (6) [redacted]

Date: Wed, 20 Jun 2018 09:30:24 -0400

It has been published.

https://www.federalregister.gov/documents/2018/06/20/2018-13246/update-to-the-regulations-for-implementing-the-procedural-provisions-of-the-national-environmental#addresses

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Sent: Tuesday, June 19, 2018 9:11 AM
To: Neumayr, Mary B. EOP/CEQ <(b) (6) [redacted] Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Smith, Katherine R. EOP/CEQ <(b) (6) [redacted] Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted] Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted]
Cc: Sun, Howard C. EOP/CEQ <(b) (6) [redacted]
Subject: Advance Notice of Proposed Rulemaking

The Advance Notice of Proposed Rulemaking is available on the public inspection desk at https://www.federalregister.gov/documents/2018/06/20/2018-13246/implementation-of-the-procedural-provisions-of-the--national-environmental-policy-act. It will be published in tomorrow's Federal Register, June 20.

Viktoria Z. Seale
General Counsel
Executive Office of the President
Council on Environmental Quality
(b) (6) [redacted] **(direct)**
(b) (6) [redacted] **(cell)**

RE: Updates to NEPA.gov

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted]

Cc: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Date: Wed, 20 Jun 2018 08:25:10 -0400

Aaron,

We are ready to update the CEQ website (proposed text below) once the regulations.gov page goes live. Please let me know when I can proceed.

Thanks,

Yardena

On the CEQ NEPA Implementing Procedures page: https://ceq.doe.gov/laws-regulations/regulations.html, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

Proposed Rulemaking:

> Advance Notice of Proposed Rulemaking [link to https://www.gpo.gov/fdsys/pkg/FR-2018-06-20/pdf/2018-13246.pdf] (20 June 2018). CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, https://www.regulations.gov. Comments should be submitted on or before July 20, 2018.

From: Mansoor, Yardena M. EOP/CEQ
Sent: Monday, June 18, 2018 1:53 PM
To: 'Carter, Marian (CONTR)' <Marian.Carter@hq.doe.gov>
Cc: Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Subject: RE: Updates to NEPA.gov

This information is not for public release before Wednesday, until after I confirm the highlighted dates and that the notice is accessible in regulations.gov. Thanks!

1. If the banner is to be an image, we need the image to enable us having time to manipulate it;

Not an image.

2. If the banner is to link to content, we need the content or URL identified;

   See 4 below.

3. If the banner is not going to contain an image, it will be a simple blue background. Please confirm;

   Blue would be fine.

4. The content or 2 sentences to be used in the banner.

   CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. See the Advance Notice of Proposed Rulemaking and related materials here. [Link to https://ceq.doe.gov/laws-regulations/regulations.html.]

5. For the Regulations web page, we need the Heading you want to use, the 3 sentences of text to be entered and the 2 hyperlinks referenced on the web page.

   On the CEQ NEPA Implementing Procedures page: https://ceq.doe.gov/laws-regulations/regulations.html, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

   Advance Notice of Proposed Rulemaking (20 June 2018). CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, https://www.regulations.gov. Comments should be submitted on or before July 20, 2018.

From: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>
Sent: Monday, June 18, 2018 1:23 PM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Cc: Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Subject: RE: Updates to NEPA.gov

Good Afternoon, Yardena:

I checked with John, and if you provide us with the following by COB today, Tuesday, June 18th, he anticipates that he can have these changes completed by tomorrow, COB, Tuesday, June 19, 2018:

1. If the banner is to be an image, we need the image to enable us having time to manipulate it;
2. If the banner is to link to content, we need the content or URL identified;
3. If the banner is not going to contain an image, it will be a simple blue background. Please confirm;

4. The content or 2 sentences to be used in the banner.
5. For the Regulations web page, we need the Heading you want to use, the 3 sentences of text to be entered and the 2 hyperlinks referenced on the web page.

Thank you,
Marian

Marian A. Carter
AU Web Support Team Manager
Highland Technology Services, Inc., Contractor
Office of Environment, Health, Safety and Security
(301) 903-3494 - Office
marian.carter@hq.doe.gov

The business of life is the acquisition of memories…

From: Mansoor, Yardena M. EOP/CEQ [mailto(b) (6) [redacted]
Sent: Monday, June 18, 2018 12:31 PM
To: Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Cc: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: Updates to NEPA.gov

Later this week: The time-sensitive updates I mentioned last week will be requested early Wednesday morning, when a CEQ Federal Register notice is expected to be published. The Wednesday changes will include:

- Adding a banner (two sentences) on the nepa.gov home page.
- Adding a heading, three sentences of text, and two links on the **CEQ NEPA Implementing Procedures** page: >https://ceq.doe.gov/laws-regulations/regulations.html<.

Follow-up: Please let me know if you have any questions on the request I sent Friday at 1:37, on the NEPA Practice page (revising and alphabetizing the tab entries, new land page and file for "Agency Jurisdiction and Expertise."

New requests:

At >https://ceq.doe.gov/laws-regulations/nepa_legislative_history.html<, please replace the following links with the corresponding attachments (filenames in parenthesis):

Congressional White Paper on a National Policy for the Environment (CongressWhitePaper.pdf)

House of Representatives Report on NEPA (House of Representatives Report on NEPA.pdf)

Senate Report on NEPA (Senate Report on NEPA.pdf)

Conference Report (Conference Report on NEPA.pdf)

At >https://ceq.doe.gov/laws-regulations/agency_implementing_procedures.html<, please replace the linked file the corrected file attached.

Thanks, in advance, for your help.

Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) [redacted] / (b) (6) [redacted]

RE: Updates to NEPA.gov - APPROVAL NEEDED FOR BANNER

From: "Carter, Marian (CONTR)" <marian.carter@hq.doe.gov>

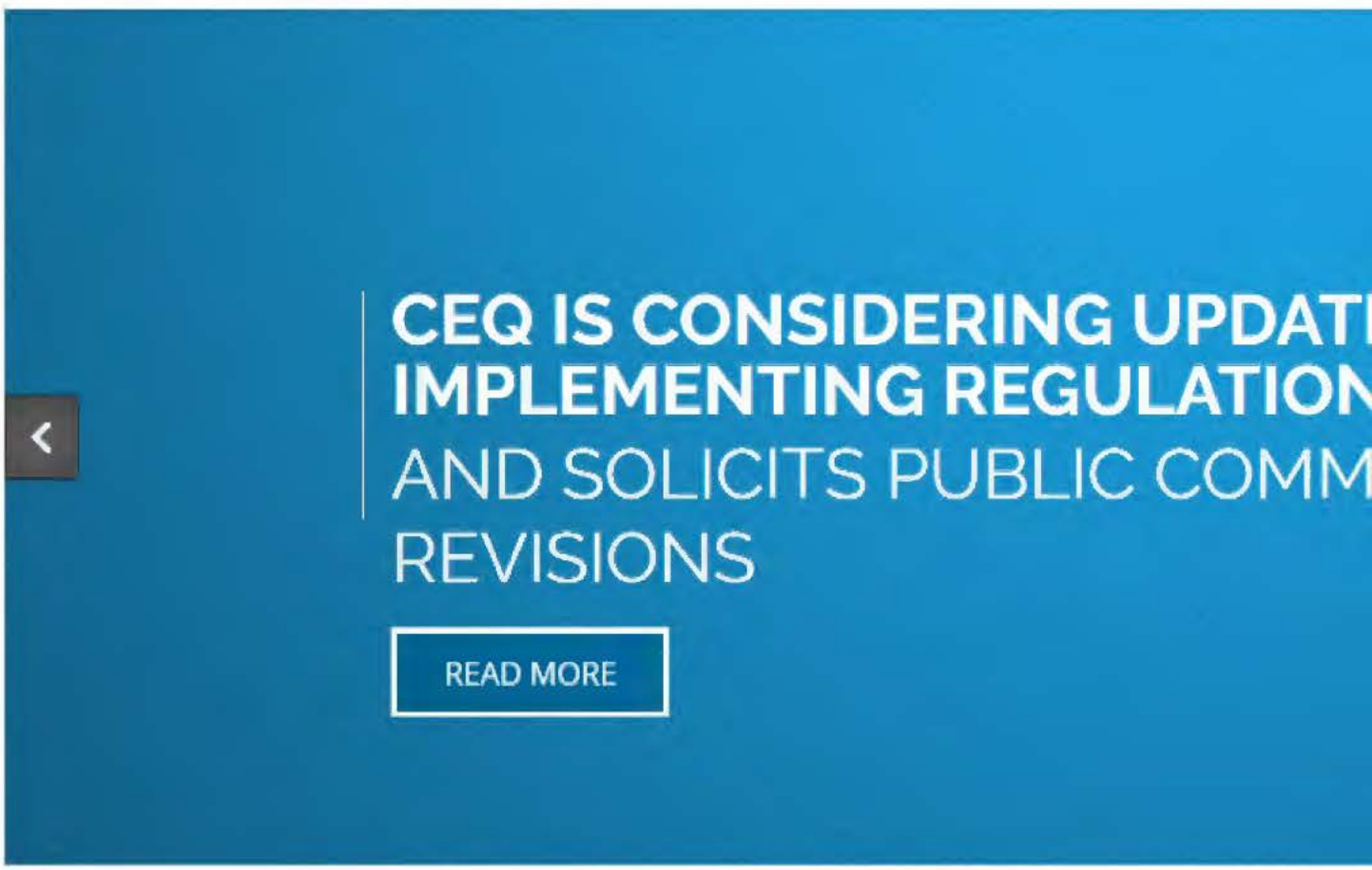
To: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Cc: "Alexander, Lillian" <lillian.alexander@hq.doe.gov>, "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted] "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted] "Adams, John (AU) (CONTR)" <john.adams@hq.doe.gov>

Date: Wed, 20 Jun 2018 10:11:35 -0400

Good Morning, Ted:

John was able to manipulate the image to the following display. If you like it, he will proceed with including it in the web site update.



From: Boling, Ted A. EOP/CEQ [mailto(b) (6) [redacted]
Sent: Wednesday, June 20, 2018 8:57 AM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted] Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Cc: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Updates to NEPA.gov

If we can add a photo to the banner, here's one of Denali from NPS.gov

---

From: Mansoor, Yardena M. EOP/CEQ
Sent: Wednesday, June 20, 2018 8:48 AM
To: Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Cc: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Updates to NEPA.gov

On the CEQ NEPA Implementing Procedures page: >https://ceq.doe.gov/laws-regulations/regulations.html<, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

Proposed Rulemaking:

> Advance Notice of Proposed Rulemaking [link to >https://www.gpo.gov/fdsys/pkg/FR-2018-06-20/pdf/2018-13246.pdf<] (20 June 2018). CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, >https://www.regulations.gov<. Comments should be submitted on or before July 20, 2018.

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Thank you,
Marian

Marian A. Carter
AU Web Support Team Manager
Highland Technology Services, Inc., Contractor
Office of Environment, Health, Safety and Security
(301) 903-3494 - Office
marian.carter@hq.doe.gov

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Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: Updates to NEPA.gov

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Thanks, in advance, for your help.

Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) [redacted] / (b) (6) [redacted]

RE: Updates to NEPA.gov

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Adams, John (AU) (CONTR)" <john.adams@hq.doe.gov>

Cc: "Carter, Marian (CONTR)" <marian.carter@hq.doe.gov>, "Alexander, Lillian" <lillian.alexander@hq.doe.gov>, "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

Date: Wed, 20 Jun 2018 09:30:40 -0400

Thanks again! Looks great!

From: Mansoor, Yardena M. EOP/CEQ
Sent: Wednesday, June 20, 2018 9:12 AM
To: 'Adams, John (AU) (CONTR)' <John.Adams@Hq.Doe.Gov>
Cc: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Updates to NEPA.gov

Thanks for the updates. At https://ceq.doe.gov/laws-regulations/regulations.html, given the low color contrast between text and links, please make one more adjustment. Use this:

> CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, https://www.regulations.gov. Comments should be submitted on or before July 20, 2018.
>
> June 20, 2018: Advance Notice of Proposed Rulemaking (Although the historical links just list their month and year, please include the day on this one.)

Instead of the current layout:

> Advance Notice of Proposed Rulemaking (20 June 2018). CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal

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Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) / (b) (6)

From: Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Sent: Wednesday, June 20, 2018 8:54 AM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6)
Cc: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6)
Drummond, Michael R. EOP/CEQ <(b) (6)
Subject: RE: Updates to NEPA.gov

Good morning Yardena,

I just want to confirm we can go ahead and publish the update now correct?

From: Mansoor, Yardena M. EOP/CEQ [mailto(b) (6)
Sent: Wednesday, June 20, 2018 8:48 AM
To: Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Cc: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6)
Drummond, Michael R. EOP/CEQ <(b) (6)
Subject: RE: Updates to NEPA.gov

On the CEQ NEPA Implementing Procedures page: >https://ceq.doe.gov/laws-regulations/regulations.html<, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

Proposed Rulemaking:

> Advance Notice of Proposed Rulemaking [link to >https://www.gpo.gov/fdsys/pkg/FR-2018-06-20/pdf/2018-13246.pdf<] (20 June 2018). CEQ is considering updating its NEPA implementing regulations and solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process. Submit comments, identified by docket ID number CEQ-2018-0001, through the Federal eRulemaking portal, >https://www.regulations.gov<. Comments should be submitted on or before July 20, 2018.

From: Mansoor, Yardena M. EOP/CEQ
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<(b) (6) [redacted] Drummond, Michael R. EOP/CEQ
<(b) (6) [redacted] Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Subject: RE: Updates to NEPA.gov

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Thank you,
Marian

Marian A. Carter
AU Web Support Team Manager
Highland Technology Services, Inc., Contractor
Office of Environment, Health, Safety and Security
(301) 903-3494 - Office
marian.carter@hq.doe.gov

The business of life is the acquisition of memories…

From: Mansoor, Yardena M. EOP/CEQ [mailto[redacted]
Sent: Monday, June 18, 2018 12:31 PM
To: Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Cc: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <[redacted]
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Subject: Updates to NEPA.gov

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Follow-up: Please let me know if you have any questions on the request I sent Friday at 1:37, on the NEPA Practice page (revising and alphabetizing the tab entries, new land page and file for "Agency Jurisdiction and Expertise."

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At >>https://ceq.doe.gov/laws-regulations/nepa_legislative_history.html<<;, please replace the following links with the corresponding attachments (filenames in parenthesis):

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Thanks, in advance, for your help.

Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) [redacted] / (b) (6) [redacted]

RE: Updates to NEPA.gov

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Adams, John (AU) (CONTR)" <john.adams@hq.doe.gov>

Cc: "Carter, Marian (CONTR)" <marian.carter@hq.doe.gov>, "Alexander, Lillian" <lillian.alexander@hq.doe.gov>, "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

Date: Wed, 20 Jun 2018 08:47:34 -0400

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Cc: Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
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Subject: Updates to NEPA.gov

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Thanks, in advance, for your help.

Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) / (b) (6)

RE: Updates to NEPA.gov

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Szabo, Aaron L. EOP/CEQ" (b) (6) [redacted] "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Date: Wed, 20 Jun 2018 08:46:47 -0400

I see the regulations.gov page is now populated and open for business. Looks good.

From: Mansoor, Yardena M. EOP/CEQ
Sent: Wednesday, June 20, 2018 8:25 AM
To: Szabo, Aaron L. EOP/CEQ <(b) (6) [redacted]
Cc: Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Updates to NEPA.gov

Aaron,

We are ready to update the CEQ website (proposed text below) once the regulations.gov page goes live. Please let me know when I can proceed.

Thanks,

Yardena

On the CEQ NEPA Implementing Procedures page: https://ceq.doe.gov/laws-regulations/regulations.html, after the **Current Regulations:** heading, create new heading "**Proposed Rulemaking:**" and insert:

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Cc: Alexander, Lillian <Lillian.Alexander@hq.doe.gov>; Boling, Ted A. EOP/CEQ

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Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality
[redacted] / [redacted]

[EXTERNAL] RE: CEQ is considering amending its NEPA Regulations

From: "Mandelker, Daniel" <mandelker@wustl.edu>

To: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

Date: Thu, 21 Jun 2018 17:44:18 -0400

Good to hear from you, Yardena, and I am glad you have new responsibilities at CEQ. I hope you understand that I am not going to cooperate with the goons who wrecked EPA and your NEPA program at DOE. The CEQ review is just a front for hardliners who are going to use it to wreck NEPA. We'll take it back in two years. Please give my regards to Michael.

From: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Sent: Thursday, June 21, 2018 12:00 PM
To: Mandelker, Daniel <mandelker@wustl.edu>
Subject: CEQ is considering amending its NEPA Regulations

Professor Mandelker,

I hope this finds you well -- thought I'd take a minute to say hello and alert you to NEPA news, in case you hadn't heard. . . .

Michael and I are still both working, respectively at FDIC and Department of Energy. DOE's NEPA Program has been less vibrant at headquarters since Carol Borgstrom's retirement in early 2017 and a subsequent reassignment of NEPA responsibilities from headquarters to the field offices. You have probably noticed that we have not published *Lessons Learned Quarterly Report* since last September. Since January, I have been on detail to the Council on Environmental Quality, which has been an interesting and gratifying opportunity for me to contribute in a different way.

Yesterday CEQ published an advance notice of proposed rulemaking (attached) inviting comments on potential revisions to update and clarify the CEQ NEPA regulations. Twenty questions are provided as means of structuring the conversation. Comments should be submitted on or before July 20, 2018, and should be submitted through >https://www.regulations.gov< by following the online instructions for submitting comments to Docket ID No. CEQ-2018-0001. We would especially value any recommendations you may make that reflect your unique depth of experience with NEPA.

Fond regards,

Yardena Mansoor

Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) [redacted] / (b) (6) [redacted]

[EXTERNAL] RE: CEQ is considering amending its NEPA Regulations

From: "Mandelker, Daniel" <mandelker@wustl.edu>

To: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

Date: Thu, 21 Jun 2018 14:39:52 -0400

Glad you have the assignment, Yardena. Say hello to my former student, Ted Boling. I will reply later concerning the notice.

From: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Sent: Thursday, June 21, 2018 12:00 PM
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Subject: CEQ is considering amending its NEPA Regulations

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(b) (6) [redacted] / (b) (6) [redacted]

FW: CEQ is considering amending its NEPA Regulations

From: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted]

To: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Date: Thu, 21 Jun 2018 14:52:43 -0400

From: Mandelker, Daniel <mandelker@wustl.edu>
Sent: Thursday, June 21, 2018 2:40 PM
To: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted]
Subject: [EXTERNAL] RE: CEQ is considering amending its NEPA Regulations

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(b) (6) / (b) (6)

Heads Up - Circulating GSA and CEQ Statements for 6/27 Roundtable

From: "Bronack, Candice M. EOP/OMB" <(b) (6) [redacted]

To: GSA <ca.legislation@gsa.gov>, DL-CEQ-LRM <(b) (6) [redacted]>

Cc: "Ventura, Alexandra EOP/OMB" <(b) (6) [redacted]

Date: Thu, 21 Jun 2018 13:40:13 -0400

Attachments: Colamaria Statement 6.27 Roundtable Senate FINAL DRAFT_6.20.docx (31.47 kB); Herrgott Statement 6.27 Roundtable Senate FINAL DRAFT_6.20.docx (33.25 kB)

HEADS UP - GSA/CEQ, we received the attached statements for the 6/27 Senate HSAGC roundtable through back channels and plan to circulate them through our LRM process momentarily. I plan to send any comments I receive to Angela Colamaria and include GSA and CEQ. Please let me know if you have any questions. Thanks.

Candice M. Bronack
Legislative Analyst – Legislative Reference Division
Office of Management & Budget
(b) (6) [redacted]
(b) (6) [redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

FYI: CEQ Remarks for Portman/McCaskill Roundtable on Federal Permitting Process for Major Infrastructure Projects (June 27, 2018)

From:	Staff Secretary <(b) (6) [redacted]
To:	"Donaldson, Annie M. EOP/WHO" <(b) (6) [redacted] "Knight, Shahira E. EOP/WHO" <(b) (6) [redacted] "Chalkey, Richard J. EOP/WHO" <(b) (6) [redacted] "Greenwood, Daniel Q. EOP/WHO" <(b) (6) [redacted] DL WHO LEG AFFAIRS Staff Sec <(b) (6) [redacted]>
Cc:	Staff Secretary <(b) (6) [redacted] "Pettigrew, Theresa L. EOP/CEQ" <(b) (6) [redacted]
Date:	Fri, 22 Jun 2018 17:05:04 -0400
Attachments:	2018-06-27 Portman and McCaskill Roundtable Invitation to Herrgott.pdf (1.75 MB); Herrgott Statement 6.27 Roundtable Senate FINAL_CLEAN.DOCX (27.19 kB)

WHCO, NEC, and OLA –

CEQ's Associate Director for Infrastructure, Alex Herrgott, has been invited to speak at an upcoming roundtable scheduled for Wednesday, June 27 at 2:30 PM. Alex's written statement, which has been reviewed and cleared through the LRM process, is attached. The invitation is also attached and details for the events are below:

Event: Roundtable with Members of the Senate Committee on Homeland Security and Governmental Affairs
Sponsors: Senators Portman and McCaskill
Topic: Federal Permitting Process for Major Infrastructure Projects
Date/Location: Wednesday, June 27, 2018; SD-106, Dirksen Senate Office Building, Washington DC
Press: Yes

Written statements are requested by Monday, June 25 at 2:30 PM – please flag any concern by this time.

STAFF SEC

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

RE: 6/27 meeting request - CEO of EDF Renewables

From: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

To: "Green, Mary A. EOP/CEQ" (b) (6) [redacted] "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Date: Fri, 22 Jun 2018 10:35:04 -0400

Thank you Mary, I will inquire with Mary and others on how to proceed and will respond to Elizabeth.

From: Green, Mary A. EOP/CEQ
Sent: Friday, June 22, 2018 10:11 AM
To: Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Cc: Drummond, Michael R. EOP/CEQ <(b) (6) [redacted]
Subject: FW: 6/27 meeting request - CEO of EDF Renewables

Wasn't sure who to route-out this request; therefore, I am starting with you (NEPA). Please advise.
Mary

From: Moeller, Elizabeth V. <elizabeth.moeller@pillsburylaw.com>
Sent: Thursday, June 21, 2018 4:33 PM
To: Green, Mary A. EOP/CEQ <(b) (6) [redacted]
Subject: [EXTERNAL] 6/27 meeting request - CEO of EDF Renewables

Dear Ms. Green,

Thank you for your time yesterday – just before we saw the release of the Advance Notice of Proposed Rulemaking on NEPA!

I am following up on behalf of EDF Renewables which is a market leading independent power producer and service provider in the U.S. with projects throughout the United States and headquarters in San Diego.

EDF Renewables' President and CEO, Tristan Grimbert, will be in DC on Wednesday, June 26th and is hoping that leaders at CEQ will have time for a short visit to discuss NEPA and national energy and environmental policy. Would a short visit on Wednesday, June 27th at, perhaps at 11:30 be convenient for schedules?

EDF Renewables delivers grid-scale power: wind (onshore and offshore), solar photovoltaic, and storage projects; distributed solutions: solar, solar+storage, EV charging and energy management; and asset optimization: technical, operational, and commercial skills to maximize performance of generating projects. EDF Renewables' North American portfolio consists of 10 GW of developed projects and 10 GW under service contracts.

Please let me know if you need any additional information. Many thanks in advance.

Kind regards,
Elizabeth

Elizabeth Vella Moeller | Partner | Public Policy Group Leader
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t 202.663.9159 | f 202.663.8007 | m (b) (6) [redacted]
elizabeth.moeller@pillsburylaw.com | website bio

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LOS ANGELES MIAMI NASHVILLE NEW YORK NORTHERN VIRGINIA
PALM BEACH SACRAMENTO SAN DIEGO SAN DIEGO NORTH COUNTY
SAN FRANCISCO SHANGHAI SILICON VALLEY TOKYO WASHINGTON, DC

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FW: FYI: CEQ Remarks for Portman/McCaskill Roundtable on Federal Permitting Process for Major Infrastructure Projects (June 27, 2018)

From:	"Pettigrew, Theresa L. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=579eb754b4c34f0e8e46d1fb4cd708d7-pe">
To:	"Kaldahl, Ryan M. EOP/WHO" <(b) (6) [redacted]
Date:	Mon, 25 Jun 2018 12:27:42 -0400
Attachments :	2018-06-27 Portman and McCaskill Roundtable Invitation to Herrgott.pdf (1.75 MB); Herrgott Statement 6.27 Roundtable Senate FINAL_CLEAN.DOCX (27.19 kB)

From: Staff Secretary
Sent: Friday, June 22, 2018 5:05 PM
To: Donaldson, Annie M. EOP/WHO <(b) (6) [redacted] Knight, Shahira E. EOP/WHO <(b) (6) [redacted] Chalkey, Richard J. EOP/WHO <(b) (6) [redacted] Greenwood, Daniel Q. EOP/WHO <(b) (6) [redacted] DL WHO LEG AFFAIRS Staff Sec <(b) (6) [redacted]>
Cc: Staff Secretary <(b) (6) [redacted] Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted]
Subject: FYI: CEQ Remarks for Portman/McCaskill Roundtable on Federal Permitting Process for Major Infrastructure Projects (June 27, 2018)

WHCO, NEC, and OLA –

CEQ's Associate Director for Infrastructure, Alex Herrgott, has been invited to speak at an upcoming roundtable scheduled for Wednesday, June 27 at 2:30 PM. Alex's written statement, which has been reviewed and cleared through the LRM process, is attached. The invitation is also attached and details for the events are below:

Event: Roundtable with Members of the Senate Committee on Homeland Security and Governmental Affairs
Sponsors: Senators Portman and McCaskill
Topic: Federal Permitting Process for Major Infrastructure Projects
Date/Location: Wednesday, June 27, 2018; SD-106, Dirksen Senate Office Building, Washington DC
Press: Yes

Written statements are requested by Monday, June 25 at 2:30 PM – please flag any concern by this time.

STAFF SEC

STATEMENT OF

ALEXANDER HERRGOTT

ASSOCIATE DIRECTOR FOR INFRASTRUCTURE
COUNCIL ON ENVIRONMENTAL QUALITY

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

June 27, 2018

Senator Portman, Ranking Member McCaskill, and Members of the Committee, thank you for the invitation to this roundtable discussion on the federal permitting process for major infrastructure projects. We appreciate this Committee's willingness to have a meaningful dialogue on this topic as we work toward a shared goal of reducing permitting delays and providing the American people the modernized infrastructure they undoubtedly need.

As many of you know, a major cause of delay has been too many decision makers without effective cross agency communication and coordination. Multiple federal agencies oversee potentially dozens of federal statutes that project sponsors must navigate before beginning construction on a major infrastructure project. Over time, this has created a redundant and often inconsistent federal permitting process. Too often, these processes do not share a single framework or time frame. For example, a highway project could have as many as 10 different federal agencies involved in 16 different permitting decisions, in addition to the state, local, and tribal agencies with separate permitting and approval processes.

The result is a federal permitting process that often takes too long, increases costs, and creates uncertainty. We are actively working to address these challenges while ensuring environmental protection. With process enhancements and a common-sense, harmonized approach among federal agencies, infrastructure projects will move through the environmental review permitting process more efficiently. Federal agency coordination is imperative to long-term process reforms throughout these agencies.

Executive Order 13807

On August 15, 2017, President Trump signed Executive Order 13807 implementing a policy of "One Federal Decision." Under One Federal Decision, federal agencies will administer the National Environmental Policy Act (NEPA) so that a single Environmental Impact Statement (EIS) and a single Record of Decision (ROD) are prepared for all reviewing agencies, and all applicable permitting decision processes will be conducted concurrently with the NEPA process to ensure that the necessary permitting decisions can be made within 90 days of the ROD. One Federal Decision also provides that federal agencies will seek to complete the environmental

[APG]

review process within an average of 2 years of the publication of a Notice of Intent to prepare an EIS. As a result of One Federal Decision, the federal environmental review and permitting process will be streamlined, more transparent, and predictable.

One Federal Decision builds on the statutory authorities provided in the Fixing America's Surface Transportation Act (FAST Act) to streamline permitting and provides a framework to further improve efficient coordination between federal agencies. The FAST-41 process, established in Title 41 of the FAST Act, provides a range of tools for large and complex infrastructure projects to navigate the federal environmental review and authorization process. In brief, FAST-41 established project-specific procedures that may be applicable or available to agencies and project sponsors in meeting permitting and review obligations. One Federal Decision broadly impacts how agencies conduct and coordinate environmental reviews while preserving each agency's statutory authority, independence, and ability to comply with NEPA and related statutes, like FAST-41.

Memorandum of Understanding

On April 9, 2018, President Trump announced that the following 12 federal agencies signed a One Federal Decision Memorandum of Understanding (MOU): Department of the Interior (Interior), Department of Agriculture (USDA), Department of Housing and Urban Development, Department of Commerce, Department of Transportation, Department of Energy (DOE), United States Army Corps of Engineers, Department of Homeland Security, Environmental Protection Agency (EPA), Federal Energy Regulatory Commission (FERC), Advisory Council on Historic Preservation, and the Federal Permitting Improvement Steering Council (FPISC). Under the MOU, these agencies committed to following the President's One Federal Decision framework. In doing so, the agencies agreed to implement an unprecedented level of coordination and collaboration in conducting their environmental reviews of major infrastructure projects.

The Council on Environmental Quality (CEQ), in coordination with other components of the White House, has convened a federal interagency working group to develop the framework under which agencies will implement One Federal Decision. This framework establishes the standard operating procedures for how agencies process environmental reviews from beginning to end. The agencies will work together to identify the appropriate level of analysis needed to conduct the necessary environmental reviews, synchronize the public engagement, and complete other procedural steps to ensure that all necessary decisions can be made within the timelines established by Executive Order 13807.

Agency Action

To date, agencies have been taking steps to advance One Federal Decision principles, starting first with normalizing regular interagency working group meetings and collaboration between agencies and CEQ to improve interagency coordination and the quality of environmental analysis. Since the agencies signed the MOU, CEQ and agency leadership have engaged in numerous meetings on agency streamlining efforts to identify and implement policy, process, and regulatory changes that include:

- The Federal Highway Administration signed an agreement with the United States Fish and Wildlife Service, the Army Corps of Engineers, EPA, United States Coast Guard, and National Oceanic and Atmospheric Administration (NOAA), committing to working together to achieve the goals of Executive Order 13807. These agencies collaboratively developed a chart coordinating each agency's processes;
- Interior issued Secretarial Order 3355 and additional guidance that advance the department's NEPA-streamlining efforts within Executive Order 13807;
- The Army Corps of Engineers issued Section 408 policy changes adopting other agencies' NEPA documents and issued a policy memorandum operationalizing "risk-informed decision making" to improve coordination and risk management across disciplines;
- USDA, FERC, DOE, and EPA are improving internal clearance processes along with increasing agency capacity for projects with dedicated staff assignments;
- USDA, the Army Corps of Engineers, NOAA Fisheries and the United States Fish and Wildlife Service are expanding the use of time-saving programmatic consultation processes; and
- Agencies will be issuing directives and conducting training at all levels of their organizations, from headquarters to field offices, on timetables and plans to implement the One Federal Decision policy nationwide.

Agency Accountability

The Office of Management and Budget is developing a performance accountability system and appropriate performance metrics to ensure that agencies are implementing One Federal Decision, including the adherence to lead federal agency permitting timetables. The Administration plans to consider agency performance during budget formulation, and agency delays from the permitting timetable may be quantified. Key agency personnel also will have accountability and performance criteria added to their performance plans to measure their effectiveness in processing project permits.

Regulatory Reforms

Following the direction laid out in Executive Order 13807, CEQ published an initial list of actions in the *Federal Register* on September 14, 2017, outlining its plans to enhance and modernize the federal environmental review and authorization process. Last fall, CEQ announced its intent to review its 1978 regulations implementing the procedural requirements of NEPA to identify potential updates and clarifications to those regulations. Just last week, CEQ published in the *Federal Register* for public comment an Advance Notice of Proposed Rulemaking titled, "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act."

****

Through improved agency coordination, increased transparency and accountability and timely decision making, we can improve our infrastructure permitting process and get projects completed and to the market faster for the benefit of the American people.

[APG]

While CEQ is focused on the development of a better process for all infrastructure project permitting, the Federal Permitting Improvement Steering Council is focused on overcoming obstacles on a project-by-project basis. My colleague, Angela Colamaria, the acting Executive Director of the Permitting Council, will expand further on the implementation of FAST-41 and FPISC's role in streamlining the federal permitting process.

Thank you again for the opportunity to participate in today's discussion.

[APG]

Fwd: Comment - CEQ-2018-001

From: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

To: "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Date: Fri, 06 Jul 2018 18:10:58 -0400

Attachments: Final State AG Letter Requesting Extension of Time to Comment on Advance.._.pdf (1.24 MB)

Just putting this on the top of your inbox.

Michael Drummond
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) [redacted]

Begin forwarded message:

From: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]
Date: July 3, 2018 at 3:10:34 PM EDT
To: "Szabo, Aaron L. EOP/CEQ" <(b) (6) [redacted] "Seale, Viktoria Z. EOP/CEQ" <(b) (6) [redacted] "Neumayr, Mary B. EOP/CEQ" <(b) (6) [redacted]
Cc: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted] "Smith, Katherine R. EOP/CEQ" <(b) (6) [redacted]
Subject: FW: Comment - CEQ-2018-001

FYI -- We received the attached this afternoon from the AGs offices of WA, MD, MA, NJ, NY, and OR requesting a 60-day extension of the comment period.

From: Kealy, Tricia (ATG) <TriciaK@ATG.WA.GOV>
Sent: Tuesday, July 3, 2018 2:44 PM
To: FN-CEQ-NEPA <(b) (6) [redacted] ksmith@ceq.eop.gov
Cc: Janke, Aurora (ATG) <AuroraJ@ATG.WA.GOV>
Subject: Comment - CEQ-2018-001

Greetings,

Attached please find a letter Re: Advance Notice of Proposed Rulemaking – Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28591 (June 20, 2018) Docket ID No. CEQ-2018-001 from Attorneys General of Washington, Maryland, Massachusetts, New Jersey, New York, and Oregon. This was submitted today on regulations.gov.

Thank you,

Tricia Kealy
Legal Assistant 3/Lead
Counsel for Environmental Protection
Office of the Attorney General
800 5th Ave, Suite 2000
Seattle, WA 98104
Phone 206-326-5494
TriciaK@atg.wa.gov

ATTORNEYS GENERAL OF WASHINGTON, MARYLAND, MASSACHUSETTS, NEW JERSEY, NEW YORK, AND OREGON

July 3, 2018

BY EMAIL AND REGULATIONS.GOV
Mary B. Neumayr, Chief of Staff
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503
NEPA@ceq.eop.gov
ksmith@ceq.eop.gov

Re: Advance Notice of Proposed Rulemaking – Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28591 (June 20, 2018)
Docket ID No. CEQ-2018-0001

Dear Chief of Staff Neumayr:

The undersigned State Attorneys General write to express our concern about the Council on Environmental Quality's (CEQ) advance notice of proposed rulemaking regarding updates to the regulations implementing the National Environmental Policy Act (NEPA). For the following reasons, we ask that you extend the public comment period from 30 days to 90 days to provide a sufficient opportunity for states, the public, and other stakeholders to comment on this significant proposal to revise regulations that have long served to protect the environment and public health.

NEPA is one of our nation's bedrock environmental laws. The CEQ's implementing regulations provide the guiding principles for administering NEPA across the entire federal government. Nearly every major federal action from the approval of significant energy and infrastructure projects to key decisions concerning the administration of federal public lands requires compliance with the NEPA process. We are concerned that amendments to CEQ's regulations may result in profound changes on the depth and quality of federal agencies' consideration of the environmental and public health impacts of major federal actions—many of which are of significant interest to our states' residents and have lasting impacts on our states' natural resources and economies. In addition, many states, including Maryland, Massachusetts, New York, and Washington, have adopted their own environmental review laws that often must be administered in conjunction with the NEPA process. Our states thus have a strong interest in ensuring that any revisions to CEQ's NEPA regulations continue to require, consistent with NEPA, that federal agencies always take a "hard look" at the environmental and public health consequences of major federal actions.

As stated in the advance notice, CEQ's NEPA regulations have been revised extremely infrequently, and therefore a compressed timeline for consideration of such revisions is unwarranted and unwise. CEQ's NEPA regulations are fundamental to the daily functioning of numerous agencies and any revisions to these regulations must be carefully and deliberately calibrated. A wealth of scholarship and practical experience can be brought to bear on the need for and prudence of any revisions, and we believe that only a truly deliberative and public process will produce revised regulations that are consistent with NEPA's structure and purpose.

Given the significant impacts that revisions to CEQ's NEPA regulations could have on states and the public, the broad scope of the advance notice, and the long history of the federal government's use of the regulations under review, we ask that you extend the comment period by 60 days to provide a meaningful amount of time for states, the public, and other stakeholders to adequately respond to the advance notice. The current 30-day comment period does not provide the affected public adequate opportunity to participate in the rulemaking and comment on the proposal as required by the Administrative Procedure Act. 5 U.S.C. § 553(c). Under section 2(b) of Executive Order 13,563, a standard comment period should be at least 60 days, but the significance of this proposal to change longstanding and far-reaching NEPA regulations demands additional time to ensure an opportunity for meaningful public involvement in the review process.

We therefore request that CEQ extend the comment period by 60 days, to September 18, 2018. We also request that CEQ hold several public hearings on the proposal in different regions of the country during the comment period.

We appreciate your consideration of this important matter.

Respectfully submitted,

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON
Attorney General

By: Aurora R. Janke

WILLIAM R. SHERMAN
Assistant Attorney General
AURORA R. JANKE
Special Assistant Attorney General
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FOR THE COMMONWEALTH OF MASSACHUSETTS

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FOR THE STATE OF NEW YORK

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FOR THE STATE OF NEW YORK

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steve.novick@doj.state.or.us

RE: CEQ Website update request

From: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

To: "Adams, John (AU) (CONTR)" <john.adams@hq.doe.gov>, "Carter, Marian (CONTR)" <marian.carter@hq.doe.gov>, "Alexander, Lillian" <lillian.alexander@hq.doe.gov>

Cc: "Mansoor, Yardena M. EOP/CEQ" <(b) (6) [redacted] "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted]

Date: Wed, 11 Jul 2018 16:14:11 -0400

Thanks John, we appreciate the prompt assistance.

From: Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>
Sent: Wednesday, July 11, 2018 3:14 PM
To: Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>
Cc: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: RE: CEQ Website update request

Good afternoon Michael,

This request has been completed.

From: Drummond, Michael R. EOP/CEQ [mailto:(b) (6) [redacted]
Sent: Wednesday, July 11, 2018 2:56 PM
To: Adams, John (AU) (CONTR) <John.Adams@Hq.Doe.Gov>; Carter, Marian (CONTR) <Marian.Carter@hq.doe.gov>; Alexander, Lillian <Lillian.Alexander@hq.doe.gov>
Cc: Mansoor, Yardena M. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: CEQ Website update request

John,

At >https://ceq.doe.gov/laws-regulations/regulations.html<, please make the indicated change and post the attached document:

(b) (5) [redacted]

(b) (5)

[redacted]

As always, thank you for your help.

Michael Drummond
Deputy Associate Director for NEPA
Council on Environmental Quality
(b) (6) [redacted]

RE: Milestones report -- agency review and input needed by July 13

From: "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted]

To: "Schneider, Daniel J. EOP/CEQ" <(b) (6) [redacted] "Seale, Viktoria Z. EOP/CEQ" <(b) (6) [redacted] "Neumayr, Mary B. EOP/CEQ" <(b) (6) [redacted] "Herrgott, Alex H. EOP/CEQ" <(b) (6) [redacted]

Cc: "Pettigrew, Theresa L. EOP/CEQ" <(b) (6) [redacted] "Boling, Ted A. EOP/CEQ" <(b) (6) [redacted] "Smith, Katherine R. EOP/CEQ" <(b) (6) [redacted]

Date: Thu, 12 Jul 2018 12:31:23 -0400

Thanks all, adding Katherine to this thread. I'll make the suggested changes.

From: Schneider, Daniel J. EOP/CEQ
Sent: Thursday, July 12, 2018 10:38 AM
To: Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted] Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Neumayr, Mary B. EOP/CEQ <(b) (6) [redacted] Herrgott, Alex H. EOP/CEQ <(b) (6) [redacted]
Cc: Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Milestones report -- agency review and input needed by July 13

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From: Seale, Viktoria Z. EOP/CEQ
Sent: Thursday, July 12, 2018 10:33 AM
To: Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Neumayr, Mary B. EOP/CEQ <(b) (6) [redacted] Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted] Herrgott, Alex H. EOP/CEQ <(b) (6) [redacted]
Cc: Pettigrew, Theresa L. EOP/CEQ <(b) (6) [redacted] Boling, Ted A. EOP/CEQ <(b) (6) [redacted]
Subject: RE: Milestones report -- agency review and input needed by July 13

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To: Neumayr, Mary B. EOP/CEQ <(b) (6) [redacted] Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted] Seale, Viktoria Z. EOP/CEQ <(b) (6) [redacted] Herrgott, Alex H. EOP/CEQ <(b) (6) [redacted]
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Sent: Monday, July 9, 2018 5:50 PM
To: rnelson@achp.gov; mdefalco@arc.gov; timthomas@arc.gov; Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] bhenson@dra.gov; jperry@fs.fed.us; edenson@fs.fed.us; mmazel@fs.fed.us; chad.parker@wdc.usda.gov; Kubena, Kellie - RD, Washington, DC <Kellie.Kubena@wdc.usda.gov>; laurel.leverrier@wdc.usda.gov; Duane, Jennifer A. <JDuane@ntia.doc.gov>; Spurgeon, Andrew <ASpurgeon@ntia.doc.gov>; Moyer, Timothy <TMoyer@ntia.doc.gov>; brian.s.teeple2.civ@mail.mil; peter.j.potochney.civ@mail.mil; fredrick.d.moorefield.civ@mail.mil; james.p.campion2.civ@mail.mil; robert.a.coffman10.civ@mail.mil; Jason.Botel@ed.gov; Sara.Trettin@ed.gov; David.Cantrell@ed.gov; herbert.mcconnell@hq.doe.gov; pam.peckham@hq.doe.gov; max.everett@hq.doe.gov; Ronald.Hewitt@hq.dhs.gov; Darrell.Smith@hq.dhs.gov; Brandon.wales@hq.dhs.gov; Marcus.Ward@hq.dhs.gov; Sonja.Rodriguez@hq.dhs.gov; Melanie.Bakaysa@associates.hq.dhs.gov; Ralph.H.Gaines@hud.gov; John.Gibbs@hud.gov; Dina.Lehmann-Kim@hud.gov; Lisa.S.Abell@hud.gov; Stanley.Gimont@hud.gov; katharine_macgregor@ios.doi.gov; sfusilie@blm.gov; k15montg@blm.gov; jjirby@usbr.gov; ralcorn@usbr.gov; lee_dickinson@nps.gov; truda_stella@nps.gov; ken_fowler@fws.gov; noah_matson@fws.gov; sharlene.roundface@bia.gov; beth.wenstrom@bia.gov; thompson.kevin@dol.gov; ahlstrand.amanda@dol.gov; Zelden.Mark.A@DOL.gov; julie.johnston@dot.gov; finch.fulton@dot.gov; kipp.kranbuhl@treasury.gov; adonovan@cdfi.treas.gov; jodie.harris@treasury.gov; barry.wides@occ.treas.gov; karen.bellesi@occ.treas.gov; thomas.klobucar@va.gov; Deborah.Scher@va.gov; Blake-Coleman.Wendy@epa.gov; Mixon.edward@epa.gov; Erica.Rosenberg@fcc.gov; Kirk.burgee@fcc.gov; Michael.Janson@fcc.gov; Michele.Berlove@fcc.gov; Ryan.Palmer@fcc.gov; Deborah.Salons@fcc.gov; jessica.salmoiraghi@gsa.gov; aluanda.drain@gsa.gov; maryann.hillier@gsa.gov; wengland@hrsa.gov; nmanzanero@hrsa.gov; tmorris@hrsa.gov; MQuinn@hrsa.gov; GSigounas@hrsa.gov; hesseb@mail.nih.gov; jneal@imls.gov; nweiss@imls.gov; rdale@imls.gov; egiancha@nsf.gov; tnandago@nsf.gov; kcalvert@nsf.gov; mehought@nsf.gov
Cc: Redl, David <dredl@ntia.doc.gov>; Hanson, Karen <KHanson@ntia.doc.gov>; Kinkoph, Douglas <DKinkoph@ntia.doc.gov>; kenl.johnson@wdc.usda.gov; Jannine.Miller@wdc.usda.gov; Page, Ben J. EOP/OMB <(b) (6) [redacted] Premaza, Victoria S. EOP/OMB

<[redacted] Stein, Nora H. EOP/OMB <[redacted] Slater, Abigail A. EOP/WHO <[redacted] Lira, Mathew L. EOP/WHO <[redacted]
Subject: Milestones report -- agency review and input needed by July 13

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Kelsey

Kelsey Guyselman
Executive Office of the President
Office of Science and Technology Policy
202-456-3824

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To: "Seale, Viktoria Z. EOP/CEQ" <(b) (6) [redacted] "Drummond, Michael R. EOP/CEQ" <(b) (6) [redacted] "Neumayr, Mary B. EOP/CEQ" <(b) (6) [redacted] "Herrgott, Alex H. EOP/CEQ" <(b) (6) [redacted]

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Date: Thu, 12 Jul 2018 10:37:51 -0400

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To: Drummond, Michael R. EOP/CEQ <(b) (6) [redacted] Neumayr, Mary B. EOP/CEQ <(b) (6) [redacted] Schneider, Daniel J. EOP/CEQ <(b) (6) [redacted] Herrgott, Alex H. EOP/CEQ <(b) (6) [redacted]
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Cc: Redl, David <dredl@ntia.doc.gov>; Hanson, Karen <KHanson@ntia.doc.gov>; Kinkoph, Douglas <DKinkoph@ntia.doc.gov>; kenl.johnson@wdc.usda.gov; Jannine.Miller@wdc.usda.gov; Page, Ben J. EOP/OMB <(b) (6) [redacted] Premaza, Victoria S. EOP/OMB <(b) (6) [redacted] Stein, Nora H. EOP/OMB <(b) (6) [redacted] Slater, Abigail A. EOP/WHO <(b) (6) [redacted] Lira, Mathew L. EOP/WHO <(b) (6) [redacted]
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Date: Thu, 12 Jul 2018 10:33:20 -0400

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Cc: Redl, David <dredl@ntia.doc.gov>; Hanson, Karen <KHanson@ntia.doc.gov>; Kinkoph, Douglas <DKinkoph@ntia.doc.gov>; kenl.johnson@wdc.usda.gov; Jannine.Miller@wdc.usda.gov; Page, Ben J. EOP/OMB <(b) (6) [redacted] Premaza, Victoria S. EOP/OMB <(b) (6) [redacted] Stein, Nora H. EOP/OMB <(b) (6) [redacted] Slater, Abigail A. EOP/WHO <(b) (6) [redacted] Lira, Mathew L. EOP/WHO <(b) (6) [redacted]
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[No Subject]

From:	"Schneider, Daniel J. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=70576341fcb44ab780c5f4d1ca218647-sc">
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Date:	Fri, 13 Jul 2018 15:22:01 -0400
Attachments:	Draft Mary Backgrounder 07-09-18.docx (107.32 kB)

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EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

Draft – Deliberative – 07/09/18

Date: July 9, 2018
Re: Backgrounder for Mary Neumayr Nomination

Background: On June 18, 2018, President Trump nominated Mary Bridget Neumayr, of Virginia, to be the Chair of the White House Council on Environmental Quality (CEQ). The following document provides a brief overview of the ongoing news surrounding Ms. Neumayr's nomination.

Overview:

Ms. Neumayr has been serving as CEQ's Chief of Staff since March 2017. Prior to joining CEQ, she served in a variety of positions with the Committee on Energy and Commerce in the U.S. House of Representatives; including as Deputy Chief Counsel, Energy and Environment (2017); Senior Counsel (2011-2017); and Counsel (2009-2010). Ms. Neumayr also served as Deputy General Counsel for Environment and Nuclear Programs at the U.S. Department of Energy (2006-2009), and as Counsel to the Assistant Attorney General for the Environment and Natural Resources Divisions at the U.S. Department of Justice (2003-20006). Prior to her government service, Ms. Neumayr was in private legal practice from 1989 through 2003. She received her B.A. from Thomas Aquinas College and her J.D. from the University of California, Hastings College of Law.

White House press release on intent to nominate: https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-personnel-key-administration-posts-46/

White House press release on formal nomination: https://www.whitehouse.gov/presidential-actions/seventeen-nominations-one-withdrawal-sent-senate-today/

Post-Nomination News:

06/12/2018: E&E News, *Trump nominates Mary Neumayr as CEQ head*: https://www.eenews.net/stories/1060084231

- "I am pleased that the President has nominated Mary Neumayr to lead the Council on Environmental Quality," Sen. Jim Inhofe (R-Okla.) said in a statement. "We've worked well together and I appreciate her commitment to protecting the environment while also cutting duplicative and unnecessary regulations. She will play a key role in working with Congress to promote good government reforms as we work towards an infrastructure bill. I congratulate her on her nomination, and look forward to her confirmation."

06/13/2018: The Hill, *Trump taps Hill veteran for White House environment job*: http://thehill.com/policy/energy-environment/392038-trump-taps-hill-veteran-for-white-house-environment-job

[APG]